

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001930

RECEIVED
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SC Court of Appeals

Norris Earl White Jr.,

Appellant,

v.

City of North Charleston

Respondent.

RECORD ON APPEAL

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Attorney for Appellant
Norris Earl White Jr.

Dated this ____ day of February 2018.

INDEX

Order Granting Summary Judgment dated June 8, 2017.....	1
Order Denying White’s Motion to Reconsider dated August 18, 2017.....	3
Complaint.....	7
Amended Complaint.....	18
Answer to Amended Complaint.....	30
Transcript of Summary Judgment Proceeding dated May 17, 2017.....	38
City of North Charleston’s Motion for Summary Judgment, filed December 9, 2016	71
City of North Charleston’s Memorandum in Support of Summary Judgment, with Exhibits, Filed May 17, 2017.....	74
White’s Memorandum in Opposition to Summary Judgment, with Exhibits, Filed May 15, 2017.....	234
White’s Motion to Reconsider, Alter or Amend.....	279
White’s Memorandum in Support of Motion to Reconsider	283
City of North Charleston’s Memorandum in Opposition to Motion to Reconsider	299
White’s Exhibits Included in Motions and Memorandum	
Deposition of Norris Earl White Jr.	95
Deposition of McCullough	215
Deposition of Officer Arroyo.....	120
Deposition of Officer King.....	150
Affidavit of Fitzpatrick, dated January 17, 2017	264
Affidavit No. 1 of Fitzpatrick	264
<i>Nol Pros</i> of Criminal Charge	269
North Charleston Police Dept. Policy, A-23.....	257
Photos of Norris Earl White Jr.....	193 – 197, 267
Consent Scheduling Order, dated January 31, 2017	273
Defendant’s Discovery Responses.....	276

City of North Charleston's Exhibits Included in Memorandum

Deposition of Norris White	95
Deposition of Officer Arroyo.....	120
Deposition of Officer King	150
Deposition of McCullough	215
Affidavit of Officer Arroyo	209
Affidavit of McCullough	212
Affidavit No. 2 of Fitzpatrick, dated May 5, 2017	227
Affidavit of Officer Glover.....	231
Waffle House Video, Compact Disc.....	178
Officer Kaufman's Supplemental Report	180
Medical Records	182
Statement of Norris Earl White Jr.	187
Internal Investigations File	189
CAD Report	200
Case Notes of Detective Allen.....	206
Charleston County EMS Records	116
Certificate of Appellant.....	302

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-10-6561

Norris Earl White, Jr.,

City of North Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment on all claims, filed 12/9/16, is granted. Defendant has demonstrated that there is no genuine issue of material fact. Plaintiff's claims for false arrest, false imprisonment, and unlawful search and seizure must fail as no private cause of action exists for these claims. Plaintiff's cause of action for gross negligence must fail, as evidence of "slight care" is present. The Defendant enjoys immunity under the SC Tort Claims Act, S.C. Code 15-78-60, from intentional torts, losses resulting from discretionary judgment of a government employee, and punitive damages. No evidence of malice has been presented to support a malicious prosecution claim. No evidence to support a claim for negligent hiring, training, or supervision has been presented. The Plaintiff has voluntarily withdrawn his claim for intentional infliction of emotional distress.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

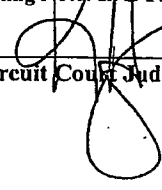
INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts 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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2151

Judge Code

5/24/2017

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-10-6561

Norris Earl White, Jr.,

City of North Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), 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, 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: Plaintiff's Motion to Reconsider, Alter, or Amend the Court's Order Granting Defendant's Motion for Summary Judgment (Order filed 6/8/17) is denied. Plaintiff has failed to demonstrate clear error under SCRPC 59(e).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts 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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Justice

Judge Code

Date _____

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE JR.

Plaintiff(s)

vs.

CITY OF NORTH CHARLESTON, NORTH
CHARLESTON POLICE DEPARTMENT

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 10- 6561

Submitted By: Milton D. Stratos II
Address: 1041 Johnnie Dodds Blvd., Ste. 14A
Mount Pleasant, SC 29464

SC Bar #: 102108
Telephone #: (843) 216-7739
Fax #: (843) 216-0804
Other:
E-mail: milt@stratoslaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI- -
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Wrongful Death (360)
☒ Assault/Battery (370)
☐ Slander/Libel (380)
☒ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

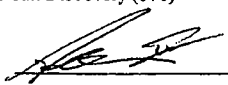
- Inmate Petitions**
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: 

Date: 12/02/2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NORRIS EARL WHITE JR.

Plaintiff,

v.

CITY OF NORTH CHARLESTON,
NORTH CHARLESTON POLICE
DEPARTMENT

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

) CASE NO.: 2015-CP-10- 6561
)

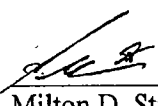
SUMMONS

FILED
2015 DEC -4 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANTS ABOVE NAMED: CITY OF NORTH CHARLESTON AND
THE NORTH CHARLESTON POLICE DEPARTMENT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the action,
a copy of which is herewith served upon you, and to serve a copy of your Answer to the said
Complaint on the subscribed at his office, 1041 Johnnie Dodds Blvd., Ste. 14A, Mount Pleasant,
SC 29464, within thirty (30) days after the service hereof, exclusive of the day of service and if
you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court
for entry of default as to all relief requested herein.

STRATOS LAW, LLC


Milton D. Stratos II
1041 Johnnie Dodds Blvd., Suite 14A
Mount Pleasant, SC 29464
(843) 216-7739
(843) 216-0804 (f)
milt@stratoslaw.com

ATTORNEYS FOR THE PLAINTIFF

December 2, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NORRIS EARL WHITE JR.

Plaintiff,

v.

CITY OF NORTH CHARLESTON,
NORTH CHARLESTON POLICE
DEPARTMENT

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10- 6561

**COMPLAINT
(JURY TRIAL DEMANDED)**

FILED
2015 DEC -4 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff herein, complaining of the Defendants above named, alleges and would respectfully show unto This Honorable Court as follows:

1. The Plaintiff is a citizen and resident of the County of Dorchester, State of South Carolina.

2. The Defendant City of North Charleston is a government entity and political subdivision organized under the laws of the State of South Carolina, specifically the South Carolina Torts Claims Act, S.C. Code § 15-78-10, and located within the County of Charleston, State of South Carolina.

3. Defendant City of North Charleston, as part of its governmental functions, operates a police department known as the North Charleston Police Department ("NCPD"), and is responsible for the acts of its employees, agents, servants, and officers, including the officers herein referenced, by virtue of the doctrine of *respondent superior*.

4. At all times mentioned herein, Officers C. Arroyo and A. King were duly appointed Police Officers with Defendant NCPD and employees, agents or servants of Defendant City of North Charleston and NCPD, and were acting within the course and scope of their employment with the Defendants.

5. At all times relevant hereto, Defendants City of North Charleston and Defendant NCPD through its police officers took actions against Plaintiff under color of the statutes, ordinances, customs and usage of the State of South Carolina, City of North Charleston, and the North Charleston Police Department.

6. That this Honorable Court has jurisdiction of the parties and subject matter set forth herein, and pursuant to South Carolina Code § 15-78-100(b).

FACTUAL ALLEGATIONS

7. That the incidents complained of herein began on December 28, 2013, at approximately 5:00 a.m. inside a Waffle House restaurant, located at 2571 Ashley Phosphate Road, City of North Charleston, County of Charleston, South Carolina.

8. On December 28, 2013, Plaintiff was in the above-referenced Waffle House Restaurant seated in a booth near the exit door and accompanied by J. Omar and two female companions.

9. At the aforementioned date and time, Officer Arroyo was seated at a booth directly behind the Plaintiff with a female companion.

10. Plaintiff and his three friends were rightfully and legally on the premises for the purpose of dining for approximately forty (40) minutes when Officer Arroyo, who was clothed in NCPD official police uniform, left his table without cause and approached the Plaintiff's table and aggressively ordered Plaintiff and the three above-referenced companions to leave the premises.

11. Plaintiff and Mr. J. Omar calmly and respectfully inquired why Officer Arroyo was demanding they leave the restaurant. Officer Arroyo responded that they were being loud, Officer Arroyo threatened to use his taser on J. Omar, and Officer Arroyo declared that he would

arrest Plaintiff.

12. At the aforementioned date and at approximately 5:06 a.m., Officer Arroyo initiated a warrantless and illegal arrest by reaching into the booth where Plaintiff was seated, grabbing Plaintiff's clothing and arm, dragging the Plaintiff from his seat, securing Plaintiff's arms behind his back and leaning Plaintiff face first into a glass barrier.

13. At all times relevant hereto, the Plaintiff was in compliance with and following all relevant South Carolina laws and local ordinances.

14. At all times relevant hereto, the Plaintiff was reasonably cooperative and reasonably civil during his unlawful arrest, despite the fact that he was entitled under the law to defend his person from an unlawful arrest.

15. After initiating the illegal seizure of Plaintiff's person, and with the Plaintiff's arms forcefully restrained behind his back, Officer Arroyo attempted to place handcuffs on the Plaintiff, pushing and pulling him back and forth while moving the Plaintiff to the other end of the restaurant.

16. While the aforesaid actions were underway, Officer Arroyo also threatened to taser J. Omar.

17. With both of Plaintiff's arms in Officer Arroyo's control, Officer Arroyo then pinned the Plaintiff against secured bar seating and placed handcuffs on one of the Plaintiff's wrists, and then without cause grapple hooked Plaintiff's left arm from behind, leveraged his weight, and with great force picked Plaintiff up from the floor and threw the defenseless Plaintiff headfirst into the tile floor. Officer Arroyo then jumped on Plaintiff's back, jammed his knee into the back of Plaintiff's head and neck, completed cuffing the semi-conscious Plaintiff's second wrist, and with the assistance of Officer King picked Plaintiff up from the floor.

18. Officer King, who arrived moments after Officer Arroyo slammed Plaintiff onto the tiled floor, then assisted Officer Arroyo in guiding Plaintiff from the premises, and in doing so intentionally bent Plaintiff over by grabbing his shoulders and pushing them down while forcing Plaintiff's cuffed hands up, and used Plaintiff's face and head as a battering ram to open two heavy glass doors.

19. Plaintiff was then illegally searched and placed in the back of Officer King's vehicle. Before being incarcerated in Charleston County Detention Center Plaintiff was transported by EMS to Trident Medical Center where he was treated for head injury, as well as facial and scalp contusions.

20. Despite the facts that no charges whatsoever were warranted, the Plaintiff was charged with Disorderly Conduct and Resisting Arrest and was detained in Charleston County Detention Center.

21. Plaintiff was exonerated of all charges brought against him when they were later dismissed prior to trial by the prosecuting authority.

FOR A FIRST CAUSE OF ACTION
(Assault and battery)

22. The allegations set forth in Paragraphs 1 through 21 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

23. Officer Arroyo unlawfully, without consent, and without probable cause battered Plaintiff, handcuffed Plaintiff, forced Plaintiff's body and face into glass partition, slammed Plaintiff's head and face into a tile floor, and used Plaintiff's head and face to open heavy glass doors.

24. The unlawful and unauthorized actions of Officer Arroyo and Officer King were far in excess of what would have been reasonable and necessary to effectuate the unlawful arrest

of the Plaintiff.

25. Officer Arroyo verbally threatened Plaintiff and Plaintiff's companions without provocation or cause whatsoever, which caused Plaintiff to be reasonably fearful that he would sustain great bodily injury at the hands of Officer Arroyo.

26. The actions of Officer Arroyo and Officer King constitute the tort of assault and battery from which Defendants are liable under the South Carolina Tort Claims Act.

27. That, as a result of said assault and battery, the Plaintiff suffered injury and endured pain and suffering, had enduring embarrassment, humiliation, and mental distress, and has suffered a loss of enjoyment of life.

FOR A SECOND CAUSE OF ACTION
(Wrongful detainment and false arrest)

28. The allegations set forth in Paragraphs 1 through 27 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

29. The intentional actions of the Defendant's police officers in falsely arresting and imprisoning the Plaintiff were done with reckless, callous and willful disregard for and indifference to Plaintiff's constitutionally protected rights.

30. Officer Arroyo initiated the illegal arrest, Officer King assisted in perpetrating the illegal arrest, and both officers provided false information in support of their illegal conduct.

31. The Plaintiff's wrongful arrest was therefore in clear violation of Plaintiff's rights, privileges, and immunities as afforded to him by the United States Constitution and the Constitution of the State of South Carolina, in particular, Plaintiff's right to be free from unreasonable searches and seizures under the Fourth Amendment of the South Carolina Constitution.

32. Defendant's unlawful conduct, assault and battery, caused Plaintiff to be detained

in police custody and jailed without probable cause for a period exceeding one hour's time against Plaintiff's will and consent, all of which was without proper legal justification in violation of Plaintiff's constitutional rights as aforementioned.

33. By reason of Defendant's unlawful conduct and actions, Plaintiff suffered actual damages, including but not limited to physical injury, anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish and emotional distress.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment)

34. The allegations set forth in Paragraphs 1 through 33 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

35. That Defendants' acts in restraining Plaintiff against his will, intentionally and unlawfully arresting and imprisoning Plaintiff without probable cause were done under the color of State and Municipal law and with reckless, callous and willful disregard for the indifference to Plaintiff's constitutionally protected rights under S.C. Code of Laws § 16-5-60.

36. That, as a direct and proximate result of the Defendants' conduct, the Plaintiff suffered actual damages, including but not limited to physical injury, anxiety, emotional trauma deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish and emotional distress.

37. Based on the actions of the Defendant's officers, the Plaintiff is informed and believes that he is entitled to actual and punitive damages in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION
(Unlawful search and seizure)

38. The allegations set forth in Paragraphs 1 through 37 of this Complaint are hereby

reiterated and incorporated by reference as if more fully set forth herein verbatim.

39. The Defendants' officers lacked reasonable suspicion and/or probable cause to conduct any search of Plaintiff's person.

40. Based upon lack of reasonable suspicion and/or probable cause, the search and seizure of Plaintiff was unlawful in all respects, and the Plaintiff suffered actual damages, including but not limited to anxiety, emotional trauma deprivation of his liberty, public embarrassment and humiliation, loss of freedom, mental anguish and emotional distress.

FOR A FIFTH CAUSE OF ACTION
(Intentional infliction of emotional distress, Outrage)

41. The allegations set forth in Paragraphs 1 through 40 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

42. The Defendant, by and through its officers, intentionally and recklessly committed the aforesaid extreme and outrageous acts in excess of all possible bounds of decency without just cause or excuse for the purpose of intentionally inflicting emotional distress on the Plaintiff.

43. The actions of the Defendant's officers are intolerable in a civilized community.

44. As a result of the conduct of the Defendant's officers, Plaintiff suffered emotional distress so severe that no reasonable person could be expected to endure it, including but not limited to anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence)

45. The allegations set forth in Paragraphs 1 through 44 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

46. That the Defendants, by and through its employees, agents, servants, and/or officers, owned a duty of care to the Plaintiff while attempting to effect a stop, detainment, and arrest.

47. That the Defendants, by and through its employees, agents, servants, and/or officers, was negligent, reckless, wanton, careless, and grossly negligent in one or more of the following particulars, in breach of the duty of care owed to the Plaintiff as aforesaid:

- a. In using unreasonable excessive force to effectuate the unlawful arrest of the Plaintiff;
- b. In using unreasonable and excessive force against the Plaintiff after the Plaintiff was unlawfully placed under arrest;
- c. In disregarding the Plaintiff's health, safety, and well-being while placing the Plaintiff under unlawful arrest;
- d. In disregarding the Plaintiff's health, safety, and well-being once the Plaintiff was placed under unlawful arrest;
- e. In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing;
- f. In failing to exercise even a slight degree of care so as to be indifferent to the consequences of their actions to the detriment of the Plaintiff.

48. All of which was the direct and proximate cause of the damages and injuries suffered herein including but not limited to anxiety, emotional trauma, and deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Hiring, Training, and Supervision)

49. The allegations set forth in Paragraphs 1 through 48 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

50. That the Defendants owed a duty of care to the Plaintiff in hiring, training, and

supervising its employees, agents, servants, and/or officers.

51. That the Defendants possessed the means and ability to control its employees, agents, servants, and/or officers.

52. That the Defendants knew or should have known of the necessity to train, control and/or admonish its employees, agents, servants, and/or officers that were involved in the incident described in this Complaint.

53. That upon information and belief, the Defendants did not properly train, supervise, admonish and control the aforementioned employees, agents, servants, and/or officers as to the following matters: grounds for probable cause, detainment procedures, arrest procedures, protocols related to use of force, and truthfully reporting the grounds for arrest.

54. The Defendants breached its duty to Plaintiff by failing to properly train, supervise, and control its officers as aforesaid, as evidenced by the stop, detainment, arrest and unlawful use of force against Plaintiff without probable cause or legal justification whatsoever, and by allowing the officers to carry out the unlawful arrest and assault and battery of Plaintiff without recourse.

55. That as a result of the negligent hiring and supervision by Defendants, the Plaintiff suffered injury and damage including physical injury, anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress.

56. The Plaintiff is entitled to damages, both actual and punitive, as a result of the aforesaid actions of the Defendant.

FOR AN EIGHTH CAUSE OF ACTION
(Violation Of Title 42 U.S.C. § 1983)

57. The allegations set forth in Paragraphs 1 through 56 of this Complaint are hereby

reiterated and incorporated by reference as if more fully set forth herein verbatim.

58. At all times relevant herein, the conduct of all Defendants and its officers was subject to the provisions of Title 42 U.S.C. § 1983.

59. Acting under the color of law, Defendants deprived the Plaintiff of his rights, privileges, and immunities secured by the United States Constitution, State of South Carolina Constitution, Federal, State and local laws as follows:

- a. By depriving the Plaintiff of his liberty without due process of law and by taking him into custody and holding him there unlawfully and against his will;
- b. By making an unreasonable search and seizure of his person without due process of law in violation of the Fourth and Fourteenth Amendments of the United States constitution and State of South Carolina Constitution;
- c. By conspiring for the purpose of impeding and hindering the due course of justice, with intent to deny the Plaintiff equal protection of the laws;
- d. By refusing or neglecting to prevent such deprivations, thereby depriving Plaintiff of his rights, privileges, and immunities as guaranteed and afforded to him by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution and State of South Carolina Constitution.
- e. By using unreasonable force against the Plaintiff in connection to an illegal stop, detainment, search and unlawful arrest lacking in probable cause.

FOR A NINTH CAUSE OF ACTION
(Malicious Prosecution)

60. The allegations set forth in Paragraphs 1 through 59 of this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

61. The unlawful and wrongful charges brought against the Plaintiff resulted in his prosecution and were made without probable cause and with malice against the Plaintiff.

62. The charges filed against Plaintiff terminated in his favor.

63. As a result of the charges filed against him, Plaintiff was forced to retain legal counsel and incur attorneys' fees to defend his innocence, all to his financial harm and detriment.

64. Plaintiff further suffered anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress as a result of the prosecution of the charges presented against him.

65. That the Plaintiff is entitled to damages, both actual and punitive, as a result of the malicious prosecution against him by the Defendant.

WHEREFORE, Plaintiff respectfully requests this Court to render a judgment in favor of the Plaintiff against the Defendants for actual, special, compensatory and punitive damages, award the Plaintiff reasonable attorney's fees and costs of the litigation in an amount deemed to be just, fair and appropriate, and for such other and further relief as the Court may deem just and equitable.

STRATOS LAW, LLC



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ATTORNEYS FOR THE PLAINTIFF

December 2, 2015
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NORRIS EARL WHITE JR.,	)	C/A No.: 2:16-cv-00155-DCN-MGB
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	<u>Jury Trial Requested</u>
CITY OF NORTH CHARLESTON,	)	
	)	
Defendants.	)	

The Plaintiff Norris Earl White Jr., by and through his undersigned counsel, complaining of the Defendants above-named, alleges and would respectfully show unto This Honorable Court the following:

1. The Plaintiff is a citizen and resident of the County of Dorchester, State of South Carolina.

2. The Defendant City of North Charleston is a municipal government entity and political subdivision organized under the laws of the State of South Carolina, specifically the South Carolina Torts Claims Act, S.C. Code § 15-78-10, and located within the County of Charleston, State of South Carolina.

3. Defendant City of North Charleston, as part of its governmental functions, operates a police department known as the North Charleston Police Department ("NCPD"), and is responsible for the acts of its employees, agents, servants, and officers, including the officers and departments herein referenced, by virtue of the doctrine of *respondent superior*.

4. Upon information and belief, the NCPD is a political subdivision of the City of North Charleston and created pursuant to the laws of the State of South Carolina. NCPD and the City of North Charleston (collectively City of North Charleston) are responsible for the policies,

practices and customs of the NCPD, as well as the hiring, training, supervising, controlling and disciplining of its police officers and other employees.

5. Officer C. Arroyo and Officer A. King were at all times material to the allegations in this Complaint, duly appointed Police Officers of NCPD and employees, agents and/or servants of City of North Charleston, and were acting within the course and scope of their employment for Defendant City of North Charleston.

6. At all times relevant hereto, Defendant City of North Charleston through its police officers took actions against Plaintiff under color of the statutes, ordinances, customs and usage of the State of South Carolina, City of North Charleston, and NCPD.

7. That proper jurisdiction of the parties and subject matter set forth herein resides in the Court of Common Pleas for Charleston County, pursuant to South Carolina Code § 15-78-100(b).

FACTUAL ALLEGATIONS

8. That the incidents complained of herein began on December 28, 2013, at approximately 5:00 a.m. inside a Waffle House restaurant, located at 2571 Ashley Phosphate Road, City of North Charleston, County of Charleston, South Carolina.

9. On December 28, 2013, Plaintiff was dining in the above-referenced Waffle House Restaurant seated in a booth near the exit door and accompanied by J. Omar and two female companions.

10. At the aforementioned date and time, Officer Arroyo, clothed in NCPD officer uniform, gun and badge, and was seated at a booth directly behind the Plaintiff with a female companion.

11. Plaintiff and his three friends were rightfully and legally on the premises for the

purpose of dining, and during this time period Plaintiff and his three friends spoke to one another in a normal tone and respected the decorum of the setting.

12. Following approximately forty (40) minutes of Plaintiff's arrival, Officer Arroyo left his table without cause and approached the Plaintiff's table and aggressively ordered Plaintiff and the three above-referenced companions to leave the premises.

13. Plaintiff and Mr. J. Omar calmly and respectfully inquired why Officer Arroyo was demanding they leave the restaurant. Officer Arroyo responded that they were being loud, Officer Arroyo threatened to use his taser on J. Omar, and Officer Arroyo declared that he would arrest Plaintiff.

14. At the aforementioned date and at approximately 5:06 a.m., Officer Arroyo, without probable cause, initiated a warrantless and illegal arrest by reaching into the booth where Plaintiff was seated, grabbing Plaintiff's clothing and arm, dragging the Plaintiff from his seat, securing Plaintiff's arms behind his back and leaning Plaintiff face first into a glass barrier.

15. At all times relevant hereto, the Plaintiff was in compliance with and following all relevant South Carolina laws and local ordinances.

16. At all times relevant hereto, the Plaintiff was reasonably cooperative and reasonably civil during his unlawful arrest, despite the fact that he was entitled under the law to defend his person from an unlawful arrest.

17. After initiating the illegal seizure of Plaintiff's person, and with the Plaintiff's arms forcefully restrained behind his back, Officer Arroyo attempted to place handcuffs on the Plaintiff, pushing and pulling him back and forth while moving the Plaintiff to the other end of the restaurant.

18. While the aforesaid actions were underway, Officer Arroyo also threatened to

taser J. Omar.

19. With both of Plaintiff's arms in Officer Arroyo's control, Officer Arroyo then pinned the Plaintiff against secured bar seating and placed handcuffs on one of the Plaintiff's wrists, and then without cause grapple hooked Plaintiff's left arm from behind, leveraged his weight, and with great force picked Plaintiff up from the floor and threw the defenseless Plaintiff headfirst into the tile floor. Officer Arroyo then jumped on Plaintiff's back, jammed his knee into the back of Plaintiff's head and neck, completed cuffing the semi-conscious Plaintiff's second wrist, and with the assistance of Officer King picked Plaintiff up from the floor.

20. Officer King, who arrived moments after Officer Arroyo slammed Plaintiff onto the tiled floor, then assisted Officer Arroyo in guiding Plaintiff from the premises, and in doing so intentionally bent Plaintiff over by grabbing his shoulders and pushing them down while forcing Plaintiff's cuffed hands up, and used Plaintiff's face and head as a battering ram to open two heavy glass doors.

21. Plaintiff was then illegally searched and placed in the back of Officer King's vehicle. Before being incarcerated in Charleston County Detention Center Plaintiff was transported by EMS to Trident Medical Center where he was treated for head injury, as well as facial and scalp contusions, which proximately resulted from the aforementioned unlawful arrest.

22. Despite the facts that no charges whatsoever were warranted, the Plaintiff was charged with Disorderly Conduct and Resisting Arrest and was detained in Charleston County Detention Center.

23. Plaintiff was exonerated of all charges brought against him when they were later dismissed prior to trial by the prosecuting authority.

24. That, pursuant to the South Carolina Constitution Plaintiff has the right to be

secure in his person against unreasonable searches and seizures.

25. That the Defendant, City of North Charleston, has a duty to hire, train and supervise persons hired to serve as police officers with due care to ensure that it's officers comply with state and federal law.

26. That the Defendant, City of North Charleston, has a duty to train and supervise its officers regarding the policies, practices, procedures, and customs used by law enforcement employed by City of North Charleston when on duty and/or providing third party services to corporate entities.

27. That the Defendant, City of North Charleston failed to adequately supervise and train Officer Arroyo and Officer King.

28. That, at the time of Plaintiff's unlawful arrest, the legal rules establishing the requirement that municipal enforcement officers must have a warrant, probable cause, or other legal justification in order to search and/or arrest a private citizen were clearly established.

29. No reasonable law enforcement officer could have believed that the unreasonable and warrantless seizure and arrest of Plaintiff comported with the South Carolina Constitution in light of clearly established legal rules for such arrests.

30. That, as a direct and proximate result of the intentional and/or negligent acts of Defendants, Plaintiff has sustained damages, to include but not limited to mental and physical pain and suffering, and injury in an amount that will be established at trial.

FOR A FIRST CAUSE OF ACTION
(Assault and battery)

31. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

32. Officer Arroyo unlawfully, without consent, and without probable cause battered

and assaulted Plaintiff, handcuffed Plaintiff, forced Plaintiff's body and face into glass partition, slammed Plaintiff's head and face into a tile floor, and used Plaintiff's head and face to open heavy glass doors.

33. The unlawful and unauthorized actions of Officer Arroyo and Officer King were far in excess of what would have been reasonable and necessary to effectuate the unlawful arrest of the Plaintiff.

34. Officer Arroyo verbally threatened Plaintiff and Plaintiff's companions without provocation or cause whatsoever, which caused Plaintiff to be reasonably fearful that he would sustain great bodily injury at the hands of Officer Arroyo and Officer King.

35. The actions of Officer Arroyo and Officer King constitute the tort of assault and battery from which Defendant is liable under the South Carolina Tort Claims Act.

36. That, as a result of said assault and battery, the Plaintiff suffered injury and endured pain and suffering, incurred medical expenses, had enduring embarrassment, humiliation, and mental distress, and has suffered a loss of enjoyment of life.

FOR A SECOND CAUSE OF ACTION
(Wrongful detainment and false arrest)

37. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

38. The intentional actions of the Defendant's police officers in falsely arresting and imprisoning the Plaintiff without a warrant and without probable cause were done with reckless, callous and willful disregard for and indifference to Plaintiff's constitutionally protected rights.

39. Officer Arroyo initiated the illegal arrest, Officer King assisted in perpetrating the illegal arrest, and both officers provided false information in support of their illegal conduct.

40. The Plaintiff's wrongful arrest was therefore in clear violation of Plaintiff's rights,

privileges, and immunities as afforded to him by the laws of this state, in particular, Plaintiff's right to be free from unreasonable searches and seizures under the Fourth Amendment of the South Carolina Constitution.

41. Defendant's unlawful restraint and arrest caused Plaintiff to be detained in police custody and jailed without probable cause for a period exceeding one hour's time against Plaintiff's will and consent, all of which was without proper legal justification in violation of Plaintiff's rights as aforementioned.

42. By reason of Defendant's unlawful conduct and actions, Plaintiff suffered actual damages, including but not limited to physical injury, anxiety, emotional trauma, deprivation of his liberty, and injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish and emotional distress.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment)

43. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

44. That Defendants' acts in restraining Plaintiff against his will, intentionally and unlawfully arresting and imprisoning Plaintiff without probable cause were done under the color of state and municipal law and with reckless, callous and willful disregard for the indifference to Plaintiff's constitutionally protected rights under S.C. Code of Laws § 16-5-60.

45. That, as a direct and proximate result of the Defendants' conduct, the Plaintiff suffered actual damages, including but not limited to physical injury, anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish and emotional distress.

46. Based on the actions of the Defendant's officers, the Plaintiff is informed and

believes that he is entitled to actual and punitive damages in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION

(Unlawful search and seizure)

47. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

48. The Defendants' officers lacked reasonable suspicion and/or probable cause to conduct any search of Plaintiff's person.

49. Based upon lack of reasonable suspicion and/or probable cause, the search and seizure of Plaintiff was unlawful in all respects, and the Plaintiff suffered actual damages, including but not limited to anxiety, emotional trauma deprivation of his liberty, public embarrassment and humiliation, loss of freedom, mental anguish and emotional distress.

FOR A FIFTH CAUSE OF ACTION

(Intentional infliction of emotional distress, Outrage)

50. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

51. The Defendant, by and through its officers, intentionally and recklessly committed the aforesaid extreme and outrageous acts in excess of all possible bounds of decency without just cause or excuse for the purpose of intentionally inflicting emotional distress on the Plaintiff.

52. The actions of the Defendant's officers are intolerable in a civilized community.

53. As a result of the conduct of the Defendant's officers, Plaintiff suffered emotional distress so severe that no reasonable person could be expected to endure it, including but not limited to anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence)

54. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

55. Each City of North Charleston police officer involved in Plaintiff's unlawful arrest had a duty to exercise due care, defined as the care which a person of ordinary reason and prudence would exercise in the circumstances, and to exercise that degree of knowledge, skill and care required of a police officer which is ordinarily possessed and exercised by those in their special line of work.

56. That the Defendant, by and through its employees, agents, servants, and/or officers, is liable for the conduct of its officers.

57. That Each City of North Charleston police officer involved in Plaintiff's unlawful arrest were acting pursuant to the policies and customs generally adopted, ratified, and accepted as regular practice by the City of North Charleston and NCPD.

58. That the Defendants, by and through its employees, agents, servants, and/or officers, was negligent, reckless, wanton, careless, and grossly negligent in one or more of the following particulars, in breach of the duty of care owed to the Plaintiff as aforesaid:

- a. In using unreasonable excessive force to effectuate the unlawful arrest of the Plaintiff;
- b. In using unreasonable and excessive force against the Plaintiff after the Plaintiff was unlawfully placed under arrest;
- c. In disregarding the Plaintiff's health, safety, and well-being while placing the Plaintiff under unlawful arrest;
- d. In disregarding the Plaintiff's health, safety, and well-being once the Plaintiff was placed under unlawful arrest;
- e. In failing to use the degree of care and caution that a reasonable and prudent

person would have used under the circumstances then and there prevailing;

- f. In failing to exercise even a slight degree of care so as to be indifferent to the consequences of their actions to the detriment of the Plaintiff.

59. All of which was the direct and proximate cause of wrongful arrest, actual damages and injuries suffered herein, including but not limited to anxiety, emotional trauma, and deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Hiring, Training, and Supervision)

60. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

61. That the Defendants owed a duty of care to the Plaintiff in hiring, training, and supervising its employees, agents, servants, and/or officers to ensure its officers complied with established state laws.

62. That the Defendants possessed the means and ability to control its employees, agents, servants, and/or officers.

63. That the Defendants knew or should have known of the necessity to train, control and/or admonish its employees, agents, servants, and/or officers that were involved in the incident described in this Complaint.

64. That upon information and belief, the Defendants did not properly train, supervise, admonish and control the aforementioned employees, agents, servants, and/or officers as to the following matters: grounds for probable cause, detainment procedures, arrest procedures, protocols related to use of force, and truthfully reporting the grounds for arrest.

65. The Defendants breached its duty to Plaintiff by failing to properly train,

supervise, and control its officers as aforesaid, as evidenced by the stop, detainment, arrest and unlawful use of force against Plaintiff without probable cause or legal justification whatsoever, and by allowing the officers to carry out the unlawful arrest and assault and battery of Plaintiff without recourse.

66. That as a result of the negligent hiring and supervision by Defendants, the Plaintiff suffered actual damages, including but not limited to physical injury, anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress.

67. The Plaintiff is entitled to damages, both actual and punitive, as a result of the aforesaid actions of the Defendant.

FOR AN EIGHTH CAUSE OF ACTION
(Malicious Prosecution)

68. All other allegations set forth in this Complaint are hereby reiterated and incorporated by reference as if more fully set forth herein verbatim.

69. The unlawful and wrongful charges brought against the Plaintiff resulted in his prosecution and were made without probable cause and with malice against the Plaintiff.

70. The charges filed against Plaintiff terminated in his favor.

71. As a result of the charges filed against him, Plaintiff was forced to retain legal counsel and incur attorneys' fees to defend his innocence, all to his financial harm and detriment.

72. Plaintiff further suffered anxiety, emotional trauma, deprivation of his liberty, injury to his reputation, public embarrassment and humiliation, loss of freedom, mental anguish, and emotional distress as a result of the prosecution of the charges presented against him.

73. That the Plaintiff is entitled to damages, both actual and punitive, as a result of the malicious prosecution against him by the Defendant.

WHEREFORE, Plaintiff respectfully requests this Court to render a judgment in favor of the Plaintiff against the Defendants for actual, special, compensatory and punitive damages, award the Plaintiff reasonable attorney's fees and costs of the litigation in an amount deemed to be just, fair and appropriate, for a trial by jury, and for such other and further relief as the Court may deem just and equitable.

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ATTORNEYS FOR THE PLAINTIFF

February 9, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON, NORTH
CHARLESTON POLICE DEPARTMENT,

Defendants

IN THE COURT OF COMMON PLEAS

C/A No.: 2015-CP-10-06561

ANSWER TO
AMENDED COMPLAINT

FILED
2016 FEB 24 AM 11:38
JULIE J. ARMS, CLERK
CLERK OF COURT

Comes now the defendant, City of North Charleston, and hereby answers the plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE
(Quaffed General Denial)

All specially not admitted herein should be deemed denied.

1. Upon information and belief, admit.
2. Admit only that North Charleston is a political subdivision of the state of South Carolina and is a governmental entity located partially in Charleston County. Deny remainder of the paragraph.
3. Deny as it calls for a legal conclusion requiring no response.
4. Deny as it calls for a legal conclusion requiring no response.
5. Admit.
6. Deny as it calls for a legal conclusion requiring no response.
7. Calls for legal conclusion requiring no response.

Factual Allegations

8. Admit.

9. Lack knowledge or information as to who exactly Plaintiff was accompanied by.
10. Admit that Officer Arroyo was performing off-duty employment for the Waffle House in uniform, and was inside the restaurant.
11. Lack knowledge or information on details, therefore deny.
12. Admit only that the Officer instructed Plaintiff to stop being disorderly or to leave. The remainder is denied.
13. Deny.
14. Deny.
15. Deny.
16. Deny.
17. Admit the officer had difficulty handcuffing Plaintiff because Plaintiff was resisting.
18. Admit that Plaintiff's companion was warned he would be tased.
19. Deny as stated.
20. Deny as stated.
21. Deny as stated. Admit that medical care was offered.
22. Deny as stated. Admit only that plaintiff was charged.
23. Cannot admit or deny at this time as the records have been expunged. Therefore, this allegation is denied.
24. Calls for legal conclusion requiring no response.
25. Calls for legal conclusion requiring no response.
26. Admit.
27. Deny.
28. Calls for legal conclusion requiring no response.
29. Deny.

30. Deny.

FIRST CAUSE OF ACTION
Assault and Battery

31. Requires no response.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

36. Deny.

SECOND CAUSE OF ACTION
Wrongful Detainment and False Arrest

37. Requires no response.

38. Deny.

39. Deny.

40. Deny.

41. Deny.

42. Deny.

THIRD CAUSE OF ACTION
False Imprisonment

43. Requires no response.

44. Deny.

45. Deny.

46. Calls for legal conclusion requiring no response and is therefore denied.

**FOURTH CAUSE OF ACTION
Unlawful Search and Seizure**

- 47. Requires no response.
- 48. Deny.
- 49. Deny.

**FIFTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress**

- 50. Requires no response.
- 51. Deny.
- 52. Deny.
- 53. Deny.

**SIXTH CAUSE OF ACTION
Negligence/Gross Negligence**

- 54. Requires no response.
- 55. Calls for legal conclusion requiring no response.
- 56. Calls for legal conclusion requiring no response.
- 57. Admit that the officers were acting in the course and scope of their duties.
- 58. Deny, including subparts.
- 59. Deny.

**SEVENTH CAUSE OF ACTION
Negligent Hiring, Training, Supervision**

- 60. Requires no response.
- 61. Calls for legal conclusion requiring no response.
- 62. Admit except the City employs officers who are necessarily afforded discretion.
- 63. Deny as stated. Officers are highly trained.

64. Deny.

65. Deny.

66. Deny.

67. Deny.

**EIGHTH CAUSE OF ACTION
Malicious Prosecution**

68. Requires no response.

69. Deny.

70. Cannot admit or deny at this time as the records have been expunged. Therefore, this allegation is denied.

71. Deny as stated.

72. Deny.

73. Deny.

**FOR A SECOND DEFENSE
(Rules 8 and 12)**

74. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the Federal Rules of Civil Procedure.

**FOR A THIRD DEFENSE
(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process, No Proximate Cause)**

75. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, service of process, statute of limitations, and the acts of the defendant were not the proximate cause of the injuries.

FOR A FOURTH DEFENSE
(Sole Negligence/Comparative Negligence)

76. Defendant asserts that Plaintiff is solely negligent for his suffering and injuries or in the alternative is comparatively negligent.

FOR A FIFTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

77. As to any violation of common law or state law, Defendant asserts the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.*, as a defense and asserts that it does not waive any of the rights, privileges or immunities therein, including but not limited to Eleventh Amendment immunity.

FOR A SIXTH DEFENSE
(Intervening and Superseding Negligence)

78. That if Defendant was negligent, which is specifically denied, the injuries and damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding acts or omissions of others for which this defendant is not liable.

FOR A SEVENTH DEFENSE
(Assumption of Risk)

79. Plaintiff assumed the risk of being injured when he resisted a lawful arrest.

FOR A EIGHTH DEFENSE
(Emotional Distress)

80. Any claims by Plaintiff for the intentional infliction of emotional distress are not actionable and are barred by the plain language of the South Carolina Tort Claims Act.

FOR AN NINTH DEFENSE
(Failure to Mitigate)

81. Plaintiff's claims are barred or must be reduced by his failure to mitigate damages should there be any damages.

FOR A TENTH DEFENSE
(Third Party Liability)

82. Defendant asserts that if anyone is liable to Plaintiff, all of which is specifically denied, it is a third party.

FOR A ELEVENTH DEFENSE
(Absence of Bad Faith, Malice or Corrupt Motive)

83. Defendant during the performance/non-performance of the alleged actions did not perform any act/inaction in bad faith, with corrupt motives, or in a malicious manner, and Defendant is therefore immune from suit.

FOR A TWELFTH DEFENSE
(Punitive Damages Unconstitutional)

84. Punitive damages are not recoverable against Defendant not only due to the unconstitutionality, but also in accordance with S.C. Code Ann. § 15-78-120(b).

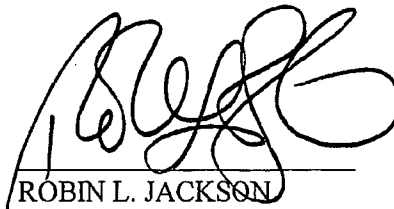
FOR A THIRTEENTH DEFENSE
(Public Duty Doctrine)

85. There is no statute, nor any reason to subject Defendant to liability as there was no duty of care owed to Plaintiff as any duty was owed to the public at large and not to any one individual.

FOR A FOURTEENTH DEFENSE
(Spoliation of Evidence)

86. Due to the expungement of Plaintiff's criminal record related to the incident in question, the spoliation of relevant evidence should preclude Plaintiff's recovery in this matter.

Wherefore, having fully answered the Amended Complaint, Defendant hereby prays that the Amended Complaint be dismissed with prejudice; that Plaintiff be responsible for all costs and fees associated with defending this action; and for all such further relief as this court deems just and proper. In addition, Defendant reserves the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.



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Attorney for Defendants

February 23, 2016

1 STATE OF SOUTH CAROLINA) COMMON PLEAS COURT
2 COUNTY OF BERKELEY) CASE NO. 2015-CP-10-06561
3
4 NORRIS EARL WHITE,)
5 JR.,) Transcript of Record
6 Plaintiff,)
7 vs.) Date: May 17, 2017
8 CITY OF NORTH)
9 CHARLESTON,)
10 Defendant.

11 * * * * *

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13 B E F O R E:
14 The Honorable Kristi Harrington
15

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19 * * * * *

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21 Denise J. Lauder, RPR
22 Ninth Judicial Circuit
23
24
25

A P P E A R A N C E S

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2

3 REPRESENTING THE PLAINTIFF:

4

MILTON D. STRATOS, II, ESQUIRE

5

STRATOS LAW, LLC

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14-A

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Mount Pleasant, SC 29464

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10 REPRESENTING THE DEFENDANT:

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Charleston, SC 29407

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INDEX

	Page No.
Proceedings.....	4
REPORTER'S CERTIFICATE.....	33

INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were held
2 May 17, 2017, Berkeley County Common Pleas, in re:
3 Norris Earl White, Junior, @10:34 a.m.)

4 THE COURT: Call your case.

5 THE CLERK: This is case number
6 2015-CP-10-6561, Norris Earl White v. City of North
7 Charleston.

8 THE COURT: State your name for the
9 record and the party you represent.

10 MR. STRATOS: Milton Stratos, II, for
11 the Plaintiff, Norris Earl White.

12 MS. JACKSON: Robin Jackson on behalf
13 of the City of North Charleston.

14 THE COURT: And, Ms. Jackson, we're
15 here on your motion.

16 MS. JACKSON: Yes, ma'am.

17 THE COURT: And it's a motion for
18 summary judgement; is that correct?

19 MS. JACKSON: Yes, ma'am.

20 THE COURT: And I understand there is
21 a video, and so I had waited to watch the video. I
22 thought we could watch it together. And so do you
23 want me to watch before argument?

24 MS. JACKSON: Do you have a preference?

25 MR. STRATOS: If you would like to make

1 your argument and I can make my argument, that's up
2 to you.

3 MS. JACKSON: I don't think it matters
4 if you see it before we make the argument. He's
5 bringing it up now.

6 THE COURT: If it's ready, I think it
7 would be beneficial to watch it before.

8 MR. STRATOS: There is no video
9 monitor?

10 THE COURT: There is not.

11 MS. JACKSON: Do you need another hard
12 copy of the brief with the exhibits?

13 MR. STRATOS: Your Honor, if I might
14 approach. I have the video on disk and I've also
15 supplemented our Memo.

16 THE COURT: I'm happy to take the
17 disk. My court's laptop does not have the ability
18 to play a disk, so it's just going to go into a
19 file.

20 MR. STRATOS: I also put it on USB so
21 you can access it through our website. I sent you
22 a link.

23 THE COURT: I received that; because it
24 is a court-issued laptop, I do not utilize that.

25 MR. STRATOS: May I hand up my

1 supplemental Memo?

2 THE COURT: You may.

3 (Whereupon, video viewed by the Court.)

4 THE COURT: Mr. Stratos, if you want
5 to come up here just to watch?

6 MR. STRATOS: Yes, ma'am.

7 THE COURT: There's no need if you are
8 comfortable, but you are welcome to.

9 MR. STRATOS: I may have a better
10 quality. So I employed a software package that
11 takes the screen shot -- a screen capture of the
12 video to bypass their security software that is
13 proprietary. They don't allow you to copy it, so
14 it's probably much more efficient to watch the
15 video.

16 (End of video)

17 THE COURT: Ms. Jackson.

18 MS. JACKSON: Thank you, Your Honor.

19 This case originates from the arrest of Mr. White
20 on December 28, 2013, at the Waffle House on Ashley
21 Phosphate Road at approximately 5:00 in the
22 morning.

23 Officer Christopher Arroyo was
24 performing off-duty security for the Waffle House
25 during that time and observed the Plaintiff with a

1 male friend and two females enter the restaurant,
2 sit down, order food, and during the time that he
3 was in the restaurant, Officer Arroyo observed him
4 get up from the table, be boisterous, talking
5 loudly, waving his arms. He also observed him
6 using curse words and occasionally offensive
7 language.

8 Officer Arroyo made the decision to go
9 over and tell the people at the table to quiet down
10 or leave. He went over and he told them to quiet
11 down or leave. One of the ladies got up from the
12 table and left. Mr. White told the officer that he
13 was not going to leave, he was going to eat his
14 meal. The officer then, as you can see on the
15 video, waves at the waitress to try to get their
16 check for them to pay and leave.

17 He then makes the decision that since
18 Mr. White has decided not to quiet down, he wants
19 Mr. White to leave the restaurant, and when Mr
20 White refuses to leave the restaurant saying he's
21 going to finish his meal, Officer Arroyo makes the
22 decision to arrest him under the North Charleston
23 City Ordinance for disorderly conduct.

24 When he attempts to arrest him,
25 Mr. White is not cooperative in providing his hands

1 to be handcuffed, and Mr. White's friend, Mr. Omar,
2 continues to confront the officer creating a
3 situation that causes the officer to take Mr. White
4 and continue to back away from Mr. Omar.

5 Eventually, Mr. White turned in on
6 Officer Arroyo, which is a very dangerous position
7 for an officer to be in. So Officer Arroyo took
8 him to the floor where he was then able to begin
9 getting his hands into handcuffs. He had called
10 for assistance and backup and Officer Anthony King
11 arrived and assisted him in handcuffing the
12 Plaintiff.

13 They then got him up to his feet and
14 walked him out to the police car. He did receive
15 medical treatment and was then lodged at the jail.
16 The charges were later dismissed by the solicitor's
17 office -- by the City's prosecutor's office without
18 any consent or discussion with the officer.

19 The plaintiffs have sued for a number
20 of causes of action. The first several causes of
21 actions are brought pursuant to the South Carolina
22 Constitution. The claims on the Amended Complaint
23 state that there are alleged violations of his
24 South Carolina constitutional rights, and the
25 defendant takes the position that because South

1 Carolina does not have a section such as 42 USC
2 1983, which conveys a private cause of action, that
3 the court of appeals in South Carolina has already
4 determined that there is no private cause of action
5 under the South Carolina Constitution and,
6 therefore, we ask that the claims for false arrest,
7 false imprisonment, and unlawful search and seizure
8 be dismissed, because they were brought pursuant to
9 the constitution and there is no private right of
10 action for that.

11 In addition, many of the causes of
12 actions, if not all of them, false arrest and false
13 imprisonment, malicious prosecution, and assault
14 and battery are all based on probable cause, Your
15 Honor. If there is probable cause, then none of
16 these causes of action can stand, and it's our
17 position that there is clearly evidence of probable
18 cause.

19 The officer charged Mr. White with a
20 violation of the North Charleston Ordinance for
21 disturbing the peace 13-36. Subsection B says, a
22 person shall be guilty of disorderly conduct if his
23 conduct is likely to cause public danger, alarm,
24 disorder, or nuisance, and he willfully does any of
25 the acts in a public place.

1 And he was charged under subsection 13
2 which relates to loud, boisterous and unreasonable
3 noise and annoyance of persons nearby. Officer
4 Arroyo was present in the restaurant at the time
5 and was able to observe all of these actions by
6 Mr. White, and that was part of the basis for
7 making his arrest for disorderly conduct.

8 We also take the position that in order
9 to determine probable cause you can consider
10 uncharged violations, and we would assert that
11 after Officer Arroyo instructed Mr. White to leave
12 and he refused. He was, therefore, trespassing and
13 that is, also, a basis for probable cause to be
14 determined in this case, even though it wasn't
15 charged.

16 The trespass would be pursuant to
17 16-11-620 of the South Carolina Code, which is
18 refusing to leave on request by an agent or
19 representative or person in possession. Officer
20 Arroyo was hired by the Waffle House to provide
21 security.

22 He was also at all times a law
23 enforcement officer with full authority to act in
24 such a manner and, therefore, based on all of those
25 things, we would assert that there absolutely is

1 probable cause in this case based on the video and
2 the officer's own observations. With probable
3 cause to make the arrest, there can, therefore, be
4 no false arrest or false imprisonment of Mr. White.

5 Additionally, this would relate to the
6 malicious prosecution cause of action, the

7 Plaintiff has alleged malicious prosecution based
8 on lack of probable cause and malice. The

9 defendant asserts there is probable cause and that
10 there is no evidence of malice, other than the

11 malice that may be presumed by a lack of probable
12 cause, which we also assert doesn't exist because

13 of the probable cause and that there's no

14 independent malice that can be determined from the
15 actions of the officer.

16 Your Honor, the search and seizure

17 allegation are also constitutional and, in

18 addition, any search that may have occurred would

19 have been a lawful search incident to arrest. This

20 was a full custody arrest and any search of

21 Mr. White that was performed was performed after he

22 was placed under arrest and was taken outside by

23 the police car, and is something that is necessary

24 in order to maintain the safety for both the

25 officer and arrestee.

1 North Charleston also asserts the
2 protections of the South Carolina Tort Claims Act
3 with regard to the plaintiff's causes of actions
4 for negligence and gross negligence, as well as
5 assault and battery. The Plaintiff argued in his
6 brief that 15-78-60, subsection 25 is not
7 applicable with relation to gross negligence.

8 We did not argue that in our brief,
9 Your Honor, but I would assert that the Plaintiff
10 in his Amended Complaint has alleged gross
11 negligence and, therefore, would have to prove
12 gross negligence in order to keep that action
13 alive. In paragraph 58, he alleges gross
14 negligence, and in paragraph 58, subsection F is
15 where he sets forth an alleged violation of the
16 standard for gross negligence by the officer. And
17 if that is a cause of action that he has brought,
18 then we would assert that he has not met the
19 standard of showing that the officer failed to use
20 right care with regard to the arrest.

21 The other sections relating to immunity
22 that North Charleston asserts are relevant are the
23 discretionary judgment, in Subsection 5. North
24 Charleston asserts that it is extremely clear that
25 the officer did use discretion in making these

1 decisions. He first observed the Plaintiff and
2 listened to what was going on. He then made the
3 decision to approach the Plaintiff, and at that
4 point he had several options.

5 The option that he chose was to ask
6 them merely to quiet down. When that option didn't
7 work, he re-evaluated his decision, and at that
8 point he merely asked them to leave. He was doing
9 everything he could to try not to make an arrest in
10 this case.

11 It was only when Mr. White refused to
12 leave and told the officer to leave him alone that
13 the officer made a decision that he was now
14 trespassing and he was being disorderly under the
15 North Charleston Ordinance that he attempted to
16 effectuate an arrest. At that point he attempted
17 to put him in handcuffs, and when he was unable to
18 do so he called for backup to get assistance from
19 other officers.

20 He also had a confrontation with
21 Mr. Omar during that time and made the decision
22 that in order to keep everyone safe -- I believe he
23 even discussed tasing with Mr. Omar if he did not
24 back away and allow him to perform his duties. He
25 and Mr. White backed away and it was only when

1 Mr. White turned in towards him, like towards his
2 duty belt and he was still not able to get him
3 handcuffed, that he made the decision based on his
4 training to take the Plaintiff to the ground in
5 order to fully effectuate that arrest.

6 We would assert there is ample evidence
7 that the officer waived competing considerations
8 and used his training and knowledge of the police
9 officers to make the decisions that he made in this
10 instance and, therefore, North Charleston is
11 entitled to discretionary immunity.

12 We would also assert that North
13 Charleston is not responsible for employee conduct
14 which constitutes intent to harm. The Plaintiff
15 has alleged assault and battery, which are
16 intentional torts, and pursuant to the Tort Claims
17 Act, subsection 15-78-60, subsection 17, an entity
18 is not liable for employee actions which constitute
19 intent to harm.

20 Now, North Charleston does take the
21 position that there was no assault and battery and
22 that all touching occurred during the course of
23 making a lawful arrest; however, to the extent that
24 assault and battery has been alleged, the officer
25 is not a defendant and the entity takes the

1 position that it is entitled to immunity for any
2 action constituting intent to harm.

3 Your Honor, the Plaintiff has also
4 filed a claim for failure to train, hire, and
5 supervise its officers. North Charleston takes the
6 position that all of its officers have been fully
7 trained. The Plaintiff has brought forth no
8 evidence that any of the officers involved in this
9 instance did not meet all of the necessary
10 requirements for hiring, training, or supervision
11 in this action.

12 Plaintiff has asserted in his brief
13 that there is no specific training given to
14 officers for off-duty employment and that is one of
15 the basis for negligent training; however, there is
16 no requirement for any separate training in
17 off-duty employment because the police officers who
18 are performing off-duty employment are performing
19 the exact same duties they would perform while they
20 are on duty.

21 They are not to perform any additional
22 duties for a private employer, nor are they to
23 perform any less duty than they would perform if
24 they were on duty; therefore, there was no need for
25 off-duty employment training because the actions

1 that are expected of an officer are the same
2 whether they're on duty or off duty.

3 Additionally, the Plaintiff has argued
4 in his brief that the mere fact -- that he takes
5 the position that the internal affairs
6 investigation was performed negligently because the
7 internal affairs investigator did not watch the
8 video or interview the officer prior to making his
9 decision. The case notes of Detective Allen, which
10 are an exhibit to our motion, show that he did, in
11 fact, watch the video prior to making his decision
12 about the use of force in this case.

13 Whether or not he interviewed Officer
14 Arroyo is a determination to be made by the
15 internal affairs investigation, and we would assert
16 that he used his discretion in making the decision
17 that it was not necessary to interview the officer.

18 Additionally, there is no allegation
19 regarding the internal affairs complaint in the
20 Amended Complaint. And so until his summary
21 judgment brief in opposition, it was unclear that
22 he was making an allegation regarding the internal
23 affairs investigation, but we would assert that all
24 of the decisions made in performing that
25 investigation were done with the discretion of the

1 officer which was then reviewed up the chain of
2 command all the way to the chief.

3 The Plaintiff finally says in his brief
4 that there is a presumption or failure to train
5 based on the fact that an arrest was made without
6 probable cause. This assertion is made without
7 support and the defendant takes the position that
8 there is no presumption of failure to train when
9 all of the evidence supports the fact that the
10 officer received all required training by the
11 State, and additional training in fact, and was a
12 certified police officer at the time of this
13 incident.

14 Does Your Honor have any questions?

15 THE COURT: Not at this time.

16 MS. JACKSON: Thank you.

17 THE COURT: Mr. Stratos, happy to hear
18 from you.

19 MR. STRATOS: Thank you, Your Honor.

20 All of our claims boil down to probable cause,
21 whether or not the officer had probable cause to
22 make the arrest on the date of the incident,
23 12/28/2013.

24 My client, Norris White, had been out
25 with friends until approximately 5:00 in the

1 morning when they arrived at the Waffle House.

2 They were not intoxicated. It was two males who
3 are friends and two females. They are seen on the
4 video for approximately 45 minutes having an
5 animated conversation where you can witness all of
6 them smiling and laughing.

7 My client, Norris White, exits his
8 table, and it's unfortunate that we don't have a
9 projector where I can actually show you at the same
10 time, but he's seen laughing and slapping his knee.

11 He's been accused by Officer Arroyo of
12 being boisterous and loud. Many of the facts, many
13 of the allegations, many of the statements made in
14 the incident report filed by Officer Arroyo and
15 other officers don't add up when you watch the
16 surveillance video.

17 Now, Officer Arroyo hops out of his
18 table which is only one booth away from my client,
19 his friend, Jamar Omar and those two females.

20 Officer Arroyo is there for approximately seven
21 seconds before he's already trying to rip my client
22 out of a booth. He stated that he wanted to remove
23 my client from the restaurant because of loud and
24 boisterous behavior.

25 We have two witnesses -- two witnesses

1 at the Waffle House who are waitresses who both
2 testified that, yes, they were speaking loudly, but
3 they weren't bothering anyone. It's not Officer
4 Arroyo's position at the Waffle House to govern
5 speech. So while I don't necessarily understand
6 the defendant's position that we're not entitled to
7 certain constitutional protections, certainly, the
8 constitution is at play here; the first amendment
9 perhaps, freedom of speech, the freedom to enjoy
10 oneself and eat in a dining establishment and have
11 perhaps a loud conversation.

12 Officer Arroyo removed my client from
13 the table. My client the entire time is asking him
14 why? What did I do wrong? Why am I being
15 arrested? Officer Arroyo never told him.

16 He just said, you need to get out of
17 here. And then he dragged him --

18 THE COURT: That's when he wasn't
19 under arrest, correct?

20 MR. STRATOS: I'm sorry?

21 THE COURT: He was not under arrest at
22 that time?

23 MR. STRATOS: He ripped him out of the
24 table.

25 THE COURT: He what him out of the

1 table, I'm sorry?

2 MR. STRATOS: He rips him out of the
3 table, he gets his arm and he pulls him out of the
4 table, and it looks like he's motioning, like get
5 out of here. And my client is like this.

6 (Indicating) My client testified that he's asking
7 why, we haven't done anything wrong. And at that
8 point he turned my client around and begins to
9 handcuff him.

10 I think it's unclear when, if ever, he
11 told my client you're under arrest. Certainly, we
12 will examine his deposition transcript, but it's
13 certain that he never told my client why he was
14 under arrest which is certainly a violation of
15 statute.

16 Now, he then moves my client to another
17 part of the restaurant --

18 THE COURT: Is that one of your causes
19 of actions?

20 MR. STRATOS: That he did not tell my
21 client why he was under arrest?

22 No, it's not expressly stated.

23 THE COURT: All right.

24 MR. STRATOS: So he moves my client to
25 another part of the restaurant under the

1 allegations that he felt threatened by my client's
2 friend who was asking him, why are you arresting my
3 friend? And he threatened to tase Mr. Omar. He
4 removes my client to a table. My client's head
5 turns around and it looks like he's asking, why are
6 you arresting me?

7 At that time, Officer Arroyo takes him
8 and physically body slams him into the tile floor.
9 A witness, a waitress, stated in her deposition
10 that she assumed his head hit a table on the way
11 down. From the video it's not concrete, so it
12 could have happened.

13 Officer Arroyo then jumped on my
14 client's back and sticks his knee in the back of
15 his neck and still struggles to handcuff him.
16 Another officer arrives and they handcuff him.
17 Officer Arroyo takes my client's hands and forces
18 them upwards. My client is bent over a 90-degree
19 angle and they use my client as a battering ram to
20 run through two glass doors.

21 Now, Officer Arroyo claims that my
22 client head-butted the glass doors on his way out.
23 He's led to the police car, placed in the back of
24 the police car. Officer Arroyo alleges that my
25 client was head-butting the bars in the police car.

1 No other officer makes that allegation.

2 EMS arrives. He's complaining of a
3 head injury. He's taken to the hospital, treated,
4 and then imprisoned overnight, charged with
5 disorderly conduct and resisting arrest.

6 The supreme court has held time and
7 time again that mere profanity alone is not a
8 violation of any law. Merely being loud and
9 boisterous in a public location is protected
10 speech.

11 There has been no allegation --

12 THE COURT: Was he arrested for

13 trespassing, Ms. Jackson?

14 MS. JACKSON: He did not, Your Honor.

15 THE COURT: What was the arrest for?

16 MS. JACKSON: The arrest was for

17 disturbing the peace under the North Charleston

18 Ordinance.

19 THE COURT: All right.

20 MR. STRATOS: This is the first time

21 that I've heard he was arrested for disturbing the

22 peace through the two years of litigation --

23 THE COURT: Clearly, what was on the

24 booking sheet? What was your --

25 MR. STRATOS: Disorderly conduct.

1 THE COURT: So disorderly conduct and
2 disturbing the peace --

3 MS. JACKSON: Disorderly conduct is
4 Subsection B of the disturbing the peace statute,
5 and then B(13) is the exact charge, but it was not
6 the South Carolina Code Section 16 --

7 THE COURT: Is it a municipal
8 ordinance?

9 MS. JACKSON: Yes, this was a municipal
10 ordinance.

11 THE COURT: Thank you.

12 MR. STRATOS: To the trespassing, there
13 is case law that states the defense may raise
14 other --

15 THE COURT: He wasn't arrested for
16 trespassing. And that was my question.

17 MR. STRATOS: No, he wasn't.

18 THE COURT: He wasn't arrested for
19 trespassing, correct?

20 MS. JACKSON: Correct?

21 MR. STRATOS: He was not. The defense
22 may raise, even though he wasn't charged with that,
23 the allegation that he was in violation of another
24 statute. I would argue, however, that Officer
25 Arroyo was not an agent of the Waffle House. In

1 fact, his own internal policy, 823, of the North
2 Charleston Police Department Policies prohibited
3 him from taking any direction from any internal --

4 THE COURT: Is it your position that he
5 is an employee of the City of Charleston?

6 MR. STRATOS: Yes, and the defense
7 would agree.

8 THE COURT: All right. And so how do
9 we get around the fact that the City would not be
10 liable for intentional acts of their employees, if
11 that's the case?

12 MR. STRATOS: I'm sorry, Your Honor?

13 THE COURT: How do we get around -- I
14 heard a phone. Please make sure phones are off.
15 On silent.

16 How do we get around the fact that
17 you're alleging an intentional act by an employee
18 of the City of North Charleston?

19 MR. STRATOS: Well, it's a negligent
20 act.

21 THE COURT: Are you telling me you
22 haven't alleged any intentional acts by Officer
23 Arroyo?

24 MR. STRATOS: That he intentionally
25 arrested my client while negligently

1 misrepresenting the basis of a lawful arrest and
2 that he didn't have probable cause, Your Honor.

3 THE COURT: So the assault and battery
4 was a negligent act?

5 MR. STRATOS: Yes, Your Honor.

6 THE COURT: Was that alleged in the
7 Complaint, Ms. Jackson?

8 MS. JACKSON: No, Your Honor. An
9 assault and battery are intentional tort. It
10 requires intent.

11 MR. STRATOS: Assault and battery is
12 merely one of our complaints.

13 THE COURT: So my question to you was,
14 you've alleged that he is clearly not an employee
15 of the Waffle House. The City of -- so he's an
16 employee of the City of North Charleston, thus, the
17 City cannot be responsible for any intentional acts
18 by their employees, correct?

19 MR. STRATOS: Yes, Your Honor.

20 THE COURT: And you didn't allege --

21 MR. STRATOS: Intentional acts that are
22 willfully carried out with malice essentially.

23 THE COURT: You may continue.

24 MR. STRATOS: As to the trespass after
25 notice, if he didn't have PC to arrest my client,

1 they -- he didn't have a basis to bring a charge of
2 trespass after notice. The crux of the case is
3 probable cause.

4 Now, we are at summary judgment, we're
5 not in trial. We've presented abundant facts. In
6 fact, the defendant relies on the factual disputes
7 at issue. Their basis for probable cause --

8 THE COURT: What are the factual
9 disputes at issue?

10 MR. STRATOS: That there are two
11 witnesses that are waitresses at the Waffle
12 House --

13 THE COURT: So as I see it, your client
14 was arrested, correct?

15 MR. STRATOS: Yes, Your Honor.

16 THE COURT: That's not in dispute.

17 MR. STRATOS: No, Your Honor; it is not
18 in dispute.

19 THE COURT: And then everything that
20 flows from what happens from that arrest is at
21 issue, correct? And so the fact that he was
22 arrested is not in dispute, correct?

23 MR. STRATOS: No, Your Honor.

24 THE COURT: The fact that he did not
25 comply with the officer when the officer asked him

1 to put his hands out is not in dispute, correct?

2 MR. STRATOS: In the context of your
3 question I can't agree with it.

4 THE COURT: Let me ask it this way:
5 Did he comply with the officer when the officer
6 said, place your hand so that I may place you under
7 arrest?

8 MR. STRATOS: To a certain extent, yes.
9 He put his hands behind his back.

10 THE COURT: What is in disagreement,
11 Mr. Stratos?

12 MR. STRATOS: Well, the entire issue of
13 probable cause leading to the arrest.

14 THE COURT: So that's the only issue,
15 in your mind, in this case that's --

16 MR. STRATOS: Well, the defense has
17 presented evidence to combat our evidence.
18 Everything is in dispute. They dispute what
19 witnesses said in favor of the Plaintiff. We
20 dispute the officer's allegation in general. My
21 client maintains that he was not using profanity.
22 He was not using racial slurs, he was not being
23 loud.

24 Mr. Jamal Omar was sitting across from
25 him and said, without a doubt we were not being

1 loud, we were not using profanity. We were sitting
2 across the table from two women we just met and we
3 were trying to be on our Ps and Qs. Every fact at
4 issue is ripe for a jury. The entire case is in
5 dispute.

6 THE COURT: What else do I need to
7 know, Mr. Stratos?

8 MR. STRATOS: The defense has brought
9 up discretionary immunity. The courts have held in
10 like scenarios time and time again that the
11 officers negligent acts of affecting a legal arrest
12 is not an act of discretionary judgment.

13 THE COURT: Say that again, sir.

14 MR. STRATOS: An officer's negligent
15 act of arresting an individual without actual
16 probable cause for affecting the arrest is not a
17 discretionary judgment.

18 As to assault and battery, we would
19 agree that it falls in the realm of intentional
20 act. We do want to preserve that claim for trial.
21 We don't know the position the officer is going to
22 take when he gets on the stand, and so I don't
23 think that claim is ripe for summary judgment. It
24 may be that it is dismissed at trial, but at this
25 stage, I don't think it's proper for summary

1 judgment.

2 As to the failure to train, one of the
3 officers that arrested my client was -- on the
4 scene was deposed. He was under the belief that
5 loud and boisterous conduct was enough to arrest an
6 individual. He was not familiar with certain
7 constitutional rights and First Amendment rights.

8 THE COURT: So your position that any
9 loud and boisterous conduct is protected under the
10 First Amendment.

11 MR. STRATOS: No, not any loud and
12 boisterous conduct, but our facts -- under our
13 facts, my client's conduct was protected speech and
14 did not raise to the level of fighting words which
15 is held by the constitution to fall under the same
16 guides as the loud and boisterous type conduct.

17 As to failure to supervise, Chief
18 Driggers issued a letter to my client saying they
19 were closing their investigation without actually
20 having viewed the surveillance video, knowing of
21 its existence but without viewing it and without
22 taking any further action.

23 Officer Arroyo --

24 THE COURT: How does that establish
25 failure to supervise? Wouldn't that have been

1 after the fact?

2 MR. STRATOS: It would have been after
3 the fact.

4 THE COURT: So what evidence do you
5 have of failure to supervise or negligent training,
6 negligent hiring?

7 MR. STRATOS: The facts of negligent
8 training are fleshed out in their depositions where
9 we discussed the number of hours applicable to
10 forming probable cause, the necessary force to
11 affect an arrest, and conduct necessary to protect
12 an individual that is under your care.

13 All of their training is at issue in
14 this case.

15 THE COURT: All right. What evidence
16 do you have of malice?

17 MR. STRATOS: We do not have any
18 evidence of malice at this time, Your Honor.

19 THE COURT: How are you going to
20 survive summary judgment claim for malicious
21 prosecution?

22 MR. STRATOS: I haven't argued that
23 point.

24 THE COURT: Isn't that an element of
25 malicious prosecution?

1 MR. STRATOS: Yes, Your Honor.

2 THE COURT: Then how are you going to
3 survive -- you have to show me at least a
4 scintilla.

5 MR. STRATOS: We're not arguing that
6 point.

7 THE COURT: All right. So you're
8 withdrawing the claim for malicious prosecution at
9 this time.

10 MR. STRATOS: Yes, Your Honor.

11 THE COURT: What else do I need to
12 know, Mr. Stratos? Anything further?

13 MR. STRATOS: Nothing further, Your
14 Honor.

15 THE COURT: Ms. Jackson, anything
16 further that I need to know for this hearing.

17 MS. JACKSON: No, Your Honor, not
18 unless you have any questions.

19 THE WITNESS: I don't have any further
20 questions. Counsel just submitted his response
21 this morning, his Memorandum. I'm going to read
22 that and take the matter under advisement. I'll
23 accept proposed orders if you can get those to me
24 by tomorrow at 5:00 p.m.

25 MR. STRATOS: Your Honor, for the

1 record, I filed my Memo on Monday.

2 THE COURT: I just received a copy of

3 it today somehow.

4 MR. STRATOS: I was just submitting a
5 supplemental where we corrected grammatical errors.

6 THE COURT: Thank you.

7 MS. JACKSON: Thank you.

8 (These proceedings were concluded at

9 11:17 a.m.)

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1 CERTIFICATE OF REPORTER

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I, Carol Denise Lauder, Registered

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Professional Reporter and Notary Public for the

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State of South Carolina at Large, do hereby certify

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that the foregoing transcript is a true, accurate,

7

and complete record.

8

I further certify that I am neither related

9

to nor counsel for any party to the cause pending

10

or interested in the events thereof.

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Witness my hand, I have hereunto affixed my

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official seal this 18th day of July, 2008 at

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Charleston, Charleston County, South Carolina.

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Carol Denise Lauder

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Registered Professional

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Reporter, CP#

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My Commission expires

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August 2, 2017.

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STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Norris Earl White, Jr.,

Plaintiff,

vs.

City of North Charleston, et al.

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06561

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Milton D. Stratos, II., Bar No. _____

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1041 Johnnie Dodds Blvd., ste. 14-A

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Defendant's Attorney:

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Charleston, SC 29422

Phone: 843-556-4045 Fax 843-556-4046

E-mail: Robin@sennlegal.com Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 15 min.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

12/07/2016

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

MOTION FOR
SUMMARY JUDGMENT

FILED
2016 DEC -9 PM 12:55
JULIE J. ARMSTRONG
CLERK OF COURT

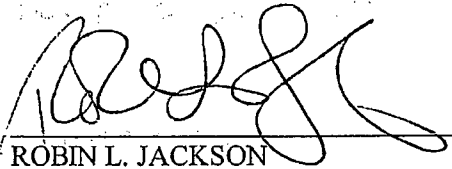
YOU WILL PLEASE TAKE NOTICE that Defendant City of North Charleston, by and through its undersigned counsel, will move before this honorable court at a time and place scheduled by this court for an Order granting Summary Judgment in favor of the Defendant. North Charleston brings this Motion pursuant to South Carolina Rules of Civil Procedure Rules 12 and 56, and applicable case law. The basis for this motion is:

1. There is no evidence of negligence or gross negligence on the part of the defendant;
2. There is no evidence of false arrest or false imprisonment;
3. There is no evidence of any search and seizure violations;
4. There was no assault or battery of the plaintiff;
5. There is no evidence of malicious prosecution;
6. The training, hiring and supervision of officers meets all standards; and
7. North Charleston is entitled to the protections of the South Carolina Tort Claims Act.

The moving defendant is requesting an order of summary judgment on all causes of action and will make all necessary arguments regarding the causes of action and applicable defenses and

immunities. This motion will be more fully supported by the record, affidavits and depositions transcripts which may be submitted as well as a memorandum of law which will be submitted.

Respectfully submitted,



ROBIN L. JACKSON
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P.O. Box 12279
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Attorney for North Charleston

December 7, 2016
Charleston, South Carolina

Certificate of Service

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by fax transmittal
- ☐ by E-mail

This 7th day of December 2016

By Amy Marie Hinty
Amy Marie Hinty

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT

FILED
MAY 17 AM 11:19
CLERK OF COURT
J. ARROYO

Comes now Defendant City of North Charleston, respectfully moving for summary judgment against the plaintiff, as it has become embroiled in this litigation through no fault of its own. The plaintiff has alleged Negligence, Gross Negligence, Assault, Battery, False Arrest, False Imprisonment, Malicious Prosecution, Unlawful Search and Seizure and Negligence with respect to hiring, training and supervision, all relating to his arrest. Defendant denies all of the allegations against it and asserts that it is entitled to summary judgment.

FACTS

On December 27, 2013, the plaintiff and his friend Jamal Omar went out clubbing. They went to at least two clubs and met up with two females. (Deposition of Norris White, 30/13; 29/4, Exhibit A). They were also drinking alcohol. (EMS Run Report, Injury Details, Exhibit B). Afterwards, the four of them arrived at the Waffle House on Ashley Phosphate Road. Officer Arroyo was working at the Waffle House in an off-duty capacity, sitting with his wife in a booth and was done with his shift, but was waiting to get paid, when the plaintiff became loud and was using profanities. (Deposition of Christopher Arroyo, 54/5, 59/2-12, 63/5-7, Exhibit C; Affidavit of Taylor McCullough, 5, Exhibit N; Affidavit of Laura Fitzpatrick, 5, Exhibit P). The plaintiff got up from the

table more than once, while yelling and waving his arms. (Arroyo, 56/6-16, Ex. C, Fitzpatrick, 5, Ex. P). The officer says customers and employees did not say anything to him, but looked at him like they wanted him to do something about it, which was their normal mode of communication. (Arroyo, 59/8-60/6, Ex. C). Plaintiff and his friends were using the words 'fuck' 'mother fucker' and 'nigger' repeatedly and loudly. (Arroyo, 61/2-9, Ex. C; Deposition of Taylor McCullough, 9/3, Exhibit O). Officer Arroyo approached the plaintiff and asked him to quiet down or leave. (White, 33/9-10, Ex. A; McCullough, 9/3-4, Ex. O; Fitzpatrick, 7, Ex. P). The plaintiff became argumentative, and asked the officer why he was bothering them. (Arroyo, 65/20-23, Ex. C; McCullough, 7-8, Ex. N). The officer then asked the waitress for the check and told him to leave, but the plaintiff refused, saying he was not leaving until he had eaten his meal. (White, 33/11-12, Ex. A; McCullough, 8, Ex. N; Fitzpatrick, 8-9, Ex. P). At one point the plaintiff gets up to let the female out of the booth. Then he gets up again, but sits back down. (White, 37/23-25, Ex. A). The officer finally grabs his arm and tells him he is going to have to leave the restaurant. (Arroyo, 69/15-18, Ex. C). White starts yelling and using profanity toward the officer. (Arroyo, 69/20-21, Ex. C). Officer Arroyo then makes the decision to arrest White and tells White to put his hands behind his back (White, 42/21-22, Ex. A; Arroyo, 70/17-21, Ex. C), but White kept turning away physically resisting. (Arroyo, 72/11-15, Ex. C; McCullough, 10, Ex. N). While the officer is trying to handcuff White, White is making racially charged accusations to his friend about the officer (White, 38/20-39/2, Ex. A), and physically struggles with the officer. The plaintiff's friend, Jamal Omar approaches the officer and the officer tells him to step back. (White, 41/6-7, Ex. A). White was also telling Omar not to do anything. (White, 41/6-10, Ex. A). Officer Arroyo and White end up moving toward the other end of the restaurant, which is empty of customers. The Officer was at the plaintiff's back, still trying to

handcuff him, when the plaintiff tried to turn around to face the officer in that close proximity. Officer Arroyo advised White not to turn around and to put his hands behind his back, but instead, White made an effort to turn his body and put himself in the officer's inside position. (Arroyo, 78/1-14, Ex. C). Due to the potential for extreme danger to the officer of having a struggling suspect close enough to grab at his weapons, the officer takes White to the ground in a controlled maneuver. (Arroyo, 82/5-17, 84/4-23, Ex. C). Once on the ground, White continues to struggle and physically resist being handcuffed until a second officer arrives and assists. (Arroyo, 89/3-4, Ex. C). The plaintiff claims a white female officer arrived, but the video clearly shows that it was a black male officer who arrived and assisted Officer Arroyo. (White, 43/5-23 Ex. A). The two officers stand the plaintiff up and try to walk him outside, but the plaintiff begins walking quickly, yanking and pulling at the officers. (Arroyo, 90/15-23, Ex. C; Deposition of Anthony King, 74/9-24, Exhibit D). As they approach the door, the plaintiff continued to lean forward and lunge forward. (King, 85/7-9, 15-17, Ex. D). At one point, he reached the door and when he lunged forward, he hit his head on the door. (King, 85/5-19, Ex. D). The plaintiff says the officers slammed his head into the door, but claims he does not recall what part of his head hit the door. (White, 45/13-15, Ex. A).

White claims his head was rammed into the second door as well, but at his deposition, he does not recall anything about it. (White, 46/21-47/1, Ex. A). However, on the video, it can be seen that Officer King's hand reached out and opens the door before White gets to it. (King, 95/3-11, Ex D; Video, Exhibit E). Outside, White was placed in the back of a police car and was seen by one of the officers slamming his head against the bars in the car. (Kaufman supplemental report, Exhibit F). Plaintiff denies doing this. (White, 47/10-15, Ex. A). EMS arrived and transported him to the hospital. Plaintiff claims he was bleeding, but the same is not noted on the EMS Run Report. (EMS,

Initial Physical Findings, Ex. B). At the hospital, the plaintiff made no mention of having his head run into the doors. He only mentioned striking his face on the ground. (Trident Hospital, Bates 84, Exhibit G). He denied loss of consciousness, laceration, confusion or disorientation. (Trident Hospital, Bates 84, Ex. G). The hospital performed a CT scan which was negative for fractures. (Trident Hospital, Bates 96-97, Ex. G). After being evaluated, he was released from the hospital less than two hours later diagnosed with a bruise. (Trident Hospital, Bates 105, Ex. G). Then White was taken to jail and booked in. He was released the next day.

On January 24, 2014, the plaintiff filed a complaint against Officer Arroyo with the North Charleston Police Department. (Statement of White, Exhibit H). Sgt. Allen was assigned to investigate the case. (IA file, Exhibit I). He interviewed Mr. White, pulled the Dispatch log (CAD, Exhibit J), and viewed in-car camera footage from Sgt. Evans' patrol unit. (Allen Notes, Exhibit K). He then spoke with the manager of the Waffle House, obtained the case history for Mr. White, and went to the Waffle House to watch the video of the incident on February 7, 2014. (Allen Notes, Ex. K). He also reviewed the incident report and the Inter-departmental Report. Once he had done these things, he prepared a report on the incident and presented it to Chief Driggers. Chief Driggers reviewed the matter with command staff and determined that Officer Arroyo had followed the Use of Force Policy, and had not violated any NCPD policies. A letter was sent to Mr. White advising him of such on February 11, 2014. In April, 2014, without consulting the officer or anyone at the Police Department, the charges were *nol prossed* by the prosecutor. (Affidavit of Arroyo, ¶5, 9, Exhibit M). The plaintiff expunged the charge and records and then filed the present lawsuit.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E. 2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Rule 56(c), SCRPC) accord *Trivelas v. South Carolina Dep't. of Transportation*, 348 S.C. 125, 130, 558 S.E. 2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); see also *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E. 2d 187, 191 (1997). Summary judgment is appropriate when "there is no genuine issue as to any material fact and...the moving party is entitled to judgment as a matter of law," *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986), and "where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 1356 (1986).

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 239 (2008). All evidence, and inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Rife v. Hitachi Constr. Mach. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct.App.2005)." *Moore v.*

LAW AND ARGUMENT

The plaintiff has only sued the City of North Charleston and has made allegations of Assault and Battery, Negligence/Gross Negligence, Negligent Hiring/Training/Supervision, Malicious Prosecution and claims of South Carolina constitutional violations -- False Arrest, False Imprisonment, Unlawful Search and Seizure. The plaintiff has voluntarily dismissed with prejudice, the cause of action for Intentional Infliction of Emotional Distress/Outrage. Counsel for the plaintiff has also stipulated that S.C. Code of Laws § 16-5-60 is not applicable, as it was impliedly repealed by the Tort Claims Act. North Charleston asserts that for the following reasons, they are entitled to summary judgment on all remaining causes of action.

I. PLAINTIFF'S CLAIMS PURSUANT TO THE SOUTH CAROLINA CONSTITUTION SHOULD BE DISMISSED.

The plaintiff has alleged that his rights under the South Carolina Constitution were violated by his false arrest (§40), his false imprisonment (§44), and the unlawful search and seizure of him (§49). These causes of action should be dismissed because South Carolina has no statutory equivalent to 42 U.S.C. § 1983, which gives rise to a private cause of action for money damages. There is no procedural mechanism for a private right of action for money damages for a state constitutional deprivation. Although there is almost no law on this topic, defendants refer the court to *Gibbs v. South Carolina Department of Probation, Parole and Pardon Services*, Op. No. 2002-UP-363 (S.C. Ct. App. 2002). While unpublished and having no precedential value, it is instructive. The Court of Appeals concluded that “[a]lthough section 1983 provides a method for obtaining monetary damages for violations of civil rights protected by the federal constitution, there is not a

similar provision in South Carolina which enables a citizen to bring a private right of action for civil damages under the state constitution.” The Court of Appeals held that “no viable cause of action exists where, as here, the state Constitution does not provide for a private right of action for civil rights violations and the legislature has not enacted a statute enabling this type of action.” *Id.* The Supreme Court declined to review this decision as well.

Additionally, the state constitutional claims are barred against the defendants by sovereign immunity. Prior to the Supreme Court’s decision in *McCall v. Batson*, 285 S.C. 243, 329 S.E. 2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. *McCall* abolished sovereign immunity, but the following year, the South Carolina Tort Claims Act was enacted by the General Assembly, and “reinstated sovereign immunity for the State and its political subdivisions with certain exceptions.” *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), *reversed on other grounds*, 538 U.S. 456 (2003). The Act “removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act.” *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.C. 2d 736, 739 (Ct. App. 2001). The General Assembly plainly states that it “intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein*.” S.C. Code Ann. § 15-78-20(b) (emphasis added). “All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.” *Id.*

It is clearly established that in response to the *McCall* decision, the General Assembly reinstated sovereign immunity, subject only to a limited waiver provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for violations of the South Carolina Constitution. Therefore, sovereign immunity is a bar to a claim for money damages, including those made by the plaintiff in this case. Defendant asks that all claims under the state constitution be

dismissed. To the extent the court disagrees with the Court of Appeals and the General Assembly, the defendant further sets forth additional bases for dismissal of each state constitutional claim.

II. THERE IS CLEAR PROBABLE CAUSE IN THIS MATTER AND THEREFORE NO EVIDENCE OF FALSE ARREST OR FALSE IMPRISONMENT.

Plaintiff has alleged both false arrest and false imprisonment. To prevail on a cause of action for false arrest, Plaintiff must establish: "(1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642, 651 (2006). Similarly, "the tort of false imprisonment is simply "a deprivation of a person's liberty without justification." *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21, 23 (App.1991), *cert. denied* (S.C. Jan. 7, 1992). False Imprisonment requires the same elements as false arrest. *Id.* (citing *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 377 S.E.2d 127 (Ct.App.1989)).

Generally, a police officer who arrests an individual will not be liable for false arrest or false imprisonment if the arrest was supported by probable cause. *See Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662, 663 (1990). In this case, Plaintiff claims that Officer Arroyo lacked probable cause to arrest him, and therefore, the restraint was unlawful. Plaintiff has the burden of proving lack of probable cause. *Jackson v. City of Abbeville*, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (S.C.App.2005). In discussing issues related to probable cause, the court in *Jackson* explained:

Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. "Probable cause" is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise." Probable cause is determined as of the time of the arrest, based on facts and circumstances-objectively

measured-known to the arresting officer. The determination of probable cause is not an academic exercise in hindsight.

Jackson v. City of Abbeville, 366 S.C. 662, 666-667, 623 S.E.2d 656, 658 - 659 (S.C.App.,2005)

(internal citations omitted). "Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion."

McBride v. Sch. Dist. Of Greenville Cnty., 389 S.C. 546, 567, 698 S.E.2d 845, 855-56 (Ct. App. 2010) (citing *Law*, 368 S.C. at 440-41, 446, 629 S.E.2d at 649, 651 (citations omitted)).

In this case, Officer Arroyo sat in a booth and listened to and observed the plaintiff's behavior for thirty minutes before approaching him. (Video, Ex. E). During those thirty minutes, the plaintiff jumped up from his table twice, walking around the restaurant while still talking loudly to his friends at the table, pounding a chair, waving his arms, high fiving his friend, and has spent time at the table talking loudly, even yelling, and waving his arms. (Video, Ex. E). At around 5:00, the language at the plaintiff's table got loud and the plaintiff and his friends were using profane and racially offensive language. (Deposition of Arroyo, 58/16-24, Ex. C; McCullough, 5-6, Ex. N; Fitzpatrick, 5, 7, Ex. P). It was Officer Arroyo's understanding from his history of working at the Waffle House, that employees sometimes got into verbal altercations with drunk patrons. (Arroyo, 59/21-24, Ex. C). In order to avoid that, Officer Arroyo would watch such customers to make sure they were not going to cause further problems. (Arroyo, 5-6, Ex. M). At 5:05 am, Officer Arroyo goes to the plaintiff's table to tell them to quiet down. (Video, Ex. E; Arroyo, 65/2-13, 70/11-16, Ex. C). Instead of complying with the officer's request, the plaintiff became loud and belligerent and told the officer to stop bothering them. (Arroyo, 65/20-23, Ex. C; Fitzpatrick, 7-8, Ex. P; McCullough, 7-8, Ex. N). Officer Arroyo told him they were disturbing other patrons, and he needed to calm down or he would be removed from the restaurant. (Arroyo, 67/6-8, Ex. C; Fitzpatrick, 7-8,

Ex. P; McCullough, 7-8, Ex. N). The plaintiff refused, yelling that he was going to sit there and eat his fucking food. (Arroyo, 67/11-12, Ex. C; Fitzpatrick, 9, Ex. P; McCullough, 8, Ex. N). Officer Arroyo then motioned to the staff to get the Plaintiff's check so he could pay his bill and leave. (Arroyo, 67/23-68/4, Ex. C). The plaintiff initially refused to leave, again saying that he was not going anywhere. (Arroyo, 69/2-7, Ex. C). Officer Arroyo instructed him to stand up and told him he needed to leave the restaurant. (Arroyo, 69/13-18, Ex. C; McCullough, 9, Ex. N). The plaintiff started yelling and using profanity and told the officer to arrest him or let him go. (Arroyo, 69/24-70/1, Ex. C). Officer Arroyo, at that time made the decision to arrest the plaintiff and charge him with Disorderly Conduct under the City of North Charleston's Ordinances. (Arroyo, 70/4-6, Ex. C).

Clearly, the officers own observations and interactions with the plaintiff leading up to his arrest constitute probable cause. The 'facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime.' *Jackson*, 366 S.C. at 666-667. The crime was Disorderly Conduct, and the officer witnessed the acts himself. Because the restraint by the officer was not illegal, there can be no false arrest, and the City of North Charleston is entitled to summary judgment on the False Arrest and False Imprisonment causes of action.

III. THE PLAINTIFF'S SEARCH AND SEIZURE ALLEGATIONS ARE NOT SUPPORTED

Search and seizure allegations are clearly claims of constitutional violations. They should be dismissed under Section I. above. In addition, Plaintiff has only made vague and conclusory allegations in his complaint regarding this cause of action. In addition to not being permissible, there is no factual support for the allegation. The Complaint only states that "officers lacked reasonable suspicion and/or probable cause to conduct any search of Plaintiff's person." (Compl. ¶48). When the plaintiff was deposed, he never testified that he was searched. When asked "what are the actions

that you contend constitute the unlawful search and seizure allegations?" (White, 59/8-9), he answered "[t]he simple fact he walking up to my table from the get-go. From that point to the end, he violated every right I had." (White, 59/11-13). Even when the plaintiff testified about being at the police car, he never even mentioned being searched. (White, 47/2-9).

Additionally, any search that occurred, was a lawful search incident to arrest. The authority to search following a full custody arrest allows a full and complete search for weapons, implements of escape and for evidence. The purpose of the search is to protect the arresting officer, prevent escape, and preserve any evidence in the possession of the arrestee. The officer is entitled to search the person of the arrestee and the area within the immediate control of the arrestee at the time of his arrest. NCPD Policy O-04; *United States v. Robinson*, 414 U.S. 218, 225, 94 S. Ct. 467, 472, 38 L. Ed. 2d 427 (1973); *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *Marron v. United States*, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927); *Go-Bart Co. v. United States*, 282 U.S. 344, 51 S.Ct. 153, 75 L.Ed. 374 (1931); *United States v. Lefkowitz*, 285 U.S. 452, 52 S.Ct. 420, 76 L.Ed. 877 (1932); *Harris v. United States*, 331 U.S. 145, 67 S.Ct. 1098, 91 L.Ed. 1399 (1947); *Trupiano v. United States*, 334 U.S. 699, 68 S.Ct. 1229, 92 L.Ed. 1663 (1948); *United States v. Rabinowitz*, 339 U.S. 56, 70 S.Ct. 430, 94 L.Ed. 653 (1950); *Preston v. United States*, 376 U.S. 364, 84 S.Ct. 881, 11 L.Ed.2d 777 (1964); *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

As is set forth above, the officer clearly had probable cause for the arrest, and therefore, the search incident to arrest was legal. The City of North Charleston is entitled to summary judgment on this cause of action.

IV. NORTH CHARLESTON IS ENTITLED TO THE PROTECTION OF THE SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. §15-78-10, et. seq. (Supp. 1997) WITH REGARD TO PLAINTIFF'S NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS.

The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, et. seq. (Supp. 1997), which provides the exclusive remedy in tort against Sheriff Cannon, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). See also S.C. Code Ann. 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

Importantly, the Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state.**" (*Emphasis added*) S.C. Code Ann. § 15-78-20(f). Defendants assert several subsections of the Act that are applicable and assert that these are absolute immunities to suit.

A. THE DEFENDANT IS NOT LIABLE FOR A LOSS RESULTING FROM THE EXERCISE OF DISCRETIONARY JUDGMENT.

"The governmental entity is not liable for a loss . . . resulting from the exercise of discretionary judgment by a governmental employee or the failure to perform any act or service which is in the discretion or judgment of the employee." § 15-78-60 (5). To establish "discretionary immunity," the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice; furthermore,

the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. *Stephens v. CSX Transp., Inc.*, 781 S.E.2d 534, (S.C. 2015) *rehearing denied*, *Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999), *rehearing denied*, *Clark v. South Carolina Dept. of Public Safety*, 353 S.C. 291, 578 S.E.2d 16, (S.C. App. 2002), *rehearing denied*, *affirmed* 362 S.C. 377, 608 S.E.2d 573. A governmental entity is not liable for losses resulting from an exercise of discretion by its employees. *Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (S.C. 2002).

Officer Arroyo clearly used his discretion in dealing with the plaintiff. When he first approached the plaintiff's table, he had three options. He could arrest the plaintiff for disorderly conduct under the North Charleston ordinance, he could simply cite the plaintiff and then leave as his shift was over, or he could go over and ask the plaintiff and his friends to quiet down. Police officers in South Carolina are not required to make an arrest, except in limited circumstances, such as criminal domestic violence. When he actually approached, the evidence shows that he chose option 3. Officer Arroyo testified that he had no intention of making an arrest. (Arroyo, 7, Ex. M). He asked the people to quiet down and calm down, and then was planning to get his payment and leave. When White became belligerent and argumentative, Officer Arroyo then still had his first two options, and a new third option, which was to tell the plaintiff to leave. Arroyo was still trying to end the encounter without an arrest. When White refused to leave after multiple requests, Officer Arroyo then made the decision to place him under arrest.

While attempting to effect the arrest, the Plaintiff continuously pulled his arms away from the officer and failed to put them behind his back as instructed. The officer was also confronted by Plaintiff's friend while trying to handcuff the plaintiff. Officer Arroyo weighed his options, and

moved away from the friend with the plaintiff, so he could then focus on getting the plaintiff handcuffed. Once they moved to the other end of the restaurant, Officer Arroyo attempted to handcuff the Plaintiff again, but the plaintiff began to turn toward him, a very dangerous position. Very quickly, the officer weighed his options again. Take the plaintiff to the floor or risk him trying to grab at something on his equipment belt. Based on his training, Arroyo used a maneuver he had been taught and took the plaintiff to the floor, where Arroyo hoped he would finally be able to get the plaintiff handcuffed. There is ample evidence of the use of discretion in this matter by Officer Arroyo, and therefore, the City is entitled to absolute immunity with regard to the allegations of negligence/gross negligence.

**B. THE DEFENDANT IS NOT LIABLE FOR A LOSS RESULTING FROM EMPLOYEE CONDUCT .
...WHICH CONSTITUTES ...INTENT TO HARM.**

The plaintiff has alleged Assault and Battery, which are intentional torts. The elements of each require intent to harm. The Tort Claims Act specifically precludes liability on the agency for any act which constitutes intent to harm. S.C. Code Ann. §15-78-60(17). *Cornelius v. City of Columbia*, 663 F.Supp. 2d 471, 480 (D.S.C. 2009), *aff'd sub nom. Cornelius v. Columbia, City of*, S.C., 399 F. App'x 853 (4th Cir. 2010). Because liability is precluded by statute, the City of North Charleston is entitled to summary judgment on this cause of action.

**VI. THERE IS NO EVIDENCE OF MALICIOUS PROSECUTION BY THE
DEFENDANT.**

Plaintiff's Eighth Cause of Action is for Malicious Prosecution. In order to recover in an action for malicious prosecution, the plaintiff must show (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) termination of such proceeding in the plaintiff's favor; (4) malice in instituting such proceedings; (5)

lack of probable cause; and (6) resulting injury or damage. *Ruff v. Eckerd's Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

In this matter, Plaintiff cannot prove that there was malice or that there was a lack of probable cause. The probable cause element goes back to incorporate the above arguments relating to false arrest and gross negligence. (II & III). Based on the facts of the case, there is clearly probable cause based on the officer's own observations. The plaintiff also has no evidence of malice. The Complaint merely makes an unsupported conclusory statement that there was malice, but provides no evidence to support such an allegation. There is no evidence that Officer Arroyo knew the plaintiff or had any personal feelings for or against him. While the plaintiff asserted to his friend on the night of his arrest that he was merely being arrested because he was black, there is nothing to support this; Officer Arroyo is Hispanic and Officer King is black. Officer Arroyo made no racially charged statements, and merely asked the plaintiff and his friends to quiet down or leave. Officer Arroyo was there to do a job and he was doing his job. There was no malice by Officer Arroyo in arresting the plaintiff.

Additionally, although the lack of probable cause can be evidence of malice, it is clear that there was probable cause for the arrest, as set forth in this brief. Therefore, the existence of probable cause is another basis for defeating the Plaintiff's claim for malicious prosecution and the same should be dismissed.

VII. THERE WAS NO ASSAULT OR BATTERY OF THE PLAINTIFF BY POLICE OFFICERS.

Defendant asserts that it is entitled to immunity under the Tort Claims Act for any act that

involves intent to harm. If the court declines to grant the City its immunity, the City further takes the position that there was no assault and battery, and all actions taken by Officer Arroyo and Officer King were permitted as they were in the course of making a legal arrest.

Although the court takes the facts in the light most favorable to the non-moving party in summary judgment, when there is a video that shows the events, and the plaintiff's testimony is directly contradictory to the video, "a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Witt v. West Virginia State Police, Troop 2*, 633 F.3d 272 (4th Cir. 2011), citing *Scott v. Harris*, 550 U.S. 372, 378, 380, 127 S.Ct. 1769, (2007), accord *Iko v. Shreve*, 535 F.3d 225 (4th Cir. 2008). In this case, the officer only touched the plaintiff after he advised him that he was under arrest. When making an arrest, a police officer has the right and duty to touch a person to the extent that it is necessary to make a lawful arrest. In this case, if the plaintiff had been compliant with the officers instructions to put his hands behind his back, he would have been handcuffed. Instead, the officers actions were all in response to the active resistance of the plaintiff. The officer, at all times was attempting to make a lawful arrest and was using only the amount of force necessary to try to overcome the Plaintiff's physical resistance.

The plaintiff's allegation that the officers used his head to open the door is also not supported by the evidence. During his deposition, the plaintiff could not even recall what part of his head he alleged hit the first door, and said nothing about hitting his head on the second door. Officer King testified that he pushed the door open, and that can be seen on the video as well. Therefore, the City is entitled to summary judgment on the cause of action for Assault and Battery.

VIII. THE TRAINING, HIRING AND SUPERVISION OF OFFICERS MEETS ALL STANDARDS.

The plaintiff has no evidence that the hiring, training, or supervision policies, procedures and

practices are below the standard of care. The only allegations in the Complaint state that North Charleston has a duty to hire, train and supervise persons hired to serve as police officers (Compl. ¶ 25), that North Charleston has a duty to train and supervise its officers regarding policies, practices, procedures and customs (Compl. ¶ 26) and that North Charleston failed to adequately supervise and train Arroyo and King. (Compl. ¶ 27). Vaguely, the plaintiff alleges that the mere fact of the arrest in this case is evidence that the officers were not properly hired, trained or supervised. Plaintiff has provided no evidence that either officer is not qualified as a police officer, that either officer failed to complete the training required by the state or the department, or that such training did not meet the standard of care.

The hiring process of police department is an eight (8) phase process involving intense background checks, testing, psychological examinations, physical examination, a polygraph and interviews. (Affidavit of Andrew Glover, ¶9, Exhibit Q). North Charleston's hiring practices are very similar to those used by other area departments. (Glover, ¶10, Ex. Q). There is no evidence in this case that Arroyo or King did not meet the qualifications to be a North Charleston Police Officer.

Both Arroyo and King received all of the training required of them by the state and the North Charleston Police Department. (Glover, ¶3-5, Ex. Q). Officers in the North Charleston Police Department receive continuous training. (Glover, ¶6, Ex. Q). Officers also receive regular supervision from their supervisors. Anytime an officer uses force of any kind, their supervisor is notified. The supervisor then reviews the use of force and completes a report that is then reviewed up the chain of command all the way to the Chief of Police. (Glover, ¶7, Ex. Q). If a supervisor sees something that would warrant a need for additional training, an officer will be required to do so. (Glover, ¶8). That did not happen in this case. (Glover, ¶8, Ex. Q).

Additionally, on March 27, 2010 the City of North Charleston Police Department was

awarded National Accreditation from the Commission on Accreditation for Law Enforcement Agencies (C.A.L.E.A). (Glover, ¶11, Ex. Q). The accreditation program requires the Police Department to comply with 446 state-of-the-art standards in four basic areas: policies and procedures, administration, operations, and support services.¹ (Glover, ¶11, Ex. Q). North Charleston Police Department received initial accreditation in 2007, and was re-accredited again in 2013 and most recently in 2016.

The CALEA standards are superior to the state required minimum standards for law enforcement agencies. (Glover, ¶12, Ex. Q). Being accredited and re-accredited is a lengthy, detailed process that the agency must go through, and by its very existence, the accreditation is evidence that the department meets the standards of care with regard to its hiring practices, its training of officers and its supervision. The plaintiff has no evidence to contradict this and therefore North Charleston is entitled to summary judgment on this cause of action.

IX. PUNITIVE DAMAGES ARE NOT PERMISSIBLE AGAINST THIS DEFENDANT FOR THE STATE LAW CAUSES OF ACTION.

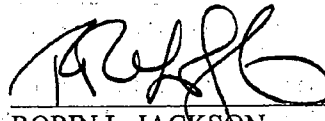
Punitive damages are barred against a governmental entity by Section § 15-78-120(b), which mandates that “[n]o award for damages under this chapter shall include punitive or exemplary damages or interest prior to the judgment.” Therefore, this defendant is entitled summary judgment on this claim and all claims for punitive damages against this defendant should be dismissed.

¹<http://www.northcharleston.org/Residents/Police/About-the-Department/Accreditation.aspx>

CONCLUSION

Based on the above and the arguments of counsel, defendant City of North Charleston asserts that it is entitled to summary judgment on all causes of action and requests that this matter be dismissed.

Respectfully submitted,



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Attorney for North Charleston

May 12, 2017

Charleston, South Carolina

EXHIBIT	DOCUMENT
A	Deposition of Norris White
B	Charleston County EMS Records
C	Deposition of Officer Christopher D. Arroyo
D	Deposition of Officer Anthony King
E	Waffle House Video
F	Officer A. Kaufman's Supplemental Report
G	Trident Medical Records
H	Statement of Norris White
I	IA File
J	CAD Report
K	Case Notes Detective Sergeant D. Allen #49
L	Amended Complaint
M	Affidavit of Christopher Arroyo
N	Affidavit of Taylor McCullough
O	Deposition of Taylor McCullough
P	Affidavit of Laura Fitzpatrick
Q	Affidavit of Lt. Andrew Glover

EXHIBIT A

In The Matter Of:

***WHITE VS.
CITY OF NORTH CHARLESTON, et al.***

NORRIS EARL WHITE, JR.

May 18, 2016

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Page 1

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
3) CASE NO.: 2015-CP-10-06561
4
5 NORRIS EARL WHITE, JR.,
6 Plaintiff,
7 vs.
8 CITY OF NORTH
9 CHARLESTON, NORTH
10 CHARLESTON POLICE
11 DEPARTMENT,
12 Defendant.
13 DEPOSITION OF: NORRIS EARL WHITE, JR.
14 DATE TAKEN: May 18, 2016
15
16 TIME: 11:06
17
18 LOCATION: SENN LEGAL, LLC
19 3 Wesley Drive
20 Charleston, SC 29407
21 REPORTED BY: Helen L. Rose, CSR, RPR
22 Certified Shorthand Reporter
23 Registered Professional Reporter
24 Notary Public
25

Page 2

1 APPEARANCES:
2 FOR THE PLAINTIFF:
3
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22
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24
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Page 3

1 INDEX
2
3 THE WITNESS:
4 NORRIS EARL WHITE, JR.
5
6 Examination by: Page
7 MS. JACKSON 4, 71
8 MR. STRATOS 69
9
10 EXHIBITS
11
12 Plaintiff's Page
13 None marked
14
15 Defendant's Page
16 No. 1 Letter 55
17 No. 2 NCPD AI Complaint Affidavit 65
18 No. 3 Charleston County Jail record 66
19
20
21
22
23
24
25

Page 4

1 (Witness sworn.)
2 NORRIS EARL WHITE, JR.,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:
5 EXAMINATION
6 BY MS. JACKSON:
7 Q Mr. White, my name is Robin Jackson. I
8 represent the City of North Charleston in the lawsuit you
9 have brought against them. It's my understanding you may
10 have been deposed at least once before; is that correct?
11 A Yes, ma'am.
12 Q I believe it's been a number of years; is that
13 correct?
14 A Yes, ma'am.
15 Q I'm going to go over the basics with you. This
16 is my one opportunity to speak to you directly, so I'm
17 going to be asking you questions today about your
18 background and history as well as the incident that took
19 place. We do have a court reporter here, and you are
20 under oath. Do you understand that you are under oath to
21 tell the truth, the same as if you were testifying in a
22 court of law?
23 A Yes, ma'am.
24 Q The court reporter, again, is taking down
25 everything that we say, so there are a few rules

Page 5

1 important to her. The first one is that when you give me
2 a response to my question that you give a verbal response
3 and you don't just shake your head or say uh-huh or
4 uh-huh. If you do that, then I may prompt you for a
5 verbal response. That's just to make sure that the
6 record is clear. Okay?
7 A Yes, ma'am.
8 Q Second, we can't both talk at the same time
9 because she can only take down one of us at a time. So
10 I'll do my best not to cut off your answers if you'll try
11 not to talk over my questions. Okay?
12 A Yes, ma'am.
13 Q If at any time you are not sure what I am
14 asking you, please direct that to me and ask me to
15 clarify the question or restate it and I'll be happy to
16 do so. On the flip side, if you answer my question, then
17 I'll presume that you understood it. Is that fair?
18 A Yes, ma'am.
19 Q If at any time you need to take a break, I am
20 happy to take a break. I just ask that if I have posed a
21 question to you that you answer that question, and then
22 I'll be happy to take a break. During any breaks you can
23 talk to people about anything you want except your
24 testimony. If you talk to somebody about your testimony,
25 then that's something that I can ask you about when we go

Page 6

1 back on the record. Okay?
2 A Yes, ma'am.
3 Q Are you taking any medications today?
4 A No, ma'am.
5 Q What is your full legal name?
6 A Norris Earl White, Jr.
7 Q And your Social Security number? And we'll ask
8 the court reporter only to take down the last four
9 digits.
10 A 8752.
11 Q Have you ever used any other Social Security
12 numbers?
13 A No, ma'am.
14 Q Your date of birth?
15 A 9-24-81.
16 Q And do you know your driver's license number?
17 A I believe it's 11198866.
18 Q Is that South Carolina?
19 A Yes, ma'am.
20 Q Do you have any restrictions?
21 A No, ma'am.
22 Q What is your current address?
23 A 472 Winter Drive, Summerville, South Carolina.
24 Q How long have you lived there?
25 A Maybe almost 20 years.

Page 7

1 Q Who lives there with you?
2 A My mother right now.
3 Q What's your mother's name?
4 A Rosa M. Jenkins.
5 Q Who has lived there with you in the past five
6 years?
7 A Just my wife and kids.
8 Q And what was your wife's name?
9 A Stephanie Marie Clark White.
10 Q And are you no longer married?
11 A Right now we're separated.
12 Q Where does she live?
13 A In Knightsville somewhere.
14 Q Do you have a phone number for her?
15 A Not offhand.
16 Q Is that something you can get today?
17 A Yes, ma'am.
18 Q Can you get that during a break?
19 A Yes, ma'am.
20 Q And how many children do you have?
21 A Two.
22 Q What are their names?
23 A Destiny and Kiara.
24 Q How old is Destiny?
25 A About to be 12.

Page 8

1 Q And Kiara?
2 A About to be 10.
3 Q Have you ever been married other than to
4 Stephanie?
5 A No.
6 Q Do you have any siblings?
7 A As in?
8 Q Brothers and sisters.
9 A Oh. Yes.
10 Q How many?
11 A That I know of knowledge, two brothers, two
12 sisters.
13 Q Okay. This case is filed in the Charleston
14 County Court of Common Pleas, which means we'll be
15 picking our jury from Charleston County residents. Are
16 any of your brothers and sisters Charleston County
17 residents?
18 A One of them, but I don't know what my brother's
19 address is.
20 Q The one that lives in Charleston County that
21 you think lives in Charleston County, what's his name?
22 A No, it's her name. That's who I know lives in
23 Charleston County. Shaniqua.
24 Q Can you spell that?
25 A No, I can't.

Page 9

1 Q What's her last name?
2 A Jenkins.
3 Q And does she have any children who are nearing
4 the age of 18?
5 A One, I believe.
6 Q What's the child's name?
7 A Daquon.
8 Q Daquon?
9 A Yes, ma'am.
10 Q Jenkins?
11 A Yes, ma'am.
12 Q Is Shaniqua married?
13 A No, not that I know of.
14 Q And your brother, that you're not sure if he
15 lives in Charleston County?
16 A Yes, ma'am.
17 Q What's his name?
18 A Lamont Waterman.
19 Q And does he have any children who are almost
20 nearing or above the age of 18?
21 A He has one, but he don't live down here.
22 Q Where do your other brother and sister live?
23 A Orangeburg. I believe she's in Orangeburg or
24 somewhere around that area. And my other brother lives
25 in Federal Way, Washington.

Page 10

1 Q Where?
2 A Federal Way, Washington.
3 Q What about your father?
4 A He's dead.
5 Q Do Destiny and Kiara live with their mother?
6 A Yes.
7 Q Does your mother work?
8 A Yes.
9 Q Where does she work?
10 A Coastal Center.
11 Q What does she do for them?
12 A I don't know.
13 Q Do you know how long she's worked there?
14 A More than 15 years, I believe.
15 Q Do you have any other family members
16 approximately 18 or over who live in Charleston County?
17 Cousins, aunts, uncles?
18 A Not to my knowledge.
19 Q Your sister Shaniqua, do you know where she
20 works?
21 A No, I do not.
22 Q Do you know if she works?
23 A I'm pretty sure she works.
24 Q What about Lamont, does he work?
25 A I don't know.

Page 11

1 Q Are you a member of any churches or local
2 organizations?
3 A No, ma'am.
4 Q What is your cell phone number?
5 A 810-9154.
6 Q Is that 843 area code?
7 A Yes, ma'am.
8 Q Is that the same number you had back in
9 December of 2013?
10 A Yes, ma'am.
11 Q Who is your provider?
12 A Right now Sprint.
13 Q Do you know who it was in December of 2013?
14 A Could have been Verizon.
15 Q Are you currently employed?
16 A No.
17 Q When was the last time you were employed?
18 A Probably about a week ago.
19 Q Where were you working a week ago?
20 A The Sign Chef.
21 Q What did you do for them?
22 A I think they called it lamination.
23 Q Why did you leave that work?
24 A I don't know. I just got a text message. It
25 was like my third day on the job, got a text message that

Page 12

1 said they don't think this would be the right fit for me,
2 so I said okay.
3 Q So you only worked there for three days?
4 A Yes, ma'am.
5 Q Where was that?
6 A Charleston.
7 Q Where in Charleston?
8 A Cross County, I believe.
9 Q Did you get that job through a temp agency?
10 A No, straight through them.
11 Q Where did you work before then?
12 A Husqvarna.
13 Q House of Honor?
14 A Husqvarna.
15 Q Oh, Husqvarna. What did you do for them?
16 A I was on the assembly line.
17 Q How long did you work for them?
18 A Not long, maybe like a week.
19 Q When was that?
20 A Maybe a month ago, two months ago.
21 Q Why did you leave after a week?
22 A Because the money ain't worth the drive.
23 Q Where did you work before then?
24 A I want to say Sportsman's Boats.
25 Q What did you do for them?

Page 13

1 A I was in lamination.
2 Q How long did you work for them?
3 A Almost nine months maybe.
4 Q Why did that job end?
5 A The fumes, the resin, started giving me
6 migraines.
7 Q So you quit?
8 A Yes, ma'am.
9 Q How long were you unemployed between
10 Sportsman's Boats and Husqvarna?
11 A I can't recall.
12 Q Was it a couple days, a couple of months?
13 A I can't recall.
14 Q What year did you work for Sportsman's Boats?
15 A Towards the end of last year, I believe, I left
16 out of there. Yeah, around the end of last year.
17 Q So the end of 2015 is when you left Sportsman's
18 Boats?
19 A I believe so.
20 Q Do you remember if it was before Thanksgiving
21 or before Christmas?
22 A It was before Christmas, I believe.
23 Q Since Christmas of 2015 you have worked one
24 week at Husqvarna and three days at the Sign Chef.
25 A Yes, ma'am.

Page 14

1 Q Have you worked anywhere else in 2016?
2 A I did valet.
3 Q Valet for who?
4 A The V.A. Hospital.
5 Q How long?
6 A I did that maybe three months.
7 Q When?
8 A I believe it could have been last year. I
9 don't know.
10 Q How did you get that job?
11 A Off of Indeed.
12 Q Off of a web site?
13 A Yes, ma'am.
14 Q Okay. And why did you leave?
15 A There was no benefits, no pay raises, no
16 nothing. What you go in at is what you going to stay at.
17 Q Where did you go to high school?
18 A Summerville.
19 Q Did you graduate?
20 A No, I got my GED in the Job Corps.
21 Q What grade did you finish at Summerville?
22 A I didn't. I left my 9th grade year.
23 Q You left in the middle of your 9th grade year?
24 A Towards the end. It had like a week or two
25 left.

Page 15

1 Q Why didn't you finish the 9th grade year?
2 A Because I was having trouble in school.
3 Q Were you expelled, or did you drop out?
4 A I was expelled.
5 Q What were you expelled for?
6 A Me and a teacher got into it. Not a physical.
7 She said I said something, but they didn't take my word.
8 But we had problems all throughout the year, so . . .
9 Q Were you criminally charged?
10 A No.
11 Q What year was that?
12 A I don't remember.
13 Q Had you failed any grades leading up to that?
14 A I believe the 4th or the 5th grade. Whenever
15 Hugo was around here.
16 Q The year of Hugo was the year you failed a
17 grade?
18 A I believe so, because we moved to Summerville
19 right after that, if I am remembering correctly.
20 Q When did you go into Job Corps?
21 A I don't know the exact date, but I graduated in
22 '01 or '02, I believe.
23 Q You got your GED?
24 A Yes, ma'am.
25 Q What kind of training did you get through Job

Page 16

1 Corps?
2 A Culinary arts.
3 Q Have you worked in culinary arts?
4 A Just on a friend's, a little barbecue stand.
5 Other than that, no.
6 Q Have you applied for jobs in culinary arts?
7 A No.
8 Q Why not?
9 A It's not something I wanted to do.
10 Q So why did you do the training then?
11 A Because that was the only class they had left.
12 I took up welding. The teacher had a heart attack or
13 stroke a week before I got there. They told me I can
14 either pick another class or I can wait until the man
15 come back. So I wanted to get in and out, and that was
16 in and out within six months.
17 Q Have you ever received any welding training
18 since then?
19 A No, ma'am.
20 Q Have you attended any other kind of schooling
21 or training since Job Corps?
22 A For barbering, massage therapy, aesthetics.
23 Q Where did you get that training?
24 A Howard's Barber College for the barbering;
25 aesthetics at CCI, Charleston Cosmetology Institute;

Page 17

1 massage therapy at MMTC, Miller-Motte Technical College.
2 Q And do you have degrees in those?
3 A I didn't go and get my license, no, but I
4 finished everything.
5 Q Okay, but you don't have any --
6 A No certificates, no, ma'am.
7 Q What do you do for income?
8 A Whatever comes along right now.
9 Q You have only worked eight days in the last
10 several months. Is your mother supporting you?
11 MR. STRATOS: Object to the form.
12 You can answer.
13 Q I'm sorry, I didn't mean to speak over the top
14 of you. I said you've only worked eight days in the last
15 several months, and you started to say something. What
16 was that?
17 MR. STRATOS: Object to the form.
18 A Nothing.
19 Q Is your mother supporting you?
20 A I don't say so.
21 Q Where are you getting money to buy food?
22 A Wherever I can get it.
23 Q Where would that be?
24 A Whatever side jobs I can find.
25 Q What kind of side jobs are you doing?

Page 18

1 A Cutting grass, whatever gives me a little bit
2 of money in my pocket. I'm not breaking the law. So I'm
3 not going and specifically looking for a job. Whatever
4 is paying me for that day, I'm trying to do.
5 Q Okay. So things in like the neighborhood?
6 Mowing somebody's grass; they pay you money?
7 A Yes.
8 Q Do you have an order of support for your
9 children?
10 A Yes.
11 Q What do you have to pay for support?
12 A When I was working at Sportsman's they had me
13 paying 601 a month.
14 Q What do you pay now?
15 A Supposed to be 601 a month, but I'm trying to
16 have it reduced.
17 Q So do you owe back child support right now?
18 A Yes, ma'am.
19 Q Did you file any kind of workers' compensation
20 claim with Sportsman's Boats?
21 A No, ma'am.
22 Q Other than the Sign Chef that told you they
23 didn't think it was a good fit for you, have you ever
24 been terminated from a job?
25 A No, ma'am.

Page 19

1 Q Have you ever been in the military?
2 A Yes, ma'am.
3 Q What branch?
4 A Navy.
5 Q When?
6 A '02 to '07.
7 Q What was your job?
8 A Ship serviceman, ran the barber shop, ship
9 store, laundromat, dry cleaning, vending machines.
10 Q What was your rank when you were discharged?
11 A I was being paid as an E3, but I was frocked to
12 E4.
13 Q I'm sorry, what?
14 A I was being paid as an E3, but frocked to an
15 E4, as in they go ahead and give you your next rank, but
16 you're not getting paid for it. But I also got it within
17 a week before I was getting out. That just means you got
18 put up to the next rank, you got promoted. That's it.
19 That's just what they call it.
20 Q Did you receive an honorable discharge?
21 A Yes, ma'am.
22 Q Do you have the paperwork for that?
23 A Yes, ma'am.
24 Q I'm going to ask you to provide that to your
25 attorney. Okay?

Page 20

1 A Okay.
2 Q Can you put on the record please what it says
3 on your T-shirt?
4 A "Need more haters, the old ones starting to
5 like me."
6 Q Other than this arrest, how many times have you
7 been arrested?
8 A I don't know.
9 Q More than five?
10 A I don't know.
11 Q How many places have you been arrested?
12 A I don't know.
13 Q Is it more than one?
14 A I don't know.
15 Q Why don't you know?
16 A I don't keep count.
17 Q Have you been arrested other than this?
18 A Yes.
19 Q Have you been arrested other than the two
20 Waffle House arrests that you have?
21 A Yes.
22 Q Have you been in a jail other than the
23 Charleston County jail?
24 A Yes.
25 Q Which other jail?

Page 21

1 A Virginia.
2 Q When you were in Virginia, were you in jail or
3 were you in prison?
4 A Jail overnight.
5 Q What county?
6 A I couldn't tell you.
7 Q What were you charged with?
8 A Couldn't even tell you that, to be honest with
9 you.
10 Q When was it?
11 A My time in the military, somewhere between '02
12 and '07.
13 Q What was the outcome of that charge?
14 A I'm not guilty.
15 Q So you know you were not guilty, but you don't
16 know what the charge was?
17 A No, I know what's on my record as in guilty.
18 So I know anything else I've been arrested for has to be
19 not guilty. That's what I know.
20 Q I'm sorry, say that again.
21 A I know what's on my record that I'm guilty of,
22 so anything else that I've been arrested for, I must be
23 not guilty.
24 Q What record are you talking about?
25 A The conspiracy to a crime charge that's on my

Page 22

1 record. I know what's on my record as in being guilty.
2 Q Okay. Conspiracy to a crime. Let's talk about
3 that. You were convicted of that?
4 A Yes, ma'am, I pled guilty, yes, ma'am.
5 Q When?
6 A I believe it was in '07, '08.
7 Q And it was conspiracy to what crime?
8 A Helping somebody find some weed.
9 Q And who was that person?
10 A Some little white boy from the neighborhood. I
11 don't remember his name.
12 Q What was your sentence?
13 A Probation. Two years probation, and I was off
14 in six months.
15 Q Was that in South Carolina?
16 A Yes, ma'am, Dorchester County.
17 Q Did you spend time in the Dorchester County
18 Detention Center?
19 A Is that overnight jail? I don't know.
20 Q Have you been arrested other than the two
21 Waffle House arrests, the Virginia arrest, and the
22 conspiracy to commit a crime arrest?
23 MR. STRATOS: Object to the form.
24 You can answer the question.
25 A Not to my knowledge. I know I've been

Page 23

1 arrested, but I don't know the exact amount of time.
2 Q That wasn't my question. My question was have
3 you been arrested for something other than the conspiracy
4 to commit a crime, the Virginia time you said you spent
5 overnight in jail, and the two times you have been
6 arrested at Waffle House?
7 A Yes. I said yes, but I don't remember when or
8 the time.
9 Q Do you remember if they occurred in South
10 Carolina?
11 A The last one was a CDV with my wife.
12 Q When was that?
13 A I don't know the date.
14 Q What year?
15 A I don't know the year.
16 Q When did you separate from your wife?
17 A Maybe three years ago.
18 Q Was she also charged?
19 A Not that night, no.
20 Q Were you convicted?
21 A Yes.
22 Q Now, adding that arrest into the mix, do you
23 have any other arrests?
24 A No, not none that's guilty. Anything else, I
25 don't know.

Page 24

1 Q Other than the Virginia arrest, have you ever
2 been arrested outside of South Carolina?
3 A Not that I can recall. I don't know.
4 Q When you were in the Navy, where were you
5 stationed?
6 A Washington state and Virginia.
7 Q Did you ever go overseas?
8 A Yes, ma'am.
9 Q Where at?
10 A A lot of places.
11 Q Were you ever stationed overseas?
12 A No, ma'am.
13 Q Have you ever been treated for any drug or
14 alcohol issues?
15 A No, ma'am, I had a drug class for the charge.
16 Q Part of the conspiracy charge?
17 A Yes, ma'am.
18 Q Have you ever been treated for mental illness
19 or mental health reasons?
20 A No, ma'am.
21 Q The arrest that we're here about today,
22 December 28, 2013, who have you talked to about that
23 arrest?
24 A People I need to, my lawyer.
25 Q Other than -- I don't want to know anything

Page 25

1 that you talked to your lawyer about. Anyone else?
2 A Lamar, I asked him to come get me from jail.
3 Q What about your wife?
4 A No, I didn't tell her what happened. We don't
5 even speak.
6 Q What about the girls that were with you?
7 A I don't even know them.
8 Q Your mom?
9 A Yeah, I talked to my mom about it.
10 Q What did you tell your mom?
11 A That he had arrested me because I'm black.
12 Q What did she say to that?
13 A Nothing. She went in her room, laid down. I
14 told her I'll take care of it, like always. I'm a grown
15 man.
16 Q When your wife and kids lived with you at the
17 Winter Drive address, did your mother also live there?
18 A Yes.
19 Q When did you live in Virginia?
20 A Between '02 and '07.
21 Q And was it before or after Washington state?
22 A After.
23 Q How long were you in Washington state?
24 A Everything, Washington state and Virginia is
25 all between '02 and '07.

Page 26

1 Q I get that.
2 A I don't know the exact time.
3 Q And you went to Washington state first?
4 A Yes, ma'am.
5 Q And you're telling me you have absolutely no
6 idea if you stayed there one day or three years?
7 MR. STRATOS: Object to the form.
8 A I don't know the exact amount of time I stayed.
9 there is the reason why I'm not giving you an exact
10 answer.
11 Q Okay. Give me a general amount of time you
12 stayed there.
13 A Couple of years maybe.
14 Q Where were you in Washington state?
15 A Bremerton.
16 Q Where did you stay in Virginia?
17 A In Newport News.
18 Q Were you there for a couple of years as well?
19 A Yes, ma'am.
20 Q When you were in Washington state, did your
21 wife live with you?
22 A While I was there, yes, ma'am.
23 Q When you were in Newport News, did your wife
24 live there with you?
25 A While I was there, yes, ma'am.

Page 27

1 Q Why did you and your wife separate?
2 A Everybody don't belong together.
3 Q When did you get married?
4 A April of '02 or '03, I believe.
5 Q Was it before or after you enlisted in the
6 Navy?
7 A After.
8 Q And neither one of you has filed for divorce
9 yet?
10 A No, we're already going through the process.
11 Q Who filed for divorce?
12 A I filed for full custody, and they answered
13 back with the filing for divorce papers.
14 Q Does Stephanie work?
15 A I don't know.
16 Q What county is the divorce filed in?
17 A Dorchester.
18 Q What have you reviewed in order to prepare for
19 your deposition today?
20 A What you mean?
21 Q Did you look at any documents?
22 A As in?
23 Q As in your statement to North Charleston, the
24 arrest report, any document.
25 A Don't need to look at it.

Page 28

1 Q I didn't ask you if you needed to. I asked you
2 if you did.
3 MR. STRATOS: Object to the form.
4 A No, I didn't.
5 Q Did you watch the video?
6 A Yeah, I watched the video.
7 Q When did you watch the video?
8 A I don't remember the date.
9 Q Was it recently?
10 A I don't remember the date.
11 Q Was it in 2016?
12 A Yes.
13 Q Was it in May of 2016?
14 A Do not remember the date.
15 Q All right. You have already provided written
16 responses to discovery through your attorney. Are you
17 aware of that?
18 A Yes, ma'am.
19 Q So I have the written account of what happened
20 that night from your perspective. Now I want you to tell
21 me on the record under oath. Starting with earlier that
22 day before you decided to go out, where were you?
23 A To my knowledge, home.
24 Q With who?
25 A Myself.

Page 29

1 Q Was your wife there?
2 A No, 'cause we was already split up.
3 Q Tell me what happened.
4 A We went out, met two girls, went to the Waffle
5 House.
6 Q Where did you go out?
7 A I don't know the name of the club.
8 Q Why not?
9 A I don't remember the name of the club. I don't
10 know, I guess that's how my memory is.
11 Q Have you ever been told by a doctor that you
12 have some diagnosable problem with your memory?
13 A No.
14 Q Have you ever been treated for a brain injury?
15 A Besides when I got slammed on my face, no, not
16 to my knowledge.
17 Q You weren't treated for a brain injury after
18 that either, were you?
19 A I don't know what they treated me for. I was
20 out.
21 Q You never looked at your medical records?
22 A No, ma'am.
23 Q Did you get referred to a neurologist?
24 A I don't know what they did, to be honest with
25 you.

Page 30

1 Q Did you go see a neurologist after that?
2 A I didn't go see anyone. No insurance.
3 Q You had no brain surgery, correct?
4 A No.
5 MR. STRATOS: Object to the form.
6 Q Before this incident in December of 2013, was
7 your memory better?
8 A I don't know. I remember what needs to be
9 remembered.
10 Q Interesting.
11 MR. STRATOS: Object to the form.
12 Q How many clubs did you go to that night?
13 A One, maybe two.
14 Q And who was with you?
15 A Omar.
16 Q Who was driving?
17 A I believe it was Omar. I'm not too positive.
18 Q Do you drink alcohol?
19 A Sometimes.
20 Q What's your drink of choice?
21 A Beer.
22 Q When you went out that night, would you have
23 used a credit card to pay for your drinks and your
24 entrance to the clubs, or would you have used cash?
25 A For the entrance, cash. They don't take cards,

Page 31

1 nothing like that. If we even paid. I don't even know
2 if we paid.
3 Q If you bought a drink, would you have used a
4 credit card or cash?
5 A Either/or. Don't know what happened that
6 night.
7 Q What credit cards did you have in 2013?
8 A Oh, matter of fact, none to my knowledge.
9 Q You didn't have any credit cards?
10 A Not to my knowledge.
11 Q Do you have any credit cards now?
12 A Yes, I believe so. I have two or three.
13 Q And what kind are they?
14 A Capital One.
15 Q Do you have them with you?
16 A No.
17 Q Are the accounts in your name?
18 A Yes.
19 Q Are you telling me that you don't know whether
20 you had them in December of 2013 -- let me finish -- or
21 that you did not have them in 2013?
22 A I did not.
23 Q So is it your testimony here under oath that
24 you had no credit cards in December 2013?
25 MR. STRATOS: Object to the form.

Page 32

1 Q In your name?
2 A To my knowledge, yes.
3 Q Is there some reason that you would not be
4 aware if you had a credit card in your name in 2013?
5 A If anything, because I got the dates wrong.
6 Q What's Omar's last name?
7 A That is his last name.
8 Q What's his first name?
9 A Jamal.
10 Q Where does he live?
11 A Somewhere in Goose Creek.
12 Q Is it one of those places where you could find
13 it if you wanted to go there, but you don't know the
14 address, or do you just not know where he lives?
15 A I don't know addresses like that, period. If I
16 don't GPS it, I'm looking for major landmarks to
17 remember.
18 Q Okay. But if Jamal called you right now and
19 said, hey, man, come to my house, could you get there?
20 A Yes, ma'am.
21 Q And do you have a phone number for Jamal?
22 A I do, but not offhand.
23 Q That's something you can get? Can you get that
24 during the break?
25 A Yes, ma'am.

Page 33

1 Q What time did you arrive at the Waffle House?
2 A I don't recall.
3 Q Approximately? Do you know approximately what
4 time you arrived at the Waffle House?
5 A I just said I don't recall.
6 Q Tell me what you do remember about being at the
7 Waffle House on December 28 of 2013.
8 A I was sitting down eating. Omar went to go pay
9 for the food. The cop walked to the table, said I need
10 to leave. And I told him, for what? He said you need to
11 leave. I told him, I'm not going anywhere till I finish
12 eating this food that I paid for. I sat down.
13 Q Did you use any curse words when you said that?
14 A No.
15 Q You didn't?
16 A No.
17 Q How certain are you?
18 A I'm positive because I don't fight officers
19 back. I don't disrespect them. That's how I know.
20 Q How certain are you of the content of the
21 conversation that you had with the officer while you were
22 still sitting at the table?
23 A I'm positive of the conversation we had.
24 Q What did you order that night?
25 A I can't remember. I believe it was some

Page 34

1 waffles, grits, or an omelette. I know it wasn't no
2 pork.
3 Q Do you not eat pork due to your religion?
4 A I don't eat pork.
5 Q Is there a reason you don't eat pork?
6 A I just feel my religion has nothing to do with
7 it.
8 Q I'm sorry?
9 A My religion has nothing to do with whether I
10 eat pork or not.
11 Q Okay. What is your religion?
12 A That doesn't matter either.
13 Q Are you refusing to answer the question?
14 A About my religion? Yes, I am.
15 Q Why are you refusing to answer my question?
16 A Because that has nothing to do with this
17 conversation right now.
18 MS. JACKSON: Will you just make a mark at that
19 location so that we can file a motion to compel.
20 BY MS. JACKSON:
21 Q I'll file a motion to compel and that we reopen
22 the deposition at your cost is what we'll be moving to
23 do, so that you're aware.
24 MR. STRATOS: Are you harassing my client
25 because he doesn't want to talk about his religion?

Page 35

1 MS. JACKSON: I'm advising him of what the next
2 step will be.
3 MR. STRATOS: You're actually threatening him.
4 MS. JACKSON: I'm not threatening him. I'm
5 advising him, as well as his counsel, that if he refuses
6 to answer my questions that I will file a motion to
7 compel and I will ask the Court to reopen the deposition
8 at your cost. And that's what I will do. It's not a
9 threat. That is what the Rules of Civil Procedure
10 instruct us to do, so I'm only advising you and your
11 client.
12 BY MS. JACKSON:
13 Q Did you see your attorney's discovery responses
14 before they were sent to us?
15 A I believe so, yes.
16 Q I asked in Number Eight for you to set forth
17 your legal name, nicknames, date of birth, Social
18 Security number, address, et cetera, and that of your
19 wife and children. You just told me that your wife
20 didn't live at Winter Drive. Do you know why you
21 identified her as living at Winter Drive?
22 A I don't know. I don't know her address. You
23 wanted an address. That's the last known address I have
24 for her.
25 Q Who is your attorney in the divorce?

Page 36

1 A I don't have one.
2 Q How did you serve her with the papers for
3 custody?
4 A I had the court do it.
5 Q Had you seen the SLED report, the SLED printout
6 background check that your attorney produced with
7 discovery responses?
8 A I don't remember.
9 Q I will show it to you. It's Bates stamped
10 Pages PL005 through PL009.
11 A Is there something I'm supposed to be looking
12 for?
13 Q Just look through that and tell me if you've
14 seen it before.
15 MR. STRATOS: I would appreciate it if you
16 would hand me exhibits before you hand them to my client.
17 Or at least a copy.
18 Q That is a document that was provided by your
19 own attorney.
20 A I don't know what it is you want me to look for
21 now.
22 Q I just want you to look through it and tell me
23 if you've seen it before.
24 A My arrest charges, yes.
25 Q Do you have any dispute with the charges and

1 convictions that are set forth in this document?
2 A The same way I looked at that one is the same
3 way I looked at it before, so no. I'm just looking for
4 guilties. As long as I know what I'm guilty of, and it's
5 nothing more, then I'm going to be fine.
6 Q All right. You said that the officer came
7 over, told you you needed to leave?
8 A Yes, ma'am.
9 Q And you told him you were going to finish your
10 food?
11 A Yes, ma'am.
12 Q Then what happened?
13 A I sat down. He picked me up.
14 Q You didn't previously tell me that you had
15 stood up.
16 A You asked me what happened. I said when he
17 came, we talked. He said about the, you need to leave.
18 I told him I'm not going till I finish the food, and I
19 sat down. So if I sat down, I had to be standing up.
20 Q Okay. At what point did you stand up?
21 A When he came to the table and tell me to get
22 up, to leave.
23 Q So after he told you to get up and leave is
24 when you stood up?
25 A Yes, ma'am.

1 Q You were saying that to Omar?
2 A Yes, I told him that's what I thought, yes.
3 Q Did you say anything to the people who were
4 seated at the counter next to where the booth you were
5 sitting?
6 A No, ma'am.
7 Q So in the video, you were turning your head
8 towards the people at the counter. Were you still
9 talking to Omar?
10 A Towards the people at the counter?
11 Q You turn your head towards the people at the
12 counter, and you can see your mouth moving.
13 MR. STRATOS: Object to the form.
14 A I don't know what part of that you're talking
15 about that. I had a young lady sitting to my right, but
16 she already had got up and left and there was still
17 another lady sitting in front of me to my right. So if I
18 turned my head to talk, I'm pretty sure that's who I was
19 talking to, if not the waitress.
20 Q I'm talking about after you were standing up
21 and the officer was trying to handcuff you. You had
22 backed up, and you were standing near the counter where
23 people were seated at the counter.
24 A Oh. No, ma'am.
25 Q So is it fair to say that the only person you

1 Q What happened next?
2 A I asked him, for what. He said you need to
3 leave. I sat down. I'm not going nowhere till I finish
4 my food. That was it. Videotape shows the rest.
5 Q What happened next?
6 A He attempted to arrest me -- well, not
7 attempted to arrest me. He arrested. Charged me with
8 disorderly conduct and resisting arrest.
9 Q Did you say anything to him during the course
10 of the time that he was trying to place you in handcuffs?
11 A Nothing to him. I was telling Omar don't mess
12 with him right now 'cause we ain't did nothing.
13 Q And what was Omar saying?
14 A Why is you arresting him? We didn't do
15 nothing. What's your name? You know, things like that.
16 Q Did you say anything to him about being black?
17 A To who?
18 Q The officer.
19 A No.
20 Q Did you say anything to Omar about believing
21 that you were being arrested because you were black?
22 A Yes.
23 Q What did you say?
24 A The only reason he messed with us is because
25 we're black. Four black people sitting to a table.

1 were talking to during the time that you were in the
2 process of being placed under arrest was Omar?
3 MR. STRATOS: Object to the form.
4 A Yes, ma'am.
5 Q If that's not correct, then you correct me and
6 tell me who else you were talking to.
7 A Just Omar and the police officer. That's the
8 only two people I was in contact with.
9 Q All right. And after you were having this
10 conversation with Omar, what else did you say to him?
11 A Nothing. I was telling him to chill out, we
12 didn't do nothing, don't worry about it. That's exactly
13 what I told him. And I kept repeating that. There's no
14 point in him making him maybe do something more stupid
15 than what he's already doing right now. This is my life
16 on the line. I don't need him to have no excuses of why
17 he's doing what he's doing, what he has done already. So
18 whatever move you make, it might put me in more jeopardy.
19 Q And you were saying that to Omar?
20 A No, that's the thought process in my head. I
21 can't tell him all that right then.
22 Don't do nothing. If we didn't do
23 nothing, don't worry about, we didn't do nothing. That's
24 all he needed to know.
25 Q What was Omar saying back?

Page 41

1 A Nothing. He walked out.
2 Q What was the officer saying?
3 A To me? Nothing.
4 Q So he was silent?
5 A Yes, the officer, to me he was saying nothing.
6 He was telling Omar to step back when I was telling Omar
7 don't do nothing. He was telling Omar to step back.
8 Q So the officer is telling Omar to step back and
9 you're telling Omar don't do nothing?
10 A Yes.
11 Q Then what happened?
12 A To my knowledge, I go to jail. I got two
13 charges.
14 Q At what point were you handcuffed?
15 A I believe it was when he had me at my front
16 table, and he walked me to the back, I believe, to pat me
17 down to see if I had anything on me.
18 Q Did he tell you that's what he was doing?
19 A No, ma'am, he didn't say nothing to me.
20 Q Then how do you know he was walking to the back
21 to pat you down to see if you had anything on you?
22 MR. STRATOS: Object to the form.
23 Q Is that what you just told me?
24 A Yes, when he laid me on the table, he tapped my
25 pockets, or whatever he was doing with my back pocket.

Page 42

1 Q And then what happened?
2 A I went to jail. I got slammed on my face when
3 I asked him why am I going to jail.
4 Q Did he tell you you were going to jail?
5 A No, I got slammed on my face. You can call
6 that the way he told me.
7 Q Okay. So is it your testimony that from the
8 time that Omar walked out of the Waffle House until --
9 well, from the time that Omar walked out of the Waffle
10 House, until what point did the officer say nothing at
11 all to you?
12 MR. STRATOS: Object to the form.
13 A To my knowledge I can't be exact, but I don't
14 remember him saying too much to me besides: You need to
15 leave, you need to leave. I believe he asked me to get
16 up when he first came to the table and he said you need
17 to get up and leave. But not too much, he ain't said.
18 Q So once the officer has his hands on you --
19 A Uh-huh.
20 Q -- did he speak?
21 A No, he told me put my hands behind my back.
22 That was it.
23 Q So the rest of the night you never heard his
24 voice?
25 MR. STRATOS: Object to the form.

Page 43

1 A Not to my knowledge, no, ma'am.
2 Q Do you recall being taken to the ground inside
3 the Waffle House?
4 A Yes, ma'am.
5 Q Do you recall seeing the second officer come
6 in?
7 A I believe it was a woman officer, yes, ma'am,
8 after I was slammed.
9 Q Do you recall seeing a black male officer come
10 in?
11 A No, ma'am. The only two officers I recall is
12 the male and the female.
13 Q When do you recall seeing the female officer?
14 A I believe it was after I was slammed. I was
15 already on the ground, and I looked up, and she came in
16 through the door.
17 Q Okay. And when that person came through the
18 door, were they in uniform?
19 A I believe she was.
20 Q Black or white?
21 A The uniform?
22 Q The woman.
23 A White.
24 Q Did that officer say something to you?
25 A Not that I can recall.

Page 44

1 Q You were eventually picked up and brought on
2 your feet, correct?
3 A Yes, ma'am.
4 Q Did anybody say anything to you at that point?
5 A Not that I recall, besides the regular: Get
6 up. Or do you need a -- I don't know if it was inside or
7 outside, but it was like: Do you need an ambulance. And
8 I said yes. I don't recall if that was on the inside or
9 the outside.
10 Q Who escorted you out of the building?
11 A I believe it was the male officer and the
12 female officer. I'm not sure.
13 Q Did any of the other patrons say anything to
14 you as you were being escorted out?
15 A If they did, I didn't hear it. My head was
16 ringing, so...
17 Q Tell me how they walked you out.
18 A Through the door by my head, hit.
19 Q All right. When you were taken to the ground,
20 what part of your head hit the ground?
21 A This part hit first.
22 Q Okay. And --
23 A My cheekbone.
24 Q For the purposes of the court reporter and so
25 that we can make sure that we know, if you'll also tell

1 us the side. Left, right, and then the part.
2 A I believe it was my left side of my cheek
3 first.
4 Q Your left cheekbone? Because you're indicating
5 with your hand like at your left cheekbone --
6 A I'm sorry, but it's the way I'm thinking, when
7 I'm recalling it and I'm remembering the feeling of my
8 face afterwards in the hospital. It's all right here
9 (indicating) because I still get the jaw popping when I
10 eat, so ...
11 Q Did you fracture any bones?
12 A They said I didn't.
13 Q You said they walked you out through the door
14 by your head. What part of your head hit the first door?
15 A I can't recall, to be honest.
16 Q Do you actually remember walking out?
17 A Yes, ma'am, I remember them picking me up. But
18 I don't remember like too much in between of them picking
19 me up and carrying me outside like that. I was still
20 kind of dazed.
21 Q You used the phrase "carry me outside".
22 A I didn't walk on my own will.
23 Q Were your feet on the ground?
24 A Yes, ma'am.
25 Q Were you moving your own feet?

1 A Uhn-uh.
2 Q Do you recall being placed in the police car?
3 A No, ma'am. The last thing that I remember
4 about outside was being on top of the police car till the
5 ambulance came. Matter of fact, I believe he sat me on
6 the ground until the ambulance came. I don't recall
7 being in the back of a police car, but I could have been.
8 Q Did you say it could have happened?
9 A I said I could have been.
10 Q Do you recall banging your face against the
11 bars in the back of the police car?
12 A Me banging my face against the bars? What, do
13 I look crazy? That's not something I would do. I'm not
14 retarded. I'm sorry, I just felt offended by you asking
15 me that.
16 I'd like to take a break.
17 Q Sure.
18 A Thank you.
19 (Recess taken.)
20 MS. JACKSON: Back on the record.
21 BY MS. JACKSON:
22 Q Have we talked about everything that you recall
23 happening inside the Waffle House?
24 A Yes, ma'am.
25 Q Is there anything that you recall happening

1 A Not by choice.
2 Q Were you on your own weight, though, or were
3 you actually lifted up off the ground?
4 A That, I can't recall. I know I wasn't moving
5 them by my own choice. I was being forced to move.
6 Q How were you being forced to move?
7 A Being handcuffed and pushed by two cops that's
8 standing behind me pushing on me to move.
9 Q Were you saying anything at that point?
10 A No, ma'am.
11 Q How sure are you of that?
12 A Positive, because I don't even remember -- like
13 once he dropped me and my head went woozy, after I seen
14 that cop ran in, I know I ain't said nothing because I
15 didn't hear anything. There was nothing to be heard, so
16 if your mind don't hear anything, your mind is not going
17 to say anything.
18 Q Okay. And you said you don't recall what part
19 of your head hit the door on the way out?
20 A No, ma'am, I just know it was my front.
21 Q What about the second door?
22 A I can't recall.
23 Q Do you recall anything about it?
24 A That it's a door. That's about it.
25 Q Do you recall anything about going out?

1 inside the Waffle House that you haven't told me about
2 already today?
3 A No, ma'am.
4 Q So now we're outside the Waffle House. And you
5 said EMS was called for you, correct?
6 A Yes, ma'am.
7 Q Did they provide you with any treatment at the
8 scene?
9 A They just put me in the stretcher and took
10 me -- as a matter of fact, it was the right side. I
11 remember when I woke up from the hospital, the cop was to
12 my left and the ice pack was to my right. And I believe
13 they said something about they were waiting for the
14 results of the CAT scan or something like that.
15 Q You were transferred to the hospital by EMS?
16 A Yes, ma'am.
17 Q Did you have any cuts, or were you bleeding
18 from anywhere?
19 A No, it was just like a little -- if you ever
20 got punched in the face, and when it gets swollen, it
21 just be like one little tiny imprint where blood might
22 leak out that one little pore. You know what I'm talking
23 about?
24 Q Were you actually bleeding?
25 A Yes, ma'am. It wasn't gushing blood, but I was

Page 49

1 bleeding.
2 Q Do you recall your time at the hospital?
3 A No, ma'am, I don't recall anything besides
4 waking up in the hospital room.
5 Q Do you remember whether or not the nurses or
6 doctors ever spoke with you?
7 A No, ma'am.
8 Q Do you recall them asking you any questions?
9 A No, ma'am. Just waiting on the CAT scan
10 results.
11 Q And I just want to make sure that I'm clear.
12 Are you saying that you were unconscious or that you just
13 don't remember?
14 A I woke up in the hospital.
15 Q Do you remember arriving at the hospital?
16 A No, ma'am.
17 Q So at some point -- and do you remember getting
18 in the ambulance?
19 A Yes, ma'am.
20 Q At some point between getting in the ambulance
21 and arriving at the hospital, do you know whether you
22 fell asleep?
23 A They didn't tell me. They didn't tell me if I
24 was knocked out or if I just fell asleep or anything.
25 They didn't tell me any of that, so I really don't know.

Page 50

1 Q Have you ever seen your medical records?
2 A The papers they gave me? Yes, ma'am.
3 Q It says that you were alert and oriented times
4 three. Do you know what that means?
5 A No, ma'am.
6 Q Do you know what the Glasgow Coma Scale is?
7 A No, ma'am.
8 Q Do you recall telling them that you were an
9 everyday smoker?
10 A Yes, ma'am.
11 Q Are you a smoker?
12 A Yes, ma'am.
13 Q Were you a smoker in 2013?
14 A Yes, ma'am.
15 Q Do you know where they would have gotten that
16 information if it was other than you?
17 A No, ma'am. Are we talking about the ambulance
18 or the hospital?
19 Q These are the hospital records.
20 A Those are the ambulance questions, but okay.
21 That's what I don't know, because I do remember the
22 ambulance coming, but I don't remember me being in the
23 hospital. So if they asked me questions, I really don't
24 remember.
25 Q But you've seen these records from the

Page 51

1 hospital?
2 A Yes, ma'am.
3 Q Is there anything in there that you dispute?
4 A I didn't pay attention to it like that.
5 Q Do you remember what you were diagnosed with?
6 A No, ma'am.
7 Q You were eventually released and taken to the
8 jail, correct?
9 A Yes, ma'am.
10 Q Do you remember being transported to the jail?
11 A Yes, ma'am.
12 Q Who took you to the jail?
13 A Some cop, North Charleston.
14 Q Tell me what happened when you got to the jail.
15 A Nothing. They put me in. I needed a bond to
16 get out. Didn't made bond in time. Stayed in jail.
17 Q Did anything happen while you were in jail?
18 A No, ma'am.
19 Q Did you have any incidents where you either
20 were the victim or involved in any kind of a fight or
21 anything?
22 A No, ma'am.
23 Q Did you suffer any physical injuries while you
24 were at the jail?
25 A No, ma'am.

Page 52

1 Q Do you remember whether you were in a cell with
2 other people or alone?
3 A Yes, there were other people. I believe there
4 was a dorm with like 50 or 60 of them in there, something
5 like that. I'm not too sure.
6 Q Okay. So a large room with bunk beds?
7 A Yeah, spread out. There were no bunk beds. It
8 was all like single beds.
9 Q But single beds all in one room?
10 A Yes, ma'am.
11 Q How long were you in jail?
12 A Day or two, I believe.
13 Q When was your previous Waffle House arrest?
14 A I don't know the date. I don't know.
15 Q If I told you that I pulled from the first
16 lawsuit that you filed that the arrest date was
17 November 8, 2009, does that sound about right?
18 A It could be. I go off the paperwork. I don't
19 know the date.
20 Q What were you arrested for back then?
21 A Same thing.
22 Q Was it the same Waffle House?
23 A Yes, ma'am.
24 Q You were convicted that time, correct?
25 A In the beginning, yes.

Page 53

1 Q Were the charges vacated?
2 A I believe so, yes, ma'am.
3 Q Do you have paperwork for that?
4 A I did. I don't have it no more. I had some
5 kind of paperwork talking about it.
6 Q I'm going to ask you to keep your voice up a
7 little bit.
8 A Okay.
9 Q And you sued the police department after that
10 arrest as well?
11 A Yes, ma'am.
12 Q Did that case go to trial?
13 A No, ma'am.
14 Q What was the outcome?
15 A As in the lawsuit?
16 Q How did it end? Yes, the lawsuit.
17 A I won.
18 Q How?
19 A They admitted they was wrong, and they paid me.
20 Q It settled?
21 A To my knowledge, yes, ma'am.
22 Q How much did they pay you?
23 A I don't know the exact amount.
24 Q Approximately?
25 A I couldn't even tell you that.

Page 54

1 Q How did they admit wrongdoing?
2 A When I first filed the report, the IA or
3 whoever it is that takes the report, sent me a letter
4 saying they was going to discipline the officer or
5 something like that.
6 Q They found a policy violation?
7 A I guess so. I don't know. They didn't tell me
8 exactly what they found or the punishment he was going to
9 be receiving.
10 Q You filed an internal affairs complaint after
11 this arrest as well?
12 A Yes, ma'am.
13 Q What was the outcome of that?
14 A They said they didn't find the cop did anything
15 wrong.
16 Q They found no policy violations, is that what
17 they said?
18 A I don't know. I just remember them saying they
19 reviewed the case and they didn't find the cop did
20 anything wrong.
21 Q Is that the letter that you received or a copy
22 of the letter that you received (indicating)?
23 A Yes, ma'am, I believe so.
24 Q Let's mark that as an exhibit.
25

Page 55

1 (White Deposition Exhibit No. 1
2 was marked for identification.)
3 Q Other than the fact that you were arrested at
4 the same Waffle House, charged with the same violation,
5 and both officers were with the City of North Charleston,
6 is there anything else that you think is the same about
7 the two arrests?
8 MR. STRATOS: Object to the form.
9 A They all following the same procedures,
10 so.
11 Q Do you believe that on both occasions you were
12 acting in the same way?
13 A As in, towards the officers?
14 Q Or were your actions that brought the officer's
15 attention to you?
16 A Yes.
17 Q And on both occasions did you act in the same
18 manner toward the officer?
19 A Yes -- well, I think I acted a little nicer to
20 this one. The last one, I was talking to, but I wasn't
21 cursing him out or anything like that. Just letting him
22 know he be wrong for what he was doing. This one, I
23 didn't say nothing to. There's no point in talking when
24 they still going to take you to jail for nothing.
25 Q Is there anything else that you believe is

Page 56

1 different about the two arrests besides the fact that you
2 spoke to the first officer and didn't speak to the second
3 officer?
4 A Yes. The first time I spoke to the officer
5 willingly. This time I didn't say nothing to this guy.
6 I made no gestures, no hand movements, no nothing to this
7 guy. He just walked up to our table. The first time I
8 asked the officer a question. This time I didn't say
9 nothing.
10 Q Anything else that was different about the two?
11 A Besides getting slammed on my face or the
12 officer slammed me in the glass that I can recall.
13 Q That was the first arrest?
14 A Yes, ma'am. He pulled his stun gun out on me.
15 Q Who did?
16 A The first officer. And he's black.
17 Q The first officer?
18 A Yes, ma'am.
19 Q Did you accuse the first officer of arresting
20 you just because you're black?
21 A No, he arrested me because I wouldn't step
22 outside with him after he cursed me out.
23 Q On the night of the December 28, 2013, were you
24 the only black male in the Waffle House at the time of
25 your arrest?

1 A No, my friend, Omar, is black.
2 Q Were there any other black males in the Waffle
3 House?
4 A I don't know. I didn't pay no mind to anybody
5 around me.
6 Q Were both arrests in the late night, early
7 morning hours?
8 A Yes, ma'am.
9 Q Are you a member of the Black Lives Matter
10 movement?
11 A No, ma'am, not yet.
12 Q What does that mean?
13 A I may be one day, may be part of more than
14 that.
15 Q Do you have a problem with law enforcement in
16 general?
17 MR. STRATOS: Object to the form.
18 Q You can answer.
19 A I have a problem with people who abuse the law
20 because you tell them "No". Some reason cops around here
21 have a problem with somebody telling them no. They don't
22 like that word.
23 Q Do you personally know any members of the North
24 Charleston Police Department?
25 A No, ma'am.

1 Q Has there ever been a situation other than the
2 first Waffle House arrest for which you filed a lawsuit
3 where you feel that law enforcement has wronged you or
4 your family?
5 A There's been instances, but I didn't follow it
6 up. But this is just, you know, you live and you learn.
7 Q Were those all personal to you, or did
8 something happen to any of your other family members?
9 A It was all personal to me in front of family
10 members. Things like that.
11 Q Have you ever received any type of law
12 enforcement training?
13 A No, ma'am.
14 Q You have made a number of allegations in your
15 amended complaint, first of which is assault and battery.
16 And I just need you to tell me as you sit here today
17 under oath specifically what acts you are alleging
18 constitute the assault and battery?
19 A Slammed on my face --
20 MR. STRATOS: Object to the form.
21 You can answer.
22 A Being slammed on my face, holding against my
23 will, not being let go when I want to be gone. If that
24 was me, on the other foot, I would have been charged with
25 kidnapping, assault, all kind of stuff, and we wouldn't

1 even be going through this process.
2 Q You said held when you wanted to be let go.
3 Was that after you were in handcuffs?
4 A Yes, ma'am. Who wants to be in handcuffs for
5 doing nothing? Who wants to be held up their time for
6 not doing anything, enjoying their night with friends or
7 people they just met, trying to make new friends.
8 Q And what are the actions that you contend
9 constitute the unlawful search and seizure allegation?
10 MR. STRATOS: Object to form.
11 A The simple fact he walking up to my table from
12 the get-go. From that point to the end, he violated
13 every right I had.
14 Q Every right you had?
15 A Yes, ma'am.
16 Q So if he had just walked up and told you to
17 calm down and quiet down, does that violate your rights?
18 A No. But he didn't do that.
19 Q If he tells you that you need to leave because
20 you're disturbing other patrons, does that violate your
21 rights?
22 A He didn't do that.
23 Q I am not asking if he did that. I'm asking if
24 that is what had happened, would that violate your
25 rights?

1 A Yes, if the establishment didn't make the phone
2 call saying, hey, this person is being obnoxious, being
3 rude, disrespectful to the people inside my restaurant,
4 please come and get them out. If no one did that, then,
5 yes, you're violating my rights because, obviously, I'm
6 in that establishment enjoying my time, and they have no
7 problem with it. So if they have no problem, why is you
8 here?
9 MR. STRATOS: Object to the form of the
10 previous question.
11 Q And if the restaurant had asked the officer to
12 come over and ask you to leave because you were
13 disturbing other patrons, would that violate your rights?
14 A No, ma'am.
15 MR. STRATOS: Object to form.
16 Q Do you have any knowledge about the
17 requirements to be hired by the North Charleston Police
18 Department?
19 A No, ma'am. Pretty sure, probably just like
20 basic training for the military, three to six months of
21 school or something, and you go.
22 Q Do you have any knowledge or information
23 regarding whether or not Officer Arroyo met the
24 requirements to be hired by North Charleston Police
25 Department?

Page 61

1 A I don't know. I'm guessing he got a badge, so
2 he met whatever requirements was needed.
3 Q Okay. Do you know what is required to meet the
4 training requirements for a law enforcement officer in
5 the state of South Carolina?
6 A No.
7 Q Or a law enforcement officer for the North
8 Charleston Police Department?
9 A No.
10 Q And do you know what the policies and
11 procedures of the North Charleston Police Department are
12 with regard to the supervision of police officers?
13 A No.
14 Q Do you have any knowledge or information as to
15 whether those policies and procedures were violated with
16 regard to the supervision of Officer Arroyo?
17 MR. STRATOS: Object to the form.
18 A No.
19 Q Do you have any information or evidence that
20 Officer Arroyo did not receive the necessary and required
21 training for a police officer?
22 A No.
23 Q Did you go to court for these charges?
24 A No.
25 Q Did you ever go to court for a hearing on these

Page 62

1 charges?
2 A Just bail bond.
3 Q Eventually the charges were dismissed; is that
4 correct?
5 A Yes, ma'am.
6 Q Both charges?
7 A Yes, ma'am.
8 Q And who dismissed those?
9 A I'm guessing North Charleston. I don't know.
10 Q Do you know whether they were dismissed by a
11 city attorney or whether they were dismissed by Officer
12 Arroyo?
13 A I can't tell you that.
14 Q Have you received any treatment for the
15 injuries that you're alleging to your face and head since
16 you left Trident Hospital?
17 A No, ma'am.
18 Q Did you receive any treatment while you were at
19 the detention center?
20 A No, ma'am.
21 Q Have you received bills for that emergency room
22 visit?
23 A I couldn't tell you if I did or not.
24 Q Have you paid any bills for that medical
25 treatment?

Page 63

1 A Not to my knowledge.
2 Q Did you lose any wages?
3 A As by going to jail?
4 Q Yes.
5 A I can't remember.
6 Q Were you employed at the time of this arrest?
7 A I can't remember.
8 Q Did you post bond?
9 A Yes.
10 Q How much?
11 A I think it was 90 or \$100 or something like
12 that.
13 Q Do you have any other costs that you incurred
14 in the course of this matter?
15 A Lawyer fee.
16 Q How much?
17 A I think for those charges I might have paid
18 anywhere from 700 to \$1200 for those charges.
19 Q Who was the lawyer who handled them?
20 A Milt Stratos, Jr.
21 Q Do you have a receipt for paying him?
22 A I did, but I don't got it no more. I know they
23 sent me one in the mail saying I was paid in full.
24 Q All right. I want you to tell me exactly what
25 injuries you are alleging. We talked a little bit

Page 64

1 earlier. I just want to make sure we covered everything.
2 You talked about an impact to your --
3 A My right side.
4 Q The right side?
5 A Yes, ma'am.
6 Q And possibly a small cut?
7 A Yes, ma'am.
8 Q That didn't require stitches, right?
9 A No, ma'am.
10 Q And any other injury?
11 A Besides the handcuffs and the bruise, like the
12 soreness of my back and neck, no, ma'am.
13 Q Did you have any treatment for your back and
14 neck?
15 A No, ma'am, I ain't felt that till a couple of
16 days later, maybe like two days later. When I try to
17 lift up, everything just felt stuck.
18 Q But you didn't get any treatment?
19 A No, ma'am. No insurance.
20 Q What about your wrists?
21 A They were just cut up from the handcuffs.
22 Q Did they look at those at the emergency room?
23 A I don't know. It wasn't bandaged up or
24 nothing. Just like a whole bunch of paper cuts
25 throughout my wrist.

Page 65

1 MS. JACKSON: Off the record.
2 (Discussion off the record.)
3 (White Deposition Exhibit No. 2
4 was marked for identification.)
5 Q I've handed you what's been marked as Exhibit 2
6 at your deposition, which at the top says North
7 Charleston Police Department Administrative Internal
8 Investigation Complaint Affidavit. Is this your
9 complaint?
10 A Yes, ma'am.
11 Q And you are listed as the complainant?
12 A Yes, ma'am.
13 Q With the incident date that we're here about
14 today, December 28, 2013?
15 A Yes, ma'am.
16 Q And is this your statement?
17 A Yes, ma'am.
18 Q Is it your handwriting?
19 A Yes, ma'am.
20 Q And is that your signature at the bottom?
21 A Yes, ma'am.
22 Q Is there anything about this statement that you
23 gave that needs to be changed?
24 A No, ma'am. The only thing that looks
25 different, I don't see my initials. See, 'cause I

Page 66

1 initial what I write in the beginning and to the end.
2 That's what I'm usually doing. That's the only thing I
3 see that's different on here. Maybe I was in a rush that
4 day, but I'm pretty sure when I write my statements on
5 anything, I put my initials on it.
6 Q Is everything else as you believe you wrote it
7 on January 24, 2014?
8 A Yes, ma'am to my knowledge.
9 Q Were you given a copy of this statement, this
10 affidavit?
11 A I cannot recall that.
12 Q Do you know if you have a copy of that at home?
13 A I can't recall.
14 (White Deposition Exhibit No. 3
15 was marked for identification.)
16 Q I want to show you what's been marked as
17 Exhibit 3 to your deposition, which at the top says
18 Charleston County Jail and then has a booking date of
19 12-28-13. If you would flip to the second page. And you
20 told me earlier that you couldn't remember if you were
21 working or not. At the bottom, the bottom third, where
22 it says social stress, slash, suicide risk, do you see
23 the first one? It says recently experienced job loss and
24 has a "Y" next to it?
25 A Yes, ma'am.

Page 67

1 Q Then about four or five lines down, it says:
2 Comments, lost job at barber shop, comma, separated?
3 A Okay.
4 Q Does that refresh your recollection about
5 whether or not you were working at the time?
6 A No, ma'am.
7 Q Do you remember losing your job at a barber
8 shop?
9 A Yes, ma'am.
10 Q What barber shop was that?
11 A I think it was Quick Stop. I can't remember.
12 And it wasn't losing my job. They closed down.
13 Q Well, okay. And I wasn't trying to imply you
14 were terminated. But because they closed down, you were
15 out of a job?
16 A Yes, ma'am.
17 Q Do you know a woman named Samantha Vaughan?
18 A You said a girl?
19 Q Samantha Vaughan.
20 A No, ma'am.
21 Q Okay. Have you spoken with any of the Waffle
22 House employees who were working on the night of this
23 arrest?
24 A No, ma'am.
25 Q Have you spoken with any person other than

Page 68

1 Jamal Omar, who has told you that they were a witness to
2 the events on the night of your arrest?
3 A No, ma'am.
4 Q Do you know whether Jamal Omar knows the
5 identity of the two females that were with you that
6 night?
7 A To my knowledge, no.
8 Q Do you have any job applications currently
9 pending?
10 A Yes, ma'am. I had a job interview this
11 morning, but I had to call them and let them know I had
12 to reschedule.
13 Q Okay. Where was the interview?
14 A At Lowe's in Summerville.
15 MS. JACKSON: Let's go off the record for just
16 a minute.
17 (Discussion off the record.)
18 MS. JACKSON: Back on the record.
19 BY MS. JACKSON:
20 Q Go ahead. Omar . . .
21 A Omar telephone number, (540)958-0140.
22 Stephanie, her phone number is (843)330-6578.
23 Q Mr. White, have you understood all the
24 questions that I've asked you today?
25 A Yes, ma'am.

Page 69

1 Q Are there any answers that you feel you need to
2 go back and change?
3 A Just the side of my face. It was the right
4 side of my face.
5 Q Right. Okay. And there were a number of
6 things throughout the course of the deposition that you
7 told me you could not remember. Is there anything that
8 you have remembered during the course of the questioning
9 that we should update your answer to?
10 A I can't remember your questions.
11 Q Sometimes when I ask a question, somebody will
12 say they don't remember. But then it will come to them
13 later, but they don't feel they should just pop out with
14 it. So I don't know if there was anything specific.
15 A I can't even remember half of the questions,
16 three-fourths of it, you was asking me.
17 MS. JACKSON: I don't believe I have any
18 further questions. Thank you very much.
19 EXAMINATION
20 BY MR. STRATOS:
21 Q Norris, you have sitting in front of you
22 Exhibit 3 of 3. If you flip to the second page of
23 Exhibit 3, did you fill that out? Did you have access to
24 a computer in the jail?
25 A No.

Page 70

1 Q Did somebody else fill it out for you?
2 A Yes.
3 Q Was it a police officer or someone working for
4 the North Charleston Police Department?
5 A Yes.
6 MS. JACKSON: Objection to the form.
7 Q That first page of Exhibit 3, did you fill that
8 out?
9 A No.
10 Q Did somebody else fill it out for you?
11 A Yes.
12 Q Who was that?
13 A Someone from North Charleston.
14 Q Are you positive about all the costs involved
15 in this case stemming from your arrest?
16 A Yes.
17 Q You're positive about the amount of bond?
18 A Maybe 85 to 90 percent sure.
19 Q What if I showed you another document that
20 actually shows you your bond cost?
21 MS. JACKSON: Objection to the form.
22 A Yeah. I thought it was that amount. I assumed
23 it was with Bad Boyz Bail Bonds. I thought I sent them
24 the paperwork saying the case was dismissed and I asked
25 them how I can get my money back, and they said you

Page 71

1 can't. And I said, well, I haven't been found guilty.
2 They said that doesn't matter. I said, well, that's a
3 lost cause situation.
4 Q Are you 100 percent positive of the amount of
5 your bond?
6 A No.
7 MS. JACKSON: Objection to the form.
8 Q There was a question earlier, have you ever
9 been treated for mental health. And I believe you
10 answered no, is that correct?
11 A Yes.
12 Q Have you ever been to any type of counseling
13 that someone might label mental health that's not exactly
14 a psychiatrist visit?
15 MS. JACKSON: Objection to the form.
16 A No, not to my knowledge.
17 Q Have you ever been to a counselor?
18 A The drug counselor.
19 Q Why did you go to the counselor?
20 A For that conspiracy to a crime charge.
21 MR. STRATOS: I don't have any further
22 questions.
23 FURTHER EXAMINATION
24 BY MS. JACKSON:
25 Q On Exhibit 3, first page, halfway down, see

Page 72

1 where it says Examiner Name?
2 A Halfway down this side, right there?
3 Q Right there.
4 A Yes, ma'am.
5 Q It says Fennell, comma, Christopher N. Do you
6 know him?
7 A No, ma'am.
8 Q Do you know where he's employed?
9 A I'm guessing North Charleston.
10 Q You're guessing, but do you know?
11 A No.
12 Q On Page 2 under the line that says
13 observations, does it again say Examiner, Christopher
14 Fennell?
15 A Yes, ma'am.
16 Q And then under the third subsection, Social
17 Stress and Suicide Risk, does it again say Christopher
18 Fennell?
19 A Yes, ma'am.
20 Q Do you recall whether you were asked questions
21 as part of the booking process?
22 A Yes, ma'am.
23 MS. JACKSON: That's all I have. Thank you
24 very much.
25 Do you want him to read and sign or waive?

Page 73

1 MR. STRATOS: That's actually for you to
2 answer. You have the opportunity to receive the entire
3 transcript. If there is any errors, grammatical errors,
4 you can make corrections.
5 THE WITNESS: Yes.
6 MR. STRATOS: You can't make any substantial
7 changes to the document. You can correct grammar or
8 misspellings and that sort of thing.
9 THE WITNESS: Okay.
10 MR. STRATOS: Do you wish to take that
11 opportunity?
12 MS. JACKSON: If you do that, the court
13 reporter will send it to you. And she'll give you a
14 certain time period in which you need to do it and the
15 instructions on how to do it, and you need to then return
16 it to her within that time period.
17 THE WITNESS: And this is only for spell
18 checking and stuff like that?
19 MS. JACKSON: Yes.
20 THE WITNESS: Do you know how to spell?
21 THE COURT REPORTER: Pretty much.
22 THE WITNESS: Then I'm good.
23 MS. JACKSON: He'll waive then.
24 (The deposition was concluded at 1:00 p.m.)
25

Page 74

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF CHARLESTON }
3
4
5 I, Helen L. Rose, Certified Shorthand Reporter,
6 Registered Professional Reporter, and Notary Public for
7 the State of South Carolina at Large, do hereby certify
8 that the witness in the foregoing deposition was by me
9 duly sworn to testify to the truth, the whole truth and
10 nothing but the truth in the within-entitled cause; that
11 said deposition was taken at the time and location
12 therein stated; that the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me and were thereafter
15 transcribed by computer-aided transcription; that the
16 foregoing is a full, complete and true record of the
17 testimony of the witness and of all objections made at
18 the time of the examination.
19
20 I further certify that I am neither related to nor
21 counsel for any party to the cause pending nor do I have
22 any interest in the events thereof.
23
24 Further, that at the time of said deposition the
25 witness elected to waive signature.
Witness my hand, I have hereunto affixed my official
seal this 28th day of May, 2016, at Charleston,
Charleston County, South Carolina.

Helen L. Rose
CSR #084-003436, RPR #051505
My Commission expires
December 8, 2016.

EXHIBIT B

PRID:27909287	RPT#:0457331	Response District:
Service:Charleston County EMS	Date:December 28, 2013	Team:ALS
Base:Medic 15	Crew 1:Secondary Caregiver	*Mizner, Grant
Unit:M15	EMT-P (SC014234)	
Shift:D	Crew 2:Primary Caregiver	Seal, Jeri
Tall/Reg:4815	EMT-B (SC024310)	
BMD:Not Known - t05	* designates an ALS Provider	
Type of Svc:Scene Unscheduled	Mode to Rec:No Lights/Sirens	
Response Code:Alpha	Moved From:Assisted/Walk	
Mode to Ref:No Lights/Sirens	Pt. Condition:Unchanged	
Moved Via:Assisted/Walk		
Position:Sitting		
Outcome:Transported		
Ref Other Type:Bar / Restaurant	Receiving:Hospital	
Location:WAFFLE HOUSE - ASHLEY PHOSPHATE	Trident Regional Medical Center	
2571 ASHLEY PHOSPHATE RD	Emergency Department	
NORTH CHARLESTON, SC 29418	9330 Medical Plaza Drive	
Ref. GPS:32.93396,-80.0517	9330 Medical Plaza Drive	
	North Charleston, SC 29406-9104	
	843-797-7000	
	Dest. GPS:32.975405,-80.074779	

Last Name: White First: Norris
Address: 47 winter dr
City: Summerville ST: SC
Zip: 29483
County: Berkeley
Citizenship: United States
Phone: (843) 810-9154
DOB: 09/24/1981 SSN: 250-49-8752
Age: 32y Sex: M
Weight: 150 lb

Height:
Subscriber: No
Race: Black, Hispanic
DNR Orders: None

Barriers to Care: None Noted

Billing Information:

Company Self-Paid (Other) Group ID: 250-49-8752

Odometer	Times
Start: 0.0	Received: 05:07
At Ref: 0.0	Dispatch: 05:20
At Rec: 6.7	EnRoute: 05:22
End: 6.7	First Resp: 05:30
Ld Miles: 6.7	At Ref: 05:30
Tot Miles: 6.7	Leave Ref: 05:41
	At Rec: 05:48
	Available: 06:11
	Med control: 05:44

Notice of Privacy Practices Given:
NPP - English
Consent Signed: No
PCS / Medical Necessity Signed: No
Primary Method of Payment: Self Pay

Scene Information
Description: 32 year old male pt found sitting on NCPD officer vehicle outside a Waffle House in handcuffs
Patient Belongings: none
Other Agencies: Law, Fire Fire Number: NCPD Law Enforcement Number: NCPD
Contact w/ Fluids: No
Protective Equip: Gloves
Chief Complaint (Category: Traumatic Injury)
right side face pain
Duration: 15 Minutes
Anatomic Location: Head
ALS Assessment: Completed for Suspected Illness
Secondary Complaint
none

Chief Complaint (Category: Traumatic Injury)																						
Duration: 1 Seconds																						
History of Present Illness																						
medic 15 responded to a 32 year old male pt with chief complaint of right sided face pain secondary an altercation with NCPD after resisting arrest at a Waffle House. medic unit arrived on scene to find pt sitting in NCPD officer vehicle. pt was sitting in the back of vehicle restrained with handcuffs complaining of right side face pain. upon assessment of pt head and face, EMS personnel noted swelling and slight deformity to pt right side of face around the jaw adjacent to the right ear. pt was able to talk but was having trouble moving his mouth. pt states that he was at the Waffle House after drinking. pt denies head pain other than right sided face pain and deformity noted by EMS. pt denies neck, chest, back, abdominal or extremity pain. pt denies LOC, dizziness nausea or any other illness or injury at this time. pt was walking assisted to ambulance and placed on bench seat in poc and secured with seat belt. pt and EMS personnel were followed by NCPD to closest destination hospital. pt vital signs were taken recorded and monitored in route to destination hospital and are as listed in report. pt transport from scene to destination hospital was unremarkable. pt was off loaded at destination ED, pt care and report was turned over to nursing staff without incidence.																						
Medical History	Current Medications	Allergies																				
None - reported by patient	None - Reported By Patient	None - Reported By Patient																				
Neurological Exam																						
Level of Consciousness: Alert Loss of Consciousness: No Chemically Paralyzed: No Neurological Present: Normal Mental Present: Normal		Glasgow Coma Scale E V M Tot Int: 4 3 6 - 15																				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">Pupils</th> </tr> <tr> <th style="text-align: center;">Left</th> <th style="text-align: center;">Right</th> </tr> <tr> <td>Size:</td> <td></td> </tr> <tr> <td>React:</td> <td>Reactive</td> </tr> <tr> <td>React:</td> <td>Reactive</td> </tr> </table>		Pupils		Left	Right	Size:		React:	Reactive	React:	Reactive	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">Motor</th> <th style="text-align: center;">Sensory</th> </tr> <tr> <td>LA: Normal</td> <td>Normal</td> </tr> <tr> <td>RA: Normal</td> <td>Normal</td> </tr> <tr> <td>LL: Normal</td> <td>Normal</td> </tr> <tr> <td>RL: Normal</td> <td>Normal</td> </tr> </table>	Motor	Sensory	LA: Normal	Normal	RA: Normal	Normal	LL: Normal	Normal	RL: Normal	Normal
Pupils																						
Left	Right																					
Size:																						
React:	Reactive																					
React:	Reactive																					
Motor	Sensory																					
LA: Normal	Normal																					
RA: Normal	Normal																					
LL: Normal	Normal																					
RL: Normal	Normal																					
Airway		Respiratory																				
Status: Patent		Effort: Normal																				
Cardiovascular																						
Injury Details																						
Reason for Encounter: Injury/Trauma Drugs/Alcohol?: Alcohol Drug/Alcohol Indicators Present: Patient Admits to Alcohol Use Intentional: No Work Related: No Injury Cause: By Other Means Mechanism: Not Applicable Equipment: None																						
Initial Physical Findings																						
Assessment Skin: Normal Skin Findings:		Tubes/Drains:																				
Impression / Diagnosis																						

Impression / Diagnosis										
System: Musculoskeletal										
Symptoms: Pain										
Impression: Traumatic injury										

Activity										
Time	R.R.	B.P.	MAP	RA SaO2	Resp	Rhythm	GC8	ECG Method	Pain	CRN#
	R.R. Method	B.P. Method			Resp Effort					
0544	103	138 / 98	111	100	17	(REG)	4/5/6		General Medical	7 #2
		Auto. Cuff			Normal					
0545	95	131 / 93	105	100	15	(REG)	4/5/6		General Medical	7 #2
		Auto. Cuff			Normal					

* Assessment made by

Response Factors Affecting Care: None

Scene Factors Affecting Care: None

Transportation Factors Affecting Care: None

Dispatch Factors: None

Turn-Around Factors: None

EXHIBIT C

In The Matter Of:
WHITE VS.
CITY OF NORTH CHARLESTON, et al.

OFFICER CHRISTOPHER D. ARROYO
May 18, 2016

Rose Reporting, Inc.
(843) 559-4445 rosereportinginc.com

Original File 051816pm.txt

Min-U-Script® with Word Index

Page 1

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
3) CASE NO.: 2015-CP-10-06561
4
5 NORRIS EARL WHITE, JR.)
6 Plaintiff,)
7 vs.)
8 CITY OF NORTH)
9 CHARLESTON, NORTH)
10 CHARLESTON POLICE)
11 DEPARTMENT,)
12 Defendant.)
13
14 DEPOSITION OF: OFFICER CHRISTOPHER DANIEL ARROYO
15
16 DATE TAKEN: May 18, 2016
17
18 TIME: 2:15 p.m.
19
20 LOCATION: SENN LEGAL, LLC
21 3 Wesley Drive
22 Charleston, SC 29407
23
24 REPORTED BY: Helen L. Rose, CSR, RPR
25 Certified Shorthand Reporter
Registered Professional Reporter
Notary Public

Page 3

1 INDEX
2
3 THE WITNESS:
4 OFFICER CHRISTOPHER DANIEL ARROYO
5
6 Examination by: Page
7 MR. STRATOS 4
8
9
10 EXHIBITS
11
12 Plaintiff's Page
13 No. 1 Incident Report 90
14 No. 2 NCPD Off-Duty Security Employment
Officer Responsibilities and Restrictions 94
15
16 Defendant's Page
17 None marked
18
19
20
21
22
23
24
25

Page 2

1 APPEARANCES:
2
3 FOR THE PLAINTIFF:
4
5 By: MILTON D. STRATOS, II, ESQ.
6 STRATOS LAW FIRM, LLC
7 1041 Johnnie Dodds Blvd., Suite 14-A
8 Mt. Pleasant, SC 29464
9
10 FOR THE DEFENDANT:
11
12 By: ROBIN L. JACKSON, ESQ.
13 SENN LEGAL, LLC
14 3 Wesley Drive
15 Charleston, SC 29407
16
17
18
19
20
21
22
23
24
25

Page 4

1 (Witness sworn.)
2 OFFICER CHRISTOPHER DANIEL ARROYO,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:
5 EXAMINATION
6 BY MR. STRATOS:
7 Q Officer Arroyo, is that the proper
8 pronunciation?
9 A Yes.
10 Q Okay. My name is Milton Stratos, II, and I
11 represent the plaintiff, Norris Earl White, in an action
12 against the City of North Charleston regarding his arrest
13 on December 28, 2013. Have you ever been deposed before?
14 A No.
15 Q So the Supreme Court requires me to give you
16 some of the rules. It will help us run more efficiently
17 and inform you of some of your rights. So the first
18 rule, your ability to communicate with your attorney is
19 suspended during the deposition. You can talk about
20 football with her, but you can't talk about any of the
21 facts of the case or the deposition until it's over.
22 Any gestures that we might make can't be
23 recorded by this very talented court reporter, so I just
24 ask that you would speak gestures or directions. And
25 uh-huhs and uhn-uhs can't be recorded accurately, so you

Page 5

1 would need to respond with a yes or no to questions that
2 ask for a yes or no.
3 It's not a marathon. If at any point in
4 time you would like to take a break, just let me know,
5 and I'll finish my line of questions, and we'll take a
6 break. You also have the opportunity to review your
7 deposition, basically to make grammatical and spelling
8 corrections. Do you wish to take that opportunity, or
9 would you like to waive it?
10 A Has this deposition formally started yet?
11 Q Yes.
12 MS. JACKSON: You can decide at the end.
13 Q You can.
14 A I'll decide later on that.
15 Q And you're aware that this deposition, you're
16 under oath just as if we were in front of a judge and a
17 jury?
18 A Yes.
19 Q Can you please state your full name for the
20 record.
21 A Christopher Daniel Arroyo.
22 Q What's your date of birth?
23 A December 12, 1980.
24 Q And the last four of your Social?
25 A 1562.

Page 6

1 Q Where are you from, Officer Arroyo?
2 A I was originally born in Chicago.
3 Q Do you still have family there?
4 A No.
5 Q When did you move from Chicago?
6 A 1996 -- 1995, I think.
7 Q Did you attend high school in Chicago?
8 A Just part of my -- half of my freshman year.
9 Q So your freshman year would have been 1995?
10 A Yes.
11 Q Where did you move in 1995?
12 A Elkhorn, Wisconsin.
13 Q So you enrolled in high school there; is that
14 correct?
15 A Yes.
16 Q Did you finish out high school in Wisconsin?
17 A No.
18 Q Where and when did you move from Wisconsin?
19 A October of 1998 I moved to Summerville, South
20 Carolina.
21 Q Did you move with your family?
22 A Myself and my mother.
23 Q And had you finished high school?
24 A No.
25 Q Did you complete high school in Summerville?

Page 7

1 A Yes.
2 Q Did you go to Summerville High School?
3 A Yes.
4 Q What year did you complete high school?
5 A 1999.
6 Q Did you immediately take up employment after
7 you graduated from high school?
8 A Yes.
9 Q So who was your first employer?
10 A While I was -- I was employed before I
11 graduated high school.
12 Q Who were you employed with during high school?
13 A Blockbuster Video.
14 Q When did you cease working for Blockbuster?
15 A I don't know the exact date.
16 Q Do you have an estimate? Year?
17 A 2001.
18 Q So after graduation, did you work for anyone
19 other than Blockbuster up until 2001?
20 A Yes.
21 Q Who else did you work for?
22 A I worked for OK Tire in Summerville. I worked
23 for American Tire in North Charleston, and I previously
24 worked at Oscar's Restaurant in Summerville.
25 Q What dates did you work for OK Tire, the

Page 8

1 beginning and the end date?
2 A It was only a couple of months, and I believe
3 it was in the year 2000, the end of the year 2000 maybe.
4 Q The same for American Tire?
5 A That would have been the end of 2000 until the
6 middle of 2001.
7 Q Were you performing the same function for OK
8 Tire and American Tire?
9 A Yes.
10 Q Your duties?
11 A Yes, but eventually at American Tire I got
12 promoted, and then my job description changed.
13 Q How did your job description change?
14 A I went from basically tire tech mechanic to a
15 service manager.
16 Q What year did that occur?
17 A 2001.
18 Q Why did you leave American Tire?
19 A American Tire got bought out by a company
20 called Aero Automotive.
21 Q And did you lose your employment at that point,
22 or did you continue to work for Aero?
23 A That's actually when I got promoted, was when
24 Aero bought us out. They promoted me to service manager.
25 Q How long did you work for Aero Automotive?

Page 9

1 A Until right before they went out of business.
2 Q What year did they go out of business?
3 A I'm not sure exactly. But I know that I left
4 there in 2001.
5 Q And when did you work for Oscar's?
6 A 2000, summer of 2000.
7 Q What were your duties at Oscar's?
8 A I was line cook there.
9 Q After you left Aero Auto in 2001, where did you
10 seek employment?
11 A Hoover Chrysler Jeep in Summerville.
12 Q How long did you work there?
13 A About a year and a half.
14 Q So into 2003?
15 A The end of 2002.
16 Q What did you do for Hoover Chrysler?
17 A I was in automotive sales.
18 Q Why did you leave Hoover Chrysler in 2002?
19 A My mother and father were still living in
20 Wisconsin. My mother had since moved back. And she
21 actually had what they call an AVM, an arteriovenous
22 malformation, in her brain that required brain surgery.
23 And I moved back to help out my family in Wisconsin.
24 Q How long did you remain in Wisconsin?
25 A Until April of 2003.

Page 10

1 Q What were you doing for employment in Wisconsin
2 during that time period?
3 A I was working as a videographer for a company
4 called Teleview Racing Patrol at the Geneva Lakes Kennel
5 Club.
6 Q Can you provide a brief description of your
7 duties there?
8 A I was a cameraman filming Greyhound races and
9 did some work in the directing room and a little bit of
10 editing, but not much. Primarily I was a cameraman.
11 Q And why did you leave that employment?
12 A Because I gained better employment back here in
13 South Carolina where I ultimately wanted to be.
14 Q So you moved from Wisconsin back to
15 Summerville?
16 A Yes. And my mother had gotten past the surgery
17 and everything, so it was time for me to return.
18 Q Did you return a married man?
19 A No.
20 Q Were you dating the woman that you ultimately
21 married in Wisconsin during the 2001, 2003?
22 A No.
23 Q So what employment did you take up in 2003?
24 A I took a position with the BAE Systems.
25 Q What were your duties at BAE Systems?

Page 11

1 A I was an electronics technician, eventually got
2 moved up to a crew chief.
3 Q What were you working on?
4 A Basically electronic systems for the military.
5 Security, surveillance.
6 Q Did you have to have security clearance?
7 A Yes.
8 Q What was your security clearance?
9 A I believe it was a secret clearance.
10 Q How long did you work for BAE Systems?
11 A I worked for BAE until the end of 2006.
12 Q 2003 to 2006, you worked for them?
13 A Yes.
14 Q Did you leave the country performing your
15 duties for them?
16 A Yes.
17 Q Is that in Iraq?
18 A Yes.
19 Q Did you go to Afghanistan?
20 A No.
21 Q What dates did you work in Iraq?
22 A February of 2006 until I believe it was June of
23 2006.
24 Q Were you in the green zone?
25 A No.

Page 12

1 Q Do you remember what city you were in?
2 A Yes.
3 Q What city was that?
4 A I was at Habbaniya Air Base between Fallujah
5 and Habbaniya, just south of Habbaniya.
6 Q What sort of equipment were you working on?
7 A It was a system called the mass notification
8 system. It was basically an early warning system for
9 incoming mortars and rockets.
10 Q So like what Israel has?
11 A I don't know what Israel has.
12 Q So at the end of June 2006, you returned to
13 Summerville?
14 A No.
15 Q Where did you return to?
16 A I returned back to the United States and was
17 assigned a job with BAE in Cherry Point, North Carolina.
18 And I'm trying to remember the name. Camp Lejeune, North
19 Carolina.
20 Q What were your duties there?
21 A The same as in Iraq. It was basically a mass
22 notification system, but for slightly different reasons.
23 Just a general base communications system.
24 Q Were you working on software?
25 A No.

Page 13

1 Q So it was all hardware?
2 A Most of what I did was hardware, yeah.
3 Q Wiring?
4 A Yes.
5 Q When did you leave the BAE Systems?
6 A The end of 2006.
7 Q Why did you leave?
8 A That job required 100 percent travel in my
9 position, and I had just gotten married. My wife was
10 pregnant, and I didn't want to be away from home anymore
11 and also desired to become a police officer. So I needed
12 employment close to home so I could go through the hiring
13 process.
14 Q What year did you get married?
15 A 2006.
16 Q What is your wife's name?
17 A My current wife?
18 Q Yes.
19 A Bridget.
20 Q Have you been married twice?
21 A Yes.
22 Q And your first wife's name?
23 A Julia.
24 Q What is her last name?
25 A S-B-E-R-N-A.

Page 14

1 Q Where does she live presently?
2 A Charleston.
3 Q Did you-all get married in North Carolina?
4 A No.
5 Q Do you know her address?
6 A I don't know her exact address, no.
7 Q Do you know what town she is living in in
8 Charleston?
9 A I know she lives on the campus of The Citadel
10 with her parents.
11 Q Do you have her phone number?
12 A I do.
13 MS. JACKSON: I can provide that to you off the
14 record, if that's okay.
15 MR. STRATOS: Sure.
16 (Discussion off the record.)
17 BY MR. STRATOS:
18 Q Does her dad work at The Citadel?
19 A Yes.
20 Q How long were you and Julia married?
21 A Just over two years.
22 Q What was the basis of your divorce?
23 A She had mental health issues that were very
24 challenging to deal with.
25 Q So you returned to Cherry Point, North Carolina

Page 15

1 June 2006. How long did you remain in Cherry Point?
2 A I'm not sure exactly how long, but it would
3 have been until sometime in the fall of 2006.
4 Q Where did you move?
5 A While I was still -- while I was working in
6 Cherry Point, I maintained residence here. I was just
7 assigned up there. So when I was finished with that
8 assignment, I just came back to Summerville.
9 Q Do you own a home in Summerville?
10 A No.
11 Q Have you ever owned a home in Summerville?
12 A No.
13 Q You left on good terms in 2006 with BAE?
14 A Yes.
15 Q And you returned in the fall of 2006 to
16 Summerville to pursue another career?
17 A Yes.
18 Q Was that with the police force?
19 A I was there to pursue -- I came home to pursue
20 my career in law enforcement. I did get a job in the
21 time in between getting hired just to keep a paycheck
22 coming in while I was going through the hiring process.
23 Q Where did you work?
24 A I worked for a company called Aerotek, which
25 was a temp agency.

Page 16

1 Q No relation to Aero Auto?
2 A No.
3 Q What were you doing for Aerotek?
4 A I was assigned to a company called
5 SimplexGrinnell, and I was a foreman on a crew installing
6 fire alarms.
7 Q In commercial zones?
8 A Yes.
9 Q Simplex, what was the last?
10 A Grinnell.
11 Q How long did you do this?
12 A Until I was offered the position with North
13 Charleston.
14 Q What date was that roughly?
15 A I don't know the date that I was offered the
16 job. My start date was April, I believe it was 23rd, of
17 2007.
18 Q All the employers that you've named, going back
19 to 1999; were you ever dismissed for wrongful behavior?
20 MS. JACKSON: Objection to the form.
21 A I was. I was dismissed from one job, but it
22 was not in my opinion for wrongful behavior.
23 Q I'll rephrase. Were you ever dismissed from
24 any of these positions for cause?
25 A No.

Page 17

1 Q The position you were dismissed from where you
2 don't believe your behavior was wrongful, what business
3 was that?
4 A OK Tire in Summerville.
5 Q And did they accuse you of doing something
6 wrong?
7 A No.
8 Q Why were you dismissed?
9 A I pointed out damage on a customer's car that
10 he was unaware of. And the owner had been doing a lot of
11 work to that car. And the owner of that car probably
12 would not have had that much work done to the car had he
13 known about the damage that this car had. I don't guess
14 he was very happy with me disclosing to this owner of the
15 vehicle that it had extensive damage that he didn't know
16 about.
17 Q Are you talking about like internal parts?
18 A Frame damage. He was having lots of suspension
19 and alignment work done to it, if I recall correctly.
20 It's been a long time. He had been paying for a lot of
21 suspension and alignment work, and I pointed out possible
22 frame damage on the vehicle to the owner.
23 Q The other job that you left during this entire
24 time period beginning in 1999 was Aero Auto, and that was
25 because they were bankrupt?

Page 18

1 A They were going out of business, yes.
2 Q All of the other employees you left of your own
3 choosing?
4 A Yes.
5 Q What sort of training did you have to go
6 through in order to qualify as a police officer for the
7 City of North Charleston?
8 A After I was hired?
9 Q Before you were hired.
10 A I had to go through the application and hiring
11 process.
12 Q Can you explain that?
13 A I had to fill out an extensive employment
14 application. I had to submit to a criminal background
15 check, a reference check, a credit check. I had to prove
16 that I had no judgments against me in the county of which
17 I resided. I had to take a psychological exam. I had to
18 take a polygraph exam, and I had to do a physical agility
19 test. And I had to do a written -- a Nelson Denny test.
20 It's a written aptitude exam. Then I had to do several
21 interviews. I had to do an oral board, a formal
22 interview, and then I was offered the position.
23 Q Did you receive any kind of education before
24 you were hired?
25 A From the police department?

Page 19

1 Q Yes, or anyone affiliated with the police
2 department.
3 A Not before I was hired.
4 Q After April 2007, what sort of education did
5 you go through?
6 A I did some in-house training where members of
7 the training department would come in and talk to us
8 about legal issues, officer safety issues, procedural
9 issues. And we did that in-house training until we were
10 sent to the academy.
11 Q And how long did the in-house training last?
12 A I don't remember exactly, but I believe that I
13 went to the academy approximately a month after I got
14 hired.
15 Q What academy did you go to?
16 A South Carolina Criminal Justice Academy.
17 Q How long were you there?
18 A Nine weeks.
19 Q So when did you graduate from the academy?
20 A I believe the exact date was August 3, 2007.
21 Q What sort of procedural training did you go
22 through, in-house training with the City of North
23 Charleston?
24 MS. JACKSON: Objection to form.
25 A We did an introduction to legal issues; city

Page 20

1 statutes; OC spray, Oleoresin Capsicum, basically pepper
2 spray, the legalities of the use of that, decontamination
3 procedures if we did use it. An introduction to the
4 taser. We did in-house training for firearms,
5 familiarization and proficiency. And I was qualified
6 with the department with my firearm before I left for the
7 academy.
8 Q Did they explain what's required to make a
9 lawful arrest during that time period, during the
10 in-house training time period?
11 A Yes.
12 Q Was it your understanding at that time the law
13 required probable cause to effect an arrest?
14 A Yes.
15 Q Or a warrant?
16 A Yes.
17 Q Did you go through any exercises during that
18 six-week period to assist those going through the program
19 to better understand probable cause and that sort of
20 thing?
21 A Where I was assisting them?
22 Q No, where -- I'll rephrase. Were there any
23 other members, new hires, going through the City of North
24 Charleston with you during this time period, beginning
25 April 23, 2007?

Page 21

1 A Yes.
2 Q How many?
3 A I don't know the exact number. Approximately
4 eight.
5 Q And it was a six-week period?
6 A It was approximately a month.
7 Q Was it eight hours a day?
8 A Yes.
9 Q How many different instructors did you have?
10 A I don't know.
11 Q More than ten?
12 A No.
13 Q More than five?
14 A No.
15 Q More than two?
16 A Yes.
17 Q Somewhere between two and five?
18 A Yes, the members of the training division.
19 Q Are all of them still there?
20 A No.
21 Q Are any of them still there?
22 A Yes.
23 Q Who is that?
24 A The one I am thinking of moved up to the
25 training division after I had done my in-house training.

Page 22

1 Q Do you remember any of the names of the
2 instructors when you were going through?
3 A Yes.
4 Q What are their names?
5 A Mike Sutton. He's no longer there. Tim Handy.
6 Q Uh-huh.
7 A I believe Rick Dean was also an instructor from
8 my pre-academy.
9 Q Do you know where any of these three are
10 currently employed?
11 A I know Mike Sutton and Tim Handy are no longer
12 in law enforcement. Rick Dean has since retired from
13 North Charleston Police Department, but he retired and
14 came back.
15 Q So is he presently working with the City of
16 North Charleston Police Department?
17 A Yes.
18 Q As an instructor?
19 A Yes, but he doesn't deal primarily with
20 pre-academy people anymore. Traffic stuff.
21 Q Ongoing education?
22 A Yes.
23 Q Have you ever been accused of effecting a
24 wrongful arrest?
25 A Yes.

Page 23

1 Q How many times have you been accused of
2 effecting a wrongful arrest?
3 A Counting this case?
4 Q Yes.
5 A Twice.
6 Q When was the other occasion?
7 A I don't know the exact date.
8 Q What year was it?
9 A I don't know the exact year.
10 Q Was it while you were with the City of North
11 Charleston?
12 A Yes.
13 Q Was it during your first stint or your second
14 stint with the City of North Charleston?
15 A Second.
16 Q What are the circumstances of that accusation?
17 A I had arrested a subject for several charges
18 after he had broken down his neighbor's door and entered
19 their home and refused to leave. I made contact with him
20 at his residence and arrested him, and he claimed false
21 arrest, excessive force.
22 Q Did he file suit?
23 A He did.
24 Q Do you know who his lawyer was?
25 A He was representing himself.

Page 24

1 Q Did this happen before or after Norris White
2 was arrested?
3 A Before.
4 Q Were you investigated by City of North
5 Charleston internal affairs?
6 A I don't know if I was investigated by Internal
7 Affairs for that or not.
8 Q Were you interviewed?
9 A Not by Internal Affairs, no.
10 Q Who were you interviewed by?
11 A The city attorney.
12 Q Was it videotaped?
13 A The interview?
14 Q Yes.
15 A No.
16 Q Did you sign a sworn statement?
17 A I honestly don't know.
18 Q So it occurred sometime before December 28,
19 2013?
20 A Yes.
21 Q What's happened to the lawsuit?
22 A It was dismissed.
23 Q Were you represented by an attorney?
24 A A city attorney, yes.
25 Q Do you know if they filed summary judgment?

Page 25

1 A I don't know.
2 Q Do you know what court it was filed in?
3 A I don't know.
4 Q Charleston County?
5 A I honestly don't know.
6 Q Do you know if it resulted in a settlement?
7 A He did not receive a settlement.
8 Q So you graduated from the South Carolina
9 Criminal Justice Academy after nine weeks of training?
10 A At the academy, yes.
11 Q You graduated August 3, 2007?
12 A I believe that's the exact date. I know it was
13 August 2007.
14 Q What were your duties immediately after
15 graduating with the City of North Charleston?
16 A I was assigned to a field training officer.
17 Q Who were you assigned to?
18 A Matt Hughes. Then I was assigned to a second
19 field training officer for a second phase.
20 Q How long were you assigned to Matt Hughes?
21 A Four weeks.
22 Q Did you basically shadow him?
23 A For the first couple of weeks I shadowed him.
24 And then gradually he let me take over the duties, and he
25 kind of stepped back and observed.

Page 26

1 Q Was it on patrol?
2 A Yes.
3 Q So I believe you stated that you had two field
4 training officers?
5 A Yes, that's standard procedure, is you do four
6 weeks with one, four weeks with another, then a final
7 check-out week with your first one again.
8 Q Is Matt Hughes still with the City of North
9 Charleston?
10 A Yes, as far as I know.
11 Q The name of your second field training officer?
12 A Craig McAlhaney.
13 Q How do you spell that last name?
14 A I'll try my best. I'm not sure, but I believe
15 it's M-C-A-L-H-A-N-E-Y.
16 Q Were you with him for four weeks?
17 A Yes.
18 Q Was it the same as your field training with the
19 first officer?
20 A No.
21 Q Briefly explain your experience with Craig
22 McAlhaney.
23 A It was the same in respect to the training. It
24 was just during a different shift and a different part of
25 the city. They try to vary your training so you can get

Page 27

1 a little bit broader perspective. It was the evening
2 shift instead of day shift.
3 Q What was an average day like under their
4 supervision?
5 A Which one?
6 Q Matt Hughes.
7 A We would have squad briefing at 6:45 in the
8 morning at the South Station. We would hit the street at
9 about 7:00 o'clock in the morning and patrol and take
10 dispatch calls until approximately 3:30, 4:00 o'clock.
11 And then we would go in and complete paperwork and he
12 would go over my daily observation reports with me, which
13 was basically his grading of me.
14 Q Did you assist in any arrests while you were
15 under the supervision of Matt Hughes?
16 A Yes.
17 Q How many approximately?
18 A I don't know.
19 Q Greater than 20?
20 A I don't know.
21 Q Craig McAlhaney, was he also on patrol?
22 A Yes.
23 Q While you were under his supervision, what was
24 the average day like?
25 A We were evening shift, so I would arrive for

Page 28

1 squad briefing at 2:45 p.m. at what then was called West
2 Bureau. It's now called North Bureau. We would have
3 squad briefing and then we would hit the street at 3:00
4 o'clock p.m. We would patrol the neighborhoods. It was
5 basic patrol functions. Handle dispatch calls for
6 service until approximately 11:30, maybe midnight. And
7 then we would come in and do our paperwork and leave at
8 about 1:00 a.m.
9 Q Did you make traffic stops as well?
10 A Yes.
11 Q So after eight weeks of field training, what
12 was your title?
13 A After eight weeks of field training, I was
14 referred back to Matt Hughes, who then signed me off and
15 released me for assignment as a solo officer. I was --
16 my title didn't change. I was a patrolman before I was
17 released from field training. I was just assigned to a
18 team as a patrolman.
19 Q Is it safe to say that you graduated from field
20 training?
21 A Yes.
22 Q Do they use that term?
23 A No, not typically.
24 Q What term do they typically use?
25 A Signed off.

Page 29

1 Q What date was that?
2 A I don't know exactly.
3 Q Roughly eight weeks after August 3, 2007?
4 A Eight or nine weeks.
5 Q You never had a partner?
6 A No.
7 Q How long were you a patrolman in your first
8 stint with the City of North Charleston?
9 A Assigned to patrol or the rank of patrolman?
10 Q The rank.
11 A Until I left.
12 Q How long were you assigned to patrol?
13 A Until July of 2008.
14 Q What changed?
15 A I was selected for a special operations unit
16 called saturation patrol.
17 Q Tell me a little bit about that.
18 A It's basically inserting officers into high
19 crime neighborhoods where there is a lot of drug activity
20 and attempting to bring the violent crime rate down.
21 Q How long did you do that?
22 A I did that until I left.
23 Q When did you leave?
24 A I believe the last day would have been
25 November 3, 2009.

Page 30

1 Q Why did you leave?
2 A Because my fiancée needed my help in Virginia.
3 She was going through some financial troubles and
4 relocated.
5 Q Your fiancée's name?
6 A Bridget.
7 Q Is that your current wife?
8 A Yes.
9 Q Any children together?
10 A Yes.
11 Q How many children?
12 A Together, one.
13 Q The child's name?
14 A Remington.
15 Q Do you have other children?
16 A Yes.
17 Q How many other children?
18 A That are biologically mine?
19 Q Yes.
20 A One.
21 Q And their name?
22 A Christopher.
23 Q Is that from your previous wife?
24 A Yes.
25 Q Have you adopted other children?

Page 31

1 A I haven't adopted, but I have three
2 stepchildren through my wife.
3 Q Are they all under the age of 18?
4 A Yes.
5 Q How old are they?
6 A 15, 13, and 8.
7 Q How old is Remington?
8 A 1 and a half.
9 Q By financial issues, how was your fiancée at
10 the time, Bridget, how was she having financial
11 difficulties?
12 A I didn't get involved too much in her
13 bookkeeping. I know that she was having issues with the
14 mortgage on her house.
15 Q Did she lose a job?
16 A She left the police department, but she left of
17 her own choosing.
18 Q Which police department was she working for?
19 A North Charleston Police Department.
20 Q Does her family live in Virginia?
21 A Yes.
22 Q Is that why she relocated to Virginia?
23 A Yes.
24 Q How long had she been working for the City of
25 North Charleston before she left?

Page 32

1 A She originally started there in 2004 and then
2 briefly left in 2007, the end of 2007, and then was
3 rehired in February or March, I believe February of 2008.
4 Q What was her title during the first time
5 period, 2004 to 2007?
6 A I believe she was a PFC when she left.
7 Q Was she on patrol?
8 A Yes.
9 Q Why did she leave?
10 A She was on patrol until shortly before she
11 quit.
12 Q What's her maiden name?
13 A Her maiden name is Blankenship. Shortly before
14 she quit, they put her in juvenile detectives because she
15 was pregnant.
16 Q And has she always gone by Blankenship?
17 A No.
18 Q So during the time period of working with the
19 City of North Charleston, how did she identify herself?
20 A Bridget Chambers.
21 Q Is that from her previous marriage?
22 A Yes.
23 Q Do you know when she was divorced from
24 Mr. Chambers?
25 A I don't know the exact date. I know it was

Page 33

1 sometime in 2010 it was finalized.
2 Q Does she still go by Chambers?
3 A No.
4 Q Has she legally changed her name?
5 A Yes.
6 Q And what is her last name?
7 A Arroyo.
8 Q Do you know when that happened?
9 A 2010.
10 Q Why did she leave in 2007?
11 A Why did she leave North Charleston Police
12 Department?
13 Q Yes.
14 A Because her then first husband was deployed to
15 Germany.
16 Q She was pregnant during that stint?
17 A Yes.
18 Q When did she return from Germany?
19 A February of 2008.
20 Q When was she divorced?
21 A The divorce was finalized in 2010. She
22 separated from him and moved back here.
23 Q I thought that you said she was rehired by the
24 City of North Charleston in 2008, February?
25 A She was, February or March.

Page 34

1 Q So when did she return from Germany?
2 A February of 2008.
3 Q Did she take up the same role?
4 A Yes. I don't believe she was assigned to the
5 same team she was on before she left, but her position
6 was the same.
7 Q She was assigned to patrol?
8 A Yes.
9 Q No partner?
10 A No partner.
11 Q Is that an internal policy, no officers on
12 patrol get partners?
13 A There is no written policy stating that we
14 don't get partners, but North Charleston just runs single
15 units. They run single officer units on the road.
16 Q It's been that way since you've been there?
17 A Yes.
18 Q So you married Bridget in 2010 after her
19 divorce?
20 A Yes.
21 Q How long did she stay with the department when
22 she was rehired in February 2008?
23 A She stayed until fall of 2009.
24 Q Was there some controversy around her leaving?
25 A What do you mean by controversy?

Page 35

1 Q Earlier you stated that she left on her own
2 choosing.
3 A She was not terminated.
4 Q So why did she leave?
5 A She left the department due to a combination of
6 the financial pressures she was dealing with, and she was
7 planning a relocation to help herself get things figured
8 out. And the department at the same time gave her a new
9 assignment that conflicted with the hours she was
10 available to work. So due to the conflict in the hours
11 that she was going to be required to work and the
12 impending financial crisis, she then left the police
13 department.
14 Q I believe you said she was having trouble with
15 her mortgage. Is that for a house here in Charleston?
16 A In Goose Creek. It was in her and her
17 ex-husband's name.
18 Q Did you move up to Virginia?
19 A Yes.
20 Q When did you do that?
21 A November of 2009.
22 Q Did you leave the City of North Charleston
23 Police Department at that time?
24 A Yes.
25 Q Without cause? You weren't terminated?

Page 36

1 A No, I was not.
2 Q Were you ever disciplined during your first
3 stint with the City of North Charleston?
4 A I don't remember.
5 Q Do you remember if there were any complaints
6 filed?
7 A I don't remember.
8 Q How long were you in Virginia?
9 A Until early June of 2010.
10 Q What were you doing for employment in Virginia?
11 A I was unemployed.
12 Q What month did you get married?
13 A We got married in August.
14 Q You said you moved up to Virginia to help her
15 with financial issues?
16 A Well, to support her.
17 Q Were you trying to find a job in Virginia?
18 A Yes.
19 Q I understand it was likely during the time
20 period of significant financial stress in the United
21 States, the recession?
22 A Yes.
23 Q Probably pretty difficult to find a job in
24 Virginia?
25 A Very.

Page 37

1 Q How did you-all decide to move back to
2 Charleston?
3 A I never wanted to leave. I did it to support
4 her and to support her children. And I kept explaining
5 to her that what we needed to do was get back to South
6 Carolina and get back to where we belong. And after
7 months of neither one of us being able to find gainful
8 employment -- the economy was pretty bad up there -- I
9 finally convinced her to come back to Charleston -- well,
10 to South Carolina.
11 Q So what month did you move back?
12 A June.
13 Q You both moved back together in June?
14 A Yes.
15 Q Did you move to Summerville?
16 A We stayed with a friend in Goose Creek until
17 the very beginning of July when our lease started on a
18 house that we leased. So we stayed in Goose Creek for
19 the first three weeks, and then we moved to Summerville.
20 Q What sort of employment were you looking for
21 from June to July 2010?
22 A From June to July of 2010?
23 Q Uh-huh.
24 A I was already rehired by North Charleston.
25 Q Was that kind of part of the plan?

Page 38

1 A Yes.
2 Q So when you returned in June you immediately
3 started working again for the City of North Charleston?
4 A Yes, I had the offer before I moved back down.
5 Q And Bridget, did she immediately start working
6 for the City of North Charleston when she returned in
7 June 2010?
8 A No.
9 Q What did she do for employment?
10 A Nothing until 2012. I believe it was 2012.
11 Q Was she looking for work?
12 A No.
13 Q Just staying home?
14 A Staying home with the children.
15 Q Who did she begin working for in 2012?
16 A The Holly Hill Police Department.
17 Q That's quite a drive. How far is that from
18 Summerville?
19 A About 40 minutes, if I remember. We were
20 actually up in the -- I guess you call it the
21 Knightsville section, so it wasn't all that bad.
22 Q Does she still work there?
23 A No.
24 Q When did she leave Holly Hill Police
25 Department?

Page 39

1 A I don't know the exact date.
2 Q Year?
3 A I think it was in 2013.
4 Q Was she on patrol there?
5 A Yes.
6 Q Why did she leave?
7 A She at the time thought she wanted to get out
8 of law enforcement, so she resigned.
9 Q Was she ever disciplined there?
10 A Yes, once.
11 Q What was that for?
12 A Missing municipal court.
13 Q Did that have anything to do with why she left?
14 A No, not at all.
15 Q So after she left there, did she take up any
16 employment?
17 A No, after that she became pregnant with our
18 child, so she couldn't really go back to work as a police
19 officer until that whole thing came to ...
20 Q Till the pregnancy term ended?
21 A Yes.
22 Q Did she go back to work after she had the first
23 child?
24 A She briefly returned to Holly Hill as a reserve
25 officer to just maintain her certification.

Page 40

1 Q What date was that approximately?
2 A It was sometime in 2014.
3 Q How long did she stay as a reserve officer?
4 A Not long. She wound up taking a full-time
5 position with another agency after a very short time.
6 Q Where was that full-time position?
7 A The St. George Police Department.
8 Q When did she begin working for them?
9 A December of 2014.
10 Q Did she maintain her certificate during that
11 entire time period?
12 A From when she left North Charleston in 2009,
13 she didn't go back to Holly Hill until 2012. It had been
14 two and a half years. So South Carolina's rule is if
15 it's been more than one year, but less than three, she
16 had to go back to the academy and do six weeks at the
17 academy, which she did for Holly Hill. If you miss more
18 than three years, you have to do everything all over
19 again.
20 Q And by everything, you mean the interim
21 training when you come in?
22 A You're required to do the entire -- what was
23 then a nine-week academy over again. The academy has
24 since lengthened to 12 weeks.
25 Q You went through nine weeks at the academy,

Page 41

1 correct?
2 A Yes.
3 Q And do you remember what day she started
4 working for the City of St. George?
5 A I don't remember what day exactly, no, sir.
6 Q Was she working for the City of St. George on
7 the date of this incident, which for the record is
8 December 28, 2013?
9 A No.
10 Q She wasn't?
11 A I don't remember exactly.
12 No, she would not have been working for
13 St. George.
14 Q So is it possible she took up employment with
15 St. George January of 2015?
16 A No, it was December of 2014. It was right
17 after she had the baby. That's right, right after she
18 had the baby she went to work for St. George.
19 Q When did she leave the Holly Hill Police
20 Department?
21 A Sometime around the end of 2013.
22 Q Was she employed at all on December 28, 2013?
23 A I honestly don't remember.
24 Q Do you know if she was employed in December of
25 2013?

Page 42

1 A I honestly don't remember.
2 Q How long did she remain with St. George Police
3 Department?
4 A A year.
5 Q Was she on patrol there?
6 A She was a detective.
7 Q Do you know approximately when she left
8 St. George?
9 A October of 2015.
10 Q Why did she leave?
11 A Because the commute from our house was more
12 than an hour, and she wanted to be closer to home.
13 Q Is she currently employed?
14 A Yes.
15 Q Where is she working?
16 A The Moncks Corner Police Department.
17 Q When did she take that job?
18 A She took that job a month or two ago.
19 Q Between October 2015 and March of 2016, was she
20 employed?
21 A Yes.
22 Q Where did she work?
23 A Town of Bonneau Police Department.
24 Q What did she do for the Town of Bonneau?
25 A Patrol.

Page 43

1 Q How long did she stay with Bonneau?
2 A Right until she started with Moncks Corner.
3 Q So October 2015 to March 2016?
4 A Approximately.
5 Q Why did she leave the Town of Bonneau Police
6 Department?
7 A It was a lot smaller than she was used to, and
8 she wanted to have a bigger variety of things to do.
9 Q Was she ever disciplined there?
10 A No.
11 Q Is she still with the Town of Moncks Corner
12 Police Department?
13 A Yes.
14 Q She's been there since March of 2016?
15 A Around there. I'm not exactly sure what day
16 she started.
17 Q So you returned to Charleston in June 2010, and
18 you immediately began working for the City of North
19 Charleston?
20 A Yes.
21 Q Were you on patrol?
22 A Yes -- well, I did -- go ahead, I'm sorry.
23 Q That's okay. What were you going to say?
24 A I did go back through one phase of field
25 training. They made me do a brief stint of field

Page 44

1 training.
2 Q What does that entail?
3 A The same as it did the first time with Officer
4 Hughes and Officer McAlhaney.
5 Q Same ones?
6 A No.
7 Q Who did you go through field training with?
8 A Jason Monroe.
9 Q And the second one?
10 A That was it.
11 Q Just four weeks?
12 A I don't remember if it was even four weeks.
13 They just make sure that you stay familiar with policies,
14 procedures.
15 Q Is Jason Monroe still with the City of North
16 Charleston?
17 A As far as I know he is.
18 Q When did you leave the City of North Charleston
19 Police Department?
20 A I left the police department August 21 of 2015.
21 Q Why did you leave?
22 A Because I wanted to work a smaller police
23 department and be closer to home.
24 Q Did you leave on good terms?
25 A Yes.

Page 45

1 Q So which police department did you move over
2 to?
3 A The St. Stephen Police Department.
4 Q When did your employment begin there?
5 A August 22, 2015.
6 Q Are you still there?
7 A Yes.
8 Q Have you been disciplined while you have been
9 employed with the St. Stephen Police Department?
10 A No.
11 Q So the second stint with the City of North
12 Charleston was June 2010 to August 21, 2015?
13 A Yes.
14 Q During that entire time period, you were with
15 patrol?
16 A Yes.
17 Q By yourself?
18 A Yes.
19 Q Did you go through any ongoing education during
20 that time period?
21 A Yes.
22 Q Approximately how many weeks do you think you
23 went through ongoing training annually?
24 A At least one full week every calendar year is
25 required by the Academy. We have what's called annual

Page 46

1 in-service mandatory training. We call it AIMS training.
2 It lasts one week. We do that every year.
3 Q What's the goal of the program?
4 A To update you on any updates in the law, legal
5 updates; changes in policies; changes in procedures;
6 maintaining proficiency with firearms, taser, OC;
7 defensive tactics; bloodborne pathogen; BioSpace
8 profiling training.
9 Q Do they update you on the law of probable
10 cause?
11 A We touch on the Fourth Amendment, and we do
12 discuss the elements of arrest and the elements of crime.
13 Q Do you do that annually?
14 A Yes.
15 Q And by touch on, is it a sit-down class?
16 A Yes.
17 Q Is it a full day of instruction?
18 A Yes. And then in addition to that, we have to
19 watch hours of legal update videos for both legals, which
20 basically just encompasses criminal statutes in general,
21 anything that might have changed, any elements of a crime
22 that may have changed, statutes that may have changed.
23 We have to watch hours of instructional videos on that.
24 We also have to watch hours of instructional videos on
25 the criminal domestic violence laws and procedure as well

Page 47

1 every year.
2 Q Are you tested?
3 A On some things.
4 Q What are you tested on?
5 A I don't exactly recall.
6 Q Are you tested on probable cause?
7 A Not once you are out of the academy you're not.
8 There's proficiency testing as well.
9 Q Can you explain that?
10 A Testing emergency vehicle operations
11 proficiency and firearms proficiency, defensive tactics
12 proficiency, taser proficiency.
13 Q But in terms of testing on the Fourth Amendment
14 and probable cause, there is no testing?
15 A Nothing formal and written. But we receive
16 updates, not just through AIMS training, but also through
17 our supervisors as well. It wouldn't be uncommon to get
18 a piece of written information passed down and case law
19 from a sergeant or a lieutenant.
20 MR. STRATOS: Let's take a quick break.
21 (Recess taken.)
22 BY MR. STRATOS:
23 Q I forgot to ask you earlier. Do you have any
24 family in Charleston County? Let me explain why I'm
25 asking: I just want to make sure that you don't have any

Page 48

1 family members on the jury.
2 A My mother and father live in Summerville. I
3 believe it's the Dorchester County portion of
4 Summerville, but I don't know exactly how the county
5 lines fall.
6 Q What's your mom's full name?
7 A Mary Phyllis Arroyo.
8 Q And your dad?
9 A Dean David Arroyo.
10 Q No other family?
11 A None that live in Charleston County, with the
12 exception of my son. But he's a minor.
13 Q Let's go back to December of 2013. How many
14 days had you worked from December 25th to the 28th?
15 A I don't remember.
16 Q Your attorney has provided me with Answers to
17 Plaintiff's Interrogatories. The plaintiff's
18 interrogatory states: Please state Christopher Arroyo's
19 work schedule on the night of the incident in question
20 and his work schedule for the preceding 30 days. I'll
21 show you Interrogatory Number 11. Please observe the
22 response. Is it likely that you didn't work anywhere
23 from December 24th until you worked for the Waffle House
24 on the 28th?
25 A I honestly don't remember. It was a long time

Page 49

1 ago.
2 Q Do you recall working the day before or the day
3 after the incident?
4 A I don't remember. It's just been so long ago
5 that I just don't remember.
6 Q For clarity, if I refer to incident or arrest,
7 I'm referring to December 28, 2013. Do you have an
8 independent recollection of December 28, 2013 outside of
9 any written statements or documents?
10 A No.
11 Q Do you remember what you were doing on
12 December 28, 2013 before you went to Waffle House?
13 A No. It was probably a pretty ordinary day.
14 Q How long had you been working off-duty
15 employment with the Waffle House before the incident?
16 A How long that night or how long?
17 Q The full time period.
18 A Period. On and off since 2007.
19 Q Do you still work for the Waffle House off
20 duty?
21 A No.
22 Q When did you stop?
23 A I would say the last time that I worked there
24 was probably sometime in 2014. I went to day shift, and
25 it became not as easy to work those hours.

Page 50

1 Q Did you work at the Waffle House on Ashley
2 Phosphate Road after 12-28-2013?
3 A I probably did. I honestly don't know. It
4 wasn't long after that that I stopped working there.
5 Q Does the City of North Charleston keep a record
6 of your hours worked on off-duty type employment?
7 A All of the off-duty coordinators, which I was
8 the coordinator for the Waffle House, for this particular
9 Waffle House -- each one has a separate coordinator -- is
10 required to turn in a schedule to the off-duty manager
11 once a month. So they would have received schedules.
12 Q What's the maximum amount of hours you were
13 allowed to work in a week with the City of North
14 Charleston?
15 MS. JACKSON: Object to the form.
16 A There's no set hours per week, only a maximum
17 number of hours in a day.
18 Q What's the maximum amount of hours in a day you
19 are allowed to work?
20 A I believe it's 16.
21 Q There's no weekly max?
22 A Not that I'm aware of.
23 Q So in December of 2013, how long would a
24 typical shift have been at the Waffle House on Ashley
25 Phosphate Road?

Page 51

1 A 1:00 o'clock a.m. until 5:00 o'clock a.m.
2 Q How much were you getting paid?
3 A \$22 an hour.
4 Q What were you being paid by the City of North
5 Charleston during that time period?
6 A I was not being paid by the City of North
7 Charleston for working Waffle House.
8 Q I mean in your normal employment with the City
9 of North Charleston. You were a salaried employee,
10 correct?
11 A Yes.
12 Q So we could figure it out if we want to boil it
13 down to hours?
14 A Yes.
15 Q Would you typically take off-duty assignments
16 weekly?
17 A I'm not sure I understand the question.
18 Q In 2013 would you typically take an off-duty
19 assignment or employment on a weekly basis?
20 A Usually maybe one day a week, sometimes maybe
21 two.
22 Q Was it always with Waffle House, or were there
23 other entities?
24 A There was a couple of others that I worked, but
25 Waffle House was my primary off-duty that I worked.

Page 52

1 Q So you're relatively familiar with everyone
2 that works there?
3 A Yes. But it was kind of a revolving door.
4 They never really kept anybody very long. Waffle House
5 employees, that is.
6 Q What particular employees in December 2013 were
7 you familiar with that were employed by the Waffle House?
8 A I think the only one that I know by even a
9 first name is, I think there was a girl named Laura.
10 Q Do you remember what she looked like?
11 A White female.
12 Q Height and size -- or weight. Sorry.
13 A If I had to guess, I would say 5'3", 100
14 pounds.
15 Q Approximate age?
16 A At that time, 35. I can describe a couple of
17 the other employees, but I don't know their names. Not
18 anymore.
19 Q Did you know their names back then?
20 A I knew them back then, I'm sure.
21 Q Were you relatively friendly with everybody in
22 the Waffle House?
23 A Yeah.
24 Q Didn't have any conflicts with anybody in the
25 Waffle House?

Page 53

1 A Not at all.
2 Q Did you eat for free?
3 A Yes, it was included, only when we were working
4 there.
5 Q Fringe benefits?
6 A If you were working there off-duty that night,
7 you could eat for free.
8 Q Were there any other fringe benefits?
9 A Other than being paid by Waffle House, no.
10 Q So you can't recall what you did the day before
11 or during the day -- you can't recall what you did the
12 day before December 28, 2013?
13 A No.
14 Q You can't recall what you did the day of before
15 the sun went down on December 28, 2013?
16 A No.
17 Q What time did Bridget meet you up at the Waffle
18 House on December 28, 2001?
19 A She rode there with me.
20 Q Does she typically do that?
21 A No.
22 Q How many times do you think she joined you on
23 an off-duty employment assignment?
24 A While she was working there as well, or joining
25 me as ...

Page 54

1 Q As a civilian.
2 A As a civilian? Maybe two or three other times.
3 Q She was not on duty or working on December 28,
4 2013?
5 A No. She was there strictly to keep me company.
6 Q It was kind of between a period of employment
7 for her, correct?
8 A If I remember correctly, yeah, it was towards
9 the end of her time at Holly Hill.
10 Q You-all rode there together in your car?
11 A Yes.
12 Q Is that a squad car?
13 A Yes.
14 Q You were in your full normal North Charleston
15 Police uniform?
16 A Yes.
17 Q Did you arrive at 1:00 a.m. on the day in
18 question?
19 A Very close to it. I don't know if it could
20 have been a couple of minutes before or a couple of
21 minutes after.
22 Q Do you remember what day of the week it was?
23 A No.
24 Q Had you ever arrested anybody inside the Waffle
25 House before?

Page 55

1 A I can tell you that it would have either been a
2 Friday or a Saturday because those were the only two
3 nights Waffle House paid for off-duty employment there.
4 I couldn't tell you if it was Friday or a Saturday.
5 Q Let's just call it a weekend night.
6 A Yes.
7 Q And the time period would have been between
8 1:00 a.m. and 5:00 a.m.?
9 A Yes.
10 Q When did you first observe Mr. Norris white?
11 A When he walked into the restaurant and sat
12 down.
13 Q Was he with anyone else when he walked in?
14 A He was with a few other people, yes.
15 Q Three other people?
16 A A few. I don't know exactly. I know at least
17 one other male and I believe two females.
18 Q Did you recognize any of them?
19 A No.
20 Q Do you remember what time they arrived?
21 A It was around 4:30.
22 Q Did they look suspicious?
23 A No.
24 Q Did they appear to be drunk?
25 A I don't know if they were intoxicated. They

Page 56

1 just seemed very loud and boisterous.
2 Q Did they seem loud and boisterous from the
3 moment they walked in?
4 A Yeah, pretty much.
5 Q What were they talking about?
6 A I couldn't hear exactly what they were talking
7 about, but every once in a while they would get real
8 loud. And I know several times Mr. White got up and
9 walked around the restaurant and was real animated and
10 loud and ...
11 Q What do you mean by animated?
12 A Waving his hands around. Basically just -- he
13 would get up from his booth and walk around the
14 restaurant and just be laughing and being loud and kind
15 of obnoxious. And then he would make his way back to his
16 seat and sit back down. He got up again and ...
17 Q How many times do you think he got up and down
18 and was boisterous and animated?
19 A Two or three.
20 Q Were they laughing?
21 A Laughing. But also yelling. I mean they
22 weren't hostile towards each other, but they began to get
23 disruptive to the other patrons.
24 Q How do you define yelling?
25 A Speaking in a loud verbal tone where it was

Page 57

1 drowning out most of the other sound in the restaurant.
2 Q Was it so loud that you couldn't have a
3 conversation with Bridget?
4 A Yes, but it was also so loud that a lot of
5 other people were probably having the same difficulty.
6 Q Did they appear to be hostile?
7 A Not when they were talking to each other, no.
8 Q Do you have any idea what they were talking
9 about?
10 A No idea.
11 Q Did it look like they were telling jokes?
12 A Maybe like they were telling stories.
13 Q Look like they were having a good time?
14 A Yes.
15 Q All of them appeared to be smiling?
16 A I couldn't really see their faces. Where I was
17 positioned in the back of the restaurant, I was looking
18 at the back of two heads.
19 Q You said that Norris would get up and was
20 animated and he was laughing. Did it appear that he was
21 laughing with a smile?
22 A Yes.
23 Q Is it safe to say that they were enjoying
24 themselves?
25 MS. JACKSON: Objection to the form.

Page 58

1 A Yes.
2 Q They looked to be having fun?
3 A Yes.
4 Q Did Bridget say anything to you about their
5 activity?
6 A I don't specifically remember if she said
7 anything or not.
8 Q Did anybody say anything to you about what they
9 were doing?
10 A Nobody said anything verbally. But when they
11 started using certain words and being very loud with
12 those words, members of the staff and other customers
13 were kind of looking at me and raising their eyebrows,
14 kind of looking at me like are you going to say something
15 to these guys.
16 Q At what point did they begin looking at you?
17 A The customers and the staff members?
18 Q Yes.
19 A When the people at Mr. White's table started
20 using very loud and profane and racially offensive
21 language.
22 Q Approximately what time may that have been if
23 they arrived at 4:30?
24 A It was around 5:00 o'clock.
25 Q Before 5:00 o'clock, is it your memory that

Page 59

1 they were using profane or loud language?
2 A It kind of grew into a crescendo as the time
3 went on that they were there. It kind of became more and
4 more loud and obnoxious as time went on.
5 Q What do you mean by obnoxious?
6 A They were using language that was offensive to
7 people that were in the restaurant.
8 Q How did you know it was offensive to other
9 people in the restaurant?
10 A Because they were looking at me, kind of giving
11 me a look like: Are you going to do something about
12 these guys and quiet them down?
13 Q How did you know if they didn't speak to you
14 that they wanted you to act?
15 A Because they kept looking at me, like kind of
16 raising their eyebrows and motioning towards them.
17 Q But they never said anything to you?
18 A No, but typically they wouldn't because they
19 don't want the customers to backlash on them.
20 Q What do you mean?
21 A Well, sometimes the Waffle House can get -- you
22 have a lot of drunks coming in there, and the people that
23 work there, it's not unheard of for them to get in a
24 verbal altercation with a customer. And to avoid
25 confrontation with the customer, instead of going and

Page 60

1 saying something verbally; they would typically just
2 motion to me like -- on other occasions they would look
3 at the person and look at me and kind of like motion with
4 their head. Or if the person wasn't directly looking at
5 the Waffle House employee, then they would point to that
6 person and they would motion that they need to go.
7 Q Did anyone point to Norris White or anyone in
8 his group?
9 A Not with their hands, no. They just looked at
10 them and then looked at me and raised their eyebrows and
11 kind of motioned with their head.
12 Q And if they -- sorry. It was your
13 understanding that they wanted you to do something if
14 they looked at you and looked at someone else?
15 A If they looked at me with that certain look on
16 their face, then yes.
17 Q Can you describe the certain look?
18 A In this particular instance with Mr. White and
19 his friends, it was a look of surprise at what they were
20 saying and reacting to the words that were coming from
21 his table. And eyebrows raised high, eyes big, kind of a
22 look of he can't do that in here.
23 Q Was it a look of surprise?
24 A Yes.
25 Q What sort of offensive language were they

Page 61

1 using?
2 A The "F" word. I don't know if you want me to
3 say it here.
4 Q Is that fuck, F-U-C-K?
5 A Yes, I remember hearing fuck, mother fucker.
6 Then they started saying nigger and they would refer to
7 people as nigger. And at that point that's when people
8 started looking at me like, okay, he can't do this in
9 here.
10 Q Well, they didn't say he can't do this in here.
11 A They didn't say it verbally. That's what
12 shocked them and looked at me with that reaction of: Are
13 you going to stop him?
14 Q Would you agree that's an impression that you
15 formed; it was not a literal communication?
16 A It was a nonverbal communication. I would
17 definitely say it was a nonverbal communication, that
18 they wanted me to address the situation that he was being
19 disorderly.
20 Q What did they want you to do?
21 A They didn't specifically state what they wanted
22 me to do.
23 Q What was your assumption if someone looked at
24 you with eyes raised and looked at another patron inside
25 the Waffle House?

Page 62

1 A What I perceived from that communication would
2 be that they want me to address that situation and either
3 have them stop being disruptive and disorderly or leave
4 the restaurant.
5 Q While they were using expletives, were they
6 still laughing?
7 A You said laughing, and I didn't know if you
8 were done.
9 Q Were they still laughing?
10 A Yes, on and off. Some of it, they were not
11 laughing.
12 Q It didn't appear -- I think I've asked you this
13 already, but it didn't appear as though any of them were
14 hostile or angry?
15 A No.
16 Q They didn't make any threats to anyone inside
17 the restaurant?
18 A Not that I heard. I don't know what Mr. Norris
19 would have said when he got up and was talking to other
20 patrons or anything, but I never heard any specific
21 threats that he made to anybody else.
22 Q Did you see him motioning to any other patrons
23 in the restaurant?
24 A I don't remember.
25 Q Do you remember what time you jumped up from

Page 63

1 your table?
2 A I didn't jump up from my table.
3 Q Do you remember what time you got up from your
4 table?
5 A I rose from my table sometime around
6 5:00 o'clock. I was sitting there waiting to get paid so
7 I could go home.
8 Q Your shift ended at 5:00, correct?
9 A Yes.
10 Q Could you have just walked out the door and
11 left at 5:00 a.m.?
12 A No, they have to hand you a carbon copy form
13 that I have to then fill out. I have to turn it in to
14 the manager. Then they pay me out of the register. That
15 form accounts for their money missing out of the register
16 that they paid me. Also I have to get paid at that time.
17 That hadn't happened yet. So if I would have left, they
18 wouldn't have had their record of me having being there
19 tonight and they couldn't have paid me.
20 Q When did you receive that carbon copy?
21 A I don't know exactly. It would be after this
22 incident.
23 Q Who was the manager on duty that night?
24 A I don't know.
25 Q Male or female?

Page 64

1 A I don't remember.
2 Q Was it the same manager there every night, or
3 are there different managers?
4 A Different managers.
5 Q How many managers do you recall worked there in
6 2013?
7 A I don't know.
8 Q More than two?
9 A I honestly don't know. I don't remember.
10 Q Did Bridget say anything to you about Mr. White
11 and his crowd?
12 A No, not that I remember.
13 Q When you got up from your table to confront
14 Mr. White, did Bridget ask you where you were going?
15 A No.
16 Q Did she say anything to you as you got up?
17 A No.
18 Q Did anyone say anything to you as you got up?
19 A No.
20 Q You walked directly over to Mr. White's table,
21 correct?
22 A Yes.
23 Q Is there two tables that separated you from
24 Mr. White?
25 A I believe there was one empty table between my

Page 65

1 table and Mr. White's table.
2 Q So what was the first thing you said to him
3 when you got to the table?
4 A I tried to keep it cool and be calm. The last
5 thing in the world I wanted to do is have any kind of a
6 confrontation. I was really wanting to just get paid and
7 go home and go to sleep.
8 I approached his table and said something
9 to the effect of, hey, you guys, you guys are starting to
10 disturb the other customers, can you keep it down and not
11 use the language you guys are using. I just tried to
12 basically just kind of calm them down and quiet them down
13 so that the other patrons could not be disturbed anymore.
14 Q Were you speaking to any particular person when
15 you arrived at the table?
16 A No, just his table in general.
17 Q The group?
18 A Yes.
19 Q So what happened after that?
20 A I remember at that point Mr. White got very
21 confrontational and got loud with me and said something
22 to the effect of why are you bothering us, we're not
23 doing anything. And I tried to explain to him that they
24 were disturbing the other patrons and that they were
25 causing a disturbance. And I believe it was about that

Page 66

1 time one the females got up and just left.
2 Q There were two females and two males at the
3 table?
4 A I don't remember exactly, but that sounds
5 right.
6 Q Was the table just large enough to seat four
7 people?
8 A Yes, it was a booth.
9 Q So you stated to the group: Keep it down, be
10 cool?
11 A Well, I didn't say it exactly like that. I was
12 very calm and held my hands out and kind of just motioned
13 like, hey, let's keep the noise down a little bit. You
14 guys are starting to get a little bit loud, and the
15 language you're using is starting to disturb the other
16 people here in the restaurant.
17 Q And that's when a female got up from the table?
18 A She didn't get up until Mr. White got
19 confrontational with me and started getting loud with me
20 and saying why are you bothering us or what are you doing
21 over here. And then at that point she got up. Mr. White
22 got up to let her out. She said something to the effect
23 of let me out, I'm leaving. And Mr. White stood up,
24 exited the booth, let her out, and then sat back down.
25 Q Was he yelling at you when he said why are you

Page 67

1 bothering us?
2 A Yes. He was saying it loud enough for the
3 entire restaurant to hear it.
4 Q What else did he say other than why are you
5 bothering us?
6 A Nothing until I responded and told him that he
7 was disturbing the restaurant and that he needed to calm
8 down or he would be removed from the restaurant. And at
9 that point he made a statement to me that he's not going
10 anywhere, he's going to sit right here -- if I remember
11 correctly he said: I'm going to sit right here and eat
12 my fucking food that I paid for, or eat my F-ing food.
13 Q He said that in response to your asking him to
14 leave the restaurant?
15 A He said that in response to me telling him he
16 would need to quiet down and quit using profane words and
17 racial slurs or he would be asked to leave the
18 restaurant. That's when he responded with that.
19 Q And he said, I'm going to sit right here and
20 eat my F-ing food?
21 A Yeah.
22 Q How did you respond to that?
23 A Well, he yelled that to me. He didn't say that
24 to me; he yelled that to me. At that point I decided he
25 was going to continue to be -- he was continuing to be

Page 68

1 disruptive, he was continuing to cause a disturbance.
2 And I motioned and told one of the members of the wait
3 staff to go ahead and get their check so they could cash
4 out and they could go.
5 Q Are part of your duties managing Waffle House
6 staff?
7 MS. JACKSON: Objection to the form.
8 A It is not to manage Waffle House staff, but
9 part of my duties is to remove subjects who are
10 disruptive from the restaurant and breaking the law.
11 Q Does the Waffle House have any policy that
12 directs you to cash customers out and tell them to leave
13 if they're being boisterous?
14 A I don't ever cash customers out.
15 Q Does the Waffle House have any policy that
16 provides you with direction to ask Waffle House staff to
17 ask people to leave?
18 MS. JACKSON: Objection to the form.
19 A I don't know Waffle House's policy as far as
20 that goes.
21 Q Is it your job as a off-duty employee of the
22 Waffle House to determine who gets to stay or go at the
23 Waffle House?
24 A If somebody is violating the law, then yes.
25 Q So Norris White said I'm sitting right here,

Page 69

1 and I'm going to eat my F-ing food. What happened next?
2 A That's when I motioned for the staff to get
3 their check ready so they could pay up and that they
4 could leave the restaurant due to them being loud and
5 disorderly and disruptive. At that point he again said
6 something along the lines of I'm not going anywhere
7 and...
8 Q So you asked the Waffle House staff to cash all
9 of them out?
10 A Yes. I believe the words I used was, "Go ahead
11 and get their check."
12 Q Then what happened?
13 A At that point I instructed Mr. White to stand
14 up, and he stood up at the same time that I was -- that
15 I -- at that point I had kind of grabbed -- like just
16 kind of lightly grabbed his arm and instructed him, okay,
17 come on, get up, you're going to have to leave the
18 restaurant. And he stood up.
19 Q Then what happened?
20 A He started yelling and using profanity at me
21 and yelling at me saying: Why are you messing with me?
22 I haven't done anything. I haven't done anything. I
23 tried to explain to him that they needed to leave because
24 he was being loud and disorderly. And then he made a
25 statement of -- along the lines of if you're going to

Page 70

1 arrest me, then arrest me. Otherwise, let me go.
2 Q Did you tell him he was under arrest?
3 A Yes.
4 Q When did you tell him he was under arrest?
5 A Shortly after he stood up and he got --
6 remained loud and confrontational with me.
7 Q Did you have your hands on him when you told
8 him he was under arrest?
9 A I don't remember.
10 Q Did you physically remove him from the booth?
11 A No, he stood up on his own accord. I just
12 happened to have kind of a very light, like a very light,
13 kind of like, like motioning with my hand underneath his
14 arm, come on, get up.
15 Q But you did apply pressure to his arm to get
16 him out of the booth?
17 A I wouldn't even say it was pressure. He stood
18 up on his own. And instead of leaving the restaurant, he
19 just got loud and confrontational with me. And that was
20 when I made the decision to go ahead and effect the
21 arrest.
22 Q Why was he arrested?
23 A He was -- what do you mean? What statute?
24 Q I'm just asking for your opinion.
25 A He was arrested because he violated our city

Page 71

1 disorderly conduct statute.
2 Q Does that require you to be in a public place
3 and disorderly before you can effect an arrest?
4 A Within view of the public, within earshot of
5 the public.
6 Q Did Mr. White appear to be drunk?
7 A I don't remember. I don't remember a strong
8 smell of alcohol or anything, but by his demeanor, he was
9 very belligerent.
10 Q Was he slurring his words?
11 A I don't remember.
12 Q Do you remember if the smell of alcohol was
13 emanating from the table at all?
14 A No, I don't remember.
15 Q Do you remember if any of the folks dining at
16 the table had the smell of alcohol?
17 A In reference to -- you're talking about the
18 smell of alcohol? No, I don't remember anybody at the
19 table smelling like alcohol. I don't remember whether
20 they did or not.
21 Q So you believe local municipal law or South
22 Carolina law allows you to make a warrantless arrest in a
23 restaurant if someone is being loud and boisterous?
24 A Using profane.
25 Q And using profane language?

Page 72

1 A Yes.
2 Q So you had your hand on his arm when he came
3 out of the booth; is that correct?
4 A Yes.
5 Q And you told him he was under arrest, correct?
6 A After he --
7 Q It doesn't have to be in perfect order,
8 but...
9 A Yes.
10 Q And what happened next?
11 A Then I attempted to detain him and place him in
12 handcuffs, which had required putting his hands behind
13 his back and restraining him in handcuffs. But he kept
14 turning away from me, and he was not physically
15 cooperating with what I was telling him to do. He
16 wouldn't stand still. He kept trying to turn around on
17 me. And at the same time the other male subject who was
18 at his table by this time was standing up and was
19 essentially standing behind me, which was a very unsafe
20 thing for me.
21 I told that subject several times to step
22 back from myself and Mr. White and to not get involved in
23 what was going on. He refused. And I tried multiple
24 times to get Mr. White to put his hands behind his back
25 so that I could handcuff him, and he would not allow that

1 to happen. He kept applying forward pressure keeping me
2 from pulling his arms behind his back, and he kept trying
3 to turn around, which would put him in what we call the
4 inside position, which we're taught at the academy is a
5 very dangerous place to have a suspect, is in front of
6 you and facing you.

7 Q And at that point you're still basically
8 directly in front of their table?

9 A Yes.

10 Q When you say he would not allow you to have his
11 arms, were his arms not behind his back at that point?

12 A I was able to grab his arms at the inner elbows
13 and pull his arms in at the inner elbows. And he was
14 physically fighting my -- well, he was physically trying
15 to impede me from being able to do that. But I was able
16 to maintain his arms behind his back, but he wouldn't put
17 his hands behind his back. He was kind of in a position
18 where his hands were still free and his hands were not
19 restrained. And he wouldn't cooperate. And I kept
20 telling him put your hands behind your back, and he
21 refused to comply.

22 Q So at that point you-all are next to a glass
23 partition; is that correct?

24 A We're near the door at this point.

25 Q So there's a glass wall that separates the

1 because I was outnumbered and I was the only officer on
2 scene. So I tried to get some distance between myself
3 and the other male, but Mr. White kept pulling away from
4 me and kept applying pressure to not let his hands be
5 brought behind his back.

6 So because he was applying that pressure
7 and not letting me handcuff him, I drew him further back
8 into the restaurant away from his friend. And his friend
9 approached again, and I verbally instructed that other
10 male that he needed to back away; otherwise, he would be
11 tased, because I feared for my safety and he was not
12 complying with what I was telling him to do either.

13 Q Is it your understanding now that the male that
14 was approaching you, his name is Jamar Omar -- Jamal
15 Omar?

16 A I only know that from hearing Mr. White say
17 that earlier.

18 Q In his deposition?

19 A Yes.

20 Q What was the purpose of sitting in on
21 Mr. White's deposition?

22 MS. JACKSON: Don't answer anything that your
23 attorney told you.

24 Q I'm not asking you for any discussions that you
25 may have had with your attorney. I just want to know

1 outside from the booth that Mr. White and his three
2 friends were eating at, correct?

3 A Well, it separates the atrium where Mr. White
4 and his friends were eating.

5 Q So were you standing against the glass
6 partition that separates the atrium and the booth at that
7 point?

8 A Initially we were. But as he started to move
9 around and physically resist my efforts to handcuff him,
10 I also observed that his friend kept approaching me. And
11 so I made an attempt to back away from that situation out
12 of concern for my own safety.

13 Q Did you put Mr. White's body into the glass
14 partition at any point?

15 A I would have put the front of his body to the
16 glass just to facilitate handcuffing him and take away an
17 avenue of escape where he couldn't just go straight
18 ahead.

19 Q Were Mr. White's hands in front of him during
20 this time period?

21 A They were at his side.

22 Q What happened next?

23 A The other male kept approaching repeatedly.
24 And I kept on telling this other male to back away
25 because at that point I was afraid for my own safety.

1 what your purpose was for sitting in on Mr. White's
2 deposition.

3 MS. JACKSON: I'm going to instruct him not to
4 answer that because it was done on the advice of counsel.

5 Q I'm asking you if you had a personal purpose,
6 outside of anything having to do with your attorney, for
7 sitting in on Mr. White's deposition? Are you refusing
8 to answer? Did you have a purpose for sitting in on
9 Mr. White's deposition outside of anything you may have
10 discussed with your attorney?

11 A No.

12 Q I will represent to you that the other black
13 male that was with Mr. White and who was approaching you,
14 his name is Jamal Omar. Do you recall what he was saying
15 to you?

16 A No.

17 Q Was he being loud?

18 A I don't specifically remember. I know that at
19 that point Mr. White was continuing to get louder. It
20 was very likely I couldn't hear what the other gentleman
21 was trying to say.

22 Q Did Mr. White at any point tell Jamal Omar to
23 stay away?

24 A No, not that I remember at all. No.

25 Q Did he motion with his hands to Jamal Omar to

Page 77

1 stay away?
2 A No. He didn't back off until I advised him
3 that if he continued to approach me and not obey my
4 verbal commands that he would be tased.
5 Q Were both of them not questioning why you were
6 arresting Mr. White?
7 A I don't recall the other gentleman -- not
8 Mr. White -- but I don't recall the other gentleman
9 asking me anything about the arrest. But Mr. White just
10 continued to be loud and profane and, you know: Why you
11 messing with me, why you messing with me, I didn't do
12 nothing.
13 Q You don't recall Mr. White telling Mr. Omar to
14 stay away?
15 A No, I don't.
16 Q Let it alone?
17 A No, I don't.
18 Q You don't recall if Mr. Omar was loud or
19 boisterous?
20 A I don't remember.
21 Q So you moved Mr. White over to a different part
22 of the Waffle House after Mr. Omar was approaching you,
23 correct?
24 A Yes.
25 Q What did you do at that point?

Page 78

1 A I still had been unable to get him to comply so
2 that I could put him in handcuffs. He still kept trying
3 to turn around on me and was pulling away from me. I
4 advised him don't turn around on me, put your hands
5 behind your back, don't turn around on me. And then he
6 made an effort to turn his body and put himself in my
7 inside position.
8 Q What does that mean?
9 A It's the position where you are essentially toe
10 to toe with the suspect. And it is taught in the academy
11 that is the most unsafe position you can allow a suspect
12 to get into, for your safety. And that's the position
13 that he attempted to turn around on me and put himself
14 inside that position.
15 Q Did you have a handcuff on him at that point?
16 A No.
17 Q You didn't have any handcuffs on him?
18 A No.
19 Q But his back was to you. Was your foot in
20 between his legs?
21 A I don't remember.
22 Q Did you have him up against the table?
23 A He had kind of pulled himself over toward the
24 table as I was hanging on to him trying to keep his arms
25 behind his back.

Page 79

1 Q Had he turned around what do you imagine might
2 have happened?
3 A I believe he would have tried to assault me. I
4 was afraid for my safety. I was outnumbered, and he was
5 clearly not going to comply with what I was telling him
6 to do.
7 Q You had a gun with you, didn't you?
8 A I did.
9 Q Why were you afraid for your safety?
10 A Because I was afraid Mr. White was going to try
11 to fight me, and maybe while I was fighting Mr. White
12 some of the other members of his party would join in.
13 Q Did they give you any reason to believe that
14 they were going to assault you?
15 A Yes.
16 Q How was that?
17 A Mr. White was not complying with my verbal
18 commands, nor was the other gentleman, until I advised
19 him that he would be tased if he didn't back away. He
20 kept on approaching me while I was attempting to detain
21 Mr. White. Mr. White repeatedly tried to keep from
22 having me be able to put his hands behind his back and
23 kept trying to pull me around the restaurant while I'm
24 trying to hang on to him.
25 Q Did anyone ever threaten you?

Page 80

1 A I don't remember.
2 Q Don't you think that's something you would
3 remember?
4 A While I was effecting the -- attempting to
5 effect the arrest, my main focus was on my safety and
6 gaining control of the suspect.
7 Q Was Mr. White or anyone at his table armed?
8 A Mr. White was not. I don't know if anybody
9 else at his table was.
10 Q Was Mr. Jamal Omar not frisked?
11 A I didn't have a chance to perform any kind of a
12 patdown or search.
13 Q Would there have been any legal justification
14 for patting down Mr. Jamal Omar?
15 A At that point, yes, he would have been searched
16 incident to his arrest.
17 Q Why would Mr. Omar have been arrested?
18 A Because he violated the City statute of North
19 Charleston, disorderly conduct.
20 Q So you were certain that Mr. Omar was being
21 loud and boisterous?
22 A Are you talking about Mr. Omar?
23 Q Yes. We can backtrack if you want.
24 A Yes, I'd like to.
25 Q Mr. Jamal Omar, I asked you if he was frisked.

Page 81

1 A No, he was not.
2 Q He was never frisked?
3 A No, he was not.
4 Q Should he have been arrested?
5 A He could have been.
6 Q On what basis?
7 A Hindering a police officer.
8 Q Was he guilty of violating a disorderly conduct
9 code?
10 A Yes, while he was at the table.
11 Q Why wasn't he arrested as well?
12 A Because Mr. White -- when I was trying to
13 effect the arrest on Mr. White, obviously, I was
14 outnumbered. And he was the one that got loud and
15 confrontational with me, and he was the one that I felt
16 was the biggest threat to my safety at that time. And he
17 was the one that I felt was instigating most of what was
18 going on. And I don't believe Mr. Omar was on scene
19 after Mr. White was arrested.
20 Q You stated that Mr. White did not have
21 handcuffs on either hand with -- let me back up. Strike
22 that.
23 When you had Mr. White against the table,
24 you said that there were no handcuffs on, correct? And
25 he turned clockwise or counterclockwise?

Page 82

1 A Counterclockwise.
2 Q And you felt threatened, correct?
3 A Yes.
4 Q That's when you decided to take him down?
5 A At that point I did perform a takedown to take
6 him down to the ground so that I can gain better control
7 of his movements and keep him from assaulting me.
8 Q Do you believe the way that you took him down
9 was necessary?
10 A Yes.
11 Q Do you believe it was reasonable?
12 A Yes.
13 Q Do you believe it was necessary and reasonable
14 because Mr. White posed a threat to you?
15 A Yes, he posed a threat and was not complying
16 physically with my commands and what I was telling him he
17 needed to do.
18 Q Are you aware that an individual can resist
19 arrest with light force if being wrongfully arrested?
20 A Yes, I am aware of that.
21 Q Are you taught that at the academy?
22 A Yes.
23 Q Did you believe that Mr. White thought he was
24 being wrongfully arrested?
25 A No.

Page 83

1 Q Wasn't he asking you why he was being arrested?
2 A No.
3 Q Mr. White was not asking you why he was being
4 arrested?
5 A Not in those exact words, no.
6 Q And his friend, Jamal Omar, was not asking why
7 you were arresting Mr. White?
8 A Not that I remember.
9 Q Did you slam Mr. White's head into the ground?
10 A No.
11 Q As a result of your taking him down, did his
12 head hit the tile floor?
13 A I believe his face hit -- the side of his face
14 might have hit the tile floor.
15 Q If you're taking down a grown man down over
16 your body in the way that you threw Mr. White, how would
17 you know whether or not his head hit the ground?
18 MS. JACKSON: Objection to the form.
19 A Can you rephrase that question.
20 Q If you're taking a man down -- is it fair to
21 say that it was a takedown?
22 A Yes.
23 Q If you're taking a man down, did you roll him
24 over your body?
25 A No, I didn't roll him over my body.

Page 84

1 Q Did you throw him?
2 A As in let go of him and have him independently
3 move of my body, no.
4 Q How would you describe the takedown?
5 A I used his momentum and his weight to -- as
6 we're taught at the academy, you use their weight and
7 their momentum against them to counteract their balance
8 and take them down to the ground so that you can get
9 better control of your suspect.
10 Q You didn't roll him over your body when you
11 took him down?
12 A No, he did not go over my body, no, sir.
13 Q When you say momentum, was he coming at you?
14 A He was in the process of turning. And we're
15 taught to use that motion, when they start to make that
16 motion, you're taught to use that motion and continue to
17 take them down to the ground. He had made that turn to
18 the counterclockwise to attempt to get into my inside
19 position, so I kept with that direction of momentum -- in
20 that direction of movement -- I'm sorry. And since he
21 had started to turn around on me counterclockwise, I
22 turned him counterclockwise and took him down to the
23 ground, basically around the side of my body.
24 Q Have you seen the video of the arrest?
25 A Yes.

Page 85

1 Q How long ago did you see it? When is the last
2 time you viewed it?
3 A The last time I viewed?
4 Q Yes.
5 A 15 minutes before this deposition started.
6 Q Then you've seen the takedown?
7 A Yes.
8 Q Would you not agree that it would be difficult
9 for you to determine whether or not Mr. White's head hit
10 the ground?
11 MS. JACKSON: Objection to the form.
12 A Can you rephrase that question again?
13 Q Based on the way you took him down, would you
14 not agree that it would be difficult for you to come to
15 any kind of determination as to how his head -- sorry,
16 whether his head hit the ground?
17 MS. JACKSON: Objection to form.
18 A No, I wouldn't say it would be difficult for me
19 to know whether, or not his head hit the ground.
20 Q After Mr. White's takedown, did he say
21 anything?
22 A I believe he was still yelling at me and
23 swearing at me.
24 Q Did you jump on top of him?
25 A I didn't jump on top of him. I was right next

Page 86

1 to him on the ground. And I was still trying to put him
2 in handcuffs and had managed to get one handcuff on him,
3 but I could not get the other handcuff secured.
4 Q Did you place a knee into the back of the neck?
5 A Not that I remember, no.
6 Q Well, you viewed the video 15 minutes ago of
7 the takedown. Do you not recall whether or not you put a
8 knee into the back of his neck?
9 MS. JACKSON: Objection to the form.
10 A It's hard to tell on the video with my uniform
11 being dark and his clothing being dark exactly what
12 extremities are where, but I do not recall putting a knee
13 into his neck.
14 Q Is it not standard protocol to put your knee
15 into the back of a suspect's neck after a takedown like
16 that?
17 MS. JACKSON: Objection to the form.
18 A Can you rephrase that question?
19 Q Is it standard protocol for an officer to place
20 a knee into the back of suspect's neck when they're lying
21 on the ground facedown --
22 MS. JACKSON: Objection.
23 Q -- to put handcuffs on them?
24 MS. JACKSON: Objection to the form.
25 A If they're trying to raise their head and raise

Page 87

1 their body, then you need to control them to keep them
2 from getting up.
3 Q Is it an acceptable standard to put your knee
4 in the back of a suspect's neck if they're lying on the
5 ground in order to get handcuffs on them?
6 MS. JACKSON: Objection to the form.
7 A Yes, if he's resisting and requiring that
8 amount of force to be used.
9 Q Are you taught to place your knee in the back
10 of a suspect's neck when they're on the ground?
11 A In certain circumstances where they're actively
12 resisting, yes.
13 Q So thereafter, did you basically mount him from
14 behind?
15 A No.
16 MS. JACKSON: Objection to the form.
17 Q Can you describe what happened after you took
18 him down to the ground?
19 A Originally he was on his chest, which is where
20 I wanted him to be so that I could pull his hands behind
21 his back and handcuff him. But then he turned on to one
22 side and continued to not obey my verbal commands, and he
23 still would not put his hands behind his back. I had
24 gotten one handcuff on, and he was still kind of trying
25 to buck me off of him.

Page 88

1 And like I said, he had turned on to, I
2 believe, his left side, which at that point I was afraid
3 that he was trying to roll over. And once he's facing
4 me, then again, he's a threat -- well, he continues to be
5 a threat at that point. Especially at that point, he
6 already had one handcuff on as well.
7 Q What were your verbal commands while he was on
8 the ground and you were trying to handcuff him?
9 A Put your hands behind your back.
10 Q Is that it?
11 A I believe I said stop resisting.
12 Q You said -- you used the word buck to describe
13 Mr. White's actions. And how do you define buck?
14 A Basically using his back to kind of break my
15 coordination to be able to effect the arrest.
16 Q Were his hands behind his back?
17 A One hand was. I don't recall where the other
18 hand was, but I do know that it was not handcuffed.
19 Q Did you get handcuffs on by yourself?
20 A No.
21 Q Was there any particular reason why you were
22 having a difficult time handcuffing Mr. White while he
23 was on the ground?
24 A Yes.
25 Q Was that because he was bucking?

1 A He was actively physically resisting and not
2 complying with my verbal commands.
3 Q Who helped you place handcuffs on Mr. White?
4 A Officer Anthony King.
5 Q You can view Mr. King coming into the Waffle
6 House in the Waffle House surveillance video; is that
7 correct?
8 A Yes. I radioed for his assistance before I
9 backed off to that corner of the restaurant with
10 Mr. White -- correction, I radioed for assistance. I
11 didn't radio for anybody specifically.
12 Q Did Officer King physically put his body on
13 Mr. White while he was on the ground?
14 A I don't remember. At that point I was just
15 trying to hold the one hand with the handcuff because
16 that's a very dangerous situation to let that hand with
17 the cuff come loose.
18 Q What might have happened if Mr. White's hand
19 came loose?
20 A It's very possible that if that hand comes
21 loose with the handcuff on it, he can use that hanging
22 handcuff as a weapon, and that can definitely cause great
23 bodily injury.
24 Q I believe you stated earlier that he'd never --
25 Mr. White had not threatened you; is that correct?

1 Q Were Officer King's on him?
2 A I don't know.
3 Q Where were your hands on Mr. White?
4 A I don't exactly remember where my hands were on
5 his body.
6 Q You weren't applying upward pressure on his
7 arms?
8 A Are you asking me that, or are you telling me
9 that?
10 Q I'm asking.
11 A If I was applying upward pressure on his arms?
12 Q Yes.
13 A No.
14 Q Was Mr. White bent over when you all took him
15 out of the restaurant?
16 A Yes, he was bent over and kind of pulling
17 forward.
18 Q Why?
19 A Because he was bending himself over and pulling
20 forward, pulling myself and Officer King along. We
21 walked with him.
22 Q You weren't applying any force on Mr. White?
23 A No. We were just trying to hang on to him and
24 get him out of the restaurant at that point.
25 Q I will show you what's been marked as

1 A I don't remember if he threatened me verbally.
2 (Arroyo Deposition Exhibit No. 1
3 was marked for identification.)
4 Q So how did Mr. White get off the ground?
5 A Once he was in handcuffs, he continued to be
6 loud and irate. And myself and Officer King each grabbed
7 underneath one of his arms. But at the same time he had
8 his feet up underneath him, and he stood up himself as we
9 were pulling him up, helping him up.
10 Q And then you and Officer King guided Mr. White
11 out of the restaurant. Would that be an accurate
12 description?
13 A No.
14 Q Okay. Please elaborate.
15 A After he stood up, we instructed him to walk
16 toward the door. And he at that point started walking
17 rapidly while yelling and swearing at us. And he
18 actually yanked myself and Officer King over towards the
19 jukebox inside the restaurant. And we kind of just were
20 trying to keep a hold of him. And then he continued to
21 walk quickly towards the front door. We weren't pushing
22 him. He was actually pulling us, and we were just
23 hanging on to him at that point walking with him.
24 Q Were your hands on Mr. White at that point?
25 A Yes.

1 Plaintiff's Exhibit No. 1. Can you please read through
2 that and tell me if you are familiar with it.
3 A With what exactly? The entire report?
4 Q Four pages.
5 A You want me to read the entire report?
6 Q Just flip through it and let me know if you are
7 familiar with it.
8 A I am familiar with it.
9 Q Did you draft any of the narrative in this
10 document?
11 A Draft? I don't understand the question.
12 Q Did you write any of the narrative in
13 Plaintiff's Exhibit No. 1?
14 A I did write one of the narratives in this
15 report, yes.
16 Q Can you please point me to which narrative you
17 wrote?
18 A It would have been the narrative on the last
19 page of the report where it says "additional narrative"
20 at the top. And at the bottom left-hand corner of the
21 page it says 1086 dash, a space, and then an 8. That's
22 my narrative.
23 Q At the very bottom to the left it reads 1086
24 and then the number 8, correct?
25 A Yes.

Page 93

1 Q Did you have any assistance in writing this
2 narrative?
3 A No.
4 Q Are they always produced in third person?
5 A Yes, all of mine are. Every narrative I write
6 is the third person.
7 Q Was the first narrative written by an Officer
8 King, to your knowledge?
9 A I didn't watch him write this narrative. It
10 says that it was written by Officer King, but I wasn't
11 there when he wrote his. I wrote my narrative alone.
12 Q This narrative on the first page of Plaintiff's
13 Exhibit No. 1, you didn't write it, correct?
14 A No.
15 Q You didn't assist him in drafting it and
16 writing it?
17 A No.
18 Q How would the individual that drafted this have
19 come to some of the conclusions, for instance -- I'll
20 strike that.
21 MR. STRATOS: Let's go off the record for a
22 second.
23 (Discussion off the record.)
24 BY MR. STRATOS:
25 Q How would you define unlawful arrest?

Page 94

1 A How would I define unlawful arrest?
2 Q Yes.
3 A An arrest that is made without a violation of
4 the law, probable cause, or a warrant.
5 Q How do you define excessive force?
6 A Using an amount of force in excess of what is
7 reasonable and necessary to effect a lawful arrest.
8 Q And conduct unbecoming?
9 A What about that?
10 Q How do you define conduct unbecoming?
11 A I would define conduct unbecoming as any kind
12 of behavior or actions that would bring shame or
13 discredit on myself or my police department.
14 Q Could you tell me who Samantha Bond is?
15 A Samantha who?
16 Q Bond.
17 A I don't know Samantha Bond.
18 (Arroyo Deposition Exhibit No. 2
19 was marked for identification.)
20 Q Before you is Plaintiff's Exhibit No. 2. Are
21 you familiar with this document?
22 A Yes.
23 Q Did you sign this document?
24 A No.
25 Q Is it signed by the chief of police?

Page 95

1 A No, it's not.
2 Q It's not signed by the chief of police?
3 A No, it's not.
4 Q Are you familiar with the signators?
5 A I am. I don't know the first one. I don't
6 know the top signature right there. It looks like Jamie
7 Bamwell. I don't know who that is.
8 Q And Cathy Stanley.
9 A Yes.
10 Q Who is Cathy Stanley?
11 A Lieutenant Cathy Stanley who was the off-duty
12 manager at that time.
13 Q What were her duties?
14 A Basically to act as a liaison between the
15 coordinators of the off-duty jobs and the businesses
16 themselves and to assign off-duty jobs to coordinators
17 and to receive schedules and that kind of thing.
18 Q As part of your off-duty assignment with the
19 Waffle House, did you have to read these officer
20 responsibilities and restrictions represented in
21 Plaintiff's Exhibit No. 2?
22 A Can you state that question again, please?
23 Q Have you read this document before?
24 A Yes.
25 Q Are you familiar with Number Three under

Page 96

1 Officer Responsibilities and Restrictions?
2 A Yes.
3 Q Do you see where it reads, "May not enforce any
4 rule or order of an employer governing customer behavior
5 on the employer's premises where the customer's conduct
6 does not constitute a violation of State or Federal law"?
7 A I do see that.
8 Q Were you observing this responsibility and
9 restriction on December 28, 2013?
10 A Yes, I was.
11 Q Did you conduct any interviews after you
12 arrested Mr. White?
13 A Was I interviewed, or did I interview anybody?
14 Q Did you interview anyone?
15 A I believe I might have just taken down the
16 names of some of the employees and their information.
17 Q Do you remember any of the employees that you
18 interviewed?
19 A Like I stated, I don't remember any names
20 except that one of them was a white female named Laura or
21 Laurie. I don't remember her last name. I don't
22 remember anybody else's name.
23 Q Did you take any notes of the conversations you
24 had with any waitresses?
25 A Other than the information they gave me about

Page 97

Page 99

1 their contact information, no.
2 Q Have you spoken to them since the incident?
3 A Maybe right after if I would have been in the
4 Waffle House again.
5 Q Which witness would you have maybe spoken to
6 after the incident?
7 A It's likely I could have spoken to all of them,
8 but I don't know for sure.
9 Q There is at least one witness that you were
10 familiar with before the accident occurred?
11 A Accident?
12 MS. JACKSON: Objection to the form.
13 Q Sorry. You were familiar with an employee of
14 Waffle House who was also a witness before December 28,
15 2013?
16 A Are you asking about a specific employee, or
17 are you asking if I was familiar with any of those
18 employees before December 28, 2013?
19 Q You've recalled the name of one Waffle House
20 employee, right?
21 A Yes.
22 Q What's her name?
23 A I believe it to Laura or Laurie.
24 Q Is it Laura Fitzpatrick? Does that ring a
25 bell?

1 A Officer Kaufman was a patrol officer who
2 arrived to assist for my call of assistance that night.
3 But he didn't arrive until after Mr. White had been
4 placed in handcuffs.
5 Q Did he assist, escort Mr. White into a patrol
6 car?
7 A I don't recall. I don't think so.
8 Q Do you know if Kaufman took Mr. White to the
9 hospital?
10 A Yes.
11 Q Let me back up. Do you know if Mr. Kaufman
12 brought Mr. White from the hospital to the North
13 Charleston Police Department?
14 A He wouldn't have been brought to North
15 Charleston Police Department.
16 Q Charleston County.
17 A The Charleston County Police Department?
18 Q Charleston County Detention Center.
19 A He would have been brought from the hospital to
20 the Charleston County Detention Center. I believe it was
21 Officer Kaufman. But by that time I was in my paperwork
22 and I was not part of that, so I don't know.
23 Q Who is an Officer Pierce?
24 A Another one of the officers that would have
25 been working patrol that night.

Page 98

Page 100

1 A Not specifically, but that's -- I mean it's
2 possible.
3 Q Okay. And you were familiar with Laura before
4 December 28, 2013.
5 A I mean I've seen her at the Waffle House when
6 she was working.
7 Q Spoken to her a few times?
8 A Yeah, small talk as she was taking my order or
9 whatever.
10 Q Has she maybe delivered you dinner?
11 A No. Delivered me dinner at the restaurant?
12 Q At the Waffle House.
13 A Yes, of course.
14 Q While you were on duty?
15 A Yes -- well, while I was working off duty. I
16 didn't typically go there and eat while I was working.
17 Q You interviewed with Captain Stephens?
18 A Regarding this incident?
19 Q Yes.
20 A Not that I remember. I don't remember if I
21 spoke to Captain Stephens or not.
22 Q Did you interview with an Officer Kaufman?
23 MS. JACKSON: Objection to the form.
24 A I don't understand the question.
25 Q That's okay. Who is Officer Kaufman?

1 Q And a Sergeant Allen?
2 A Sergeant Darryl Allen?
3 Q Do you recall interacting with Sergeant Allen?
4 A Not specifically.
5 Q Do you remember John Hawkins?
6 A He wasn't there that night. But I do know who
7 John Hawkins is.
8 Q Is he a manager at the Waffle House?
9 A I don't know what his title is. I do know that
10 he works for Waffle House.
11 Q Were you friendly with him?
12 A Not really. I didn't really know him too well
13 at all.
14 Q And Teri McCullough, did you interview her?
15 A I think she was one of the waitresses, now that
16 you bring that name up. That name does ring a bell.
17 Q What does she look like?
18 A White female. I couldn't tell you much more
19 than that.
20 Q Hair color?
21 A I want to say was a light brown.
22 Q Tall or short?
23 A I couldn't tell you.
24 Q And George Jenkins, he's listed as a witness in
25 defendant's responses to our interrogatories. Do you

Page 101

1 recall George Jenkins?
2 A Not specifically.
3 Q Do you recall interviewing a black man
4 following Mr. White's arrest?
5 A I may have. I don't specifically remember if I
6 interviewed a black man following the arrest or not.
7 Q Are there any other officers that I have not
8 asked you about that appeared to Waffle House on
9 December 28, 2013?
10 A Sergeant Matt Lawless.
11 Q Can you spell the last name?
12 A L-A-W-L-E-S-S.
13 Q What's his title?
14 A Sergeant.
15 Q Do you know what time he appeared?
16 A I'm not sure.
17 Q Did he assist in the arrest?
18 A No. He simply responded. Any time there is a
19 use of force, a supervisor as to respond to the scene.
20 So Matt Lawless was the North Bureau supervisor working
21 at that time, which is the bureau where that is.
22 Q Do you know if your wife Bridget called the
23 police during the arrest?
24 A No, she did not.
25 Q Do you know who she called?

Page 102

1 A I don't know if she called anybody.
2 Q I will represent to you that she's seen on the
3 phone in the surveillance video. To your knowledge you
4 do not recall her having called anyone?
5 A No. I imagine -- I can speculate, but I don't
6 know who she would have called.
7 Q Do you know if anyone called 911?
8 A I don't know of anybody who called 911.
9 MR. STRATOS: Off the record.
10 (Discussion off the record.)
11 (Recess taken.)
12 BY MR. STRATOS:
13 Q Did you know Officer Shivers?
14 A I did know Officer Shivers.
15 Q Did you know about Officer Shivers being
16 involved in a incident with Mr. White?
17 A Not before this case was brought forward, no.
18 Q Did you know that Officer Shivers was
19 disciplined due to a wrongful arrest of Mr. White?
20 MS. JACKSON: Object to the form.
21 A No, I did not know that until this, until this
22 case came about and I was informed of that.
23 Q While you are performing secondary employment
24 duties, you're always acting on behalf of the City of
25 North Charleston?

Page 103

1 A Yes.
2 Q Is that internal policy?
3 A I've never seen a written policy that says that
4 when you're working off-duty employment, you're always
5 acting on behalf of the City of North Charleston. I've
6 never seen a written policy that states that.
7 Q Did you make a statement to the Professional
8 Standards Bureau?
9 A Regarding this?
10 Q Yes.
11 A No.
12 Q Have you ever been involved in any prior
13 incident at Waffle House while engaged in off-duty
14 employment?
15 MS. JACKSON: Objection to the form.
16 Q Have you ever effected an arrest at the Waffle
17 House?
18 A A couple.
19 Q Were you engaged in off-duty employment?
20 A Yes.
21 Q Have any of the individuals that you arrested
22 at the Waffle House claimed that you used excessive
23 force?
24 A No.
25 Q Any of them claim that the arrest was wrongful?

Page 104

1 A Not that I've ever been made aware of, no.
2 Q And was it for disorderly conduct?
3 A I don't know.
4 Q Do you remember the names of the individuals
5 you arrested while engaged in off-duty employment at the
6 Waffle House?
7 A Not all of them. I remember one person's name
8 in particular.
9 Q What's their name?
10 A Stacy Gadsen.
11 Q Do you remember what year that was?
12 A 2007 or 2008.
13 Q Did you charge her?
14 A Him.
15 Q Did you charge him?
16 A Yes.
17 Q What did you charge him with?
18 A I believe it was possession. I don't know --
19 for example -- I don't know to be exact, but I know I
20 made a cocaine charge. I don't know if it was possession
21 with intent to distribute or possession. But he was
22 arrested for cocaine and I believe resisting arrest.
23 Q Briefly describe the circumstances of the
24 arrest.
25 A Myself and Officer Schoolfield were sitting

1 inside the Waffle House. At that time they staffed two
2 officers to work it, not just one. And we were getting
3 ready to eat our food. And myself and Officer
4 Schoolfield noticed a subject walking at a very fast pace
5 from the Motel 6, which is right behind the Waffle House.
6 And if I remember correctly it was cold outside, and the
7 subject was wearing only a tank top, jeans, and socks.
8 And he appeared to be in some kind of distress, as he had
9 his hands on his head.

10 Q You don't have to tell me any more.

11 A I don't mind. And he entered the door with a
12 knot of cocaine in his hand, and he was in a cocaine
13 induced delirium.

14 Q Were the other individuals that you arrested in
15 Waffle House, were they patrons?

16 A Some were.

17 Q Some were not?

18 A Some were not. Some were drunks that had
19 fallen asleep in their cars in the parking lot or pulled
20 up in the parking lot, car smells of marijuana and open
21 containers, stuff like that.

22 Q How many arrests do you think you've had in the
23 Waffle House?

24 A Not many. When I'm there, my goal is to be
25 there, keep the restaurant safe, keep things orderly, get

1 North Charleston?

2 A Yes.

3 Q What were you disciplined for?

4 A I lost my jacket. I left it in the squad room,
5 and when I came back -- I left the squad room. I left my
6 winter jacket hanging on a chair and received a dispatch
7 call and left the squad bay, got in my car, answered the
8 dispatch call. Reported back to the squad bay, and my
9 jacket was gone. They sent a notice out to all the
10 teams, if anybody's seen Officer Arroyo's jacket, please
11 return it. Nobody returned it, and I was written up for
12 mismanagement of equipment.

13 Q And then another time I was driving home
14 after working my shift and then going to court. And I
15 fell asleep behind the wheel, and I was involved in a
16 single vehicle accident in my patrol car.

17 Q Are there any other instances where you've been
18 investigated by the Office of Professional Standards?

19 A For anything at all?

20 Q For anything at all.

21 A Yes.

22 Q How many other instances?

23 A I think two.

24 Q What was the first one?

25 A One, I know one was we were attempting to serve

1 paid, and go home. I'm not there to make arrests.

2 That's not my primary goal when I go to work off duty.

3 Q Have there been maybe five?

4 A I would say probably -- if I had to guess -- I
5 don't know exactly. Not many.

6 Q Not 50?

7 A Not 50.

8 Q Not 20?

9 A Not 20.

10 Q So less than 15?

11 A Yep. Probably less than ten.

12 Q You don't remember the hours that you worked
13 that week, the week of the arrest?

14 A I do not remember the hours that I worked, no.

15 Q Have you obtained convictions from the arrests
16 you've made at the Waffle House?

17 A From this particular arrest or from other
18 arrests?

19 Q From other arrests.

20 A I have.

21 Q How many?

22 A I don't know.

23 Q Do you have a ratio?

24 A I don't know.

25 Q Have you ever been disciplined by the City of

1 an arrest warrant on a subject, and he had filed a
2 complaint that we made unlawful entry into his home.

3 Q And the second one?

4 A I guess that would be three because I'm pretty
5 sure that subject who filed the lawsuit represented
6 himself. But you know what, I didn't write a statement
7 for that, so never mind that one.

8 Q I don't mean just statements. Just any
9 instances.

10 A I think the only other one would have been I
11 had a traffic stop in which somebody claimed that my
12 search of their vehicle incident to a subject's arrest
13 from that vehicle was unlawful.

14 Q And the third one would be the Norris White
15 arrest?

16 A Yes, but I never -- I was never even
17 interviewed by AI for that. I was investigated for it, I
18 guess.

19 Q You were never interviewed by anyone?

20 A No, with the exception of the sergeant who
21 would have responded to the scene due to the use of force
22 would interview me and then put that in what's called an
23 interdepartmental report and then forward that to IA. So
24 I guess I was interviewed by Sergeant Lawless, and that
25 was sent up to IA.

Page 109

1 Q And that's just an assumption, though, correct?

2 A Well, I know he did talk to me and ask me about

3 the incident. I didn't read his report.

4 Q So when I asked you if you'd ever been

5 interviewed, are we making a correction here? I believe

6 earlier you stated that you weren't interviewed.

7 A I was not interviewed by anybody in Internal

8 Affairs, no.

9 Q Are there any other facts you know that would

10 provide either party with clarity regarding this action?

11 A I'm sorry, can you restate that?

12 Q Are there any other facts you'd like to talk

13 about today regarding this action?

14 A No.

15 Q Is there anything else that you would like to

16 convey?

17 A No.

18 Q Would you like to make any corrections?

19 A No.

20 Q Do you have any other opinions you would like

21 to share that you have not shared today?

22 A No.

23 Q Have you spoken to anyone, outside of lawyers

24 or the police officers we've previously named, about this

25 incident?

Page 110

1 A No.

2 Q Have you posted anything on any social media

3 sites regarding the incident of December 28, 2013?

4 A Absolutely not.

5 MR. STRATOS: I don't have any further

6 questions.

7 MS. JACKSON: No questions.

8 He will read and sign.

9 FURTHER DEPONENT SAITH NOT...

10 (The deposition was concluded at 5:00 p.m.)

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Page 111

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

3

4 I, Helen L. Rose, Certified Shorthand Reporter,

5 Registered Professional Reporter, and Notary Public for

6 the State of South Carolina at Large, do hereby certify

7 that the witness in the foregoing deposition was by me

8 duly sworn to testify to the truth, the whole truth and

9 nothing but the truth in the within-entitled cause; that

10 said deposition was taken at the time and location

11 therein stated; that the testimony of the witness and all

12 objections made at the time of the examination were

13 recorded stenographically by me and were thereafter

14 transcribed by computer-aided transcription; that the

15 foregoing is a full, complete and true record of the

16 testimony of the witness and of all objections made at

17 the time of the examination.

18 I further certify that I am neither

19 related nor counsel for any party to the cause pending

20 or interested in the events thereof.

21 Further, that at the time of said deposition the

22 witness elected to reserve signature.

23 Witness my hand, I have herunto affixed my

24 official seal this 30th day of May, 2016, at Charleston,

25 Charleston County, South Carolina.

Helen L. Rose
RPR #051505, CSR #084-003436 (IL)
My Commission expires
December 8, 2016.

Page 112

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

3) CASE NO.: 2015-CP-10-06561

4

5 NORRIS, EARL WHITE, JR.,

6 Plaintiff,

7

8 VS.

9 CITY OF NORTH

10 CHARLESTON, NORTH

11 CHARLESTON POLICE

12 DEPARTMENT,

13 Defendant.

14

15 SIGNATURE OF DEPONENT

16

17 THIS IS TO CERTIFY THAT I HAVE READ THE TRANSCRIPT

18 OF MY DEPOSITION TAKEN ON THE 18TH DAY OF MAY, 2016, IN

19 THE FOREGOING CAUSE, AND THAT THE TRANSCRIPT ACCURATELY

20 STATES THE QUESTIONS ASKED AND THE ANSWERS GIVEN BY ME,

21 WITH THE CHANGES OR CORRECTIONS, IF ANY, MADE ON THE

22 ERRATA SHEET(S) ATTACHED HERETO.

23

24

25

26 Officer Christopher Daniel Arroyo

27 Signed this ____ day of

28 _____, 2016.

29

30

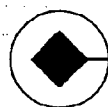
EXHIBIT D

In the Matter Of:

NORRIS EARL WHITE, JR vs CITY OF NORTH CHARLESTON

OFFICER ANTHONY KING

February 09, 2017



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Officer Anthony King

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS	1	Page 3
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT	2	
NORRIS EARL WHITE, JR.,	3	
Plaintiff,	4	
-vs-	5	
Case No.:	6	
2015-CP-10-6561	7	
CITY OF NORTH CHARLESTON,	8	
Defendant.	9	
THE DEPOSITION OF OFFICER ANTHONY KING,	10	
taken on behalf of the Plaintiff, on February 9, 2017,	11	
commencing at 10:13 a.m., at the Law Offices of Senn Legal, 3	12	
Wesley Drive, Charleston, South Carolina, 29407.	13	
Reported by: Douglas K. Liperote	14	
Spectrum Reporting Services	15	
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Page 5 1 case? 2 A. Correct. 3 Q. So you are aware that your testimony is under oath? 4 A. Yes. 5 Q. Just as if we were in a courtroom without a judge? 6 A. Yes. 7 Q. I would just ask that you listen to my entire 8 question before you answer, and I'll let you finish your 9 answer before I start a new one so that we're not interrupting 10 each other. It makes it easier for him to do his job. 11 I think you probably know you can't -- you shouldn't 12 use head shakes or interjections, hand gestures. I would just 13 ask that you answer "yes" or "no" or "left" or "right," and 14 that sort of thing. During the deposition, the time to 15 consult with your attorney is suspended. If you speak to her 16 about any topic or subject, I can actually ask you about it. 17 And while we're on that topic, are you represented 18 by Robin? 19 A. Yes. 20 Q. Okay. So is there any reason why you can't give 21 your best testimony today? 22 A. No. 23 Q. Is there any reason why you couldn't give truthful 24 testimony in any way? 25 A. No.	Page 7 1 A. Sometimes. 2 Q. Which gym? 3 A. The city's provided -- the city municipal gym. 4 Q. Do you belong to any golf courses? 5 A. No. 6 Q. And where do you live? 7 A. North Charleston. 8 Q. What's your address? 9 A. 7709 Peggy Drive, P-E-G-G-Y. 10 Q. What is the zip code? 11 A. 29418. 12 Q. Besides what Robin may have discussed with you, 13 please tell me what you did to prepare today for the 14 deposition. 15 A. I reviewed the incident report from the date, and 16 I've also reviewed the video from the date. 17 Q. What portions of the incident report did you review? 18 A. Primarily my portion, but the incident report in its 19 completeness. 20 Q. So you read Officer Arroyo's narrative? 21 A. Yes. 22 Q. And his supplemental narrative? 23 A. I don't remember if he did a supplemental on top of 24 his initial. 25 Q. We'll get to that later and figure it out. Did you
Page 6 1 Q. Are you under the influence of any drugs or alcohol 2 that might affect your ability to truthfully answer. 3 A. No. 4 Q. Those are questions that are asked of everyone. 5 In asking some of the questions throughout the 6 deposition, it would be really time-consuming to give you an 7 introduction or a qualification as to the date of this actual 8 incident. So when I'm speaking to you, if I refer to 9 "incident" or "arrest," generally, at any point in time, I'll 10 be referring to this case and the arrest of Norris White, Jr., 11 on December 28, 2013, at the Waffle House on Ashley Phosphate 12 Road. Do you understand? 13 A. Yes. 14 Q. Okay. Are you a member of any civil clubs or 15 organizations? 16 A. Can you define civil clubs? 17 Q. Like philanthropic organizations, NRA -- 18 A. I'm a member of the Fraternal Order of Police. 19 Q. Any other civil clubs or organizations? 20 A. No. 21 Q. Are you a member of a church? 22 A. No. 23 Q. Do you belong to any other groups or clubs? 24 A. No. 25 Q. Do you go to a gym?	Page 8 1 view the surveillance video from the Waffle House? 2 A. Yes. 3 Q. And you viewed it in its entirety? 4 A. I reviewed the portion that pertained to this arrest 5 of Norris White. 6 Q. So you reviewed Officer Arroyo approaching Norris 7 White's table? 8 A. Yes. 9 Q. And then removing him from the table? 10 A. I reviewed him asking them -- it appeared to be that 11 they got up from the table, yes. 12 Q. And you reviewed from a different angle where they 13 moved to another part of the restaurant? 14 A. Yes. 15 Q. And then on their way out, Officer Arroyo and Norris 16 White as they're exiting the Waffle House? 17 A. As we're exiting the Waffle House, yes. 18 Q. So you're the second officer in the surveillance 19 video captured at the Waffle House? 20 A. Yes. 21 Q. Did you review any other pleadings or the Complaint 22 or the Answer? 23 A. What do you mean by pleadings? 24 Q. A pleading is a formal document that's filed with 25 the court that begins a lawsuit. So if you don't know what a

Page 9	Page 11
1 pleading is, you likely did not read it. 2 A. No. 3 Q. Did you review any discovery responses? 4 A. No. 5 Q. Did you speak to any police officers in preparing 6 for the deposition? 7 A. No. 8 Q. Did you speak to any other person, other than your 9 lawyer, to prepare for the deposition? 10 A. Yes. 11 Q. Who did you speak to? 12 A. Officer Alex Kaufman. 13 Q. And what did you speak about? 14 A. To let him know that this case was being scheduled 15 for a trial. 16 Q. What is Officer Kaufman's role? 17 A. He was another officer on the scene. 18 Q. What is his title? 19 A. Officer. 20 Q. Is he a patrolman? 21 A. He's since left the department. 22 Q. Where is he now? 23 A. I believe for an insurance company. 24 Q. Like an Allstate, or -- 25 A. Possibly. I'm not 100 percent sure which one.	1 Q. Would you agree with me that this applies to all 2 people regardless of race, religion, gender or ethnicity? 3 A. Yes. 4 Q. Would you agree that all people have a right to be 5 secure in their persons, their houses and property? 6 A. Yes. 7 Q. This applies whether or not you like a person? 8 A. Yes, that applies whether or not I like a person. 9 Q. And this applies whether or not you find a person 10 ominous or not? 11 A. Yes, I believe that it applies. 12 Q. And this applies in all places in the United States? 13 A. Correct. 14 Q. The Fourth Amendment, to be free from unreasonable 15 searches and seizures applies even though you may find people 16 to be your enemy, correct? 17 A. Yes. 18 Q. Where are you working presently? 19 A. North Charleston Police Department, special 20 operations, trafficking. 21 Q. When did you start working for North Charleston 22 Police Department? 23 A. February 2007. 24 Q. Where did you work before that? 25 A. J.C. Penney.
Page 10	Page 12
1 Q. As a salesman? 2 A. I don't know. 3 Q. Did you just speak to him on the phone? 4 A. Yes. 5 Q. Can you please describe for me the content of the 6 conversation? 7 A. I let him know that this case that he was part of, 8 because he put a supplement in the report, was being scheduled 9 for a trial and to expect a call from Robin. 10 Q. What did he say? 11 A. Okay. 12 Q. Did you do anything else to prepare for the 13 deposition today? 14 A. No. 15 Q. When you met with your lawyer, was anybody else 16 present? 17 A. No. 18 Q. I'm going to ask you if you agree with this 19 statement: The right of the people to be secure in their 20 persons, houses, papers and effects against unreasonable 21 searches and seizures shall not be violated and not warrants 22 shall issue but upon probable cause supported by oath or 23 affirmation and particularly describing the place to be 24 searched and persons or things to be seized. 25 A. Yes.	1 Q. What were you doing at J.C. Penney? 2 A. I was a department supervisor. 3 Q. What's your date of birth? 4 A. September 2, 1981. 5 Q. Did you go to high school in town? 6 A. Yeah. 7 Q. Where did you go? 8 A. R.B. Stall High School. 9 Q. Did you play sports? 10 A. No. 11 Q. Is your family in town? 12 A. Some of them, yes. 13 Q. Did you go to college? 14 A. Yes. 15 Q. Where did you go to college? 16 A. College of Charleston. 17 Q. What was your major? 18 A. Political Science. 19 Q. How many years did you spend there? 20 A. For undergrad, it took me six years. And for my 21 master's certificate, it took me another two years. 22 Q. What did you get a master's in? 23 A. Urban planning. 24 Q. Did you work while you were in college? 25 A. Yes.

Page 13 1 Q. Where did you work? 2 A. J.C. Penney. 3 Q. Did you attend the College of Charleston from 2000 4 to 2006? 5 A. 2001 to 2006, I believe it was. 6 Q. So from 2001 to January 2007 you worked for J.C. 7 Penney? 8 A. Yes. 9 Q. You didn't work for anybody else in between? 10 A. No. 11 Q. Why did you leave J.C. Penney? 12 A. Change of career. 13 Q. Any other reason? 14 A. No. 15 Q. Were you ever reprimanded at J.C. Penney for any 16 reason? 17 A. No. 18 Q. Were you ever involved in any physical altercations 19 while being employed at J.C. Penney? 20 A. No. 21 Q. And you've been employed with North Charleston 22 Police Department since February 2007 with no breaks in 23 between? 24 A. Correct. 25 Q. And where are you based with the North Charleston	Page 15 1 A. Sergeant. 2 Q. And what division were you working for? 3 A. The traffic unit. 4 Q. What was your role in the division? 5 A. I was a DUI enforcement officer. 6 Q. So what kind of cases were you working on? 7 A. Mostly impaired driving cases. 8 Q. Is it really a very similar role to a -- like a 9 regular patrolman? 10 A. It is, except for my primary focus was impaired 11 drivers, whereas regular patrolmen could have any variety of 12 focuses. 13 Q. Were your hours at night? 14 A. Yes. 15 Q. What were your typical hours? 16 A. Typically ranged from -- depending on the day, it 17 could be as early as 9:00 p.m. to 5:00 a.m., or as late as 18 11:00 p.m. to 7:00 a.m. 19 Q. And your general responsibilities? 20 A. Just traffic enforcement, and specifically to remove 21 impaired drivers. 22 Q. Do you remember when the division was created? 23 A. I'm pretty sure it's been around for approximately 24 20 years. 25 Q. The DUI enforcement?
Page 14 1 Police Department? 2 A. What do you mean? 3 Q. Where's your office? 4 A. Centre Pointe. 5 Q. And when did you attend the academy? 6 A. From March 2007 to May 2007 I believe it was. 7 Q. Have you ever been the subject of an internal 8 investigation at North Charleston Police Department for any 9 complaint? 10 A. Not that I'm aware of, no. 11 Q. Have you ever been the subject of an investigation 12 by SLED? 13 A. No. 14 Q. Has anyone ever filed a complaint against you? 15 A. Not that I'm aware of. 16 Q. At the time of the incident being December 28, 2013, 17 what was your rank? 18 A. Patrolman First Class. 19 Q. Who was your immediate supervisor? 20 A. I believe it was Sergeant Rick Keys. 21 Q. Can you please spell that last name? 22 A. K-E-Y-S. 23 Q. And that was Rick? 24 A. Yes. 25 Q. What was his rank?	Page 16 1 A. It's been rolled into the traffic unit, yes. 2 Q. How many members are part of the DUI division? 3 A. There's always been about two. 4 Q. Do you get special compensation? 5 A. No. 6 Q. You say that Rick Keys is your direct supervisor. 7 Is he in charge of the division? 8 A. He was my supervisor at the time, I believe, and he 9 was in charge of my part of the unit. 10 Q. Who heads up the division? 11 A. At the time it was -- I believe it was Deputy Chief 12 Reggie Burgess, and then Captain Coyle Kinard at the time. 13 Q. How do you spell Kinard? 14 A. K-I-N-A-R-D. 15 Q. Have you ever engaged in secondary or off-duty 16 employment? 17 A. Yes. 18 Q. When have you engaged in secondary or off-duty 19 employment? 20 A. Sporadically over the course of being with the 21 department. 22 Q. Since 2007 you have? 23 A. Yes. 24 Q. Where have you engaged in secondary or off-duty 25 employment?

Page 17 1 A. Various locations such as 5K runs where roads need 2 to be closed, the Coliseum for assisting with parking, and I 3 think that's pretty much it. 4 Q. 5K runs and the Coliseum parking? 5 A. Yes. 6 Q. Never in a restaurant? 7 A. No. 8 Q. Do most officers at North Charleston Police 9 Department participate in secondary or off-duty employment? 10 A. I believe that a larger proportion of them, yes. 11 Q. Just as secondary income? 12 A. Yes. 13 Q. What was your role in your off-duty assignments 14 during the 5K runs and the Coliseum parking role? 15 A. For the 5K runs it was for road closures, obviously 16 so the run could go through. And for the Coliseum it was to 17 facilitate traffic coming in during an event and exiting after 18 the event's over. 19 Q. How many North Charleston Police Department policies 20 or standing orders exist that regulate off-duty and secondary 21 employment? 22 A. I don't recall. 23 Q. Are you aware of any policies or standing orders 24 that regulate off-duty -- 25 A. I do know we have policies, yes.	Page 19 1 A. My understanding of the policies, and I can't say 2 them verbatim, is that they would have to engage that person 3 first, and then if that doesn't resolve the situation then we 4 can get involved. If that's what you're asking. 5 Q. I am. So, in essence, your understanding as to 6 North Charleston Police Department policy is that in that kind 7 of scenario, an employer or an agent of the employer would 8 have to take some act; for example, requesting that the 9 customer leave or exit the premises before you could actually 10 take action? 11 A. For a 5K or are we talking -- 12 Q. This is a really poor question. I apologize. 13 In the scenario I just gave you, one example from 14 the answer you just provided would be a manager for the 15 coliseum requesting that a customer leave the premises for 16 unruly behavior. At that point the customer would be 17 trespassing after notice, correct? 18 A. Yes. 19 Q. Before actually requesting the patron to leave, are 20 you aware of a policy that prohibits you from taking orders or 21 direction from a manager regarding your duties as a police 22 officer? 23 MS. JACKSON: Objection to the form. You 24 can answer. 25 A. I believe the policies in their totality
Page 18 1 Q. But you don't know how many? 2 A. I do not. 3 Q. Can you recall any specific policies? 4 A. No, I can't. Specific policies, no. 5 Q. At the time of the incident were you aware of any 6 policies that prohibits an officer from following orders of a 7 secondary employer, like the Waffle House? 8 A. What do you mean? 9 Q. For example, while you were providing secondary 10 employment for 5K runs, a policy that would prohibit you from 11 taking direction from one of the staff that was running the 12 event? 13 A. I'm not aware that there's a policy that says we 14 can't listen to what the off-duty employer is asking, if 15 that's what you're asking. 16 Q. Or follow the direction of the off-duty employer 17 with regarding your duties as a police officer? 18 A. As far as them telling me what I can and can't do as 19 a police officer? 20 Q. Not can or can't do, but direction. For example, a 21 manager at the coliseum might not like an unruly customer 22 who's parking a car. Are you aware of a policy that would 23 prohibit you from taking direction from the manager who might 24 be telling you to go do something about some unruly person 25 parking a car?	Page 20 1 specifically mention something along those lines. I couldn't 2 tell you exactly what they say. But, essentially, I know that 3 as a law enforcement there has to be a violation that occurs 4 in our presence, or, in your example, trespassing after notice 5 where a violation has now occurred, where we would have to get 6 involved and take action. 7 Q. For example, it would be a violation of policy if a 8 manager said, hey, go arrest that person if the person didn't 9 commit a misdemeanor in your presence? 10 A. That's my understanding. 11 MS. JACKSON: Objection to the form. 12 Q. Did you have to take an oath as a law enforcement 13 officer with the North Charleston Police Department? 14 A. Yes. 15 Q. And what is that oath? 16 A. I can't repeat it verbatim. I'm sorry. 17 Q. Do you have a copy of it? 18 A. No, not with me. 19 Q. Please tell me in your own words what the oath is 20 that you took? 21 MS. JACKSON: Objection to the form. 22 A. In my own words, or in my representation of it, it 23 is an oath to adhere to the constitution both of the State and 24 of the United States, adhere to the city ordinances, city 25 policies. The short version after that is to serve and

Page 21

1 protect.
 2 Q. Part of your oath is that you swear to uphold the
 3 laws of the State of South Carolina?
 4 A. Yes.
 5 Q. And you swear to protect the citizens of North
 6 Charleston --
 7 A. All citizens, yes.
 8 Q. -- South Carolina. You swear to enforce the laws of
 9 South Carolina?
 10 A. Yes.
 11 Q. And the criminal code? Is that a yes?
 12 A. Yes.
 13 Q. If a crime is conducted in your presence, it's a
 14 part of your oath to conduct an arrest at the time to enforce
 15 the law?
 16 A. One more time, please?
 17 Q. Take your time and get some more water. I'm not in
 18 a rush.
 19 A. Okay. I'm good.
 20 Q. If a crime is conducted in your presence, is part of
 21 your oath to conduct an arrest at the time to enforce the law?
 22 A. Conduct an arrest, if necessary -- if I deem it
 23 necessary or if it's required by law, such as a felony
 24 offense.
 25 Q. And you promise not to let ill will, malice or

Page 22

1 prejudice affect your partiality in carrying out your duties?
 2 A. Yes, I promise to not let any of my prejudices that
 3 might exist affect my duties.
 4 Q. Is there anything else that you promise in your oath
 5 as a police officer?
 6 MS. JACKSON: Objection to the form.
 7 A. I don't recall the exact rest of the oath, but I did
 8 swear to it.
 9 Q. Is part of your oath the promise to uphold the
 10 public trust?
 11 A. I believe so, yes.
 12 Q. And you would agree with me that your badge is a
 13 privilege?
 14 A. Yes.
 15 Q. You don't have a right to carry the badge?
 16 A. That is correct.
 17 Q. And the public puts its faith and trust in you to
 18 uphold the law and the constitution?
 19 MS. JACKSON: Objection to the form.
 20 A. Yes. The public does have a certain trust in us
 21 because of the badge that we wear.
 22 Q. And you agree that you're an arm of the taxpayer?
 23 MS. JACKSON: Objection to the form.
 24 A. Arm of the taxpayer? I'm sorry, what do you mean by
 25 arm of the taxpayer?

Page 23

1 Q. You're an arm of the public?
 2 MS. JACKSON: Objection to the form.
 3 A. As like a public servant, is that what you're
 4 saying?
 5 Q. Yes, sir.
 6 A. Yes, I'm a public servant.
 7 Q. Let's talk about your law enforcement training.
 8 Do you know how many hours of law enforcement
 9 training you've had over the years?
 10 A. Not off the top of my head.
 11 Q. Is there a way to quantify it?
 12 A. I believe the academy quantifies it for us, I just
 13 don't know the total number of hours.
 14 Q. For example, attorneys have CLE hours we have to
 15 perform over a year. Is there a certain amount of training
 16 hours that you're required to have on an annual basis?
 17 A. Yes, I believe it's 40 hours every year. And I
 18 believe you have recertifications every three years, and you
 19 have to have to meet that 40 hours; 120 every three years to
 20 maintain your certification.
 21 Q. What type of education do you go through in
 22 obtaining those hours?
 23 MS. JACKSON: Objection to the form.
 24 A. Do you mean from the -- back in 2007 to today, or
 25 are you talking about on a yearly basis?

Page 24

1 Q. On an annual basis from 2007 to the date of the
 2 incident.
 3 A. We go through -- every year it varies just a little
 4 bit. I don't know the specifics of what's required to
 5 maintain your certification. I do know we go through -- as a
 6 matter of fact, I used to teach certain portions of it:
 7 Defensive driving, domestic violence, a legal update. Now we
 8 go through scenario-debates training, hazmat, there is usually
 9 a Taser update. I can't think of the other topics that are --
 10 but it varies outside of those basic ones usually every year.
 11 Q. Did you have any training on probable cause during
 12 --
 13 A. Yes, both at the criminal justice academy and
 14 through our legal updates.
 15 Q. Do you get that on an annual basis?
 16 A. Essentially, yes.
 17 Q. Do you have continuing education for proper and
 18 necessary force to apply in effecting an arrest?
 19 A. I believe there's a use-of-force update. I want to
 20 say it's almost annually. There's a training block in for
 21 that.
 22 Q. Do you have a choice as to what classes you can
 23 attend to acquire the 40 hours annually?
 24 A. No. Our department and our training unit sets up
 25 that schedule.

Page 25 1 Q. Does everyone train as a group? 2 A. With over 300 officers, we can't. So they break it 3 down into groups of about 15 or so. 4 Q. And you stated that you did attend the South 5 Carolina Criminal Justice Academy? 6 A. Correct. 7 Q. And what did you learn there? 8 A. The basics of law enforcement, the basics of law, 9 defensive driving, defensive tactics, how to shoot. 10 Q. Do they teach you about probable cause? 11 A. Yes, I believe it was week one to three back then. 12 Q. They teach you how to secure suspects? 13 A. Yes, and defensive tactics. 14 Q. How to take them into custody? 15 A. Correct. 16 Q. And they teach you how to take care of a citizen who 17 is under your control? 18 MS. JACKSON: Objection to the form. 19 A. How to take care of a citizen that's like under 20 arrest? Yes. 21 Q. Do they teach you about your duties regarding 22 citizens that are under your control? 23 A. Yes, how to take care of a citizen under our 24 control. 25 Q. When did you first learn about incident report	Page 27 1 A. When you leave out facts it appears that way to 2 others. 3 Q. So why is report-writing important? 4 A. Why is report -- because it documents what happened. 5 Q. Does it help you to testify? 6 A. It helps you to remember what happened, yes. 7 Q. And to later testify if necessary? 8 A. Yes. 9 Q. And it helps you inform other officers involved in 10 the case? 11 A. It's there so that they can read the report 12 themselves without actually having to ask you, if necessary. 13 Q. So if other officers get involved in a certain case, 14 it allows them to take over and rely on your report? 15 MS. JACKSON: Objection to the form. 16 A. What do you mean "rely on my report"? Other 17 officers, when you do a report, the primary officer always 18 does the primary narrative, if that's, per se, what you're 19 asking, and then other officers add in what their part was as 20 far as that. That's how it is supposed to be. 21 Q. Reviewing and relying on reports is a standard, 22 common, ordinary part of a police officer's job? 23 A. Yes. 24 MR. STRATOS: Go ahead and mark this 1. 25 (Whereupon, Exhibit 1 was
Page 26 1 writing? 2 A. At the academy. 3 Q. After the academy? 4 A. At the academy. 5 Q. Okay. And what did they teach you? 6 A. Just the basics of what requirements, how the 7 systems are usually set up. 8 Q. They teach you that your writing needed to be 9 accurate? 10 A. Yes. 11 Q. Complete? 12 A. Yes. 13 Q. And truthful? 14 A. Yes. 15 Q. And completeness is important because if it's not 16 complete then the omissions can make it untruthful or 17 misleading? 18 MS. JACKSON: Objection to the form. 19 A. If it's incomplete, yes, it could appear to be 20 untruthful. 21 Q. When the court swears you in you promise to tell the 22 truth, the whole truth, and nothing but the truth, right? 23 A. Yes. 24 Q. Because when you leave out some facts, it's the same 25 thing as a lie or it's untruthful?	Page 28 1 marked for identification.) 2 MS. JACKSON: This is missing one page. I 3 don't know if it's important. Not important? 4 MR. STRATOS: Huh-uh, thanks. 5 BY MR. STRATOS 6 Q. Officer King, I have just handed you Exhibit Number 7 1. At the top it reads, "Incident Report," correct? 8 A. Yes. 9 Q. Are you familiar with this document? 10 A. Yes. 11 Q. And all four pages? 12 A. All five, yes. 13 Q. I'll represent to you that there are highlights in 14 there. They're not intentional. I would just ask that you 15 ignore the highlights. 16 A. Okay. 17 Q. The first page, can you describe for me the purpose 18 of this first page? 19 A. The first page for our incident reports, the way our 20 system is set up it indicates the incident type, which was 21 selected for the UCR code out of the FBI's reporting system. 22 It tells you where, the premise type. So if it was in the 23 road, it was at a residence, parking garage, that kind of 24 thing. It gives you the incident date. It gives you a 25 24-hour clock so you can kind of sandwich, per se, when the

Page 29

1 incident occurred. Dispatch times. Location number is what
 2 our internal zone or area that it occurred in. Victim's
 3 information. Complainant's information. Suspect's
 4 information. Basics.
 5 And then allows for supplements to be put in. And
 6 then if there was a property involved like a theft of property
 7 or recovered of stolen property, it would allow that
 8 information along with the values to be in. At the bottom,
 9 you get the reporting officers, the primary two, and then the
 10 approving officer next to that. And whether or not it needs
 11 to be followed up with a follow-up investigation.
 12 Q. I just noticed on this first page, the approving
 13 officer is blank. Is that common?
 14 A. That just means that this was printed out -- or they
 15 selected the wrong printout. There is a way to print it where
 16 you can print -- if the approving officer hasn't signed off,
 17 you can print a copy. Say if I needed one, and then if the
 18 approving officer, once he approves it, you have to select
 19 that you want the one with the approving officer to show up.
 20 Q. Okay. And internal policy requires that an
 21 approving officer sign off on every incident report?
 22 A. Yes.
 23 Q. Did you write all the information into the system
 24 above the "Supplement: A. King"?
 25 A. I don't recall. Usually, if it's not my case, I

Page 30

1 don't do anything but my supplement.
 2 Q. Okay. Would this be considered Officer Arroyo's
 3 case?
 4 A. Yes.
 5 So did he likely input all this material above your
 6 supplement?
 7 A. Most likely, yes.
 8 Q. And it appears the charges are disorderly conduct
 9 and resisting arrest, is that correct?
 10 A. Yes.
 11 Q. And 5:25, what time does that represent?
 12 A. From my reports, that would be the arrest time or
 13 departure time, depending on what the incident report was. I
 14 don't recall what the 5:25 represents for this one.
 15 Q. If you look down the middle, somewhat to the right
 16 on the first page of Exhibit Number 1, you'll see Date/Time of
 17 Offense, 05:07:21 AM, on December 28, 2013?
 18 MS. JACKSON: Where?
 19 MR. STRATOS: (Indicating).
 20 MS. JACKSON: Oh, okay.
 21 A. Okay, yeah.
 22 Q. Is this the time that Officer Arroyo would have
 23 radioed in for help?
 24 MS. JACKSON: Objection to the form.
 25 A. Could be, yes. That could have been auto-populated

Page 31

1 from the dispatch center since it has the 21 seconds.
 2 Q. To your understanding, Officer Arroyo is the officer
 3 that radioed in for assistance, correct?
 4 A. Right.
 5 Q. No other officer radioed in for assistance?
 6 A. To my recollection, correct.
 7 Q. So more likely than not, the 5:07:21 seconds
 8 represents the time that Officer Arroyo radioed in for help?
 9 MS. JACKSON: Objection to the form.
 10 Answer if you know.
 11 A. That could represent the time, yes.
 12 Q. Did dispatch contact you to arrive at the Waffle
 13 House to assist Officer Arroyo?
 14 A. No, dispatch didn't contact me.
 15 Q. Can you tell me how that works?
 16 A. When somebody calls for help, it'll go out to
 17 everybody that is on that channel. Usually, if no one answers
 18 up, they'll start calling people who they know are working in
 19 that area to respond. That's not what occurred this time.
 20 Q. What occurred?
 21 A. I was clearing a traffic stop on a suspected
 22 impaired driver. I was literally across the street from the
 23 Waffle House. After clearing that, almost simultaneously, the
 24 call for assistance came out, so I U-turned and pulled into
 25 the Waffle House parking lot.

Page 32

1 Q. Do you know what time you pulled into the Waffle
 2 House parking lot?
 3 A. Not with -- I would have to estimate it was about
 4 5:07 in the morning.
 5 Q. Is there a way to look at the report and make that
 6 determination?
 7 A. I didn't put a time in there, and I don't think -- I
 8 don't see that Arroyo documented either what time I actually
 9 pulled into the parking lot.
 10 Q. Do you recall how many officers were on patrol that
 11 night, 12/28/2013 -- sorry, that morning?
 12 A. Are you referring to this particular part of the
 13 city or just --
 14 Q. Yes, sir, just that particular part of the city.
 15 A. I do not. I wasn't assigned to patrol, so I have no
 16 idea how many officers would have been working that night.
 17 Q. Do you have an estimate of how many officers would
 18 have heard the call to dispatch?
 19 MS. JACKSON: Objection to the form.
 20 A. I assume all the officers that were working as part
 21 of the city since this was a separate radio channel.
 22 Q. Do you know how many officers appeared at the scene
 23 at any point in time to respond to the call?
 24 A. I remember just me and Arroyo at first. I know,
 25 obviously, Officer Kaufman got there, and a supervisor. I

Page 33

1 don't remember which supervisor got there.
 2 Q. How many supervisors were there at the time?
 3 A. Eventually, I think a sergeant -- I think it might
 4 have been Sergeant Lawless that showed up. I don't know if
 5 more than just him was there, but.
 6 Q. And approximately what time do you believe Officer
 7 Lawless appeared?
 8 A. After the -- I think it was after the arrest was
 9 made and he was already in my back seat.
 10 Q. And Officer Kaufman?
 11 A. I'm pretty sure it was close to that, too.
 12 Q. What portion of this incident report did you write
 13 on your own?
 14 A. The supplement I put in.
 15 Q. The supplement is the little section on the first
 16 page of Exhibit Number 1?
 17 A. Correct. For this exhibit it would be page one, and
 18 then page three if this is how it's set up properly. The one
 19 that says, "A. King," with my badge number and the date at the
 20 top.
 21 Q. So the portions of the incident report that do not
 22 have "A. King" at the very top, you didn't write?
 23 A. Correct.
 24 Q. Did you assist either Officer Kaufman or Officer
 25 Arroyo produce their report?

Page 34

1 A. No.
 2 Q. Do you recall when you produced your report?
 3 A. I would have cleared the scene because it was almost
 4 time to go home, so I would have cleared the scene and gone
 5 and put my supplement in and then go home.
 6 Q. You mean you would have input it into your computer?
 7 A. At the office. At the time, and for most of us even
 8 now, we can't do these on the street.
 9 Q. Did Officer Kaufman take Norris White to Trident
 10 Hospital?
 11 A. According to his report, yes.
 12 Q. Did he follow an EMS?
 13 A. I don't recall, but that's normally how -- if the
 14 EMS is there and the EMS says to transport, they usually
 15 transport him and the officer follows behind.
 16 Q. Did anyone help you write your incident report?
 17 A. No.
 18 Q. Who did you speak to to gather the facts?
 19 A. Before I left the scene, I made sure I understand
 20 why I was there in the first place, and then pretty much I
 21 just put in what I did once I got there.
 22 Q. When did you first learn the reason for you being
 23 there?
 24 A. When Officer Arroyo called over the radio, obviously
 25 there was something going on. After the arrest was made and

Page 35

1 escorted to my vehicle, that's when Officer Arroyo explained a
 2 little bit as to why the assist was needed in the first place.
 3 Q. What exactly did Officer Arroyo radio?
 4 A. I think we used 10 codes back then.
 5 Q. I'm sorry?
 6 A. 10 codes.
 7 Q. Like T-E-N?
 8 A. Yes, which were abbreviated numbers or numerical
 9 codes, radio codes for longer -- that would take longer to
 10 transmit situations. Even today, if I got into a struggle,
 11 I'd probably default to some of the 10 codes. But he probably
 12 said 10-10, or fight with an officer, which would have gotten
 13 all of our attention, which is why I U-turned into the parking
 14 lot.
 15 Q. Why would it have gotten your attention?
 16 A. Because a struggle with an officer, you go back up
 17 whoever that is.
 18 Q. So you think he radioed 10-10 or a fight?
 19 A. Yeah.
 20 Q. Something that seemed like an emergency?
 21 MS. JACKSON: Objection to the form.
 22 A. Correct.
 23 Q. Do you know the exact definition of 10-10?
 24 A. We stopped using 10 codes primarily a few years
 25 back, so I don't remember the exact definition. It might have

Page 36

1 been officer in distress or something along those lines.
 2 Q. So were you in a hurry to get over to the Waffle
 3 House?
 4 A. Yes.
 5 Q. Due to Officer Arroyo's call over the radio, you
 6 believed he was in distress?
 7 A. Yes.
 8 Q. So you didn't speak to Officer Arroyo before you
 9 assisted him, handcuffed and escorted Mr. White outside?
 10 A. No.
 11 Q. You didn't know any specific facts as to why Mr.
 12 White was under arrest?
 13 A. No.
 14 Q. When did you learn the specific facts as to why
 15 Mr. White had been arrested?
 16 A. Once he was under arrest and secured in what
 17 happened to be my patrol car.
 18 Q. So you placed Mr. White in your patrol car?
 19 A. Yes.
 20 Q. Officer Arroyo accompanied you?
 21 A. Yes.
 22 Q. Were any other officers present at that time?
 23 A. I don't recall.
 24 Q. And when did Officer Arroyo first begin to explain
 25 the facts as to why Mr. White was arrested?

Page 37	Page 39
1 A. Once the subject was detained and he was put in my 2 back seat. It's normal to kind of have a quick debrief, per 3 se, as to what led up to the arrest. 4 Q. What did Officer Arroyo say to you at that time? 5 A. I believe it revolved around that he was under 6 arrest for disorderly conduct, and then, obviously, for 7 resisting, because I had to come over there to assist. I 8 don't recall that we got into specifics at what was 9 disorderly, but I do recall that -- pretty confident that we 10 talked about at least why he was under arrest. 11 Q. Can you describe Officer Arroyo's temperament at 12 that time? 13 A. He was out of breath, obviously, from the struggle, 14 but other than that, he was calming down. Of course, when 15 you're struggling with somebody, there's a little bit of 16 adrenalin in there, so you have to come down off your 17 adrenalin. But nothing out of the normal, personality-wise, 18 for Officer Arroyo in my encounter with him prior to the... 19 Q. Did he seem excited? 20 A. I believe the adrenalin was still in him, yes. 21 Q. Did you or Officer Arroyo ever place Mr. White on 22 the hood of your car? 23 A. I don't believe so, no. 24 Q. Is it policy to search a suspect before you place 25 him in the car?	1 Q. The four-door? 2 A. Yes. 3 Q. Were you wearing a body camera? 4 A. I don't believe we had them. I didn't have one at 5 the time. 6 Q. Was there an in-car camera in your unit? 7 A. Yes. 8 Q. Does it capture the outside of your car? 9 A. It wasn't activated. 10 Q. Does it capture the outside of your car? 11 A. Yes, it would, if it was on. 12 Q. Does it capture the interior of your car? 13 A. Yes, if it was on. 14 Q. How do you activate your in-car camera? 15 A. Activating your blue lights. 16 Q. Is that the only way to activate your in-car camera? 17 A. If you're -- if things aren't hectic, then you can 18 trigger it using your belt mic. 19 Q. Are you required by policy to activate your in-car 20 camera when you're apprehending a subject? 21 A. During any law enforcement action, yes. 22 Q. When you placed Mr. White into the rear of your 23 vehicle, were you required by policy to have the in-car camera 24 activated? 25 A. I don't believe so because, technically, the law
Page 38	Page 40
1 A. Correct. Yes, it is policy to search him. 2 Q. Would you generally place a suspect's body against 3 the vehicle to secure him while you're searching him? 4 A. It depends on the suspect. Definitely not against 5 the hood because that's actually an officer safety issue. But 6 if you have to lean him on like the side of the car as you're 7 opening the door so you can search him, I've seen that happen. 8 Q. Why is it an officer safety issue to put a suspect 9 on the hood of the car? 10 A. One, if the car is running, they can get injured 11 from the heat, the car being hot. Two, it can actually put an 12 officer at a disadvantage if he decides to push off or take 13 off running, because you can throw off your center of balance, 14 fall over. I've seen videos where they've swung around from 15 being placed on the hood and take an officer's weapon and that 16 kind of thing. 17 Q. So they can use the vehicle as leverage? 18 A. Correct. 19 Q. Did you personally search Mr. White? 20 A. I don't recall who actually did the search. I know 21 he was searched, but I don't recall who actually did it. 22 Q. Were there any weapons found on Mr. White? 23 A. I don't believe so. 24 Q. What type of car were you driving that night? 25 A. Unfortunately, it was still my Crown Victoria.	1 enforcement action had already occurred. He was already under 2 arrest. 3 Q. In-car cameras would assist you in proving up facts 4 in a case, correct? 5 MS. JACKSON: Objection to the form. 6 A. They could, yes. 7 Q. Is there any reason why your in-car camera was not 8 activated? 9 A. Exigent circumstances. I had just turned it off 10 from clearing my traffic stop when, simultaneously, the call 11 came out. I U-turned it, pulled into the parking lot, and 12 kind of walked in. We're talking seconds, if that much. I 13 just didn't -- I never turned on my blue lights to U-turn into 14 the parking lot. I just turned them off. And when I walked 15 in, there was a struggle in front of me, so I never -- it 16 never occurred to me to hit my belt mic, too, because I was 17 trying to help an officer make an arrest. 18 Q. Hitting the belt mic would have turned on the blue 19 lights in your vehicle or -- 20 A. Just the camera. 21 Q. Are you aware of any specific North Charleston 22 Police Department policies regarding the in-car camera usage? 23 A. I have vague -- broadly know of them, yes. 24 Q. Do you know the number of policies? 25 A. No, I don't know the number.

Page 41 1 Q. Can you recall any of them? 2 A. By specifically, no. 3 Q. Can you recall any of the rules in them? 4 A. I can broadly recall, generally, what the department 5 wants you to do if you're equipped with a camera. 6 Q. Can you describe your conversation with dispatch on 7 12/28/2013? 8 MS. JACKSON: Objection to the form. 9 A. As far as from the beginning of the night or from 10 when I got involved to help with Officer Arroyo? 11 Q. Let's just start at the beginning. You've already 12 discussed that you heard Officer Arroyo radio something to the 13 effect of 10-10, meaning that he was in imminent danger? 14 A. Officer distress. 15 Q. Officer distress call. What happened next with 16 dispatch? What was sort of the discussion? 17 A. I would have cleared my traffic stop, so that they 18 can show me out with him. Then I would have checked on scene. 19 And then I most likely would have -- none of us would have 20 transmitted it in until he was under arrest -- in custody, 21 with both handcuffs being cuffed and everything. 22 Q. Would other officers have radioed into dispatch? 23 A. They probably would have checked in route just in 24 case, until we either said we didn't need them or subject was 25 in cuffs.	Page 43 1 in the Waffle House when you first went in? 2 MS. JACKSON: Objection to the form. 3 A. No, I do not. 4 Q. Do you recall if any of the patrons or employees of 5 the Waffle House were crying or shouting? 6 A. I do not. 7 Q. Did any Waffle House employee or patron say anything 8 to you while you were inside the Waffle House? 9 A. If they said anything to me when I was first walking 10 in, I wasn't paying attention to them, and I don't recall them 11 saying anything to me as we walked out with the arrestee at 12 the time either. 13 Q. At some point in time you went back in to 14 investigate, correct? 15 A. I probably walked back in, yes. 16 Q. I'm not trying to trap you there -- 17 A. No -- 18 Q. My question originally was did anybody say anything 19 to you when you first walked in. After you made the arrest 20 and put Mr. White in the vehicle, did you walk back in to the 21 Waffle House? 22 A. I probably did. I don't remember. And I don't 23 remember if I watched that part. Because for the video, I 24 just watched pretty much the incident. I didn't really pay 25 attention after or before.
Page 42 1 Q. Did you let dispatch know that you were the first to 2 arrive? 3 A. I wouldn't have said that. I would just checked on 4 scene. They would keep track of who was there, who was first 5 and that kind of thing. 6 Q. And do you remember the total number of officers 7 that responded? 8 A. No, I do not. 9 Q. In terms of making an arrest and taking an 10 individual into custody, in this case Mr. White, in total 11 there were four officers involved, correct? 12 MS. JACKSON: Objection to the form. 13 A. There was me, Officer Arroyo. Obviously Officer 14 Kaufman got there because he put a supplement. And then a 15 supervisor would have responded, which I believe was Sergeant 16 Lawless at the time. 17 Q. When you first walked into the Waffle House after 18 getting that call from dispatch, did the patrons appear to you 19 to be fearful? 20 MS. JACKSON: Objection to the form. 21 A. I don't recall. I wasn't really paying attention to 22 the patrons. I was paying to the attention to the suspect and 23 Officer Arroyo in an active struggle to not have Officer 24 Arroyo put him under arrest. 25 Q. You don't recall the attitudes of any of the patrons	Page 44 1 Q. You don't recall speaking to any witnesses after 2 Mr. White was in custody? 3 A. No, I don't recall that. 4 Q. And you don't recall speaking to any witnesses 5 before he was taken into custody? 6 A. No, definitely not before. 7 Q. The academy teaches you about using reasonable force 8 on someone in your custody, correct? 9 A. Yes. 10 Q. Can you describe your training on use of force on 11 someone in your custody? 12 MS. JACKSON: Objection to the form. 13 A. What do you mean? 14 Q. What type of training -- 15 A. Broadly or -- 16 Q. Is it in-classroom training? 17 A. At the academy, it's classroom and actual hands-on 18 training. At the department, it's also classroom and hands-on 19 training. 20 Q. Okay. So, let's start with the academy. Please 21 describe for me the in-classroom training on in-custody force 22 to use on a suspect in custody. 23 MS. JACKSON: Objection to the form. 24 A. Back then, I want to say it was -- I want to say it 25 was a week-long training where like one half of the day was

Page 45

1 classroom and the other half was hands-on training, I believe.
 2 Q. So for one week in the classroom they teach you how
 3 to use reasonable force on a suspect in custody, and then for
 4 a week after that time you had hands-on experience?
 5 A. I can't be specific, but I want to say it was one
 6 week and half of the day you were in the classroom and half of
 7 the day you were doing hands-on. It's been a while.
 8 Q. So you're not sure if it was a week or longer?
 9 A. I can't remember what it was back in 2007 at the
 10 academy now, specifically.
 11 Q. With the North Charleston Police Department, can you
 12 describe your training on reasonable force on someone in your
 13 custody?
 14 MS. JACKSON: Objection to the form again.
 15 A. In the annual training, we do the -- a brief review
 16 of use of force. They usually hand out the policy to
 17 everybody. And then we do a hands-on every year as well.
 18 Q. And how much training?
 19 A. It's like an hourly time quantified? Out of the
 20 forty hours I would say it's four to eight.
 21 Q. And, generally, what do they teach to you in those
 22 classes?
 23 A. It varies. They try to cover -- in the classroom
 24 section, they try to cover everything. In the hands-on stuff,
 25 they might cover what they see as -- you know, the instructors

Page 46

1 might see out on the road, or what they've told -- they ask
 2 for like, from the students, from the actual people in the
 3 class, they'll ask, what do you want to know more about or
 4 what do you want a refresh on? So the topic of the hands-on
 5 can vary from year to year and from class to class even.
 6 Q. Can you describe any North Charleston Police
 7 Department policy or standing order regarding use of force?
 8 A. Not specifically.
 9 Q. Would you agree that it's your duty to protect
 10 individuals from harm in your custody and control?
 11 A. Yes.
 12 Q. Would you agree as a general rule police officers
 13 should not use unnecessary force in controlling a person in
 14 their custody?
 15 MS. JACKSON: Objection to the form.
 16 A. Yes, a police officers should only use reasonable.
 17 Q. And why is that important?
 18 A. For everybody's safety involved, the officer and the
 19 person that's under arrest.
 20 Q. Still could get injured, correct?
 21 A. The officer and/or the suspect can get injured, yes.
 22 Q. And you're always supposed to follow the rule?
 23 A. Yes.
 24 Q. And you would expect other police officers to follow
 25 the rule?

Page 47

1 MS. JACKSON: Objection to the form.
 2 A. Yes.
 3 Q. It would be unsafe not to follow the rule?
 4 MS. JACKSON: Objection to the form.
 5 A. Yes, it would be highly unsafe for everybody
 6 involved during an arrest if we're not at least following the
 7 rules.
 8 Q. And if you break the rule you're responsible for the
 9 harms and losses; am I correct?
 10 MS. JACKSON: Objection to the form.
 11 A. If the rules are broken then there could be harm
 12 involved, yes.
 13 Q. And you'd be responsible?
 14 MS. JACKSON: Objection to the form.
 15 A. Depends on who breaks the rules.
 16 Q. The person who breaks the rules would be responsible
 17 for the harms and losses?
 18 MS. JACKSON: Objection to the form.
 19 A. Yes, if the suspect, the person under arrest or the
 20 officer breaks the rules.
 21 MR. STRATOS: Is your objection to the form
 22 of the question?
 23 MS. JACKSON: Yeah.
 24 MR. STRATOS: Is there something ambiguous
 25 about it or confusing?

Page 48

1 MS. JACKSON: Well, your last one wasn't
 2 even really even a question, so.
 3 MR. STRATOS: Can you please describe for
 4 me how it wasn't a question?
 5 MS. JACKSON: Can you read it back?
 6 (Whereupon, the last question
 7 was read back).
 8 MR. STRATOS: I believe the first one you
 9 object to was, "You agree that as a general rule a police
 10 officer should not use unnecessary force in controlling a
 11 person in their custody?"
 12 MS. JACKSON: Yeah. I maintain my
 13 objection to the form.
 14 MR. STRATOS: I'm going to go on.
 15 BY MR. STRATOS:
 16 Q. And you learned about the Fourth Amendment at the
 17 academy, correct?
 18 A. Correct.
 19 Q. And you've received continuing education with regard
 20 to the Fourth Amendment, correct?
 21 A. Correct.
 22 Q. What did you learn about the Fourth Amendment at the
 23 academy?
 24 A. Everything you said when we started this deposition.
 25 Q. The topics of the police officers' oath?

Page 49 1 A: I'm sorry? 2 Q: Were you referring to the topics of the police 3 officers' oath? 4 A: No, when you started about the Fourth Amendment, we 5 started. Those topics. The Fourth Amendment and its plain 6 text was covered at the academy. 7 Q: So what did you learn about the Fourth Amendment? 8 A: Do you want me to repeat what we said earlier or -- 9 Q: Yeah, if you don't mind. 10 A: That a person will be protected from unlawful 11 searches and seizures pretty much from the government. 12 Q: Is that same substance taught in follow-up training 13 with North Charleston Police Department? 14 A: Follow-up training and reading up on major case law 15 on our own. 16 Q: Well, what's your understanding of what the Fourth 17 Amendment requires of a police officer that's going to make an 18 arrest? 19 A: You need probable cause to make an arrest. 20 Q: Or a warrant, correct? 21 A: Or a warrant based on probable cause. 22 Q: And your understanding of what's required when a 23 police officer's going to seize a citizen? 24 A: Yes, you need probable cause to make an arrest. 25 Q: And your understanding of probable cause?	Page 51 1 was taken.) 2 BY MR. STRATOS: 3 Q: Did you receive at the academy any training on the 4 First Amendment? 5 A: Yes. 6 Q: Can you describe that training? 7 A: It was just going over the plain text of what the 8 First Amendment says. 9 Q: What does the First Amendment say? 10 A: You have a right to be free -- free of speech, 11 religion. There's a big third and I forgot what it was. 12 Q: Would you agree that it basically prohibits the 13 government from creating laws that prohibit the free exercise 14 of speech? 15 A: Yes. 16 Q: And it protects certain types of speech? 17 A: Yes, I believe it does. 18 Q: And what behavior provides probable cause to arrest 19 someone for disorderly conduct? 20 A: There's a lot. There's -- I believe specifically 21 mentions like loud and boisterous. Bear with me. I didn't 22 use it much. I don't remember what all the subsections say. 23 Q: Okay. You're understanding is that you were trained 24 that an individual that's loud and boisterous may be arrested 25 and you may form probable cause on that behavior?
Page 50 1 A: Probable cause that a crime had been committed. 2 Q: Can you define "probable cause" for me? 3 A: I can't give you the technical definition of what 4 probable cause is. I can give my interpretation, if that's 5 okay. Is that -- it is that you -- that the officer knows 6 that a statute or law exists and that the officer believes 7 that the person who they are wanting -- who might be needing 8 to go -- be under arrest has violated that statute or law. 9 Q: And easier question might be what does probable 10 cause require? 11 A: A violation of law. 12 Q: Are there different restrictions or requirements of 13 the Fourth Amendment with regard to warrants versus 14 misdemeanor offense? And this is with regard to your ability 15 or authority to conduct an arrest. 16 A: For misdemeanors, and I might forget a piece or two, 17 but it has to pretty much be committed in your presence. 18 Warrants, you have to establish that a violation of law 19 occurred and convince a judge to sign it saying that there was 20 probable cause, and then the arrest can be made. 21 Q: We've nearly gone an hour and a half. Would you 22 like to take a breather and get some more to drink? 23 A: I'm good to go. 24 MS. JACKSON: Let's take a quick break. 25 (Whereupon, a short recess	Page 52 1 A: I wasn't trained on it, I just know what the -- I 2 know vaguely what the statute says. 3 Q: And you believe it is -- that PC -- that probable 4 cause is formed if someone is loud and boisterous in a public 5 location? 6 A: I believe that was part of the statute, and I 7 believe -- reason to believe that a crime was committed, that 8 you violated that specific portion of the statute, then yeah, 9 I believe you can arrest them for that. 10 Q: Using profanity alone, would that provide you with 11 probable cause to effect an arrest? 12 A: I believe there's parts of the statute that say 13 where you can and can't use profanity and that kind of thing. 14 Me, personally, I believe it's the totality of everything. 15 Q: So you believe the law allows for a proper arrest to 16 be made on a charge of disorderly conduct based on an 17 individual using profanity alone? 18 A: Me, personally, I'd have to look at the totality of 19 everything. 20 Q: Do you think that it requires more than profanity 21 alone? 22 A: I would -- I believe -- my personal belief is yes. 23 Q: I'll ask you some easier questions. We're still 24 describing behavior that provides probable cause to arrest 25 someone for disorderly conduct.

Page 53 1 A. Okay. 2 Q. Would an individual that's annoying or projecting 3 annoying behavior provide you with probable cause to arrest 4 someone for disorderly conduct? 5 A. Well, "annoying" itself is subjective so, again, it 6 would have to be like -- I'd have to be the one making the 7 decision and look at everything that's in front of me. 8 Q. How about someone that's obnoxious? 9 A. "Obnoxious" is subjective, so I'd have to look at 10 the total of everything that's in front of me before I made an 11 arrest. 12 Q. What if a reasonable officer believed that an 13 individual was being obnoxious, would that provide him with 14 probable cause to affect an arrest based on a violation of a 15 disorderly conduct statute? 16 A. A reasonable officer should be looking at the 17 totality of everything in front of him, so I can't say without 18 actually being there and having to make the decision myself. 19 Q. When you said the totality of the facts and 20 circumstances, can you describe exactly what you think is 21 necessary to have probable cause to arrest someone for 22 disorderly conduct? 23 A. I have to believe that first there was a violation 24 of disorderly conduct, and once I believed there was, 25 obviously, there would be probable cause. And then me,	Page 55 1 disorderly, I believe it would probably be assault or making 2 verbal threats. But I don't believe I would use the 3 disorderly conduct statute for threatening somebody. 4 Q. Just so that I nail this down, if an individual is 5 loud and boisterous in public and is loud and boisterous in 6 your presence, your understanding is that provides you with 7 probable cause to make an arrest for disorderly conduct? 8 A. Yes. 9 Q. Okay. How about fighting words? 10 A. I have never -- I haven't had much interaction with 11 what defines fighting words. If you're threatening me using 12 fighting words, I believe I can arrest you for disorderly 13 conduct. 14 Q. Are you familiar with the term from your training? 15 A. I know it's come up a couple of times, but like I 16 said, I really haven't had much interaction since the initial 17 training. When I started at the academy, I believe the 18 academy mentioned it, but since then I haven't had much 19 interaction with that. 20 Q. Okay. Describe for me the atmosphere at the Waffle 21 House at 4:00 or 5:00 in the morning. 22 A. Interesting clientele come in between 4:00 and 5:00 23 in the morning. In my years of doing DUI enforcement, we used 24 to get a lot of "be on the lookouts," or BOLOs, from dispatch 25 for people leaving the Waffle House that were -- somebody
Page 54 1 personally; I always try to give somebody a chance first to 2 not have to take someone to jail. 3 I think as an officer that's been around for 10 4 years or so that the last thing I like to do is go to the jail 5 with somebody. It's a lot of paperwork. I don't like taking 6 custody of people. So for me, personally, I'd have to believe 7 that there was a violation establishing the probable cause 8 part of it, and then I'd personally give them a chance before 9 -- a chance or two before I'd make the arrest. 10 Q. Based on your training and experience, you would 11 agree that using profanity without any other facts or 12 circumstances involved would not provide an officer with 13 probable cause to arrest somebody for disorderly conduct? 14 A. Profanity alone, speaking at a level like you and I 15 are talking right now, I don't believe that's enough to arrest 16 somebody for disorderly conduct. I don't believe that myself, 17 personally, and with my discretion that a violation occurred 18 in my presence where I would believe somebody would need to go 19 to jail for disorderly. 20 Q. Would threatening someone in your presence provide 21 you -- sorry. 22 If an individual threatened someone else in your 23 presence, would it provide you with probable cause to arrest 24 someone for disorderly conduct? 25 A. I don't believe the appropriate charge would be	Page 56 1 called, whether anonymously or not, for a suspected drunk 2 driver. That kind of call. So I know there's a lot of people 3 that were under the influence between 4:00 and 5:00 in the 4 morning at Waffle House. 5 Q. It's not like a library, correct? 6 A. No, it's not a library. 7 Q. You wouldn't want to bring your young children there 8 at 4:00 or 5:00 in the morning, would you? 9 A. If I ever have any, no. 10 Q. Why? 11 A. I wouldn't want them around the type of people that 12 I have personally seen at an establishment that's open serving 13 food right after the bars close at 4:00 in the morning. 14 Q. They're typically going to be using profanity, 15 correct? 16 MS. JACKSON: Objection to the form. 17 A. They're going to be looking and acting 18 interestingly. 19 Q. And they're going to be loud? 20 A. It could be loud. They could be boisterous. They 21 could be cursing. They could dress interestingly. So there's 22 a lot of variables that go into the kind of people that you 23 see at a Waffle House that early in the morning. 24 Q. I've asked you about policies and procedures, but I 25 just want to lock this down real quick and we can move on,

Page 57

1 depending on your answer.

2 Q. What policies and procedures in place on December

3 28, 2013, that governed conduct of a law enforcement officer

4 relating to your specific duties to someone in your custody?

5 MS. JACKSON: Objection to the form.

6 A. There's a variety of policies. Broadly, it states

7 that they are there in our custody, so the layman's term I

8 could -- they're our children, per se. We're responsible for

9 them. We're responsible to make sure they get medical care if

10 they need it; make sure they get to the jail safely. They are

11 ours until the jail takes custody of them.

12 Q. Is it fair to say the policies and procedures of

13 North Charleston Police Department are the rules of the road

14 in your conduct as a law enforcement officer?

15 MS. JACKSON: Objection to the form.

16 A. They encompass it along with, like I said, the

17 basics of the oath. We're still to abide by the laws of the

18 constitution, the laws of the state, the laws of the city, and

19 our policy and procedures.

20 Q. So the policies and procedures of the City of North

21 Charleston or North Charleston Police Department set out the

22 standard by which you are expected to perform your duties?

23 A. Yes, they are our standards to abide by.

24 Q. Are you aware if any officer that responded to the

25 Waffle House on 12/28/2013 wore a body camera?

Page 58

1 A. I don't believe we had them at the time. So no, I'm

2 not aware of anybody that would have had a body camera.

3 Q. Did you view any camera footage from the incident at

4 all after the accident?

5 MS. JACKSON: Objection to the form.

6 Q. I'll qualify that. You've already viewed the

7 surveillance video from the Waffle House very recently, in the

8 last 24 hours, correct?

9 A. Yes.

10 Q. Did you view any other camera footage from the

11 incident on 12/28/2013?

12 A. No, I haven't.

13 Q. Are you aware if there's any other in-car camera

14 footage from 12/28/2013?

15 A. I'm not aware of any other video.

16 Q. When you responded, you moved in and cuffed Norris

17 White, correct?

18 A. I assisted Arroyo. I don't know who actually put

19 the cuffs on him.

20 Q. Do you recall where Norris' hands were?

21 A. I remember one hand was behind his back. I don't

22 the other hand wasn't, which was part of the struggle.

23 Q. Do you recall which hand was behind his back?

24 A. No, I don't.

25 Q. Why was one of his hands behind his back?

Page 59

1 A. My understanding is that Arroyo was trying to put

2 handcuffs on him and had control over one hand, but he

3 couldn't get control over the other, leading to the struggle

4 and the assistance request.

5 Q. When you arrived, did you observe the hand that was

6 not handcuffed moving?

7 A. I don't recall.

8 Q. You don't recall at all where the hand was that was

9 not cuffed?

10 A. I don't.

11 Q. Okay. Did you physically handcuff Norris White?

12 A. I don't know who actually put the handcuffs on him.

13 I remember grabbing a hand, putting it behind his back, and

14 then the cuffs were on. I don't know if it was my cuffs or

15 Arroyo's cuffs, or who actually put the cuffs on him.

16 Q. Okay. Did that happen within a matter of seconds?

17 A. I believe it was really, really quick. I can't say

18 if it was seconds or half a minute or anything like that. I

19 just know it was really quick. Once I got there to assist

20 him, we were able to get both hands behind his back and put

21 the handcuffs on.

22 Q. The surveillance footage shows you walking into the

23 Waffle House, correct?

24 A. Yes.

25 Q. And you immediately and quickly walked over to where

Page 60

1 Officer Arroyo and Mr. White are on the ground, correct?

2 A. Yes.

3 Q. So when you arrived, Officer Arroyo is on top of

4 Mr. White?

5 A. Yes.

6 Q. Mr. White is on his chest?

7 A. I believe so. He was trying to maintain some sort

8 of control so he could make the arrest.

9 Q. You do recall observing at least one hand in a

10 handcuff?

11 A. I know one hand was behind his back. I don't know

12 if it -- I don't remember, even after looking at the video,

13 whether a handcuff was on that hand or not.

14 Q. But you don't recall seeing the other hand that you

15 do not believe was handcuffed?

16 A. No.

17 Q. And you're not sure how the other hand got cuffed,

18 but it did?

19 A. Yes.

20 Q. And that happened very quickly, correct?

21 A. Yes.

22 Q. Was Mr. White speaking at the time he was

23 handcuffed?

24 A. He was vocal. I don't remember what he was saying.

25 I believe there was profanity involved. I don't remember the

Page 61

1 exact words, though. But he was rather vocal that he didn't
 2 want to be arrested.
 3 Q. Were the words he was saying coherent? Did you
 4 understand him clearly?
 5 A. I just remember hearing the voices. I obviously
 6 knew Arroyo's voice. The other voice I could hear was
 7 obviously the person trying to be arrested. I don't -- again,
 8 just as I mentioned earlier, I wasn't really focused on what
 9 he was saying or what anybody else was doing other than trying
 10 to get the person in custody for Officer Arroyo.
 11 Q. Can you recall if Mr. White was speaking English?
 12 A. I believe it was English. I don't recall anything
 13 that I didn't -- that sounded like another language, if that's
 14 what you're asking. I just can't recall exactly what was
 15 being said.
 16 Q. Was it spoken in a normal voice or loud voice?
 17 A. I believe there was some yelling going on.
 18 Q. Would you describe it as screaming?
 19 A. Screaming is a relative term. I believe it was
 20 loud. Again, I just don't remember exactly what he was
 21 saying.
 22 Q. At the time Mr. White's hands were put in handcuffs,
 23 did you observe any bruising or knots on his face?
 24 A. I honestly wasn't looking. Once we got the cuffs
 25 on, the next thing that automatically hits in my mind is to

Page 62

1 get him up. That's one of the things we're trained on, so
 2 that's all I remember focusing on. Getting the handcuffs on,
 3 getting him up, and then getting him out of the restaurant
 4 because, you know, you want to -- "secure" might be the wrong
 5 word, but secure the scene. In other words, get the scene
 6 under control.
 7 And we can't do that with a suspect you're trying to
 8 arrest when an officer is struggling to make the arrest inside
 9 of a confined location like a Waffle House. The first things
 10 going through my mind would have been, because I can see it
 11 now, it was you get in there, get the cuffs on, get the
 12 suspect out, get him into an environment that you're
 13 comfortable with. And then you back up and figure out what
 14 was going on kind of thing.
 15 Q. What did you personally observe Norris White doing
 16 to resist arrest?
 17 A. I remember him bucking up and down, like -- you
 18 know, he -- in my experience, it was consistent with he wasn't
 19 planning to go to jail. He was going to keep trying to figure
 20 out a way not to go to jail.
 21 Q. Can you do your best to describe bucking up and
 22 down?
 23 A. This might be a little -- it's kind of like a bull
 24 bucking up and down, you know. I can see it in my head, I
 25 just can't -- it's very hard to put it into words.

Page 63

1 Q. Is it fair to describe it as a full body struggle?
 2 A. Yes.
 3 Q. Kicking his legs?
 4 A. I believe he was trying to. I know that -- I
 5 remember all parts of his body that he could move were moving,
 6 bucking.
 7 Q. Moving his pelvis up and down maybe?
 8 A. Yes. I would say his pelvis was included in that.
 9 Q. Did Mr. White complain of any pain or headache at
 10 that time?
 11 A. Not that I recall.
 12 Q. Did he say anything at all while you were in the
 13 Waffle House that you understood?
 14 A. Again, I wasn't really paying attention to what he
 15 was saying. I just remember two voices, Arroyo's, and what I
 16 figured out to be the arrestee. I don't -- outside of -- I
 17 focused on Arroyo and getting the cuffs on.
 18 Q. Okay. How did Norris White get up from the ground?
 19 A. We assisted him up.
 20 Q. And how did you assist him up?
 21 A. We roll them over to their front, pretty much their
 22 butt, and then you give them instructions, like use a knee or
 23 help kind of roll them up onto one leg, and then you stand
 24 them up.
 25 Q. Are your hands involved in assisting them up?

Page 64

1 A. Yes, the officers -- I don't remember if it was mine
 2 or Arroyo's, but yes.
 3 Q. Where are you trained to put your hands to assist an
 4 arrestee up?
 5 A. It depends on which way they want to get up. You'd
 6 put one hand underneath their elbow and the other hand near
 7 their shoulder blade to kind of help them balance themselves
 8 up.
 9 Q. What if a suspect is handcuffed with his hands
 10 behind his back?
 11 A. That's with his hands behind his back.
 12 Q. So you would use upward leverage under their elbow?
 13 A. No. You would -- you'd kind of guide them, but
 14 use their body weight and their center of gravity to help them
 15 up.
 16 Q. So you're taught to allow them to get up on their
 17 own?
 18 A. Essentially. You're just guiding them, like trying
 19 to also maintain a position where you can control them if it's
 20 necessary.
 21 Q. Was Mr. White stumbling when you got him up from the
 22 ground?
 23 A. He was still vocal. I still don't remember what he
 24 was saying. I remember him pulling away a little bit because
 25 he still didn't want to follow commands, still was pretty

Page 65	Page 67
1 adamant he wasn't going to jail. So we quickly wanted to get 2 him outside of the restaurant. 3 Q. Did he appear to have his balance? 4 A. When he wanted to, yes. 5 Q. Did you speak to him with regard to his ability to 6 walk straight? 7 A. Usually in my instances and the way I try to handle 8 these is one officer does the talking. I believe Arroyo did 9 most of the talking. That way it's not confusing to somebody 10 under arrest, because officers could be saying two different 11 things or are trying to say the same thing, but saying it two 12 different ways. So one officer makes the verbal commands, one 13 officer tells the suspect what to do. 14 Q. Were Mr. White's feet stumbling and shuffling when 15 you moved him out of the Waffle House? 16 A. No, because he was still trying to pull away from 17 us. 18 Q. Is it your duty to control Mr. White's movement once 19 he's in your custody? 20 A. Yes. 21 Q. Where were your hands on Mr. White's body as you 22 were leaving the Waffle House? 23 A. They call it the escort position. But we try to 24 keep one hand on the cuffs and then one hand on his arm. I 25 don't remember where my -- because it was so quick, I don't	1 Q. Does it have North Charleston Police Department on 2 the front of it? 3 A. I can see it just a little bit, but yes, it would 4 have. 5 Q. Do you recall if Officer Arroyo had on body armor? 6 A. I didn't touch Officer Arroyo to find out, but he 7 should have, yes. 8 Q. Are you required to have body armor when you're 9 working off-duty or secondary employment? 10 A. Yes. 11 Q. Did you have on body armor? 12 A. Yes. 13 Q. Both of you had guns? 14 A. Yes. 15 Q. Both of you had Tasers? 16 A. I don't know if he had a Taser, I did. 17 Q. I'll refer you to Plaintiff's Exhibit Number 2. Can 18 you describe for me what's going on in this photo? 19 A. This looks like we're getting ready to escort him 20 out of the restaurant. 21 Q. Would you agree that it looks like you are taking 22 him out of the restaurant; you're escorting him out of the 23 restaurant? 24 A. I can't tell by this photo if I had hands on or not. 25 I can see Officer Arroyo's hand, though.
Page 66	Page 68
1 remember if Arroyo took the first position and then I kind of 2 walked him until he started pulling away again, or if I took 3 the first one and then we switched up. But then, again, it 4 was so quick. It was just get him outside of the building. 5 MR. STRATOS: That's one. 6 MS. JACKSON: Two. 7 MR. STRATOS: Sorry. Two, three and four. 8 MS. JACKSON: Doug, could you tell me which 9 one is, which based on the number, just the last three digits 10 at the top? 11 (Off-the-record discussion) 12 (Whereupon, Exhibits 2, 3 and 4 13 were marked for identification.) 14 BY MR. STRATOS: 15 Q. Officer King, I've just handed you what has been 16 marked as Plaintiff's Exhibit Numbers 2, 3 and 4. Do you 17 recognize these photos? 18 A. Yeah. They are from the video from the Waffle 19 House. 20 Q. Is that from 12/28/2013? 21 A. Based on what's going on in them, yes. 22 Q. Do you recognize Officer Arroyo? 23 A. Yes, he's the Hispanic officer. 24 Q. Do you recognize yourself? 25 A. I'm the one with the beanie hat on.	1 Q. You can see Officer Arroyo's right and left hand, 2 correct? 3 A. I can see the right one, I think I see the left one. 4 I think that's a hand. 5 Q. And it appears as though in Exhibit 2 that Officer 6 Arroyo's left hand is on Norris White's left shoulder, 7 correct? 8 A. That should be his right shoulder. You're talking 9 about the right hand, correct? 10 MS. JACKSON: Do you want to point? 11 Q. I can use another exhibit that's a little clearer. 12 MS. JACKSON: Left hand. 13 A. Left hand, okay. Left hand is on or near his torso, 14 I think, on this photo. 15 Q. If you observe Norris White's head -- 16 A. I can't tell which one is -- 17 Q. -- which is partially blocking Officer Arroyo's left 18 hand? 19 MS. JACKSON: He's saying that. 20 A. Oh, that's his head. Okay. 21 Q. Would it appear to you in Exhibit 2 that Officer 22 Arroyo's right hand is on Norris White, and his left hand is 23 specifically located on Norris White's left shoulder? 24 A. I would say if what was described to me as his head, 25 then it's down near his shoulder blade, yes.

Page 69 1 Q. And you're in the photo, correct? 2 A. Yes, I'm in the photo. 3 Q. But we can't tell if you're applying any force 4 whatsoever, correct? 5 A. Not by this photo, no. 6 Q. Do you recall having applied any pressure on 7 Mr. White's body at this point? 8 A. At this time specifically, I can't recall. 9 Q. Now I'll just ask a couple of questions with regard 10 to Exhibit Number 3. At the top, the last three digits are 11 098. 12 You're familiar with this photo? 13 A. Yeah. This is from the same video. 14 Q. On 12/28/2013? 15 A. Yes. 16 Q. This is Officer Arroyo and yourself and the suspect, 17 Mr. White? 18 A. Yes. 19 Q. Can you tell me what Officer Arroyo's right hand is 20 doing? 21 A. It's grasping his shoulder blade. I think that's 22 his shoulder blade. It looks like he's pulling him back, 23 trying to get him to pull -- stand up. 24 Q. I think that's his left hand with the watch on? 25 A. Yes. Yes, left hand.	Page 71 1 so he stands up instead of what he wants to do, which is lean 2 forward. 3 Q. What makes you believe that Officer Arroyo's left 4 hand is pulling and not pushing down? 5 A. Because he's -- it looks like his hands are clasped 6 in like a C shape and it would be rather awkward and be kind 7 of an officer safety issue to put yourself in an off balance 8 like that if you're not trying to pull backwards. To push 9 forward, you'd actually be leaning your body weight forward, 10 which means everybody could go forward; everybody would fall. 11 The only way to get somebody, really, to stand up, 12 the easiest way is to pull them backwards with their shoulder 13 blade, and then where my hand is, try to gain control of the 14 handcuffs to make them stand up. 15 Q. All right. Exhibit Number 4. The last three digits 16 are 661. You're familiar with this setting? 17 A. Yes, it's another still -- 18 Q. Same scene? 19 A. -- from the video from the same scene. 20 Q. That's you and Officer Arroyo? 21 A. Yes. 22 Q. Mr. White's hands are again pointing skyward behind 23 his back, correct? 24 A. Correct. 25 Q. And Officer Arroyo's left hand is on Mr. White's
Page 70 1 Q. Okay. So what is Officer Arroyo's right hand doing? 2 A. Trying to maintain control of near where the 3 handcuffs are. 4 Q. Does it look like he's hold of the handcuffs? 5 A. I don't know if he was right on the handcuffs or 6 not. It looks like he might have been on the wrist. 7 Q. And Mr. White is bent over in what appears to be a 8 90 degree angle, correct? 9 MS. JACKSON: Objection to the form. 10 A. Yes. 11 Q. Bent forward? 12 A. Yes. 13 Q. Both Mr. White's arms are behind his back, correct? 14 A. Yes, that is correct. 15 Q. In this prone position, are you in a position to 16 control Mr. White's movements? 17 MS. JACKSON: Objection to the form. 18 A. This is in his -- if Mr. White is bending forward 19 refusing to stand up, we're not in 100 percent control of his 20 movements, and I recall, and this photo kind of reminds me, 21 that we were trying to get him to stand up, because I can see 22 where my hands are in this one. 23 Q. What is it you believe your hands are doing in this 24 -- in Exhibit Number 3? 25 A. Mine, along with Arroyo, are trying to pull him back	Page 72 1 shoulder, correct? 2 A. Yes. 3 Q. And Mr. White's head is bent over -- he's bent at 4 the waist at a 90 degree angle, correct? 5 MS. JACKSON: Objection to the form. 6 A. He's still bent over. This is the same -- roughly 7 the same second from the other, from Exhibit 3, so this is 8 pretty much a continuous -- he's still pulling forward, he's 9 still bent forward, still refusing to stand up. We're still 10 trying to get control of him to get him outside of the 11 restaurant. 12 Q. Could it be that Officer Arroyo is actually applying 13 downward pressure with his left hand? 14 A. I would say no because, again, that would put us off 15 of balance and could risk all of us falling forward. When the 16 suspect is pulling forward, you have to counter that force 17 equal or more, otherwise you're going to fall forward with 18 him. 19 Q. If you look at Officer Arroyo's right hand, if you 20 were pulling, wouldn't Mr. White's hands be back and not up 21 toward the sky? 22 MS. JACKSON: Objection to the form. 23 A. No, not necessarily. Not if he's still trying to 24 counter our pulling back by pulling forward. So if he's 25 still -- if a suspect is trying to counter, not only are you

Page 73 1 trying to gain control of them by getting them to stand up -- 2 if they're still actively trying to counter your attempt to 3 pull them up, they're going to still be pushing pressure or 4 force to the direction they want -- to do what they want, and 5 you have to overcome that. You have to not only recognize it, 6 but you have to overcome that to gain control of the suspect. 7 Q. Okay. Your goal at this point is to get Mr. White 8 out of the Waffle House, correct? 9 A. That is correct. 10 Q. So you're going towards two doors to exit, both of 11 them are glass, correct? 12 A. Yes. 13 Q. And Mr. White is bent over at, essentially, a 90 14 degree angle, correct? 15 MS. JACKSON: Objection to the form. 16 A. Yeah. He's still bent over, pulling forward. 17 Q. Is it fair to say the Mr. White was bent over at a 18 90 degree angle? 19 A. I wouldn't say 90 degrees, because -- 20 Q. Could you describe the angle? 21 A. I can't give you a specific degree angle, but 90 22 degrees would make it very hard for my arm, and I think that's 23 my hand near Arroyo's right hand, to reach that far. I'm only 24 5'4", he's 6'1". It would be very hard for me to reach him at 25 a 90 degree angle.	Page 75 1 Q. Were you aware after the fact that Mr. White claimed 2 that he lost consciousness when he was taken down to the 3 ground by Officer Arroyo? 4 A. No, I wasn't aware of that. I don't remember him 5 being unconscious. I remember him being loud and very 6 vocal -- 7 Q. You don't remember him being uneasy on his feet? 8 A. No, I do not. 9 Q. You placed Mr. White in the rear of your vehicle 10 after you took him outside, correct? 11 A. I think both of us did, because mine was the closest 12 one. I don't remember where Officer Arroyo parked that night, 13 but usually back then when people were working the Waffle 14 House, they parked near the entrance to the Motel 6 behind, so 15 there wouldn't be cut-through traffic and kind of -- I don't 16 want to say secure the parking lot, but kind of make it more 17 manageable. So their cars were usually that far back, so mine 18 would have been closer because I pulled right in front of the 19 Waffle House, essentially. 20 Q. Did you remain at your car with Mr. White? 21 A. I don't recall if I stood there with him. 22 Q. You did not turn on a recording device? 23 A. No, I never thought to turn on a recording device. 24 He was already handcuffed. 25 Q. You unintentionally violated North Charleston Police
Page 74 1 Q. It kind of looks like in Exhibit Number 4 that 2 you're actually at Mr. White's side, is that correct? 3 A. Yes. 4 Q. Okay. And the back of Mr. White's head is toward 5 the ceiling and the front of Mr. White's face is toward the 6 ground, correct? 7 A. It could be. I can't tell in this photo. 8 Q. And both you and Officer Arroyo are guiding him to 9 exit the Waffle House, correct? 10 A. He's pulling forward, I remember that clearly. And 11 we were also wanting to go toward the door. But we're also 12 having to counteract his pulling forward at the same time. So 13 wherever he was trying to pull us toward, or whatever his 14 intentions were, we were trying to counteract that while still 15 keeping in mind that you have to get him out of the 16 restaurant. 17 One of the officer safety concerns that comes up is 18 in a confined space, there's more -- I don't remember how many 19 patrons were in there, but there was quite a few, and you 20 never know what they might do. So you have to keep all of 21 that going -- keep everything fluid in your mind that trying 22 to control him, plus get him out of the restaurant, plus keep 23 an eye or at least notice any overt, suspicious movements from 24 anybody else in the restaurant. And the Waffle House's are 25 quite small, so.	Page 76 1 Department internal policy regarding your in-car camera at 2 that point? 3 MS. JACKSON: Objection to the form. 4 A. No. My understanding, as I said earlier, is that 5 cameras have to be recording until the law enforcement action 6 is complete. And my understanding is once the person's in 7 handcuffs and under arrest, that law enforcement action is 8 complete. 9 Q. But you never actually turned on your in-car camera, 10 correct? 11 A. That's correct. 12 Q. And you said earlier that was by mistake, correct? 13 A. No, I said once the law enforcement action was 14 complete that I didn't put on my camera. I didn't think to 15 put the camera on after the law enforcement action was 16 complete, if that's what you're referencing. 17 Q. I'm referencing when you were in action when you 18 first arrived. Basically, you said earlier that policy is you 19 should have turned on the blue lights, and at that point the 20 in-car camera would have come on, correct? 21 MS. JACKSON: Objection to the form. 22 A. Well, policy says if there's a law enforcement 23 action to be done, you should turn on your camera. I said 24 that since I had just cleared one, when I pulled into the 25 parking lot, I didn't think to turn it on when I pulled into

Page 77	Page 79
1 the parking lot because it was so quick. So, inadvertently, 2 because of seconds that went through, seconds that went 3 through with me turning around and walking in, then yes. In 4 the few seconds that I had to observe what was going on, I did 5 not turn my camera on. 6 Q. Okay. And so we're clear here, you're saying yes, I 7 inadvertently violated the policy and I did not turn on the 8 in-car camera when I responded to the Waffle House, correct? 9 MS. JACKSON: Objection. 10 A. If you're saying that because of the seconds that it 11 took me to get in there that I should have turned my camera 12 on, then I did not turn my camera on. 13 Q. So you should have turned your camera on, and you 14 didn't; that was a mistake in your being there, correct? 15 MS. JACKSON: Objection to the form. 16 A. Yes. Then I should have turned my camera on the 17 minute -- the second that I pulled into the parking lot. 18 Q. Okay, and you didn't? 19 A. I did not. 20 Q. Okay, thank you. Did you leave the door open while 21 Norris White was sitting in the rear of your car? 22 A. I don't recall that I did. That would have been out 23 of character for me. 24 Q. Do you remember buckling Mr. White into the rear of 25 your car?	1 A. Yes. 2 Q. Do you know Officer Arroyo's wife? 3 A. I vaguely knew her while she worked for North 4 Charleston. 5 Q. What was her reputation at North Charleston? 6 A. I didn't know her that well. Unless you work 7 directly with me on the same team, I kind of just stuck with 8 my teammates. 9 Q. What did you hear about her? 10 A. She was married to him. 11 Q. Is that it? 12 A. They have kids. 13 Q. Did they have any marital issues? 14 A. I have no idea. 15 Q. Okay. Did you speak to Norris White after you 16 placed him in your car? 17 A. I don't recall. Are you talking about like 18 immediately after being placed in the car? 19 Q. Yes, sir. 20 A. I don't recall if I spoke to him immediately after 21 we placed him in the car. 22 Q. Did you know Norris White prior to the incident? 23 A. I'd never seen him before. 24 Q. Did you have any reason to believe he was violent or 25 making threats to anyone?
Page 78	Page 80
1 A. No, because we hadn't moved yet. 2 Q. Do you recall how long he was in your car? 3 A. I do not. 4 Q. Did you call EMS personnel? 5 A. I don't know who called them. I know they were 6 called, I just don't know who called them. 7 Q. Okay. Did Officer Arroyo assist you in placing Mr. 8 White in the rear of your car? 9 A. I'm sure he did, only because we were the ones that 10 finally got him into custody, finally got him out of the 11 restaurant. It would only make sense to have both officers 12 who already have hands on to go ahead and put him in the car. 13 Q. Once you had him secured in the car, Officer Arroyo 14 began to tell you what happened, correct? 15 A. Yeah. He gave me a brief synopsis of what led up to 16 the call for assistance. 17 Q. Okay. And then Officer Arroyo walked back in the 18 Waffle House, correct? 19 A. I don't know where he went. I don't recall that. 20 It might be on the video. I didn't look that far on it. 21 Q. Do you recall Officer Arroyo's wife being in the 22 Waffle House? 23 A. Yes. 24 Q. And you're aware that she was present during the 25 entire incident, correct?	1 A. Only by what I saw when I walked in. 2 Q. What you described to be resisting arrest, is that 3 what you're speaking to? 4 A. Yes. Once Arroyo told him that he was under arrest, 5 anything other than putting your hands on your back to me is 6 resisting. 7 Q. Well, someone that's a threat to anyone or violent 8 is something important for you to know to effect an arrest and 9 take someone into custody, correct? 10 A. If you have that access to that information ahead of 11 time, yes. 12 Q. And it's also important to know whether a suspect is 13 known to flee or known to have weapons, known to use violence? 14 A. If you have access to that, yes. 15 Q. Were you wearing boots that night? 16 A. Yes. 17 Q. Pepper spray? 18 A. Yes. 19 Q. What type of gun did you have on you? 20 A. Glock 23 -- 21. 21 Q. Is that a 40 cal? 22 A. Twenty-one, 23? Twenty-one. It's a 45 caliber. 23 Q. Do you know what type of gun Officer Arroyo had? 24 A. It should have been the department issued one. It 25 should have been the same model with the same caliber. I just

Page 81

1 don't know the serial number on it.

2 Q. When did they switch from using the 9 to a 45, are

3 you aware?

4 A. I have no idea. That must have been long before I

5 got hired, because we've been using a 45 since I started.

6 Q. Was the switch made because the 45 puts people down

7 easier than a 9?

8 MS. JACKSON: Objection --

9 A. I have no idea. I'm not a gun aficionado. I just

10 know -- my first experience with guns was when I got hired. I

11 don't know much about guns, sorry.

12 Q. Mr. White never threatened you?

13 A. Never threatened me directly, no.

14 Q. Mr. White never punched you?

15 A. I wasn't going to let him punch me.

16 Q. Mr. White never slapped you?

17 A. No.

18 Q. He never kicked at you?

19 A. He might have tried to when he was bucking up and

20 down, but --

21 Q. Well, his face was towards the ground, right?

22 A. Yes.

23 Q. So he didn't even know you were there when you were

24 handcuffing him, correct?

25 MS. JACKSON: Objection.

Page 82

1 A. I don't know if he knew I was there.

2 Q. Could he have intentionally kicked at you?

3 A. He could have kicked at whoever was behind him, yes.

4 Q. He didn't verbally threaten you?

5 A. Not that I can recall.

6 Q. Do you recall what you said to Norris White?

7 A. I don't recall me saying anything to Norris,

8 actually.

9 Q. And he was charged with disorderly conduct and

10 resisting arrest?

11 A. Yes.

12 Q. What's your understanding of what exactly Norris

13 White did to -- let me strike.

14 What's your understanding of what Mr. White did that

15 constituted a violation of South Carolina's disorderly conduct

16 law?

17 A. My understanding, according to what I was told, is

18 that he was being loud and boisterous, using profanity, using

19 racial slurs, and he was asked to quiet down or leave. And he

20 refused to do either, which constitutes a belief that the

21 violation occurred, which constitutes that it was an

22 arrestable offense, and kind of left Officer Arroyo no choice.

23 Q. Who asked Mr. White to leave?

24 A. I don't know. I think Arroyo said he did.

25 Q. Is that Mr. Arroyo's duty?

Page 83

1 A. If he believed the violation of the law occurred, he

2 was giving him options to not take him to jail.

3 Q. Was Mr. White asking why he was being arrested?

4 A. I don't know.

5 Q. Do you recall if he was saying I've done nothing

6 wrong?

7 A. After we got him in the car, I don't recall if he

8 said anything like that.

9 Q. And he never told you that he believed that there

10 was no basis to arrest him?

11 A. I don't recall that either.

12 Q. Did Mr. White have any weapons on him?

13 A. No.

14 Q. Can you describe your relationship with Officer

15 Arroyo?

16 A. I think he was assigned to uniform patrol at the

17 time. I was assigned to the traffic unit. I'd been there for

18 a while. We ran into each other a couple of times for calls

19 for service, or he backed me up on a traffic stop. I didn't

20 hang out with him after work or anything like that.

21 So it would kind of be like chance encounters. I

22 knew his name, I knew he worked here for a while, and I knew

23 he worked -- I think at the time he might have been on night

24 shift, just off this night. That's about as much -- I mean,

25 we weren't close or anything.

Page 84

1 Q. What was his reputation?

2 A. He was a cop. He came to work to work. I knew,

3 like me, he wasn't afraid of staying late if it meant he had

4 to get the job done kind of thing. I knew he had kids.

5 That's pretty much all. I had his phone number because we ran

6 into each other a couple of times, about as much -- we really

7 didn't hang out much. I didn't get to see him much at work

8 kind of thing. We were both working the same time, I guess.

9 Q. Where did you all run into each other?

10 A. Usually on calls. When I would make a stop, for

11 officer safety, you don't do field sobriety by yourself. So I

12 would call, and whoever showed up, I'd kind of get their phone

13 number, you know, for trial purposes, and make sure I knew who

14 they were. That kind of thing. So, usually when I was making

15 a traffic stop.

16 Q. Do you know what Officer Arroyo is doing presently?

17 A. I believe he is still a police officer in another

18 agency.

19 Q. Do you know where he moved?

20 A. As far as agency?

21 Q. Yes, sir.

22 A. I call it the country, somewhere out in the woods.

23 Somewhere nearby, but out in the woods.

24 Q. Somewhere in South Carolina?

25 A. Yes.

Page 85 1 Q. In Exhibit 1, page 2, in additional narrative. Just 2 confirm for me -- 3 A. For mine, my additional narrative? 4 Q. Yes, sir. This is your narrative of the incident. 5 A. Okay. 6 Q. The second line down, it reads "At the entrance/exit 7 door, the male 'head butted' the door and pushed it open"? 8 A. Yes. 9 Q. Can you explain to me how Mr. White head-butted the 10 door? 11 A. Yes. He was still pulling forward while we were 12 trying to get him to stand up, while we were also trying to 13 make it toward the -- get out of the restaurant. As we got 14 close to the door, before any of us could open it, again, he 15 lunged forward and essentially head-butted the door to open 16 it. 17 Q. Do you know of any reason why he would intentionally 18 try to harm himself? 19 A. I don't think he intentionally tried to do it. I 20 don't know if he realized that the door was that close, 21 because he was actively trying to still pull away from us. 22 Unfortunately, there was a door there this time when he pulled 23 forward -- when he lunged forward. 24 Q. I believe Officer Arroyo reports in his narrative 25 that Mr. White was head-butting the bars in the police car, in	Page 87 1 Q. They're not aluminium? 2 A. Aluminium is, I guess, a metal. I don't -- I'm not 3 sure what they're made of, I just know they're in there. 4 Q. They're strong enough to prevent somebody from 5 coming through the back seat? 6 A. Yes. 7 Q. Do the metal bars -- in your particular vehicle, do 8 they take up the entire span from left to right? Well, from 9 the driver's side to the passenger side is it all metal bar -- 10 is that the first thing that a rear passenger would encounter 11 if he tried to go forward? 12 A. No, no. The metal bars are on the rear doors, for 13 the rear windows, behind the driver's seat. 14 Q. To prevent him from kicking out the windows in the 15 rear? 16 A. Correct. Behind the driver's is plexi -- it's 17 plastic. And then behind the front passenger seat is a metal 18 cage so air can circulate. 19 Q. And so your car was pulled into the Waffle House, 20 just basically the street next to the Waffle House, correct? 21 A. No. I was actually in the Waffle House parking lot. 22 There's like a driveway to the hotel, there's an Asian 23 restaurant, the driveway, and then there's the Waffle House 24 parking lot. When you pull into the Waffle House parking lot, 25 I believe I was like -- pulled straight in -- if I was to keep
Page 86 1 your police car? 2 A. Okay. 3 Q. Did you have bars in your police car? 4 A. I did. It was a cage car, so there was bars on both 5 the rear passenger window section and there was a half cage, 6 half plexiglas partition between the front seats and the back 7 seats. 8 Q. Where are the bars and where is the plexiglas? 9 A. The plexiglas separates the front seats from the 10 back seats. So the plexiglas was behind the driver, 11 obviously, so people don't spit on me and that kind of thing. 12 There's kind of like a mesh cage on the passenger side behind 13 the front passenger seat so the air can circulate. And then 14 there's bars on the rear passenger doors between the interior 15 compartment of the rear passenger seats and the glass windows 16 themselves, so you can't break the glass. 17 Q. Okay. Do you know approximately the width of the 18 bars? 19 A. I do not. 20 Q. Do they look like traditional jail cell bars? 21 A. I would say, yes. 22 Q. Are they like an iron-type material? 23 A. I guess so. 24 Q. Heavy metal? 25 A. They are metal.	Page 88 1 going straight, I'd go straight out of the Waffle House 2 parking lot into the Motel 6. There's like a cut-through 3 there. 4 Q. As you exited the Waffle House with Mr. White, your 5 driver's side was facing you, correct? 6 A. Yes. 7 Q. So when you placed Mr. White into your patrol unit, 8 you placed him behind the driver's seat, correct? 9 A. Yes, to get him into the car. 10 Q. And you're not completely sure whether or not you 11 closed the door? 12 A. I would -- it would be out of my character to not 13 close the door. 14 Q. So as Mr. White was seated in the rear compartment 15 of your unit, the left side of his body would have been facing 16 the rear driver's side door, correct? 17 A. Yes. 18 Q. Generally speaking, when an officer has a suspect's 19 arms behind his back, how long should it take, you know, a 20 competent officer to handcuff a suspect? 21 A. Back then we were training, I believe, at the 22 academy when I went through, I think it was three to five 23 seconds to get the cuffs on. They called it speed cuffing. I 24 don't believe they train that anymore. I believe they just 25 train to get them on properly and quickly. I don't think

Page 89

1 there's a time limit anymore.
 2 Q. When do you think that changed?
 3 A. I don't know. That's just some random conversations
 4 with some newly minted police officers. I believe they
 5 changed that; I just don't know when.
 6 Q. How about yourself; how quick are you?
 7 A. I don't arrest a lot of people, especially now, but
 8 I haven't had -- I would say five seconds. As long as they're
 9 -- not necessarily cooperative; but not resisting, you know.
 10 They acknowledge -- their body cues acknowledge that they know
 11 they are under arrest just waiting to get the cuff on, I think
 12 about five seconds.
 13 Q. And you go through training at North Charleston
 14 Police Department regarding cuffing on an annual basis?
 15 A. Yes, we do.
 16 Q. Please describe for me that training.
 17 A. Our training -- or at least the last years that I
 18 can recall clearly that it had been more about form, proper
 19 form. For example, making sure the hole for the cuff key is
 20 facing up, not facing down. So form and technique versus
 21 speed.
 22 Q. Could you please describe that really quickly if you
 23 have suspect that's standing in front of you with both hands
 24 behind his back. Where specifically would you put your hands?
 25 A. I would put one hand -- obviously, one hand would be

Page 90

1 on the cuff. I wouldn't put my other hand on him at all until
 2 I got the first cuff on. And then once you get the second
 3 cuff on, through technique, it should all be pretty much one
 4 simultaneous motion. Your strong side arm should be free for
 5 in case they resist, but the only thing it pretty much does is
 6 close the second cuff onto the suspect. So when you're
 7 putting --
 8 Q. Your free arm, you're speaking of your right hand?
 9 A. For me it would be my right hand.
 10 Q. And we're speaking just your training, correct?
 11 A. Yes. I'm a left-side cuffer. I really haven't been
 12 a right-side cuffer, unless I absolutely have to. And have
 13 only been if they're too big to fit in one -- like their
 14 shoulder blades are too wide and you have to put two sets of
 15 cuffs on. That's why I have two on my belt.
 16 Q. But you go in with your left hand, that first cuff
 17 should go on pretty much automatically with your motion. And
 18 then you spin over, essentially, and put the other cuff onto
 19 the other hand still with your left hand. The only thing your
 20 right hand does is close the cuff on the secondary hand that
 21 you put it on. And that's it, because you have to keep your
 22 left hand -- or your strong hand free in case things got bad
 23 while you're trying to cuff somebody.
 24 Q. Are you taught to secure their arms while also
 25 handcuffing them at the same time?

Page 91

1 A. What do you mean secure their arms?
 2 Q. I mean, prevent their arms from moving with your
 3 hands or your arms?
 4 A. You will -- you do your -- depending on what the
 5 charge is and how cooperative they are. I've done my search
 6 prior to cuffing and after and if I have backup, obviously.
 7 But I can't recall anywhere where you're trained to like
 8 somehow hold their hands -- hold their arms while you have a
 9 cuff in one hand and you keep your other hand free in case you
 10 need to go other ways because they choose to make other
 11 decisions.
 12 Q. Are you not trained if you're behind a suspect to
 13 put your right hand underneath their right arm and then come
 14 through and grab their left wrist to secure their arms?
 15 MS. JACKSON: Objection to the form.
 16 A. I have never heard of that before.
 17 Q. Well, what do you do with someone that's actively
 18 resisting arrest and you're standing and their back is to you;
 19 how do you cuff them?
 20 A. If they're actively resisting, you have to get the
 21 cuffs on however you can. The way we're trained is if they
 22 are not resisting arrest. If they're resisting arrest, the
 23 dynamics depend on the person resisting. If the person
 24 resisting is refusing to put either hand behind their back,
 25 there's ways and techniques -- a variety of them that you can

Page 92

1 hopefully deploy to get their hands behind their back.
 2 Q. If he's got one cuff on or you got one hand behind
 3 your back, there's training to say that you don't lose ground
 4 or lose that one hand, because a free two-handed person that
 5 doesn't want to go to jail is more dangerous than a one-handed
 6 person that doesn't want to go to jail. On the same token, a
 7 one-handed person, if they're still actively resisting once
 8 you got one hand on, they're -- they'll -- the probability
 9 that they're going to increase their level of resistance goes
 10 up, because they really don't want to go to jail. Does that
 11 make -- hopefully that makes sense and answers your question.
 12 Q. So is it your opinion, now that you recently watched
 13 the surveillance video from December 28, 2013, that Officer
 14 Arroyo's actions in taking Norris White down was proper
 15 technique and pursuant to North Charleston Police Department
 16 procedure?
 17 A. Watching what the suspect did as Officer Arroyo was
 18 trying to take him into custody before the takedown, I would
 19 say yes, because you can actually -- now that I've watched it
 20 I can see where he's like -- his body movements were kind of
 21 predicting what his next thoughts could be. And you have to
 22 look at body movements. Your body kind of gives away what you
 23 might be wanting to do.
 24 Q. So I agree with the takedown. Once they're on the
 25 ground -- like I said, when I got there he was still bucking

Page 93 1 up and down. It looked like he was struggling a little bit 2 more before I got there, so you have to -- because of the 3 confined -- I mean, we're talking only a few feet, give or 4 take, between where they were both on the ground and where 5 like the bar was. So all that, the table, the benches, the 6 other patrons, all those are a threat to the officer. So to 7 get as much compliance out of the suspect you possibly can 8 until backup arrives. The way he held him down until I got 9 there, I'd be personally okay with that. I didn't see any 10 violations in my opinion. 11 Q. What if Officer Arroyo didn't have probable cause to 12 effect an arrest in the first place, does that change your 13 opinion? 14 A. That would be for the court to decide, quite 15 honestly. But I'm not here to judge whether he had probable 16 cause. I'm here to assist him with the arrest that he made a 17 decision with, and then help him maintain control of the 18 suspect as best we can to get him outside of the -- I would 19 say the restaurant where variables can come into play that 20 could interfere with the arrest as well, and then everything 21 else is on Officer Arroyo. 22 Q. Is there anyone that we haven't spoken of that you 23 know of who has knowledge of the incident? 24 A. Officer Kaufman got there sometime and assisted with 25 getting him to the hospital, apparently. He's the only other	Page 95 1 helped record any of the events of the law enforcement action 2 being taken inside the Waffle House? 3 A. It might have caught some of the audio of what 4 Arroyo might have been saying or the defendant -- excuse me, 5 Mr. Norris, but the way the car was positioned, it wouldn't 6 have recorded anything. 7 Q. Would you agree with the statement that probable 8 cause is the reasonable belief that a person violated the law? 9 A. Yes, I would agree with that statement. 10 Q. When you were watching the video, once you get 11 through the second door, do you recall, either from being 12 there that night or from seeing on the video, did Norris White 13 head-butt the second door? 14 A. No. I didn't recall it, but when I watched the 15 video it becomes clear that my hand, because, obviously, I can 16 tell the difference between Arroyo's hand and mine, actually 17 opens the second door. And then we get him outside of the 18 restaurant. 19 Q. Okay. When you arrived at the scene, were there 20 people outside? 21 A. I don't recall. 22 Q. You were asked earlier about the Fourth Amendment 23 and the First Amendment. Do you have either one of those 24 memorized verbatim? 25 A. No, I do not.
Page 94 1 one that I know of, only because of the report. Like I said, 2 this was -- everything happened quickly, and I don't remember 3 -- other than the supervisor and Kaufman, obviously. Because 4 the supervisor would have responded to this after hearing it 5 on the radio that an officer was in distress. The supervisor 6 is going to respond. I don't know if that's in policy, but 7 that's just -- now that I am a supervisor, that's what I've 8 seen since I started. So us four would probably be the only 9 ones that I'm aware of being there. 10 Q. Are there any other facts you'd like to discuss in 11 this case that we haven't already talked about? 12 A. No, not that I want to bring up. I think it's all 13 pretty clear. 14 Q. Do you have any other opinions with regard to this 15 case that we haven't already discussed? 16 A. No, I do not. 17 Q. Okay. 18 MR. STRATOS: I don't have any further 19 questions. 20 MS. JACKSON: I think I might have a 21 couple. 22 CROSS-EXAMINATION 23 BY MS. JACKSON: 24 Q. You were asked earlier about not turning on your 25 blue lights, not having a camera on. Would your camera have	Page 96 1 Q. Are you required by the police department to have 2 the police officer's oath memorized verbatim? 3 A. No, I'm not. 4 Q. Do you feel that in your actions as a police officer 5 you comply with the police officer's oath? 6 A. I feel I do, yes. 7 Q. Are you required by the North Charleston Police 8 Department to memorize all of the policies and procedures 9 verbatim? 10 A. No, I'm not. 11 Q. Do you receive regular training on the policies and 12 procedures? 13 A. Yes, I do. 14 Q. And do you receive notification when those policies 15 and procedures are updated? 16 A. Yes, we do. 17 Q. Are you aware that the North Charleston Police 18 Department is certified by CALEA? 19 A. Yes, I am. 20 Q. And is CALEA a law enforcement certification that 21 has standards higher than the South Carolina minimum 22 standards? 23 A. Yes, they are. 24 Q. And to your knowledge, do the policies of the North 25 Charleston Police Department meet those CALEA standards?

Page 97

1 A. Yes, ma'am. They do.

2 Q. And have you been CALEA certified since 2013?

3 A. I believe so. Yes, ma'am.

4 Q. Mr. Stratos asked you if you left the door open and

5 you said it was not your regular habit to do so. What about

6 the window?

7 A. Before transporting, usually I do roll down the

8 windows if there's a suspect in my back seat. I'm a

9 germophobe, so there's that threat of contamination, whether

10 it be TB or something. If someone's just sitting in your car

11 with windows up and there's not really any external air

12 circulating, so I wouldn't -- that would be in my normal

13 tendency to keep the windows down until actually the car is

14 moving with a suspect in the back seat.

15 Q. And that would also allow you to hear if the

16 prisoner was calling for you?

17 MR. STRATOS: Object to form.

18 A. Yes, ma'am.

19 Q. During the time that you've worked with the North

20 Charleston Police Department, have you always been in

21 compliance with the requirements for training?

22 A. Yes, ma'am. I have.

23 Q. And have you actually received additional training

24 above and beyond the required 40 hours a year?

25 A. Yes, ma'am. I have.

Page 98

1 Q. Are you an instructor in anything?

2 A. I am, several things.

3 Q. What are you an instructor in?

4 A. I'm an instructor in basic skills development, which

5 means I can write lesson plans for the department, teach from

6 those lesson plans, and get them certified at the academy if I

7 wanted to so that other agencies could teach from those lesson

8 plans.

9 Also a DUI SFST instructor. I've been that for

10 several years, which means I can teach DUI detection

11 techniques, as well as the proper administration of field

12 sobriety testing. And post arrest procedures and case law

13 regarding DUIs. I'm also a speed measuring device detective

14 instructor, which is SMD, which means I teach officers how to

15 properly use radar and lidar units. And I've been that for a

16 few years.

17 Q. What is your current rank?

18 A. I'm a sergeant.

19 Q. And as a sergeant, are you a supervisor?

20 A. Yes, ma'am. I am.

21 MS. JACKSON: I don't believe I have any

22 further questions.

23 MR. STRATOS: Just a couple of follow-ups.

24 REDIRECT EXAMINATION

25 BY MR. STRATOS:

Page 99

1 Q. You're not an expert with regard to cinematography,

2 are you?

3 A. I'm not even sure what cinematography is, so no.

4 Q. You're not an expert in the ways and means that

5 cameras operate?

6 A. No.

7 Q. You're not certain the angle that your car was

8 pulled into the parking lot with any degree of certainty,

9 correct?

10 A. No, I'm not.

11 Q. Because we don't have any in-car footage, we can't

12 be certain whether or not your in-car camera would have

13 actually captured some of the scene, correct?

14 A. I honestly believe that there might have been some

15 audio involved, but the parking lot of the Waffle House, the

16 height of a Crown Vic, and where the cameras are mounted in

17 the windshield, it might have caught the bottom of a window.

18 Q. But you can't be certain, correct?

19 A. I can't be certain based on where I was parked that

20 night, but I can just be certain based on the height of a

21 Crown Vic, where the cameras are, and how high that is. Plus

22 most of the disturbance was on the floor when I got there.

23 And then the doors, when the doors of the restaurant were to

24 the far left of the restaurant, as you're looking at it from

25 the road -- from Ashley Prospect Road, and I'm pretty

Page 100

1 confident that the way I pulled in, like I said earlier, was

2 straight in and kind of parked there facing the hotel. So

3 without actively turning the camera myself, which obviously I

4 didn't do because I went straight in, the likelihood of

5 catching anything would be slim to none.

6 Q. But you cannot be certain whether or not the camera

7 caught -- would have caught any of the arrest or any of the

8 incident, correct?

9 A. No, I cannot be 100 percent certain.

10 Q. Had you turned on the in-car camera, you would have

11 more likely than not captured audio from the incident,

12 correct?

13 A. There's a strong possibility, yes.

14 Q. And you can't say with any degree of certainty

15 whether or not you rolled down your passenger rear windows,

16 correct?

17 A. No, I'm pretty confident I did. I can't say if I'm

18 certain. I'm pretty certain that I did not leave the doors

19 opened, but I'm pretty confident I rolled down the windows.

20 It would be completely out of my character to leave the

21 windows rolled up with a suspect in the back seat.

22 Q. But you don't have any independent recollection of

23 actually rolling down the windows that night, correct?

24 A. No, I can't remember from 2013 whether I rolled down

25 the windows.

Page 101 1 Q. Basically, what you're saying is because of this 2 habit it's more likely that I did roll it down, but I don't 3 know for sure, correct? 4 A. Because of my habit, yes. 5 Q. Okay. 6 MR. STRATOS: I don't have any further 7 questions. 8 MS. JACKSON: We're done. 9 (The deposition was concluded at 12:43 10 p.m.) 11 (Signature reserved)	Page 103 ERRATA SHEET 2 RE: Norris White, Jr. -vs- City of N. Charleston 3 4 DEPOSITION OF: Officer Anthony King 5 Please read this original deposition with care, and if 6 you find any corrections or changes you wish made, list them 7 by page and line number below. DO NOT WRITE IN THE 8 DEPOSITION ITSELF. Return the deposition to this office 9 after it is signed. We would appreciate your prompt 10 attention to this matter. 11 To assist you in making any such corrections, please use 12 the form below. If supplemental or additional pages are 13 necessary, please furnish same and attach them to this errata 14 sheet. 15 Page ____ Line ____ should read: _____ 16 _____ 17 Page ____ Line ____ should read: _____ 18 _____ 19 Page ____ Line ____ should read: _____ 20 _____ 21 Page ____ Line ____ should read: _____ 22 _____ 23 Page ____ Line ____ should read: _____ 24 _____ 25 Page ____ Line ____ should read: _____
Page 102 CERTIFICATE OF REPORTER 1 2 3 STATE OF SOUTH CAROLINA) 4 COUNTY OF CHARLESTON) 5 I, Douglas K. Lipero, the officer before whom the 6 foregoing deposition was taken, do hereby certify that the 7 witness whose testimony appears in the foregoing deposition 8 was duly sworn by me; that the testimony of said witness was 9 taken by me to the best of my ability and thereafter reduced 10 to typewriting under my direction; that I am neither counsel 11 for, related to, nor employed by any of the parties to the 12 action in which this deposition was taken, and further that I 13 am not a relative or employee of any attorney or counsel 14 employed by the parties thereto, nor financially or otherwise 15 interested in the outcome of the action. 16 17 18 Date _____ 19 Doug Lipero, Court Reporter 20 Notary Public in and for the 21 County of Charleston 22 State of South Carolina 23 24 25 My commission expires November 5, 2025.	Page 104 1 2 Page ____ Line ____ should read: _____ 3 _____ 4 Page ____ Line ____ should read: _____ 5 _____ 6 Page ____ Line ____ should read: _____ 7 _____ 8 Page ____ Line ____ should read: _____ 9 _____ 10 Page ____ Line ____ should read: _____ 11 _____ 12 Page ____ Line ____ should read: _____ 13 _____ 14 Page ____ Line ____ should read: _____ 15 _____ 16 Page ____ Line ____ should read: _____ 17 _____ 18 Page ____ Line ____ should read: _____ 19 _____ 20 Page ____ Line ____ should read: _____ 21 _____ 22 Page ____ Line ____ should read: _____ 23 _____ 24 _____ 25 DKL

EXHIBIT E



EXHIBIT F

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 12/28/2013 05:07	OCA #: 2013044810

Supplement: A. Kaufman #328

On 12-28-2013 I responded to assist Pfc Arroyo at the Waffle House on Ashley Phosphate. I arrived and located the suspect detained in the rear of Pfc King's vehicle. While waiting for EMS to arrive on scene I observed the suspect repeatedly bang his forehead against the safety bars inside of Pfc King's vehicle. EMS arrived and advised that the suspect would need to be evaluated by medical staff, at which point Sgt Lawless directed me to take custody of the suspect and escort him to Trident Hospital. I applied my department issued handcuffs to the suspect per department policy. EMS transported the suspect to Trident ER as I followed behind. Upon arriving he was seen by medical staff. The medical staff informed me that the suspect sustained a contusion, however no broken bones were observed. At this time I was relieved by a day shift unit who transported the suspect to the CCDC on Leeds. Nothing further.

EXHIBIT G

TRIDENT HEALTH SYSTEMS (COCTR)

EMERGENCY PROVIDER REPORT

REPORT #: 1228-0072 REPORT STATUS: Signed

DATE: 12/28/13 TIME: 0715

PATIENT: WHITE, NORRIS E

ACCOUNT #: D00044180269

AGE: 32 SEX: M

SERVICE DT: 12/28/13

UNIT #: D100227897

ROOM/BED:

PCP PHYS: NO PRIMARY OR FAMILY PHYSICIAN

AUTHOR: Hopkins MD, Michael

* ALL edits or amendments must be made on the electronic/computer document *

HPI-Head Injury

HPI

Confirmed patient: Yes

Greet time: 0553

Complaint: head injury (FACE INJURY)

Source of history: patient, police

Timing - onset: just prior to arrival

Timing - duration: since onset

Mechanism of injury: PT IN ALTERCATION WITH POLICE, STRUCK FACE ON GROUND

Location of pain or injuries: face (R SIDED)

Quality: aching

Radiation of pain: no pain radiation

Severity onset: moderate

Severity current: moderate

Associated Symptoms:

Reports contusion, Denies LOC, Denies confusion, Denies disorientation, Denies laceration,

Denies seizure post accident, Denies visual disturbance, Denies vomiting

Exacerbated by: nothing

Relieved by: nothing

Pt. reports/records indicate: no recent doctor visit, no recent hospitalization

Risk Strat-Head Injury

IC Bleed Risk: risk factors reviewed

Nexus C-spine Criteria: no post midline tend., not intoxicated, normal level of alertness, no focal neuro deficits, no distracting injuries

Review of Systems

Constitutional:

Denies: malaise, fever.

Skin:

contusion. DENIES: redness.

Allergy/Immun:

DENIES: hives, itching.

Eyes:

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4563

Name: WHITE, NORRIS E
Phys: Hopkins MD, Michael
DOB: 09/24/1981 Age: 32 Sex: M
Acct: D00044180269 Loc: D.TED
Exam Date: 12/28/2013 Status: DEP ER
Radiology No:
Unit No: D100227897

EXAMS:
003353853 CT HEAD WITHOUT CONTRAST EXAM REASON: HEAD AND FACE INJURY

HISTORY:
Assault. Hip pain.

COMPARISON:
10/28/2008

TECHNIQUE:
Unenhanced CT brain from vertex to skull base.

FINDINGS:
The ventricles, sulci and cisterns appear age appropriate.

There is no midline shift or mass effect. The gray white interface is maintained without acute territorial infarct. There is no intracranial hemorrhage or abnormal extra-axial fluid collection.

The imaged paranasal sinuses are well aerated. The calvarium is intact.

IMPRESSION:
1. No acute intracranial process.

** Electronically Signed by BRENT WILLIAMS on 12/28/2013 at 0812 **
Reported and signed by: WILLIAMS, BRENT

CC:

Dictated Date/Time: 12/28/2013 (0812)
Technologist: JOHN E CAPE

Transcribed Date/Time: 12/28/2013 (0812)
Prepared By: PHY. WILBER2
Electronic Signature Date/Time: 12/28/2013 (0812)
Orig Print D/T: 8: 12/28/2013 (0817)

BATCH NO: N/A

PAGE 1

Signed Report

Patient: WHITE, NORRIS E MRN: D100227897 Encounter: D00044180269

Page 23 of 33

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4563

Name: WHITE, NORRIS E
Phys: Hopkins MD, Michael
DOB: 09/24/1981 Age: 32 Sex: M
Acct: D00044180269 Loc: D.TED
Exam Date: 12/28/2013 Status: DEP ER
Radiology No:
Unit No: D100227897

EXAMS: 003353854 CT MAXILLO-FACIAL W/O CON EXAM REASON: HEAD AND FACE INJURY

HISTORY:
Head and face injury.

COMPARISON: No similar comparison.

TECHNIQUE: Axial CT of the facial bones reviewed with coronal and sagittal reformats.

FINDINGS:

No facial fracture identified. The paranasal sinuses are well-aerated. Skull base details appear appropriate. Image portions of the cervical spine are unremarkable.

IMPRESSION:

1. Negative exam.

A preliminary report was provided by Virtual Radiologic at the time of the study.

** Electronically Signed by BRENT WILLIAMS on 12/28/2013 at 0847 **
Reported and signed by: WILLIAMS, BRENT

CC:

Dictated Date/Time: 12/28/2013 (0847)
Technologist: JOHN E CAPE

Transcribed Date/Time: 12/28/2013 (0847)
Prepared By: PHY. WILBR2
Electronic Signature Date/Time: 12/28/2013 (0847)
Orig Print D/T: S: 12/28/2013 (0851)

BATCH NO: N/A

PAGE 1

Signed Report

Patient: WHITE, NORRIS E MRN: D100227897 Encounter: D00044180269

Page 24 of 33



Trident Medical Center
9330 Medical Plaza Dr
Charleston, SC 29408
(843) 847-4160

Discharge Summary (Chart Copy)

Date: 12/28/2013
Time: 7:28 a.m.

Treating Provider: Michael Hopkins, MD
Provider Signature:

Phone: Fax:

Patient Name: NORRIS WHITE
Patient Address: 472 WINTER DRIVE
SUMMERVILLE, SC 29483

MR#: D100227897 Account: D00044180269
Phone: (843) 810-9154

Your Discharge Instructions:

Your Medication Education:

Your Prescriptions:

HEAD INJURY - NO WAKE UP
FACIAL & SCALP
CONTUSIONS

Ibuprofen

Ibuprofen (Motrin) 800 Milligram
15 Tablets
1 tablet Q 8 hours as needed (0
Refills). Printed.

You should follow up with the following physician As needed:

Physician Name: Primary Care Physician

Specialty: Primary Care/Family

Address:

Phone:

Follow-up Notes: On 12/28/2013 this patient was treated at Trident Medical Center for Refer to Discharge Instruction List.

155/27 - 86 - 992-20



* P I N S *

Page 1 of 1

Patient: WHITE, NORRIS E MRN: D100227897 Encounter: D00044180269

Page 32 of 33

EXHIBIT H

North Charleston Police Department
Administrative Internal Investigation Complaint Affidavit

MAIL TO: NORTH CHARLESTON POLICE DEPARTMENT
P. O. BOX 62558
NORTH CHARLESTON, SC 29419-2558
ATTN: PROFESSIONAL STANDARDS BUREAU

INCIDENT LOCATION: WAFFLE HOUSE
INCIDENT DATE: 12-28-13 INCIDENT TIME: 2-4 AM REPORT NUMBERS: _____
COMPLAINANT: NORMIS WHITE RACE: BLACK SEX: M AGE: 32 DOB: 9-24-1981
ADDRESS: 472 WINTER DR
HOME PHONE: (843) 810 9154 WORK PHONE: _____
OFFICER/EMPLOYEE NAME: ORDYAL RACE: _____ SEX: _____ AGE: _____
OFFICER/EMPLOYEE NAME: _____ RACE: _____ SEX: _____ AGE: _____
OFFICER/EMPLOYEE NAME: _____ RACE: _____ SEX: _____ AGE: _____
OFFICER/EMPLOYEE NAME: _____ RACE: _____ SEX: _____ AGE: _____

BRIEF SUMMARY OF INCIDENT AND ALLEGATION(S)

SOME FRIENDS AND I WAS AT THE WAFFLE HOUSE EATING
BREAKFAST AS WHERE EATING I WAS APPROACHED BY THE
OFFICER AND HE SAID I NEED TO LEAVE MY RESPONSE WAS
WHY WHAT DID I DO WRONG, THE OFFICER THEN RESPONDED AGAIN
WITH I NEED TO LEAVE, I REPLIED I'M NOT GOING
ANYWHERE UNTIL I FINISH ^{NEW} EATING THE FOOD THAT I PAID
FOR. I TRIED TO SIT DOWN AND THATS WHEN THE OFFICER
GRABS ME AND THROWS ME TO THE FLOOR TO ARREST ME. AS
MY FRIEND TRIED TO ASK WHAT IS IT I DID WRONG HIS
RESPONSE WAS GET BACK BEFORE I TASE YOU AND YOU CAN GO
WITH HIM. I WAS THEN TAKEN TO HOSPITAL AND AFTERWARDS
JAIL.

I HAVE READ THE FORGOING AFFIDAVIT OR HAVE HAD IT READ TO ME AND I DO HEREBY AFFIRM THAT THE INFORMATION PROVIDED BY ME IN THIS AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT ANY FALSE, MISLEADING OR UNTRUE STATEMENTS, ACCUSATIONS OR ALLEGATIONS HEREIN MADE BY ME IN RELATION TO THIS COMPLAINT MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL PROSECUTION.

1-24-14
DATE

[Signature]
AFFIANT'S SIGNATURE

EXHIBIT I

NORTH CHARLESTON POLICE DEPARTMENT INTER-DEPARTMENTAL INCIDENT REPORT

(This Report Must Be Completed by a Supervisor prior to the end of his/her shift.)
Forward the Original Report through the Chain of Command to the Division Commander.
The Division Commander will forward the Original Report to the Office of Professional Standards.

Revised 08/01/06

INCIDENT TYPE: Level 3 Use of Force/ Injured Suspect		DATE: 12/28/2013	
INCIDENT LOCATION: 2571 Ashley Phosphate (Waffle House)		ZONE: 8	
LOCATION TYPE:	RESIDENCE ☒ []	BAR ☐ []	ROADWAY ☐ []
	BUSINESS ☒ []		OTHER ☐ []
DATE OF INCIDENT: 12/28/2013	TIME OF INCIDENT: 5:07AM	OCA#	2013044810
DEPARTMENT PROPERTY INVOLVED (N/A):		DAMAGE	LOST
		STOLEN	OTHER
DESCRIPTION OF PROPERTY:			
NAME OF OFFICER(S) INVOLVED Pfc Arroyo #275, Pfc A. King #170			
<u>If this Inter-Departmental involves an Accident or Damage to a City Vehicle</u> Complete the "Vehicle Accident/Damage Summary Report" This completed form is only needed for insurance information to repair damaged vehicles. <u>Send original report to Police Administrative Services along with the Green Copy of the FR 10</u> <u>Attach a copy of the "Vehicle Accident Summary Report" and FR 10 to this report.</u>			
Use of Force Information			
Subject name:	NORRIS WHITE	AGE	32
		GENDER	M
		RACE	B
Level of Force 1-5	3		DAY OF WEEK
			Saturday
SUBSTANCE USED	Empty Hand		NUMBER OF OFFICERS ON SCENE
			1
Subject Injury Information			
INJURY: ☒ YES ☒ NO			
INJURY INVOLVED: (IF YES, DESCRIBE NATURE OF INJURY TO INCLUDE WHO AND WHERE TREATED)			
White complained that the right side of his face hurt and his neck. He also advised that his wrists hurt from the handcuffs. EMS responded and checked White and he was transported to Trident Hospital to be treated. White was treated and released. No broken bones. Sergeant Lawless took photos of his face and added them to the report.			
Officer Injury Information			
INJURY: ☐ YES ☒ NO			
INJURY INVOLVED: (IF YES, DESCRIBE NATURE OF INJURY TO INCLUDE WHO AND WHERE TREATED)			
HAS RETURN TO WORK: ☒ YES ☒ NO			
Witness(es)			
NAME: ☐	Arroyo	BAD#:	275
NAME: ☐	King	BAD#:	170
NAME: ☐		BAD#:	
NAME: ☐		BAD#:	
IF AN INVESTIGATION IS REQUIRED, COMPLETE THE INCIDENT, INVESTIGATION, CONCLUSION /RECOMMENDATION PORTIONS. ALSO ATTACH ANY COPIES OF INCIDENTS, BOOKING,			

STATEMENTS OR INJURY REPORT (12-A) ETC.

INCIDENT

On 12/28/2013 at approximately 05:07AM Officer Arroyo #275 was working off duty at the Waffle House, 2571 Ashley Phosphate when the suspect, Norris White (DOB 9/24/1984) was being loud and cursing. Officer Arroyo made contact with White and asked him to stop yelling and cursing. Suspect White began to raise his voice and became confrontational with Officer Arroyo. White was asked to leave the business and stated "I'm going to sit right here and finish my food". White then told Officer Arroyo that he was sitting down to eat unless he was going to arrest him. Officer Arroyo then attempted to take White into custody and White began to struggle with Officer Arroyo. He continued to struggle with Officer Arroyo and was given verbal commands to put his hands behind his back and attempted to pull away and turn around. While Officer Arroyo was struggling with White one of White's friends attempted several times to get something from White's pocket and Officer Arroyo told him to stay back or he would be tased, and he complied. Officer Arroyo then took White to the floor to attempt to gain control of him. White then tried to roll over and get up and Officer Arroyo placed his knee on the back of his neck to keep him from getting up. Once Officer King arrived on scene they were able to get White into custody and he was placed into handcuffs that were checked for proper fit. As Officers Arroyo and King went to escort suspect White out of the business White slammed his head into the door of the business as they were leaving. White was then placed into the back of Officer King's patrol vehicle and was banging his head on the window bars. White complained that his neck and the right side of his face hurt. There was no visible injury. EMS responded to check White and he was transported to Trident Hospital to be treated. No broken bones were found. Photos were taken of his face and neck and added to the report. White was charged with Disorderly conduct and Resisting Arrest. White was lodged at the Charleston County Detention Center.

SUPPLEMENTAL

(OVERFLOW FOR INCIDENT, INVESTIGATION, CONCLUSION/RECOMMENDATION)

INVESTIGATION

(DESCRIBE WHAT YOU DID)

I responded to the scene and was briefed by Officers Arroyo and King. I spoke to Norris White who advised that he was not being loud that it was females at the table and that he told the officer unless he was going to arrest him he was sitting down to eat and Officer Arroyo grabbed him. White advised that the back of his neck hurt and the right side of his face. White also advised that the cuffs hurt his wrists. I spoke to the employees inside the business to see what they witnessed. Employee Laura Fitzpatrick advised that the suspect was being loud and was asked to stop and did not. Officer Arroyo advised the business had video but nobody working could operate it. Employees were provided the case number and asked to make a copy and contact NCPD when it is available. Captain Stephens was notified. I forwarded a copy of the preliminary inter-departmental to the Office of Professional Standards and the originals through the chain of command. Photos were taken of the suspect White's face, neck and wrists and added to the report.

CONCLUSIONS AND RECOMMENDATIONS

After interviewing the officers and reviewing the incident report I determined that Officer Arroyo followed Departmental Policy (Policy 0-02, level 3) when the suspect, repeatedly, refused to comply with the officer's verbal commands and demonstrated a Level 4 Active Physical Resistance by resisting the officer Arroyo's attempt to take him into custody and continuing to resist after being in custody. I concluded that Officer Arroyo acted within the scope of the N.C.P.D. Use of Force Policy # 0-02 and the injuries sustained are a direct result of the suspect's choice to resist arrest. I recommend no further action on this incident but it is forwarded for further review.

Sergeant

M. Lawless

DATE:

12/28/2013

Lieutenant

D. Hardee

DATE:

Captain

Stephens

DATE:

12-28-2013

Deputy Chief

D. Cheafle

DATE:

1-14-14

Memorandum _____ *City of North Charleston Police Department*



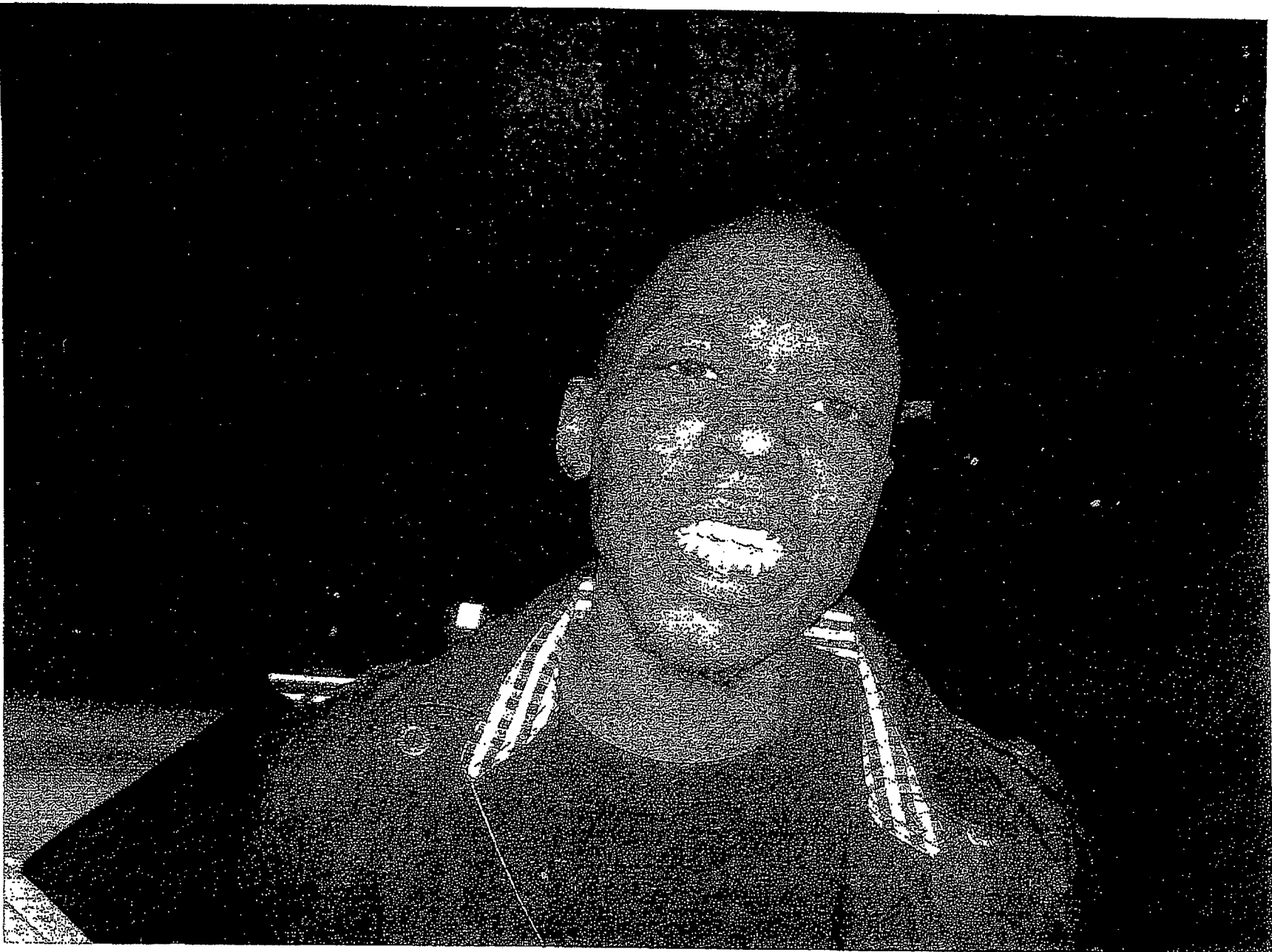
Capt. J.I. Stephens Jr. _____
Central Bureau Commander

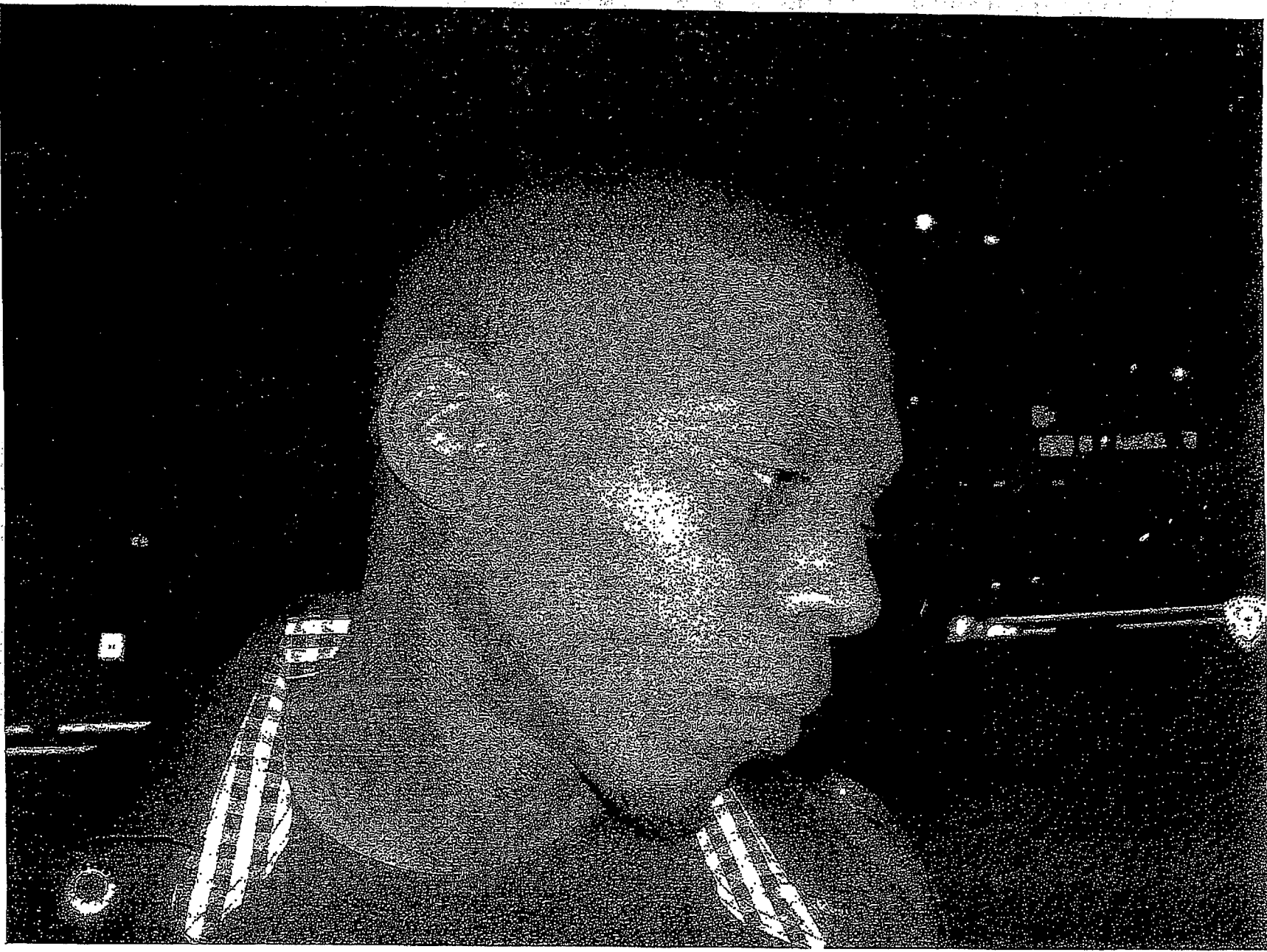
Date: 12-28-2013
To: Deputy Chief Cheattle
Re: Interdepartmental Oca # 2013044810

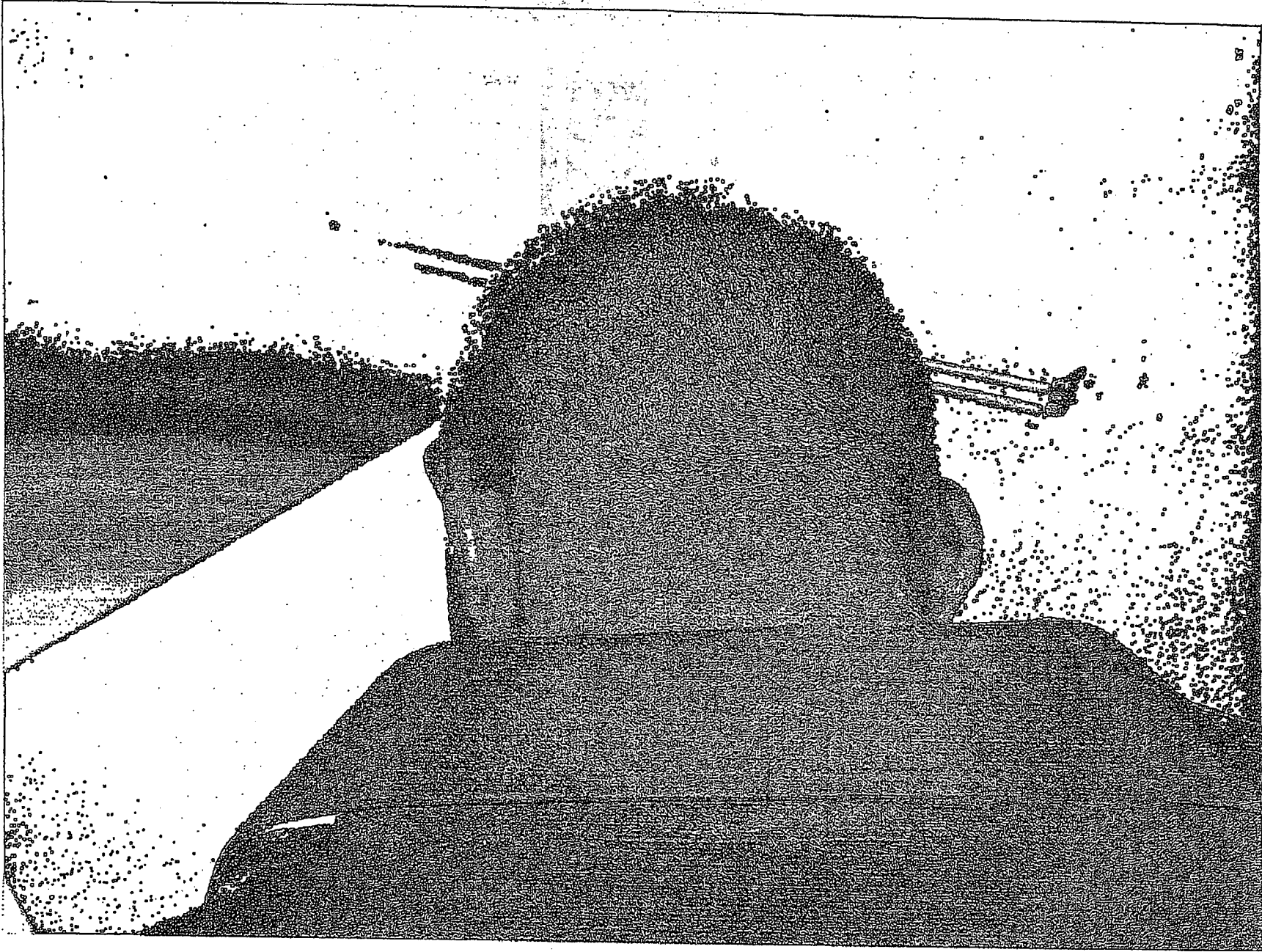
Deputy Chief Cheattle,

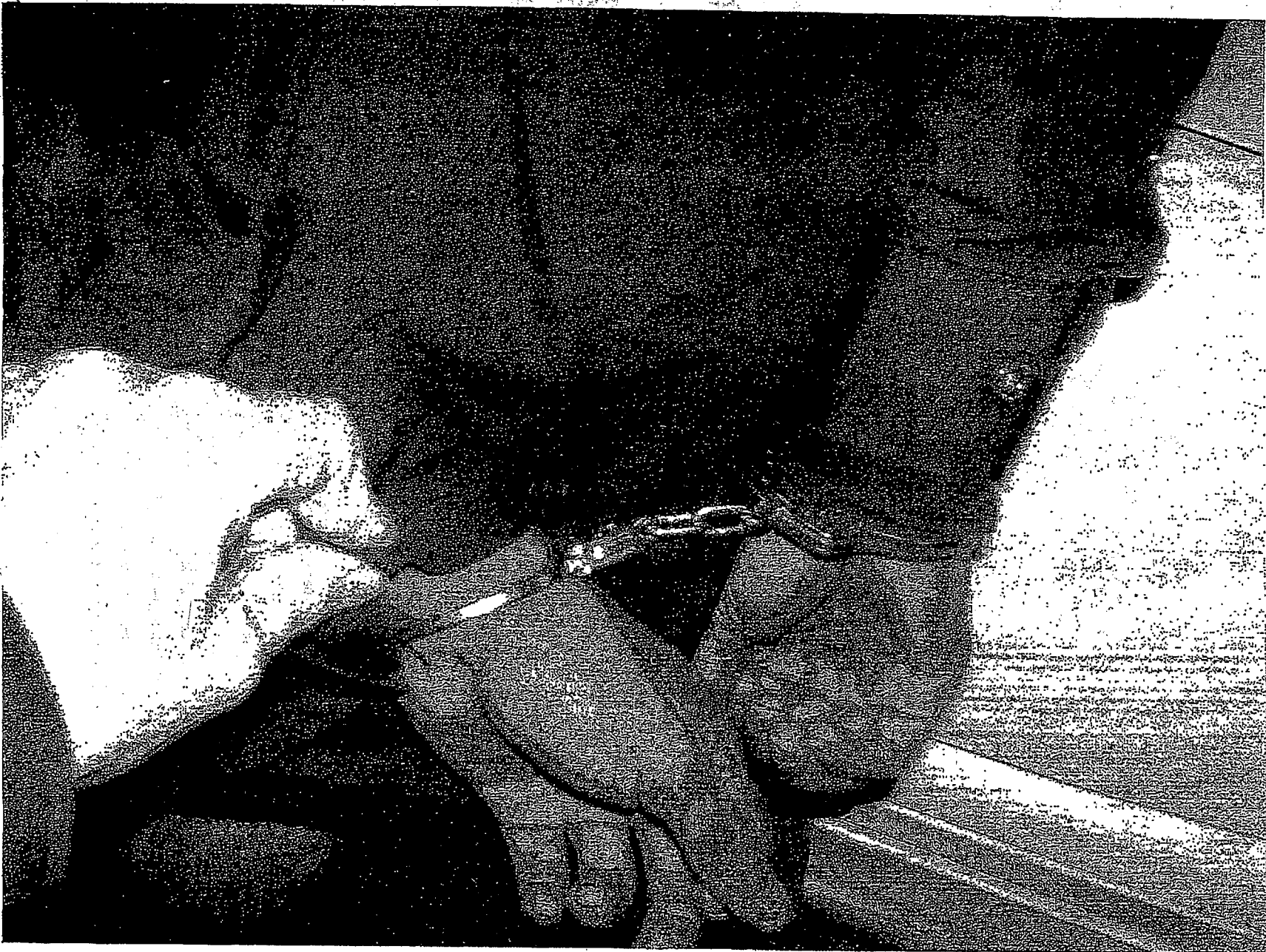
I have completed the "Use of Force/Injured Suspect" interdepartmental summary report concerning Pfc. Arroyo. In summary, Pfc. Arroyo was working off-duty at the Waffle House at 2571 Ashley Phosphate Rd. The suspect became loud and was shouting profanities so Pfc. Arroyo requested that he leave the premises. The suspect refused and stated that he was going to finish his food. Pfc. Arroyo attempted to handcuff the suspect but he began to resist and a struggle ensued. The suspect then rolled over and Pfc. Arroyo was able to place his knee on the neck area of the suspect to gain control. Pfc. King arrived to assist and the suspect was taken into custody. As the suspect was being escorted out of the business, he slammed his head into the door and then slammed his head into the window bars as he was placed into the marked vehicle. There was no visible injury to the suspect but EMS was called because the suspect complained of facial and neck pain. The suspect was transported to Trident Hospital for treatment and no fractures were indicated. Photos were taken of the suspect's facial area and neck and attached to the report. The suspect was subsequently deposited into A.C.D.C. and charged with Disorderly Conduct and Resisting Arrest. The business is equipped with video but no employee working at the time knew how to operate it. I instructed Sgt. Lawless to retrieve a copy of the video as soon as possible. Based on the report, I concur with Sgt. Lawless that nothing further is warranted concerning the incident.

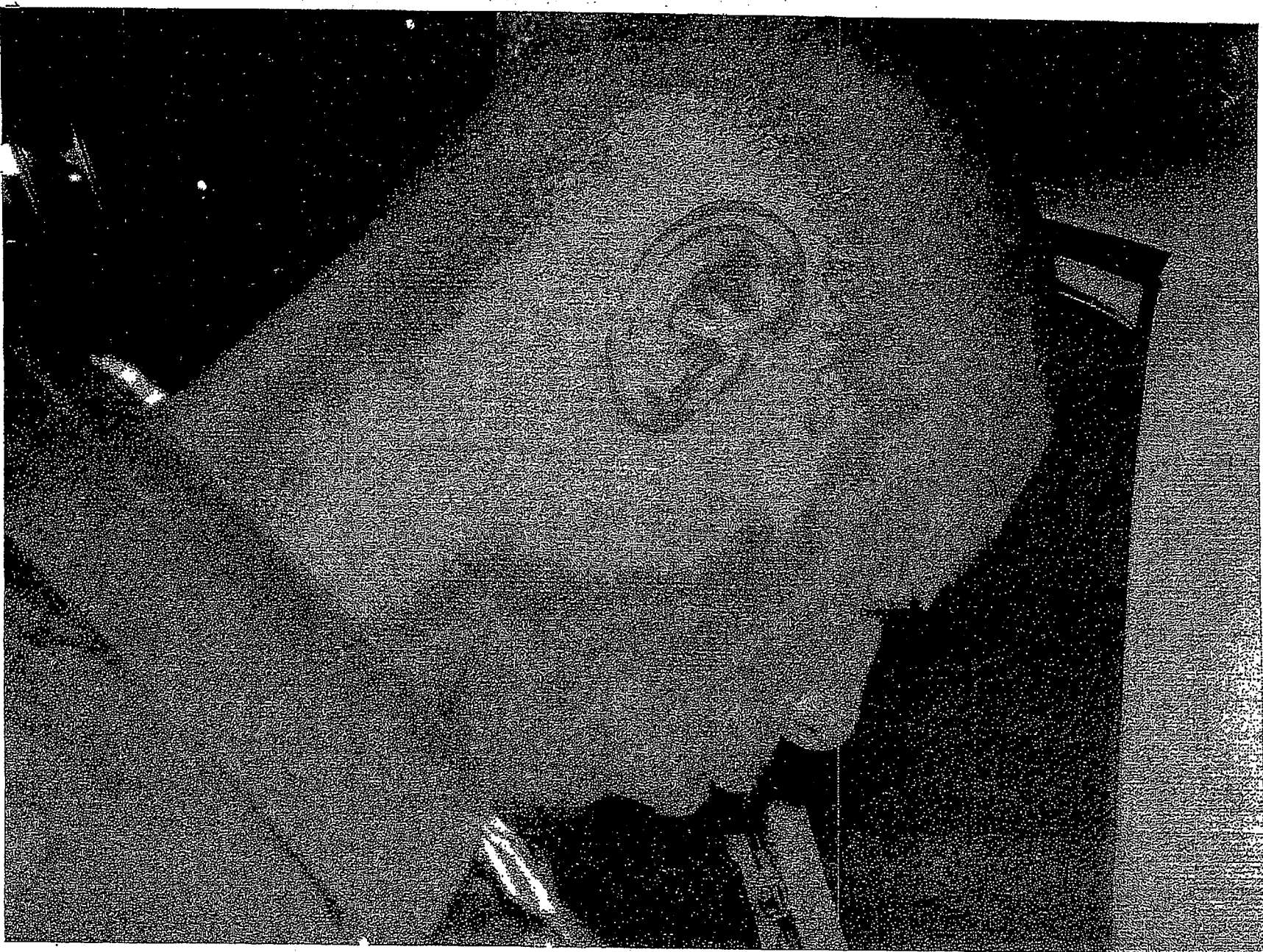
Capt. J.I. Stephens Jr.
Central Bureau Commander
North Charleston Police Department











February 11, 2014

Mr. Norris Earl White Jr
472 Winter Dr
Summerville, SC 29483-4109

Mr. White,

First I would like thank you for giving North Charleston Police Department the opportunity to investigate an incident that involved you and one of our employee's. An investigation of your complaint was conducted and there were no violations of Department Policy and Procedures. The officer(s) acted in accordance with the laws of the State of South Carolina and the Constitution of the United States of America.

Thank you for allowing our office the opportunity to address your concern, and please do not hesitate to contact me if I may be of further assistance.

Respectfully,

Sgt. D.L. Allen
North Charleston Police Department
Support Services
Office of Professional Standards
allen@northcharleston.org
SWAT I*
(843) 554-5700w
(843) 740-5827o

cc: Office of Professional Standards

EXHIBIT J

Incident Detail Report

Data Source: Data Warehouse
 Incident Status: Closed
 Incident Number: 201300817321
 Incident Date: 12/28/2013 05:07:21
 Last Updated: 1/24/2014 12:16:10

Incident Information

Incident Type:	129C01	Alarm Level:	
Priority:	LP3-Charlie	Problem:	129C_Suspicious Person
Determinant:		Agency:	Law
Base Response#:		Jurisdiction:	North Charleston PD-NCPD
Confirmation#:		Division:	NCZ8
Taken By:	McDowell, Leta B	Battalion:	NCZ8
Response Area:	NCPD 108	Response Plan:	LL01
Disposition:	LCCR_Call Comp/ Report Taken	Command Ch:	
Cancel Reason:		Primary TAC:	
Incident Status:	Closed	Secondary TAC:	
Certification:		Delay Reason (if any):	
Longitude:	80051703	Latitude:	32933965

Incident Location

Location Name:	WAFFLE HOUSE ASHLEY PHOSPHATE	County:	Charleston
Address:	2571 ASHLEY PHOSPHATE RD	Location Type:	Restaurant
Apartment:		Cross Street:	MAZYCK RD/TEDDER ST
Building:		Map Reference:	
City, State, Zip:	NORTH CHARLESTON SC 29418		

Call Receipt

Caller Name:	NCPD
Method Received:	Call Back Phone:
Caller Type:	Caller Location:

Time Stamps	Date	Time	User	Elapsed Times	Description	Time
Phone Pickup	12/28/2013	05:07:21				
1st Key Stroke	12/28/2013	05:07:21			Received to In Queue	00:00:00
In Waiting Queue	12/28/2013	05:07:21			Call Taking	00:00:00
Call Taking Complete	12/28/2013	05:07:21	McDowell, Leta B		In Queue to 1st Assign	00:00:00
1st Unit Assigned	12/28/2013	05:07:21			Call Received to 1st Assign	00:00:00
1st Unit Enroute	12/28/2013	05:07:21			Assigned to 1st Enroute	00:00:00
1st Unit Arrived	12/28/2013	05:07:21			Enroute to 1st Arrived	00:00:00
Closed	12/28/2013	08:19:47	Dearborn, Alicia K		Incident Duration	01:12:28

Resources Assigned

Unit	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
NC275	05:07:21		05:07:21		05:07:21			06:19:29			
NC362	05:07:23		05:07:23		05:09:29			05:15:12			
NC321	05:07:27		05:07:27					05:09:34			
NC170	05:07:46		05:07:46		05:07:49			05:44:04			
NC063	05:09:36		05:09:36		05:09:37			05:44:29			
NC139	05:09:42		05:09:42		05:09:44			05:44:26			
NC081	05:16:51		05:16:51		05:16:52			05:44:31			
NC328	05:41:31	LCCR_Call Comp/ Report Taken	05:41:31		05:41:33			05:19:47			

Personnel Assigned

Unit	Name
NC170	King, Anthony Jade (170) (NCPD0923) - PFC

Pre-Scheduled Information
 No Pre-Scheduled Information

Transports
 No Transports Information

Transport Legs
 No Transports Information

Comments	Date	Time	User	Type	Conf.	Comments
	12/28/2013	05:07:22	LBM	Response		REQ ASSISTING
	12/28/2013	05:07:23	CAN	Response		Backed up NC275 with NC362
	12/28/2013	05:07:27	CAN	Response		Backed up NC362 with NC321
	12/28/2013	05:07:46	CAN	Response		Backed up NC362 with NC170
	12/28/2013	05:08:08	CAN	Response		NC170 OUT AT THE WAFFLE HOUSE
	12/28/2013	05:09:16	LBM	Response		NC275 1 IN CUST
	12/28/2013	05:09:25	CAN	Response		NC170 UNITS SLOW RESPONSE, ALL 10-4
	12/28/2013	05:09:38	CAN	Response		Backed up NC170 with NC083
	12/28/2013	05:09:42	LBM	Response		Backed up NC083 with NC139
	12/28/2013	05:09:46	CAN	Response		NC083 CANCEL ANY OTHER UNITS NOT ALREADY HERE
	12/28/2013	05:16:51	LBM	Response		Backed up NC063 with NC081
	12/28/2013	05:19:48	LBM	Response		REQ EMS FOR NECK PAIN
	12/28/2013	05:19:57	CAN	Response		Multi-Agency EMS Incident #: 0457331
	12/28/2013	05:20:12	CAN	Response		NC275 REQ EMS, SUSPECT C/O NECK PAIN, SCENE SECURE [Shared]
	12/28/2013	05:20:32	LBM	Response		Requested Case Number(s) Issued for North Charleston PD- NCPD: 2013044810 [Shared]
	12/28/2013	05:22:39	MFH	Response		Problem changed from Traumatic Injuries+ to Traumatic Injuries A+ by Fire [Shared]
	12/28/2013	05:23:07	MFH	Response		Problem changed from *Traumatic Injuries to Traumatic Injuries A 01 by EMS [Shared]
	12/28/2013	05:34:09	???	Response		[Fire] has closed their Incident []
	12/28/2013	05:41:32	LBM	Response		Backed up NC063 with NC328 [Shared]
	12/28/2013	05:41:36	LBM	Response		Secondary Location for NC328: TRIDENT HOSPITAL, 9330 MEDICAL PLAZA DR, NORTH CHARLESTON, SC 29406. [Shared]
	12/28/2013	05:41:48	LBM	Response		NC328 ESCORTING EMS TO TRIDENT WITH 95 SUBJECT [Shared]
	12/28/2013	05:42:42	LBM	Response		Secondary Location for NC275: TRIDENT HOSPITAL, 9330 MEDICAL PLAZA DR, NORTH CHARLESTON, SC 29406. [Shared]
	12/28/2013	06:11:11	SRS	Response		[EMS] has closed their Incident []

Address Changes
No Address Changes

Priority Changes
No Priority Changes

Alarm Level Changes
No Alarm Level Changes

Activity Log	Date	Time	Radio	Activity	Location	Log Entry	User
	12/28/2013	05:07:21	NC275	At Scene	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
	12/28/2013	05:07:23	NC362	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		CAN
	12/28/2013	05:07:23	NC362	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = 7800 RIVERS AV [TOYS R US]	CAN
	12/28/2013	05:07:23	NC275	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC362	CAN
	12/28/2013	05:07:27	NC321	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		CAN
	12/28/2013	05:07:27	NC321	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = DORCHESTER RD / CROSS COUNTY RD	CAN
	12/28/2013	05:07:27	NC362	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC321	CAN
	12/28/2013	05:07:37		Read Incident		Incident 771 was Marked as Read.	LBM

12/28/2013	05:07:37		Read Comment		Comment for Incident 771 was Marked as Read.	LBM
12/28/2013	05:07:46	NC170	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		CAN
12/28/2013	05:07:46	NC170	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = ASHLEY PHOSPHATE RD / STALL RD	CAN
12/28/2013	05:07:46	NC362	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC170	CAN
12/28/2013	05:07:49	NC170	At Scene	2571 ASHLEY PHOSPHATE RD		CAN
12/28/2013	05:07:58		Read Comment		Comment for Incident 771 was Marked as Read.	CAN
12/28/2013	05:08:10		UserAction		User clicked Exit/Save	CAN
12/28/2013	05:09:29	NC362	At Scene	2571 ASHLEY PHOSPHATE RD		CAN
12/28/2013	05:09:34	NC321	Available	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:09:36	NC063	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		CAN
12/28/2013	05:09:36	NC063	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = REMOUNT RD / CAN ATTAWAY ST	
12/28/2013	05:09:36	NC170	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC063	CAN
12/28/2013	05:09:37	NC063	At Scene	2571 ASHLEY PHOSPHATE RD		CAN
12/28/2013	05:09:42	NC139	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:09:42	NC139	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = 235 FOREST CIR	LBM
12/28/2013	05:09:42	NC063	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC139	LBM
12/28/2013	05:09:44	NC139	At Scene	2571 ASHLEY PHOSPHATE RD		LBM
12/28/2013	05:10:42		UserAction		User clicked Exit/Save	LBM
12/28/2013	05:15:12	NC362	Available	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:16:51	NC081	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:16:51	NC081	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = 5101 ASHLEY PHOSPHATE RD [BLOCKBUSTER VIDEO - ASHLEY PHOSPHATE]	LBM
12/28/2013	05:16:51	NC063	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC081	LBM
12/28/2013	05:16:52	NC081	At Scene	2571 ASHLEY PHOSPHATE RD		LBM
12/28/2013	05:19:45		Read Comment		Comment for Incident 771 was Marked as Read.	CAN
12/28/2013	05:19:49		Read Comment		Comment for Incident 771 was Marked as Read.	LBM
12/28/2013	05:19:57		MultiAgencyResponse		Generated Inc: EMS Inc#0457331	CAN
12/28/2013	05:20:20		UserAction		User clicked Exit/Save	CAN
12/28/2013	05:20:37		Read Comment		Comment for Incident 771 was Marked as Read.	LBM
12/28/2013	05:26:32		UserAction		User clicked Exit/Save	LBM

12/28/2013	05:41:31	NC328	Dispatched	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:41:31	NC328	Responding	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]	Responding From = ASHLEY PHOSPHATE RD / STALL RD	LBM
12/28/2013	05:41:31	NC083	Unit Backed up	WAFFLE HOUSE - ASHLEY PHOSPHATE	Backed up with NC328	LBM
12/28/2013	05:41:33	NC328	At Scene	2571 ASHLEY PHOSPHATE RD		LBM
12/28/2013	05:41:36	NC328	20 - Responding 2nd Loc	TRIDENT HOSPITAL	Incident ID = 2522771, 9330 MEDICAL PLAZA DR 32977442, 80073763,	LBM
12/28/2013	05:42:16		Read Comment		Comment for Incident 771 was Marked as Read.	CAN
12/28/2013	05:42:42	NC275	20 - Responding 2nd Loc	TRIDENT HOSPITAL	Incident ID = 2522771, 9330 MEDICAL PLAZA DR 32977442, 80073763,	LBM
12/28/2013	05:43:06		UserAction		User clicked Exit/Save	CAN
12/28/2013	05:44:04	NC170	Available	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:44:25	NC139	Available	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:44:29	NC063	Available	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:44:31	NC081	Available	2571 ASHLEY PHOSPHATE RD [WAFFLE HOUSE - ASHLEY PHOSPHATE]		LBM
12/28/2013	05:48:51	NC328	21 - At Scene 2nd Location	TRIDENT HOSPITAL	Incident ID = 2522771, 9330 MEDICAL PLAZA DR 32977442, 80073763,	LBM
12/28/2013	05:48:54	NC275	21 - At Scene 2nd Location	TRIDENT HOSPITAL	Incident ID = 2522771, 9330 MEDICAL PLAZA DR 32977442, 80073763,	LBM
12/28/2013	06:19:29	NC275	Available	9330 MEDICAL PLAZA DR [TRIDENT HOSPITAL]		SJF
12/28/2013	06:19:37		Read Comment		Comment for Incident 771 was Marked as Read.	SJF
12/28/2013	06:19:47	NC328	Available	9330 MEDICAL PLAZA DR [TRIDENT HOSPITAL]		AKD
12/28/2013	06:19:47		Response Closed	WAFFLE HOUSE - ASHLEY PHOSPHATE		AKD
12/28/2013	06:19:52		UserAction		User clicked Exit/Save	SJF

Edit Log

Date	Time	Field	Changed From	Changed To	Reason	Table	Workstation	User
12/28/2013	05:07:37	Read Call	False	True	(Response View)	Response_Master_Incident	911DSP25	LBM
12/28/2013	05:07:37	Read Comme	False	True	(Response View)	Response_Master_Incident	911DSP25	LBM
12/28/2013	05:07:58	Read Comme	False	True	(Response View)	Response_Master_Incident	911DSP24	CAN
12/28/2013	05:19:45	Read Comme	False	True	(Response View)	Response_Master_Incident	911DSP24	CAN
12/28/2013	05:19:48	Call_Back	663-0916		(Response View)	Response_Master_Incident	911DSP24	CAN
12/28/2013	05:19:49	Read Comme	False	True	(Response View)	Response_Master_Incident	911DSP25	LBM
12/28/2013	05:19:51	Caller_Nam		NCPD	(Response View)	Response_Master_Incident	911DSP24	CAN
12/28/2013	05:20:37	Read Comme	False	True	(Response View)	Response_Master_Incident	911DSP25	LBM

12/28/2013 05:42:16	Read Comme False	True	(Response Viewe	Response_Master_Incident911DSP24	CAN
12/28/2013 08:19:37	Read Comme False	True	(Response Viewe	Response_Master_Incident911DSP24	SJF

Custom Time Stamps
No Custom Time Stamps

Custom Data Fields
No Custom Data Fields

Attachments
No Attachment

12/28/2013 05:42:16

EXHIBIT K

Case Notes

Detective Sergeant D. Allen #49

January 24, 2014

- Via walk-in, conducted a recorded interview with complainant Norris E. White Jr; he provided a written statement.
- Printed out the CAD notes for the incident in question dated December 28, 2013.
- Viewed in-car camera footage from Sgt. S. Evans patrol unit, requested a copy burned to a CD.

February 4, 2014

- Via telephone (843) 553-1140 spoke with the John Hawkins; manager at the Waffle House located at 2571 Ashley Phosphate Rd, North Charleston, SC 29418. He advised that a copy of the incident had been provided to officer Arroyo.
- Obtained a copy of the North Charleston Clerk of Court case history for Mr. Norris E. White Jr, document added to the blue folder.

February 7, 2014

- Sgt's Allen and Rooney met with Waffle House Manager, John Hawkins. We viewed the footage of the December 28, 2013 incident that involved complainant Norris E. White.
- Mr. Hawkins advised to send a request for a copy to the corporate office via e-mail, CCTV@wafflehouse.com.
- Returned to the office, sent a copy request to Waffle House cc Lt. Stanley.
- Printed out an overview map of the restaurant.

February 11, 2014

- The case was presented to NCPD Chief E. Driggers; his decision was to send the complainant an insufficient letter.
- Sgt's Allen and Rooney went the Waffle House located at 2571 Ashley Phosphate Rd, North Charleston, SC to pick up a copy of the arrest incident involving the complainant (Dec 28, 2013). Investigators' were advised the disk will be available February 12, 2014.
- Mr. Norris was scheduled for a jury trial February 11, 2014 @ 11:45a, disposition pending.

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Figure 1. The effect of the concentration of the *Ag* on the *Ag* adsorption capacity of the *Ag*-*Ag*2S-*Ag*2S2O3-*Ag*2S2O4-*Ag*2S2O5-*Ag*2S2O6-*Ag*2S2O7-*Ag*2S2O8-*Ag*2S2O9-*Ag*2S2O10-*Ag*2S2O11-*Ag*2S2O12-*Ag*2S2O13-*Ag*2S2O14-*Ag*2S2O15-*Ag*2S2O16-*Ag*2S2O17-*Ag*2S2O18-*Ag*2S2O19-*Ag*2S2O20-*Ag*2S2O21-*Ag*2S2O22-*Ag*2S2O23-*Ag*2S2O24-*Ag*2S2O25-*Ag*2S2O26-*Ag*2S2O27-*Ag*2S2O28-*Ag*2S2O29-*Ag*2S2O30-*Ag*2S2O31-*Ag*2S2O32-*Ag*2S2O33-*Ag*2S2O34-*Ag*2S2O35-*Ag*2S2O36-*Ag*2S2O37-*Ag*2S2O38-*Ag*2S2O39-*Ag*2S2O40-*Ag*2S2O41-*Ag*2S2O42-*Ag*2S2O43-*Ag*2S2O44-*Ag*2S2O45-*Ag*2S2O46-*Ag*2S2O47-*Ag*2S2O48-*Ag*2S2O49-*Ag*2S2O50-*Ag*2S2O51-*Ag*2S2O52-*Ag*2S2O53-*Ag*2S2O54-*Ag*2S2O55-*Ag*2S2O56-*Ag*2S2O57-*Ag*2S2O58-*Ag*2S2O59-*Ag*2S2O60-*Ag*2S2O61-*Ag*2S2O62-*Ag*2S2O63-*Ag*2S2O64-*Ag*2S2O65-*Ag*2S2O66-*Ag*2S2O67-*Ag*2S2O68-*Ag*2S2O69-*Ag*2S2O70-*Ag*2S2O71-*Ag*2S2O72-*Ag*2S2O73-*Ag*2S2O74-*Ag*2S2O75-*Ag*2S2O76-*Ag*2S2O77-*Ag*2S2O78-*Ag*2S2O79-*Ag*2S2O80-*Ag*2S2O81-*Ag*2S2O82-*Ag*2S2O83-*Ag*2S2O84-*Ag*2S2O85-*Ag*2S2O86-*Ag*2S2O87-*Ag*2S2O88-*Ag*2S2O89-*Ag*2S2O90-*Ag*2S2O91-*Ag*2S2O92-*Ag*2S2O93-*Ag*2S2O94-*Ag*2S2O95-*Ag*2S2O96-*Ag*2S2O97-*Ag*2S2O98-*Ag*2S2O99-*Ag*2S2O100-*Ag*2S2O101-*Ag*2S2O102-*Ag*2S2O103-*Ag*2S2O104-*Ag*2S2O105-*Ag*2S2O106-*Ag*2S2O107-*Ag*2S2O108-*Ag*2S2O109-*Ag*2S2O110-*Ag*2S2O111-*Ag*2S2O112-*Ag*2S2O113-*Ag*2S2O114-*Ag*2S2O115-*Ag*2S2O116-*Ag*2S2O117-*Ag*2S2O118-*Ag*2S2O119-*Ag*2S2O120-*Ag*2S2O121-*Ag*2S2O122-*Ag*2S2O123-*Ag*2S2O124-*Ag*2S2O125-*Ag*2S2O126-*Ag*2S2O127-*Ag*2S2O128-*Ag*2S2O129-*Ag*2S2O130-*Ag*2S2O131-*Ag*2S2O132-*Ag*2S2O133-*Ag*2S2O134-*Ag*2S2O135-*Ag*2S2O136-*Ag*2S2O137-*Ag*2S2O138-*Ag*2S2O139-*Ag*2S2O140-*Ag*2S2O141-*Ag*2S2O142-*Ag*2S2O143-*Ag*2S2O144-*Ag*2S2O145-*Ag*2S2O146-*Ag*2S2O147-*Ag*2S2O148-*Ag*2S2O149-*Ag*2S2O150-*Ag*2S2O151-*Ag*2S2O152-*Ag*2S2O153-*Ag*2S2O154-*Ag*2S2O155-*Ag*2S2O156-*Ag*2S2O157-*Ag*2S2O158-*Ag*2S2O159-*Ag*2S2O160-*Ag*2S2O161-*Ag*2S2O162-*Ag*2S2O163-*Ag*2S2O164-*Ag*2S2O165-*Ag*2S2O166-*Ag*2S2O167-*Ag*2S2O168-*Ag*2S2O169-*Ag*2S2O170-*Ag*2S2O171-*Ag*2S2O172-*Ag*2S2O173-*Ag*2S2O174-*Ag*2S2O175-*Ag*2S2O176-*Ag*2S2O177-*Ag*2S2O178-*Ag*2S2O179-*Ag*2S2O180-*Ag*2S2O181-*Ag*2S2O182-*Ag*2S2O183-*Ag*2S2O184-*Ag*2S2O185-*Ag*2S2O186-*Ag*2S2O187-*Ag*2S2O188-*Ag*2S2O189-*Ag*2S2O190-*Ag*2S2O191-*Ag*2S2O192-*Ag*2S2O193-*Ag*2S2O194-*Ag*2S2O195-*Ag*2S2O196-*Ag*2S2O197-*Ag*2S2O198-*Ag*2S2O199-*Ag*2S2O200-*Ag*2S2O201-*Ag*2S2O202-*Ag*2S2O203-*Ag*2S2O204-*Ag*2S2O205-*Ag*2S2O206-*Ag*2S2O207-*Ag*2S2O208-*Ag*2S2O209-*Ag*2S2O210-*Ag*2S2O211-*Ag*2S2O212-*Ag*2S2O213-*Ag*2S2O214-*Ag*2S2O215-*Ag*2S2O216-*Ag*2S2O217-*Ag*2S2O218-*Ag*2S2O219-*Ag*2S2O220-*Ag*2S2O221-*Ag*2S2O222-*Ag*2S2O223-*Ag*2S2O224-*Ag*2S2O225-*Ag*2S2O226-*Ag*2S2O227-*Ag*2S2O228-*Ag*2S2O229-*Ag*2S2O230-*Ag*2S2O231-*Ag*2S2O232-*Ag*2S2O233-*Ag*2S2O234-*Ag*2S2O235-*Ag*2S2O236-*Ag*2S2O237-*Ag*2S2O238-*Ag*2S2O239-*Ag*2S2O240-*Ag*2S2O241-*Ag*2S2O242-*Ag*2S2O243-*Ag*2S2O244-*Ag*2S2O245-*Ag*2S2O246-*Ag*2S2O247-*Ag*2S2O248-*Ag*2S2O249-*Ag*2S2O250-*Ag*2S2O251-*Ag*2S2O252-*Ag*2S2O253-*Ag*2S2O254-*Ag*2S2O255-*Ag*2S2O256-*Ag*2S2O257-*Ag*2S2O258-*Ag*2S2O259-*Ag*2S2O260-*Ag*2S2O261-*Ag*2S2O262-*Ag*2S2O263-*Ag*2S2O264-*Ag*2S2O265-*Ag*2S2O266-*Ag*2S2O267-*Ag*2S2O268-*Ag*2S2O269-*Ag*2S2O270-*Ag*2S2O271-*Ag*2S2O272-*Ag*2S2O273-*Ag*2S2O274-*Ag*2S2O275-*Ag*2S2O276-*Ag*2S2O277-*Ag*2S2O278-*Ag*2S

EXHIBIT L

...the ...

207

EXHIBIT M

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

AFFIDAVIT OF
OFFICER CHRISTOPHER ARROYO

FILED
2017 MAY -5 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the affiant, Christopher Arroyo, and first being duly sworn swears and states
the following:

1. I am over the age of 18 years and at all times relevant to this matter I was employed with the North Charleston Police Department.
2. Currently, I am a Police Officer with the St. Stephen Police Department.
3. I submit this affidavit to provide additional information that was not asked of me during my deposition.
4. While working in an off-duty capacity at the Waffle House, I retain all of my law enforcement authority. During the hours I am working there, I act as an agent and/or representative of both the Waffle House and the North Charleston Police Department, although I am not permitted to "enforce or threaten to enforce any rule or order of an employer governing customer behavior where the customer's conduct does not constitute a violation of the law." NCPD Policy A-23 Off Duty Employment.
5. On the night of December 28, 2013, I was sitting in a booth near by not right next to the plaintiff. I could hear loud, boisterous noises coming from the plaintiff and could see him getting up and down from the table, walking around, waving his arms while continuing to talk loudly to people at his table.
6. I believed, based on my observations, that his conduct was annoying to the staff and other patrons nearby.
7. My intention was to ask him to quiet down, and then end my shift and go home. I did not go to the table with the intention of making an arrest or even issuing a citation.

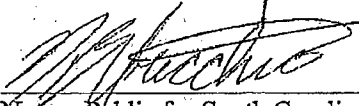
8. When I approached Mr. White's table, I asked him to quiet down or leave. Mr. White responded by telling me that he was not going to leave.
9. I again told Mr. White that he needed to leave the premises and he refused.
10. At the time, I recognized that Mr. White was now trespassing after notice, but in light of his actions when I told him he was under arrest, I later made the decision not to charge him with trespass after notice, and to charge him with disorderly conduct under the North Charleston ordinance and resisting arrest.
11. After I charged Mr. White with disorderly conduct and resisting arrest, the file was turned over to the prosecutor's office. I never heard anything again on the case.
12. When the charges were nol prossed by the prosecutor on April 13, 2015, she had never spoken to me about the case. She dismissed the charges without consulting me.
13. If she had contacted me about this case, I would have walked her through the video, so she would better understand what she was seeing, since there is no audio.
14. My last day working for North Charleston was August 21, 2015, so I was still employed with North Charleston when the charges were nol prossed and available to speak with the prosecutor.
15. The first I knew of the nol prossed charges was during this civil litigation.
16. I checked with Officer King and my former supervisors, but none of them said they were consulted about the nol pros of these charges.
17. I did not type this affidavit, but have had the opportunity to review it and make changes.

AFFIANT FURTHER SAYETH NAUGHT!



Christopher Arroyo

Signed and sworn to before me
this 5th day of May, 2017.



Notary Public for South Carolina

My commission expires: July 23, 2023

Nicholas B. Uricchio

Page 2 of 2

EXHIBIT N

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

AFFIDAVIT OF
TAYLOR MCCULLOUGH

JULIE J. ARMSTRONG
CLERK OF COURT

2017 MAY -5 PM 1:17

FILED

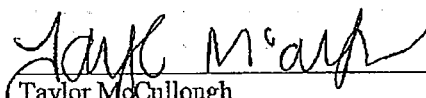
COMES NOW, the affiant, Taylor McCullough, and first being duly sworn swears and states the following:

1. I am over the age of 18 years and live in North Charleston, South Carolina.
2. During the month of December, 2013, I was working as a waitress at the Waffle House on Ashley Phosphate Road. On December 28th, I was working the night shift and was present between the hours of 3am and 6am.
3. During that time, there was a North Charleston Police Officer who was working for our restaurant. He worked there almost every weekend and his job was to provide security for the restaurant.
4. After 4:00am on December 28, 2013, a man who I have now been advised is the plaintiff, came in with another male and two females and sat in a booth.
5. Between the time they sat down and when the officer went over to their table, the man was cursing, talking loudly and acting like he was drunk.
6. I know that other people in the restaurant were not being loud, because I was able to hear him.
7. The officer went over to his table and asked him to stop, but the man just got louder and said very loudly "why are you bothering me."
8. After that, the police officer motioned for their check, and told him to leave. The man stayed at his table saying something about not leaving.
9. I heard the officer ask him to stand up and put his hands behind his back, but he did not get

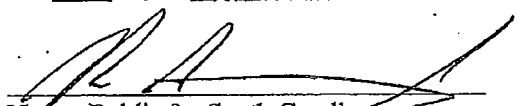
up.

10. The officer grabbed him and it looked like he was trying to handcuff him, but the officer could not get his arms behind him.
11. I do not know why, but they moved down the restaurant to the other end and then the officer suddenly took the man to the ground and went down with him.
12. Another officer showed up and went to them on the ground, but I was not paying attention to what happened after that.
13. I do not remember all of the details of this incident because it was a long time ago.
14. I do not know the man who was arrested or the officer and am only saying the things I fully remember in this affidavit.
15. I have had the opportunity to review this affidavit and make changes to it.

FURTHER AFFIANT SAYETH NAUGHT!


Taylor McCullough

Signed and sworn to before me
this 8th day of MARCH, 2017.


Notary Public for South Carolina
My commission expires: Aug 19 - 2020

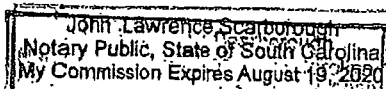


EXHIBIT O

In The Matter Of:

WHITE VS.

CITY OF NORTH CHARLESTON, et al.

TAYLOR B. McCULLOUGH

March 16, 2017

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Page 1	Page 3
1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS 2 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT 3) CASE NO.: 2015-CP-10-06561 4 5 NORRIS EARL WHITE,) 6) Plaintiff,) 7 vs.) 8 THE CITY OF NORTH) 9 CHARLESTON,) 10) Defendant.) 11 12 DEPOSITION OF: TAYLOR BROOKE McCULLOUGH 13 14 DATE TAKEN: March 16, 2017 15 16 TIME: 2:05 p.m. 17 18 LOCATION: STRATOS LAW FIRM, LLC 19 1041 Johnnie Dodds Blvd., Suite 14-A 20 Mt. Pleasant, SC 29464 21 22 REPORTED BY: Helen L. Rose, CSR, RPR 23 Certified Shorthand Reporter 24 Registered Professional Reporter 25 Notary Public	1 INDEX 2 3 THE WITNESS: 4 TAYLOR BROOKE McCULLOUGH 5 6 Examination by: Page 7 MR. STRATOS 4 8 MS. JACKSON 20 9 10 11 EXHIBITS 12 There were no exhibits proffered. Page 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 APPEARANCES: 2 3 FOR THE PLAINTIFF: 4 5 By: MILTON D. STRATOS, II, ESQ. 6 STRATOS LAW FIRM, LLC 7 1041 Johnnie Dodds Blvd., Suite 14-A 8 Mt. Pleasant, SC 29464 9 10 FOR THE DEFENDANT: 11 12 By: ROBIN L. JACKSON, ESQ. 13 SENN LEGAL, LLC 14 3 Wesley Drive 15 Charleston, SC 29407 16 17 18 19 20 21 22 23 24 25	1 (Witness sworn.) 2 TAYLOR BROOKE McCULLOUGH, 3 called as a witness herein, having been first duly 4 sworn, was examined and testified as follows: 5 EXAMINATION 6 BY MR. STRATOS: 7 Q Ms. McCullough, my name is Milt Stratos, II. I 8 represent the plaintiff in a matter where the caption is 9 Norris White v. the City of North Charleston. We've 10 actually spoken on a couple different occasions. You may 11 have spoken with Robin, the defense counsel for the City 12 of North Charleston. So you may be somewhat familiar 13 with the facts of this case. Correct? 14 A. Uh-huh. 15 Q Before I get started -- and I'm going to try to 16 make this incredibly short for you -- the Supreme Court 17 requires me to give you the ground rules for moving 18 forward in a deposition and how to properly answer 19 questions and that sort of thing. 20 A Okay. 21 Q You're aware that your testimony is under oath, 22 correct? 23 A Yes. 24 Q We tend to speak with our hands and gestures 25 and pointing directions, but because everything has to be

Page 5	Page 7
1 recorded in the transcript we have to speak instead of 2 conveying meaning with our hands. So I would ask that if 3 you're asked yes or no questions to respond yes or no, or 4 direction-wise, please respond with a verbal response. 5 A Okay. 6 Q Some of the questions might be slightly 7 intrusive. They are asked of everyone, so please don't 8 take offense. And I'll just ask you a really quick 9 series of questions regarding your background. Is there 10 any reason why you can't give your best testimony today? 11 A No. 12 Q Are you under the influence of drugs or alcohol 13 that will impair your ability to answer questions 14 truthfully today? 15 A No. 16 Q Is there any other reason that would prevent 17 you from giving a deposition that is truthful and honest 18 today? 19 A No. 20 Q What is your current mailing address? 21 A It's 7008 Stall Road, Lot 39. 22 Q What zip code is that? 23 A 29406. 24 Q What's your date of birth? 25 A 6-1-96.	1 Q Church? 2 A No. 3 Q Are you married? 4 A No. 5 Q Where were you working in December of 2013? 6 A Waffle House on Ashley Phosphate. 7 Q How long had you been working there? 8 A Since January of 2013. 9 Q Since January of 2013? 10 A Uh-huh. 11 Q Do you remember the specific address on Ashley 12 Phosphate Road? 13 A For the Waffle House? 14 Q Yes, ma'am. 15 A 2819 Ashley Phosphate Road. 16 Q What was your position at the Waffle House? 17 A I was a waitress. 18 Q And tell me some of the duties you have as a 19 waitress? 20 A Serve the customer and deliver the food to 21 them. 22 Q Are you stationary? While you are being a 23 waitress in the Waffle House, are you in one location? 24 A Uh-huh. 25 Q Do you move about the restaurant?
Page 6	Page 8
1 Q How long have you lived at your present 2 address? 3 A For a year now, since February of last year. 4 Q Where did you live before that? 5 A 7335 Stall Road, Lot 35, I believe. 6 Q What time period did you live at the second 7 location? 8 A For a year. 9 Q Where did you live before that? 10 A I don't remember the address. It was in Moncks 11 Corner. 432? 434? I don't remember the address. 12 Q That's okay. If you remember, please interject 13 and let us know. December of 2013, where were you 14 living? 15 A 2819 Haverhill Circle. But I don't remember 16 the zip code. 17 Q What part of town? 18 A It was in Charleston. 19 Q Is that the city of Charleston? 20 A North Charleston. 21 Q Do you have any relatives over the age of 18 22 that live in Charleston County? 23 A No. 24 Q Do you belong to any civic organizations? 25 A No.	1 A You said do I move around the restaurant? 2 Q Yes, to serve the customers. 3 A Yes. 4 Q So you might be in the kitchen at some point, 5 correct? 6 A Right. 7 Q And then you might be out amongst the tables -- 8 A Yeah. 9 Q -- or behind the bar? Is it proper to call 10 that area a bar in this particular Waffle House where you 11 worked? 12 A So there's the back where we keep like our 13 dishes, like the pots and stuff, and like where they keep 14 the food in the pantry. Then they have the grill where 15 you keep -- that's where we usually work. Then they have 16 the floor where the people sit. So the kitchen like 17 where they cook is behind where you can see everything. 18 Q During the normal course at work, would you 19 generally be all around the restaurant? 20 A Right. 21 Q Do you recall the events of December 20, 2013? 22 A As far as this case? 23 Q Yes, ma'am. 24 A Yeah, so basically it was the man with the 25 group of his friends, and they were sitting at what we

Page 9

1 call our office section, which is right behind where the
2 grill is. And they were talking like within their group.
3 The man was saying some cuss words. And the officer
4 asked him to quiet down and to stop. And the man
5 basically asked the officer why are you bothering us, I'm
6 not really doing anything.
7 And the officer -- they continued to
8 argue. I don't really know what else was said, or I
9 don't remember what else was said. And the officer asked
10 him to stand up; and the man didn't want to stand up. He
11 asked -- he continued to ask why are you bothering us,
12 you know, we're not doing anything.
13 And somehow the officer and the man ended
14 up on the floor. I don't remember like how they got --
15 you know, how the man got up or anything like that, but
16 he was slammed to the floor by the officer.
17 Q That was a lot, so I might -- you did a good
18 job. I'm going to back up to try and make sure I've got
19 everything. I promise not to take too long. Do you
20 remember the number of friends that was with the
21 particular gentleman that was arrested?
22 A Yeah, it was four people including him.
23 Q You are aware that the gentleman that was
24 arrested that night, his name is Norris White?
25 A Well, now I know, yeah. But, no, I didn't know

Page 10

1 him.
2 Q So if I refer to Mr. Norris White, I'll be
3 referring to the gentleman that was arrested that night.
4 A Right.
5 Q Do you recall what kind of clothing he had on
6 that night?
7 A No.
8 Q It wasn't something striking or different that
9 you might recall?
10 MS. JACKSON: Objection to the form.
11 A No.
12 Q You said that a man was cussing at their table.
13 Are you certain whether or not it was Norris White that
14 was cussing, or could it have been anyone?
15 A It could have been any of them. I don't really
16 recall. It's been so long ago. And it's normal for the
17 Waffle House on the third shift for people to be drunk
18 and cussing with their friends.
19 Q So it's a very common occurrence --
20 A Yeah.
21 Q -- for people at the Waffle House at that
22 time --
23 A Uh-huh.
24 Q -- to be using profanity?
25 A Yeah, we got it all the time, so it was, you

Page 11

1 know, something that we just ignored. It wasn't ...
2 Q It's just a part of being at the Waffle House,
3 correct?
4 A Right.
5 Q At that time?
6 A Yeah.
7 Q Do you remember where you were located when you
8 were observing the officer first made contact with Norris
9 White and the folks at his table?
10 A I was like behind their table, like where the
11 grill is, like by the cooler I believe. I can't remember
12 if I was their waitress or not.
13 Q Can you tell me with a matter of feet?
14 A I'd say like five feet away from them
15 approximately.
16 Q So you could have well heard just about
17 everything that they were discussing, correct?
18 A Yeah. I mean, I wasn't really focusing on what
19 they were discussing. So I was, you know. And we were
20 busy at that time, so I was just serving my customers. I
21 mean I wasn't like listening to their conversations.
22 Q You stated that Norris White was arguing with
23 the officer; is that correct?
24 A Yeah, he was basically saying why are you
25 bothering us, we're not doing anything wrong.

Page 12

1 Q Do you recall anything specific that he said
2 other than why are you bothering us?
3 A No.
4 Q That's okay. Do you recall the officers'
5 demeanor?
6 A At first he was calm, and then once Norris
7 started asking why are you bothering us, he started
8 getting louder and louder, like he was getting angry that
9 he wasn't cooperating.
10 Q Do you remember anything specific that the
11 officer was saying?
12 A Just for him to stand up and put his arms
13 behind his back, but no.
14 Q Do you recall if Norris White got up and put
15 his hands behind his back when the officer told him to?
16 A No, he, you know, asked why are you bothering
17 us, you know, I'm not doing anything. He just continued
18 to ask that. But I don't remember when he stood up. I
19 wasn't paying attention at that time.
20 Q You don't recall the officer having to put his
21 hand on Mr. White to get him out of the table?
22 A I don't remember.
23 Q Was Norris White and the folks at his table,
24 were they eating when the officer approached their table?
25 A They've ordered, but I don't know if they had

Page 13

1 their food or not yet. I'm pretty sure that they had
2 their food.
3 Q Do you recall anyone else at the table saying
4 anything to the officer --
5 A No.
6 Q -- when he approached the table?
7 A No.
8 Q Did anybody say anything to the officer at any
9 point in time?
10 A I don't remember.
11 Q Did anyone, any employee of the Waffle House
12 ask Mr. White or anyone at his table to leave the
13 restaurant?
14 A No, he just asked for Norris to stand up.
15 Q Separate from the officer.
16 A Oh.
17 Q But any Waffle House employees, did they ever
18 ask him to leave?
19 A Uhn-uh.
20 Q Was there any reason to ask them to leave, in
21 your opinion?
22 A I mean it was normal for us, like I said, so we
23 weren't really paying attention to them.
24 Q Was Norris White or anyone else at his table
25 screaming?

Page 14

1 A No, they were loud amongst themselves and
2 laughing, but...
3 Q Did it appear to you that they were having a
4 good time?
5 A Yeah.
6 Q Were they disturbing other patrons in the
7 Waffle House?
8 MS. JACKSON: Objection to the form.
9 A No.
10 Q Your answer is no?
11 A I mean I don't think so.
12 Q Did other patrons look like they were perturbed
13 or annoyed by the behavior? Were they staring over at
14 Norris White's table from what you can recall?
15 MS. JACKSON: Objection to the form.
16 A Once the officer got involved.
17 Q Once the officer got involved, then you noticed
18 people were paying attention?
19 A Uh-huh.
20 Q But before that, you don't recall anyone
21 actually paying attention to anyone at Norris White's
22 table?
23 A No.
24 MS. JACKSON: Objection to form.
25 Q Have you ever asked anyone to leave the Waffle

Page 15

1 House?
2 A Yes.
3 Q You have? Why have you asked other people to
4 leave the Waffle House?
5 A We've had people who have actually been like --
6 like there was a lady sitting at the high bar one time,
7 and she was like so drunk that she kept falling down.
8 You know, people that like ask for money and stuff like
9 that or are just sitting there for long periods of time.
10 Q Do you have to call taxis for people and that
11 sort of thing?
12 A We kind of just ask them to leave. And then
13 once -- if they don't leave, then we call the police.
14 Q Do you recall how often police officers were
15 inside the Waffle House?
16 A They sat in the Waffle House every weekend.
17 The officer that was in there that night, he was our
18 normal like security I guess.
19 Q Were you familiar with them?
20 A Yeah, he was in there pretty much every
21 weekend.
22 Q Did you speak to him?
23 A Yeah.
24 Q Were you friendly?
25 A Yeah.

Page 16

1 Q Did you serve him meals?
2 A Yeah.
3 Q Do you recall that he was with anybody that
4 night?
5 A His wife.
6 Q Did you know her?
7 A No. She only came once in a while.
8 Q Every once in a while?
9 A Uh-huh.
10 Q You had maybe seen her once before?
11 A I'd say once or twice.
12 Q Had you ever spoken to her?
13 A Just Hey and served her food to her.
14 Q Did they appear to be getting along on
15 12-28-2013?
16 A The officer and his wife?
17 Q Yes, ma'am.
18 A Yeah, I suppose.
19 Q And so were you bothered or offended by
20 anything that Norris White said or did at any point in
21 time on December 28, 2013?
22 A No.
23 Q And you never asked them to leave?
24 A No.
25 Q To your knowledge no one else asked them to

Page 17

1 leave other than the police officer?
2 A Just the police officer.
3 Q What shift were you working that night?
4 A Third shift, 9:00 to 7:00.
5 Q We had a conversation several months ago,
6 correct?
7 A Uh-huh.
8 Q We talked about this incident, correct?
9 A Yes.
10 Q At that time you told me a few facts. I just
11 want to ask you if you still believe them to be true.
12 A Uh-huh, yes.
13 Q You said that Norris White's behavior or speech
14 while in the Waffle House before he was arrested was
15 nothing to be concerned about?
16 A Right.
17 Q You still believe that to be true?
18 A Yeah, I mean it was normal, you know, for third
19 shift, like I said, and it wasn't really bothering me.
20 Q And they were just eating and hanging out?
21 A Uh-huh.
22 Q And --
23 A Yes.
24 Q They were not bothering anyone?
25 A They were just, you know, laughing and talking

Page 18

1 loudly. He was saying some curse words. But like I
2 said, he wasn't bothering me. It was normal for us to
3 hear, so . . .
4 Q And it escalated really fast once the officer
5 approached the table?
6 A Yes.
7 Q And that you didn't think that Norris White
8 deserved the treatment that he got?
9 A I don't think that he should have been slammed
10 to the ground, but . . .
11 Q When he was slammed, it was real loud?
12 A Uh-huh, yes. I mean you could hear it. I
13 think he hit the table.
14 Q So some part of Norris White's body hit an
15 object, and it was real loud?
16 A Yes.
17 Q So was it a real hard slam?
18 A Yes.
19 MS. JACKSON: Objection to the form.
20 A The officer was on top of him. I mean you
21 could hear both of them hit the ground.
22 Q You didn't think that Norris White deserved
23 that?
24 A I mean in my opinion, like I said, it was
25 normal for third shift, so it didn't bother me. But the

Page 19

1 officer was sitting close to him, so I guess that's why
2 he heard him.
3 Q Do you recall any racial slurs coming from the
4 table?
5 A No.
6 Q Was Mr. White resisting arrest?
7 MS. JACKSON: Objection to form. She's not
8 qualified to answer that.
9 BY MR. STRATOS:
10 Q You can answer, please.
11 A He wasn't standing up when the officer asked
12 him. He kept asking, you know, why are you bothering us.
13 So at first he wasn't standing up, but . . .
14 Q After Mr. White and the officer were standing,
15 did you observe Mr. White at any point in time fight back
16 with the officer?
17 A No. I mean I don't know when he got his hands
18 behind his back. But when I looked over, he had his
19 hands behind his back, and he was still, you know, asking
20 the officer why are you arresting me, why are you
21 arresting me. But as far as like him pulling away or
22 anything like that, I don't remember seeing that.
23 Q So from your memory you never saw Norris White
24 pulling away from the officer?
25 A No.

Page 20

1 Q Or trying to get away from the officer?
2 A I don't remember seeing that.
3 Q And do you recall Norris White saying anything
4 other than why are you arresting me to the officer?
5 A Why are you bothering us, and why are you
6 arresting me. That's all I remember.
7 Q Was he screaming?
8 A No. I mean he was kind of like getting
9 frustrated towards the end, talking more loudly. But he
10 wasn't screaming at the officer.
11 Q When the officer removed Mr. White from the
12 Waffle House, do you recall how they exited the building?
13 A After he was slammed to the ground, I don't
14 remember. I think another officer came and actually
15 escorted him out, but I don't remember.
16 MR. STRATOS: I don't have any further
17 questions. If you'd just answer any kind of follow-up
18 questions.
19 EXAMINATION
20 BY MS. JACKSON:
21 Q Hi. Now, Ms. McCullough, I'm Robin Jackson. I
22 represent the police department. And now that you're
23 turning your head towards me, you're going to need to
24 talk a little bit louder so that she can still hear you.
25 Okay?

Page 21

1 Where did you go to high school?
2 A Berkeley High School.
3 Q Did you graduate?
4 A I got my GED.
5 Q What was the last grade you attended at
6 Berkeley?
7 A 11th grade.
8 Q When did you get your GED?
9 A In 2013.
10 Q Have you attended any colleges or trade
11 schools?
12 A No.
13 Q Have you ever been arrested?
14 A No.
15 Q Have you ever been treated for any drug or
16 alcohol issues?
17 A No.
18 Q In order to get ready for this deposition, have
19 you ever seen a video of this incident?
20 A No, not since that night.
21 Q Did you watch the video that night, or you just
22 saw what happened?
23 A No, what happened that night. I haven't seen
24 the video.
25 Q Have you ever seen the police report?

Page 22

1 A No.
2 Q Did you receive a subpoena for your deposition
3 today?
4 A Yes.
5 Q Did you receive a check with that?
6 A No.
7 Q You did not receive a check?
8 A No.
9 MS. JACKSON: Do you have her check?
10 MR. STRATOS: Am I being deposed? Yes, I have
11 her check. Thank you.
12 MS. JACKSON: You subpoenaed her. And we're
13 doing a proper deposition. It was supposed to be served
14 with the subpoena.
15 MR. STRATOS: Thank you.
16 BY MS. JACKSON:
17 Q So you were almost at the end of your shift
18 when this happened, correct?
19 A It was like in the middle of the night. Our
20 shift was from 9:00 p.m. to 7:00 o'clock a.m.
21 Q Okay. And this was at about 5:00?
22 A Yeah. I guess. I don't remember the time,
23 but...
24 Q I'm not trying to trick you. According to the
25 reports and the video, it was right around 5:00 a.m.

Page 23

1 A Yeah.
2 Q You had worked with that officer in the past?
3 A Yes, he came almost every weekend for security.
4 It was him and another officer. They rotated.
5 Q Had you ever noticed any problems with him
6 before?
7 A With the officer?
8 Q Yeah.
9 A No. I mean he would -- like, okay, so there
10 was an incident where this man had his radio on, and he
11 came in to get his food. It was a to-go order. And he
12 gave the man a ticket for his like radio being too loud.
13 But we didn't hear it. But other than that, no.
14 Q When did that happen?
15 A I don't remember the time.
16 Q You saw him give him a ticket?
17 A Yeah.
18 Q Did you know the person?
19 A No.
20 Q You said that you heard the beginning of the
21 conversation when the officer asked him to quiet down,
22 and then he said why are you bothering us?
23 A Yes.
24 Q You said, when you first started telling the
25 story -- and I was trying to keep up with my notes -- you

Page 24

1 said you heard a man cussing?
2 A Yes, Norris. He was saying curse words and
3 talking friendly within his group of friends.
4 Q Did you see him getting up from the table?
5 A No, they were sitting the whole time until the
6 officer asked him to put his hands behind his back.
7 Q So you never saw Norris White get up from the
8 table and walk over towards the juke box or throw his
9 arms in the air while he was talking?
10 A No.
11 Q Were you watching them the whole time?
12 A I mean in between like me serving my other
13 customers. I watch all my customers, but I wasn't like
14 staring at them the whole time.
15 Q Okay. So is it possible that Norris White got
16 up from his table and you just didn't see it?
17 MR. STRATOS: Object to the form.
18 A That's possible.
19 Q You said you were standing about five feet away
20 when the officer first walked over to the table?
21 A Yes, ma'am.
22 Q Did you stay there, or were you still doing
23 other things for work?
24 A I was still serving my other customers.
25 Q So did you hear -- is it fair to say you did

Page 25

1 not hear everything that was said between the officer and
2 Mr. White while Mr. White was still sitting at the table?
3 A Right. I mean I didn't hear everything that
4 went on, as far as like I don't remember the whole
5 conversation. I just remember when he said why are you
6 bothering us and the officer asked him to stand up.
7 Q Did you hear the officer ask for their check?
8 A No.
9 Q After the officer told Mr. White to stand up,
10 did you watch the two of them the entire time after that?
11 A No, I don't remember him like putting his hands
12 behind his back or any of that. But I mean he kept
13 asking why are you bothering us and why are you arresting
14 me. But as far as what led to him like, I guess, the
15 officer slamming him to the ground, I don't remember. I
16 didn't see it.
17 Q Did you see a second man approach the officer
18 while the officer was trying to put Mr. White under
19 arrest?
20 A No.
21 Q Did you see Mr. White and the officer move from
22 where they were next to his booth to the other end of the
23 restaurant?
24 A No, I don't -- I didn't. I don't know what got
25 them down there because they were at one side of the

Page 26

1 store, and the other booth that he was slammed into was
2 at the other side of the store.
3 Q You don't know how they got there?
4 A No.
5 Q Were you watching them during the seconds
6 before they went to the ground?
7 A No.
8 Q How did you know that they went to the ground?
9 A With the loud noise.
10 Q So you were looking elsewhere and you heard it
11 and you turned over to see what was going on?
12 A Right, and I seen that they were, you know,
13 going down to the ground then, you know, because of the
14 noise.
15 Q When you were in high school, did you do any
16 work with police cadets?
17 A No.
18 Q Have you ever worked or volunteered for any law
19 enforcement agency?
20 A No.
21 Q Have you ever had any experience with learning
22 any police procedures or guidelines?
23 A No.
24 Q Do you know anything about the North Charleston
25 Police Department policies and procedures?

Page 27

1 A No.
2 Q Do you know anything about how law enforcement
3 officers are trained?
4 A No.
5 MR. STRATOS: Object to the form.
6 Q Do you know anything about the defensive
7 tactics that are taught to police officers?
8 A No.
9 Q Are you familiar with the statutes for the City
10 of North Charleston?
11 A I don't know what that is.
12 Q The ordinances, the laws.
13 A No.
14 Q You said you thought the officer got angry that
15 Mr. White wasn't cooperating. Did the officer tell you
16 he was angry?
17 A No, he just started, you know, speaking more
18 loudly, like, "Stand up", you know.
19 Q Telling him to stand up, he was being louder?
20 A Than when he first approached the table.
21 Q All right. So did he have to ask Mr. White
22 multiple times to stand up?
23 A Yes, he kept asking him. And the man kept
24 asking him what did I do wrong, can you tell me why
25 you're bothering us. Norris did.

Page 28

1 Q Do you remember how many customers you had at
2 that time?
3 A I don't remember.
4 Q So when you were asked earlier if he was
5 bothering other patrons, you weren't watching everyone in
6 the restaurant at all times?
7 A I didn't see anybody looking at them or
8 anything like that. Of course, I couldn't watch
9 everybody, but I don't recall them bothering anybody. No
10 one said anything to us.
11 Q You said no one said anything to "us"?
12 A To me or the other workers about him bothering
13 anybody.
14 Q Did you guys talk about that?
15 A I mean, no.
16 Q So you don't know if they said something to any
17 of the other workers, do you?
18 A They would have told us, you know, if they're
19 bothering us -- or if he was bothering the other
20 customers, and they told a waitress, they would have told
21 us because we had to tell the grill op. And he's the one
22 that kicks people out.
23 Q The grill operator?
24 A Yeah, he's like the -- basically the manager
25 for night shift because there's no manager on duty at

Page 29

1 that time.
2 Q Okay. And if a customer had complained to
3 another staff person and that staff person looked over
4 and saw that the officer was already addressing
5 Mr. White, would they have had any need to go to the
6 manager?
7 A I mean no, I guess.
8 Q Did you say no, yes; or no, I guess?
9 A No, I guess.
10 Q Okay. Was that one of the jobs of the officer,
11 to maintain the law inside the Waffle House while he was
12 there on duty?
13 MR. STRATOS: Object to the form.
14 A He was the security officer.
15 Q And that was your understanding of what he was
16 there for?
17 A Uh-huh.
18 Q Is that a yes?
19 A Yes.
20 Q Mr. Stratos asked you earlier about a comment
21 that he attributed to you from a prior conversation about
22 Norris White didn't deserve the treatment that he got.
23 Do you know why he was taken to the ground?
24 A Not really. I mean, from my understanding it
25 was because he was being loud and, you know, saying curse

Page 30

1 words. And so that's why the cops or the officer
2 approached him.
3 Q Okay. That's not what I asked you. I asked
4 you if you knew why he was taken to the ground?
5 A No. That's my understanding, is because he was
6 being loud is the reason why the officer approached him.
7 Q And if something had happened in the meantime
8 between the time when the officer first tried to place
9 him under arrest by the booth and when he got down to the
10 other end of the restaurant, would you agree with me that
11 you did not see what else could have happened?
12 A No, I don't see when he got his hands put
13 behind his back or, you know, what caused him to be taken
14 to the floor.
15 Q When you heard them going to the ground and you
16 looked, when you looked over, where were you?
17 A I was like towards the end by -- going towards
18 the back, like back of the store where the pantry is. So
19 basically I was by their table where they were originally
20 at.
21 Q By the booth they were sitting at?
22 A Right.
23 Q Mr. White was sitting at?
24 A Right, I was by our coffee pot, if I'm not
25 mistaken.

Page 31

1 Q So you were not at the same end of the
2 restaurant that they were at?
3 A No. He started off at his booth. And I don't
4 know how he got to the other end of the restaurant, but
5 that's where he was taken to the ground at.
6 Q And when you heard the noise and looked, where
7 were they? Were they already on the ground?
8 A Right, that's when I heard, you know, the noise
9 of him being slammed to the ground.
10 Q Okay. So you didn't see them fall?
11 A No.
12 Q So you don't know whether he hit something on
13 the way down or not?
14 A I mean you could hear him hit the table.
15 That's what made the noise.
16 Q How do you know he hit the table?
17 A That's what made the noise. It was like a
18 metal -- like at the bottom of the table is metal. And
19 that's where the loud noise came from.
20 Q How do you know that?
21 A Because I heard it.
22 Q Are you talking about the stand that holds the
23 table to the floor?
24 A Right. At the top is like wooden material, and
25 at the bottom is like metal. And you could hear like

Page 32

1 them slap against the metal like towards the floor.
2 Q So you're talking about the legs of the
3 table --
4 A Right.
5 Q -- are metal? Okay. After this happened and
6 the officers escorted Mr. White out, did you and the
7 other employees have conversation about this?
8 A No, not really. We went on with our work. I
9 mean the officer asked for a report, and we gave him, you
10 know, the report at the time. Well, it was another
11 officer, not the officer that the conflict was with. It
12 was another officer that came. We gave him the report,
13 and we went back to work.
14 Q What report?
15 A About what happened, like the incident that
16 happened.
17 Q You gave him a statement?
18 A Right.
19 Q Did you write it out or did you give it to him
20 verbally.
21 A Verbally. And he asked for our name, phone
22 numbers, and things of that sort.
23 Q Were you with the other employee when you gave
24 your statement?
25 A No. They were continuing working. And he

Page 33

1 pulled each one of us to the side at the time -- or aside
2 at one time.
3 Q And then after the officers all left, do
4 you-all talk about this again?
5 A No. I mean we had to basically kind of explain
6 to our manager what happened, because like I said there's
7 not a manager on duty on third shift. So we let them
8 know what happened, but they also had a police report
9 also. The police left like a pink slip for them.
10 Q And then ever again since the night of this
11 incident, have you ever talked to Laura Fitzpatrick about
12 this?
13 A She messaged me on Facebook and saying that he
14 was trying to get a hold of me about the incident. And
15 that was it.
16 Q But the two of you while you were still working
17 at Waffle House never again talked about this incident?
18 MR. STRATOS: Object to the form.
19 A No.
20 Q What about George Jenkins? Did the two of you
21 ever talk about it again while you were still working at
22 Waffle House?
23 A No. George is actually my boyfriend. And he
24 doesn't even remember what happened basically because he
25 was the cook. He basically faced the grill the whole

Page 34

1 time.
2 Q Did he tell you that he didn't see what
3 happened?
4 A Right.
5 Q Laura never told you what she saw?
6 A No, we've never discussed it.
7 Q And it was just the three of you working that
8 night?
9 A I believe so.
10 Q Did you know either of the women who were
11 sitting at the table with them, with Mr. White?
12 A No.
13 Q Did you know any of the people who were sitting
14 at the bar that night, at the counter?
15 A I don't remember.
16 Q You said you live at 7008 Stall Road. Lot
17 what?
18 A 39.
19 Q Do you have a phone?
20 A Uh-huh.
21 Q What's your phone number?
22 A (843)628-9598.
23 Q You said you don't have any family members who
24 live in Charleston County.
25 A No, no family here.

Page 35

1 Q How old is your son?
2 A He's about to be 4. He was 3 years old at the
3 time.
4 Q He's your only child?
5 A At this time, yeah, besides this one
6 (indicating).
7 Q Right. Does George have any children?
8 A He does. He has a son. He's about to be 14.
9 Q Where are you currently employed?
10 A Food Lion. On Ashley Phosphate.
11 Q Why did you leave the Waffle House?
12 A A lot of our crew was actually laid off
13 including me, Laura, and some other people. I can't
14 remember.
15 Q Why were you laid off?
16 A There was a issue with food costs. So they
17 couldn't figure out who it was, so they just laid us all
18 off.
19 Q What does that mean, "food costs"?
20 A I don't really know what it is. It's like the
21 food or like their costs they spent on food, I guess, and
22 it's not matching up with like the sales, I guess.
23 Q So there was a money discrepancy?
24 A No, it's like food costs. Like, how much they
25 pay for the food or whatever over how much they should be

Page 36

1 getting back. And some people weren't like putting like
2 toppings and stuff like that on the ticket, so it wasn't
3 being charged.
4 Q Okay. How long have you been at Food Lion?
5 A Since January.
6 Q Where did you work before that?
7 A iQor.
8 Q What did you do for them?
9 A I was a call center agent.
10 Q How long did you work there?
11 A For a year.
12 Q When were you laid off from Waffle House?
13 A August 2014.
14 Q What did you do before iQor?
15 A I worked at K-Mart.
16 Q In North Charleston?
17 A Uh-huh.
18 Q Doing what?
19 A I was a sales associate.
20 Q For how long?
21 A It was seasonal, so it was about three months.
22 It was during Christmastime.
23 Q Where did you work before that?
24 A Dial America.
25 Q How long did you work there?

Page 37

1 A Six months.
2 Q Why did you leave?
3 A I quit. I don't know.
4 Q Why did you leave iQor?
5 A I had a lot of health issues with this
6 pregnancy in the beginning, so I had a lot of absences
7 and I couldn't take like a family leave, leave of absence
8 or anything like that yet, so I just quit.
9 Q Does Dial America get us back to Waffle House,
10 or is there something else in there?
11 A Walmart was in between there.
12 Q Which Walmart?
13 A In Moncks Corner and Rivers Avenue.
14 Q What did you do for them?
15 A I was a cashier, a sales associate. Basically
16 everything.
17 Q And how long did you work there?
18 A I'd say about six or eight months.
19 Q Why did you leave?
20 A I had a miscarriage at that time.
21 Q Does that get us back to Waffle House?
22 A Yeah, Waffle House was before them.
23 Q Do you have a middle name?
24 A Brooke, B-R-O-O-K-E.
25 Q You said you're on Facebook. What is your

Page 38

1 Facebook handle? Is it just Taylor McCullough?
2 A Uh-huh.
3 Q Have you ever been married?
4 A No.
5 Q Do you wear glasses or contacts?
6 A I wear glasses.
7 Q For what? What is your prescription?
8 A I have no idea.
9 Q Do you know if you are nearsighted or
10 farsighted?
11 A No.
12 Q What do you need the glasses to do?
13 A Basically just see better. I'm supposed to
14 wear them all the time, but I only wear them like if I'm
15 driving or like if I need to see up close, like if I'm
16 reading or something.
17 Q So you need them for reading and for driving?
18 A Right.
19 Q So near and far?
20 MR. STRATOS: Object to the form.
21 A I guess.
22 Q Who is your doctor?
23 A For my eyeglasses?
24 Q Uh-huh.
25 A Dr. White, I think is his name. It's downtown.

Page 39

1 Q Downtown Charleston or downtown North
2 Charleston?
3 A Downtown Charleston. I think it's -- I can't
4 remember the name of it, something optometrist.
5 Q When was the last time you had your eyes
6 checked?
7 A It's been a while.
8 MS. JACKSON: I think those are all the
9 questions I have for you. Thank you.
10 MR. STRATOS: Nothing further.
11 (The deposition was concluded at 2:51 p.m.)
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Page 40

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)
3
4 I, Helen L. Rose, Certified Shorthand Reporter,
5 Registered Professional Reporter, and Notary Public for
6 the State of South Carolina at Large, do hereby certify
7 that the witness in the foregoing deposition was by me
8 duly sworn to testify to the truth, the whole truth and
9 nothing but the truth in the within-entitled cause; that
10 said deposition was taken at the time and location
11 therein stated; that the testimony of the witness and all
12 objections made at the time of the examination were
13 recorded stenographically by me and were thereafter
14 transcribed by computer-aided transcription; that the
15 foregoing is a full, complete and true record of the
16 testimony of the witness and of all objections made at
17 the time of the examination.
18
19 I further certify that I am neither related to nor
20 counsel for any party to the cause pending nor do I have
21 any interest in the events thereof.
22
23 Further, that at the time of said deposition the
24 witness elected to waive signature.
25
Witness my hand, I have hereunto affixed my official
seal this 26th day of March, 2017, at Charleston,
Charleston County, South Carolina.

Helen L. Rose
CSR #084-003436, RPR #051505
My Commission expires
December 7, 2026.

EXHIBIT P

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

AFFIDAVIT OF
LAURA FITZPATRICK

FILED
2017 MAY -5 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the affiant, Laura Fitzpatrick, and first being duly sworn swears and states the following:

1. I am over the age of 18 years and live in Goose Creek, South Carolina.
2. During the month of December, 2013, I was working as a waitress at the Waffle House on Ashley Phosphate Road. On December 28th, I was working the night shift and was present between the hours of 3am and 6am.
3. During that time, there was a North Charleston Police Officer who was working for our restaurant. I did not know the officer well, but I know he worked there almost every weekend and that his job was to provide security for the restaurant.
4. After 4:00am on December 28, 2013, a man who I have now been advised is the plaintiff, came in with another male and two females and sat in a booth.
5. Between the time they sat down and when the officer went over to their table, I saw the man get up several times, talking loudly and waving his arms. He was using cuss words as he talked.
6. The man seemed intoxicated to me by how loud he was and the way he was acting.
7. After a period of time where the man was being loud and using cuss words, the officer got up and went over to his table. I heard the officer tell them to quiet down.
8. Then the man stood up and loudly said "how can you arrest me, I'm not doing anything wrong." Then he sat back down.

9. I saw that the officer asked for their bill and it seemed like he was telling them to leave. I heard the man say that he was not leaving until he was done eating and he was using cuss words when he said that.
10. I did not see everything that happened because I was also working.
11. The officer and the man started out in front of the booth when the officer was trying to handcuff him, but moved toward the other end of the restaurant.
12. I do not know what happened, but suddenly, the officer put the man on the floor and it looked like they were wrestling around.
13. Then, another officer came in and they arrested the man and took him out of the restaurant.
14. After the man was finally handcuffed and taken out of the restaurant, a different officer came back and asked me questions about what I saw.
15. I told that officer that the man was being loud and was asked to stop and did not.
16. I have seen the first affidavit I signed and reviewed it and realized that it was not completely accurate.
 - a. In paragraph 4, it says we had a party crowd, but I recall that the restaurant was not crowded at the time the man and his friends were in there. There were a few people at the counter, but it was not overly loud that morning because I could hear what the officer said to the man at his table.
 - b. In paragraph 7, it says the man and his friends were speaking in a 'normal tone'. Those are not my words. I remember thinking the man was intoxicated because he was so loud and kept cussing.
 - c. In paragraph 12, I admit that I have no knowledge as to whether the officer was mad or whether he was just doing his job. The officer did tell the man he was under arrest before they moved to the other end of the restaurant and went to the ground and I could see before they moved to the other end of the restaurant, that the officer was not able to get the man handcuffed.
17. I have had the opportunity to review this affidavit and make changes to it. I do not believe I know anything else about this matter. It was a long time ago and I do not work there anymore.

FURTHER AFFIANT SAYETH NAUGHT!

Laura Fitzpatrick
Laura Fitzpatrick

Signed and sworn to before me
this 8th day of MARCH, 2017.

[Signature]
Notary Public for South Carolina
My commission expires: Aug 19, 2020

John Lawrence Scarborough
Notary Public, State of South Carolina
My Commission Expires August 19, 2020

EXHIBIT Q

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

AFFIDAVIT OF
LT. ANDREW GLOVER

2017 MAY -5 PM 1:18
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the affiant, Lt. Andrew Glover, and first being duly sworn swears and states the following:

1. I am over the age of 18 years and at all times relevant to this matter I have been employed with the North Charleston Police Department.
2. Currently, I am a Lieutenant in the Training Division and have knowledge and access to the training records for all officers as well as knowledge and experience in the hiring, training and supervision of officers.
3. I have reviewed the training records for Officer Anthony King and Officer Christopher Arroyo.
4. I have looked at all of the training for both officers, but specifically looked for training relating to "grounds for probable cause, detainment procedures, arrest procedures, protocols related to use of force and truthfully reporting the grounds for arrest" as alleged in the Amended Complaint.
5. Both King and Arroyo have received all training required by the North Charleston Police Department and the State of South Carolina. They have specifically received training in all of the topics that are mentioned in #4 above and passed all such training.
6. Training at the North Charleston Police Department is a continuous process. In addition to annual training, officers receive training updates anytime there is a development that necessitates such.
7. Additionally, officers receive supervision through the use of interdepartmental reports. Anytime an officer uses force, a supervisor of that officer reviews the incident and the force

used, prepares the interdepartmental report and the report goes up the chain of command, is reviewed at each level all the way up to the Chief of Police.

8. Depending on what the supervisor sees when he or she reviews the incident, an officer may be required to receive additional training. That did not happen in this case. The interdepartmental did not request any additional training for these officers.

9. I am also familiar with the hiring process for North Charleston Police Officers. There are eight (8) phases for the hiring process for all persons applying for the position of Police Officer, and a candidate may be disqualified at any phase:

- a. Application which must be submitted with driving record, license, birth certificate, high school diploma, college transcripts, and a copy of a letter from a clerk of court in your home county that there are no outstanding judgments against you.
- b. Initial background check relating to criminal, civil and driving records.
- c. Written testing, interview and physical ability test - this includes a polygraph screening test and a Nelson Denny test;
- d. Polygraph Examination
- e. Full Background Investigation including employment history, military history, education history as well as reference and neighbor checks;
- f. Review/Interview with Board to address situational reasoning, ability, maturity, integrity, self control, adaptability and overall suitability for employment;
- g. Psychological Examination with a licensed psychologist who performs extensive psychological examination to determine mental and emotional suitability;
- h. Medical Examination/Drug Screen by a licensed medical doctor.

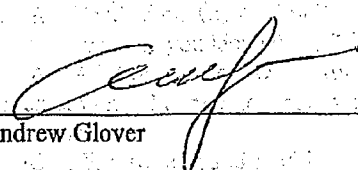
10. The hiring phases used by North Charleston are very similar to those of other police departments in the area.

11. The North Charleston Police Department is also nationally accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) and has been continuously accredited since 2007. This accreditation requires our department to comply with 446 state-of-the-art standards relating to policies and procedures, administration, operations and support services.

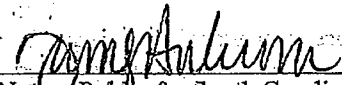
12. The CALEA standards are above and beyond the minimum standards required by the state of South Carolina and are designed to help law enforcement agencies follow standards which reflect the current thinking and experience of law enforcement practitioners and researchers.

13. I did not type this affidavit, but have had the opportunity to review it and make changes.

AFFIANT FURTHER SAYETH NAUGHT!


Andrew Glover

Signed and sworn to before me
this 4th day of April, 2017.


Notary Public for South Carolina

My commission expires: March 23, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NORRIS EARL WHITE JR.

Plaintiff,

v.

CITY OF NORTH CHARLESTON,
NORTH CHARLESTON POLICE
DEPARTMENT

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10- 6561

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

FILED
2017 MAY 15 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT

COME NOW the Plaintiffs; Norris Earl White Jr., by and through undersigned counsel,
and do submit this memorandum in opposition to Defendants' Motion for Summary Judgment.

The subject matter of this action and all allegations set forth are properly before this court
pursuant to the South Carolina Tort Claims Act (the "Act"), S.C. Code 15-78-100(b).

This unlawful arrest / excessive force action rests on the premise that Plaintiff's arrest on
December 28, 2013 was without probable cause. Plaintiff complaint alleged sufficient facts, and
Plaintiff has developed sufficient evidence, to support all the following causes of action: (1)
Negligence/Gross Negligence, (2) Assault and Battery, (3) Wrongful Detainment and False
Arrest, (4) False Imprisonment, (5) Malicious Prosecution, (6) Unlawful Search and Seizure, (7)
Negligent Hiring, Supervision and Training. Plaintiff concedes that his final cause of action,
outrage, or Intentional Infliction of Emotional, is a prohibited cause of action under the Act, and
as such Plaintiff consents to dismissal of the same.

STATEMENT OF FACTS

The incident that is the basis of this action began on December 28, 2013, at
approximately 5:00 a.m. inside a Waffle House restaurant, located at 2571 Ashley Phosphate
Road, City of North Charleston, County of Charleston, South Carolina. The Plaintiff, Norris

White, was in the above-referenced Waffle House Restaurant seated in a booth near the exit door and accompanied by his friend J. Omar and two female companions Plaintiff and J. Omar had met out at a bar just a few hours prior. The group of four arrived at approximately 4:00 am, and after being seated they all ordered breakfast. While the group may have consumed minimal amounts of alcohol before visiting the Waffle House there is no evidence to suggest that anyone in their group was intoxicated. Waffle House employee, Laura Fitzpatrick, who was serving the Plaintiff and his friends, provided a sworn affidavit, which supports this assertion, and the arresting officer, Officer Arroyo, cannot say that the Plaintiff was intoxicated. (Aff. of Witness Laura Fitzpatrick, Pl. Exhibit 2); (Depo of Officer Arroyo, 55/24 – 56/1, Def. Mot. for Sum. J. Exhibit C).

Also at the Waffle House that night, seated only two to three booths down from the Plaintiff, was City of North Charleston Police Officer, Officer Arroyo and Officer Arroyo's wife. Officer Arroyo was present at the Waffle House under the authority of the City of North Charleston Police Department (hereinafter referred to as "NCPD"), pursuant to the NCPD Secondary Employment / Off-Duty Employment Policy, NCPD Policy A-23. Pl. Exhibit. He was being paid by the Waffle House to be present, but he remained under the scope of his employment with the NCPD. Officer Arroyo was seated facing the restaurant and his wife was seated with her back to the restaurant. Officer Arroyo testified that he could not see the faces of anyone sitting at the Plaintiff's table; that, he was looking at the backs of their heads. (Depo. of Officer Arroyo, 57/8 – 57/18, Def. Mot. for Sum. J., Exhibit C).

The incident occurred on a weekend, and it was the early morning hours. The crowd in the Waffle House at this particular location is considered by Waffle House employees to be a "party crown." (Aff. of Laura Fitzpatrick, Pl. Exhibit 2). "It's not a family friendly type

atmosphere at that time." *Id.* At four in the morning the Waffle House at this location is loud.

The patrons are typically boisterous, they dress interestingly, they use profanity and many of them are intoxicated. (See, *Id.*; and, Depo. of Officer King, 56/2-23, Def. Mot. for Sum. J.,

Exhibit D). NCPD Police Officer King agreed with the above. The Waffle House at that time is

not a "library," and not a place to bring your children. (Depo of Officer King, Def. Mot. for Sum.

J., Exhibit D).

The Plaintiff and the members of his table were behaving in a civil manner, and no differently from any other patron in the Waffle House (See, Aff. of Laura Fitzpatrick, Pl. Exhibit

2). The Plaintiff and his companions were enjoying their meal, while having a rousing conversation. They were openly socializing in their booth amongst themselves. Their

conversation was filled with laughter and they were smiling. (Deposition of Christopher Arroyo,

57/19 – 58/10, Def. Mot. for Sum. J., Exhibit C). In doing so, again, they were not disruptive to

other patrons. This much can be seen by observing the surveillance video, and watching the reactions of patrons inside the Waffle House. Pl. Exhibit. The only moment the patron's

attention is had is when Officer Arroyo created a disruption by arresting the Plaintiff. (See, Surveillance Video, Def. Mot. for Sum. J., Exhibit E.)

The Plaintiff and his friends made no threats to any patron, person or employee in the

Waffle House and they did not use fighting words or threatening language directed at each other

or any patron or employee. (See, Aff of Laura Fitzpatrick, Pl. Exhibit 2; Depo of Officer Arroyo,

79/25 – 80/8, 89/24-90/1, 62/16-18 Def. Mot. for Sum J., Exhibit C;; Depo of Officer King,

81/12-13, Def. Mot. for Sum. J., Exhibit D).

For reasons unknown to Plaintiff, Officer Arroyo approached his table at approximately

5:00 am, and told Plaintiff to leave. At that moment, as seen in the surveillance video, one of the

female companions at Plaintiff's table exits their booth and walks outside of the restaurant. Plaintiff testified that he was just enjoying the conversation, and out of nowhere Officer Arroyo while hovering over their table said to him, "you need to leave." (Depo. of Norris White, 37/6-13, Def. Mot. for Sum. J., Exhibit A.; and, Complaint Affidavit of Plaintiff, Def. Mot. for Sum. J., Exhibit H).

No one asked the Plaintiff to leave before Officer Arroyo arrested him. Moreover, witness Laura Fitzpatrick provided a sworn statement that she did "not know why the police officer decided to go to their table." "I did not ask him to and I did not make eye contact, or motion for him to go to their table." (Pl. Exhibit 2). However, Officer Arroyo testified in his deposition that he decided it was time to remove Plaintiff from the restaurant when an employee, which had to be Laura Fitzpatrick, made special eye contact with him, which was a signal to remove Plaintiff. (Depo of Officer Arroyo, 58/2-60/24, Def. Mot. for Sum. J., Exhibit C). The surveillance video, however, contradicts Officer Arroyo's testimony, as no employee or patron is seen looking at or motioning to Officer Arroyo around the time before he approached Plaintiff's table.

Next, Plaintiff states to Officer Arroyo that he has done nothing wrong and that he is going to finish his meal. Officer Arroyo then pulls Plaintiff from the table and immediately places him under arrest with both of the Plaintiff's hands behind his back. Plaintiff states that he did not struggle, but that he continually questioned why Officer Arroyo was arresting him. Officer Arroyo struggled to competently handcuff Plaintiff, and takes Plaintiff to the other end of the restaurant. The surveillance shows Mr. White turning his head to the left in an obviously non-threatening manner, and at that point Officer Arroyo wrestles Plaintiff's arm and slams Plaintiff face first into the tile floor. (Depo of Officer Arroyo, 83/9-14, Def. Mot. for Sum. J.,

Exhibit C). Plaintiff states that he may have lost consciousness at this point. Officer King then arrives, and assists Officer Arroyo pick Plaintiff up off the ground. Both Officer King and Officer Arroyo thereafter guide the handcuffed Plaintiff out of the Waffle House. With Plaintiff's hands forced upward and toward the ceiling, Plaintiff is bent over while stumbling as he is being forced forward, and both Officer Arroyo and Officer King use Plaintiff's head to open two glass doors. (See; Def. Mot. for Sum. J., Exhibit E).

Officer Arroyo and Officer King escort Plaintiff to Officer King's unit, searched his person without consent, and placed Plaintiff in the rear of Officer King's police car, behind the driver's seat. Officer King allegedly buckled Plaintiff into the seat, and closed the door. In an alleged attempt to conceal the cause of Plaintiff's injuries, Officer Arroyo stated in his incident report that Plaintiff then began banging his head on the interior, rear, driver side window bars. However, Officer King did not make the same claim in his report. Further, Plaintiff incurred an obvious injury to the right side of his face. (Pl. Exhibit 3). It would be impossible to bang the right side of one's face into the rear driver side door if seated in a squad car behind the driver's seat, and buckled.

Before being incarcerated in Charleston County Detention Center Plaintiff was transported by EMS to Trident Medical Center where he was treated for a suspected head injury, as well as facial and scalp contusions.

Plaintiff was charged with Disorderly Conduct and Resisting Arrest, and was detained in Charleston County Detention Center. Plaintiff was forced to pay bail and hire a lawyer. Plaintiff filed a complaint with the NCPD and an internal investigation was conducted by the NCPD, Office of Professional Standards. Officer Arroyo testified that he was never interviewed by anyone in NCPD internal affairs. (Depo of Officer Arroyo, 109/7-8, Def. Mot. for Sum. J.,

Exhibit C). Moreover, based on the evidence, the NCPD officers tasked with investigating the arrest of Plaintiff did not view the surveillance video before Chief Driggers ordered Detective Allen on February 11, 2014 to send Plaintiff a letter, which informed the Plaintiff that the NCPD concluded that there were no violations of NCPD policies involved in his arrest. (Pl Exhibit 5)(See, Sgt. Allen Notes, Def. Mot. for Sum. J., Exhibit K). Significantly, this decision was made knowing of the existence of a surveillance video, but without having viewed it.

The charges against Plaintiff were ultimately dismissed (*nol prossed*) on April 13, 2015 after City Prosecutor Vaughn viewed the surveillance video, some 15 months after the charges were filed. According the Prosecutor Vaughn, the charges were dropped due to "lack of prosecutorial merit." (Pl Exhibit 4, Statement of Atty Vaughn). Defendant claims in its Memorandum in Support of Summary Judgment that attorney Vaughn dismissed both charges against Plaintiff without having consulted "the officer or anyone at the Police Department." However, there is no fact in evidence to draw this conclusion and Defendant has objected to providing attorney Vaughn's file on the basis of privilege.

AUTHORITY

Summary judgment is an "extreme remedy to be cautiously invoked." *Holloman v. McAllister*, 289 S.C. 183, 186 (1986). In determining whether a triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Kloester v. Carolina Rental Ctr.*, 313 S.C. 490, 493 (1994). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004); *Baugus v. Wessinger*, 303 S.C. 412, SE2d 169 (1991). When the burden of proof is by a preponderance of the evidence, a non-

moving party need only present a scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 (2009). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Bardley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004).

If any reasonable inferences exist which tend to show negligence, then it is a question for the jury and not the court to determine. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 541 S.E.2d 831 (2001). "Questions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury, as to which the trial court's only function is to inquire whether particular conclusions are or not the only reasonable inferences to be drawn from the evidence." *Kennedy v. Custom Ice Equipment Co., Inc.*, 271 S.C. 171, 246 S.E.2d 176 (1978) (quoting *Wilson v. Marshall*, 260 S.C. 271, 195 S.E.2d 610 (1973)). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. *Staubes v. City of Folly Beach*, 331 S.C. 192 (Ct. App. 1998).

ARGUMENT

The subject matter of this action and all allegations and claims set forth are properly before this court pursuant to the South Carolina Tort Claims Act (the "Act"), S.C. Code 15-78-100(b). The Tort Claims Act renders state agencies and governmental entities "liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations and exemptions contained within the Act. S.C. Code Ann. § 15-78-40 (Supp.2001). Plaintiff's Complaint makes clear that all claims against NCPD and its employees are properly brought under the jurisdiction of the Act, however the Complaint does contain one insignificant reference to S.C. Code of Laws § 16-5-60. After researching the issue, Plaintiff

concedes that the Act impliedly repealed S.C. Code § 16-5-60. However, because not one of Plaintiff's causes of action are based solely on §16-5-60, no proper grounds exist to dismiss any cause of action, and no further argument needs to be made to this issue.

A. PLAINTIFF'S ARREST WAS WITHOUT PROBABLE CAUSE

The heart of this case turns on whether or not Officer Arroyo possessed probable cause to effect a warrantless arrest. If there is slight evidence the arrest was without probable cause, then it follows that Plaintiff's claims (false arrest, false imprisonment, negligence, unlawful search and seizure) should be heard by a jury.

The question of whether probable cause exists is ordinarily a jury question unless the evidence yields but one conclusion as a matter of law. *Law v. S.C. Dept of Corr.*, 368 S.C. 424, 441, 629 S.E. 2d 642, 651 (2008). The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. *Parrott v. Plowden Motor Co.*, 246 S.C. 318 (1965). Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief effects on such grounds as would induce an ordinary prudent and cautious man, under the circumstances, to believe likewise. *State v. George*, 323 S.C. 496 (1996). Even handed law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer. *Horton v. California*, 496 U.S. 128, 138 (1990). The party alleging a lack of probable cause bears the burden of proof on that point. *Jackson v. City of Abbeville*, 366 S.C. 662 (Ct. App. 2005).

Plaintiff allegedly committed a violation of S.C. Code § 16-17-530, Public Disorderly Conduct. This statute requires either public gross intoxication, or the use of fighting words. The United States Supreme Court has consistently held that a charge of disorderly conduct requires that the arrestee's actions rise to the level of fighting words. *Houston v. Hill*, 482 U.S. 451

(1987). The "fighting words" exception to protected speech means that the conduct must constitute more than mere spoken words. *Gooding v. Wilson*, 405 U.S. 518, 92 S.Ct. 1103 (1972). Moreover, it is well settled that the use of profanity alone does not constitute fighting words. *State v. Pittman*, 342 S.C. 545, 548, 537 S.E.2d 563, 565 (Ct. App. 2000). The South Carolina Supreme Court has held that probable cause to arrest an individual "requires more than profanity or loud and boisterous behavior directed at the officers. *Pittman*, at 566.

Officer Arroyo's testified that he formed probable cause to effect the arrest of Plaintiff based on Plaintiff's loud, and boisterous voice, the use of profanity and the fact that Plaintiff got up from his table and laughed loudly. (See, Depo of Officer Arroyo, 56/2-23, Def. Mot. for Sum. J., Exhibit C). Further, Defendant's Memorandum in Support of Summary Judgment provides a list of actions that are allegedly captured on surveillance which Defendant claims support the belief that Plaintiff committed a crime.

1. Plaintiff jumped up from his table twice;
2. Walking around the restaurant while still talking loudly to his friends at the table;
3. Pounding a chair;
4. Waving his arms;
5. High fiving his friends.

(See, Def. Memo in Support of Summary Judgment, p. 8.) In the United States, ordinary and prudent folks do not believe the above actions constitute the commission of a crime. They certainly do not provide probable cause for an arrest.

Here, without question, the evidence shows that Plaintiff did not use fighting words and Plaintiff did not threaten any patron or employee of the Waffle House. He did not cause a disturbance prior to his arrest. There is no evidence that any individual complained about

Plaintiff's conduct. Contrary to Officer Arroyo's testimony, the surveillance video captured at the restaurant proves that no Waffle House employee complained about Plaintiff's behavior. Plaintiff posed no threat to anyone. He directed no derogative or threatening language at anyone.

Officer Arroyo also claims that Plaintiff and/or people sitting at his table were using profanity and racial slurs. Plaintiff denies this allegation, and Witness Laura Fitzpatrick opposed this assertion in a properly executed affidavit. (See, Def. Exhibit O, Pl Exhibit 2). Moreover, Witness Taylor McCullough provided sworn testimony in opposition to this assertion. When McCullough was asked in her deposition if she recalled any racial slurs coming from the table she replied with an emphatic, "[N]o." (Depo. of Taylor McCullough, P. 19, 3-5, Def. Exhibit, O). Further, McCullough testified that Plaintiff and the members of his table weren't doing anything out of the ordinary, and they were not bothering anyone in the restaurant.

Q You said that Norris White's behavior or speech while in the Waffle House before he was arrested was nothing to be concerned about?

A Right.

Q You still believe that to be true?

A Yeah, I mean it was normal, you know, for third shift, like I said, and it wasn't really bothering me.

Q And they were just eating and hanging out?

A Uh-huh.

Q And --

A Yes.

Deposition of Taylor McCullough, P. 17, 13-23, Def. Exhibit O.

Q Were they disturbing other patrons in the Waffle House?

MS. JACKSON: Objection to the form.

A. No.

Q. Your answer is no?

A. I mean I don't think so.

Q. Did other patrons look like they were perturbed or annoyed by the behavior?

Were they staring over at Norris White's table from what you can recall?

MS. JACKSON: Objection to the form.

A. Once the officer got involved. Once the officer got involved, then you noticed people were paying attention?

A. Uh-huh.

Q. But before that, you don't recall anyone actually paying attention to anyone at Norris White's table?

A. No.

MS. JACKSON: Objection to form.

Id., at 14, 6-23.

If Plaintiff or members of his table were "screaming" profanities and racial slurs, as Officer Arroyo has alleged, it stands to reason that at least one patron or employee of the Waffle House would look over at their table, would glance or turn their head, or even complain to Waffle House management. However, the surveillance footage reveals that the Plaintiff was not causing a disturbance at all. Defendant's description of Plaintiff's behavior – the basis for forming probable cause – quickly unravels when viewed alongside the surveillance footage.

(See, Pl. Exhibit 5). In fact, the only time the patrons seem disturbed, or glance in the direction

of Plaintiff is when Officer Arroyo begins to arrest the Plaintiff without cause, and without explaining why he was arresting Plaintiff.

Therefore, Plaintiff's speech did not exceed the bounds of the First Amendment. Plaintiff did not use fighting words, and he was not causing a disturbance. Based on clear precedence established under *State v. Pittman*, *Houston v. Hill*, and *Gooding v. Wilson*, Officer Arroyo lacked probable cause to effect an arrest. Having shown no probable cause existed at the time of Plaintiff's arrest, summary judgment as to all of Plaintiff's claims must be denied. (See, *State v. Pittman*, 342 S.C. 545, 548, 537 S.E.2d 563, 565 (Ct. App. 2000) (See, also *Houston v. Hill*, 482 U.S. 451 (1987)).

B. PLAINTIFF WAS ENTITLED TO QUESTION THE OFFICER'S ACTIONS

Plaintiff was free to question Officer Arroyo as to why he was being arrested, and to challenge his unlawful seizure. While Plaintiff may have been loud and boisterous after he was placed under arrest there is no evidence that Plaintiff used fighting words before or after his arrest, and for this reason there is no new and distinct crime to support a charge of disorderly conduct or resisting arrest.

"Probable cause to arrest an individual requires more than profanity or loud and boisterous behavior directed at the officers." In *Re Jeremiah*, 606 S.E.2d 766 (S.C. 2004) (citing, *State v. Pittman*, 342 S.C. 545 (Ct. App. 2000)). "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *State v. Perkins*, 306 S.C. 353, 355, 412 S.E.2d 385, 386 (1991) (citing *City of Houston v. Hill*, 482 U.S. 451, 462-63 (1987)).

The United States Supreme Court has consistently recognized that "the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." *Hill*,

482 U.S. at 461. "The State may not punish a person for voicing an objection to a police officer where no fighting words are used." *State v. Pittman*, 342 S.C. 545, 548, 537 S.E.2d 563, 565 (Ct. App. 2000) (citation omitted). Fighting words are words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Perkins*, 306 S.C. at 354, 412 S.E.2d at 386 (citations omitted). "As further noted by the Supreme Court, the 'fighting words' exception may require narrow application in cases involving words addressed to a police officer 'because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen.'" *Id.*

Therefore, because there was no probable cause to believe Plaintiff committed any crime, and because Plaintiff did not use fighting words at any time, summary judgment as to all of Plaintiff's claims is inappropriate.

C. GROSS NEGLIGENCE STANDARD IS IMPROPER UNDER THE FACTS AND NCPD IS NOT ENTITLED TO DISCRETIONARY IMMUNITY

The Tort Claims Act renders state agencies and governmental entities "liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations" and exemptions contained within the Act. S.C. Code Ann. § 15-78-40. The Act provides exceptions to the waiver of immunity under S.C. Code Ann. 15-78-60. While the exceptions to the waiver of immunity are applied under proper circumstances, the exceptions apply to legislative, judicial or quasi-judicial action or in action, administrative functions, the collection of taxes, and a host of other government functions which are traditionally shielded from liability based on discretionary function and public policy.

Defendant has alleged that Plaintiff carries the burden under S.C. Code § 15-78-60 of proving NCPD and its officers were grossly negligent. Defendant has argued that S.C. Code § 15-78-60(25) applies. This exception requires Plaintiff to prove the government actor was

grossly negligent when "supervision and control of student, patients, prisoners, inmates, or client of any governmental entity" are involved. S.C. Code 15-§ 78-60(25).

In addition, Defendant asserts the department's, and its officers' conduct is subject to absolute discretionary immunity under the Act, specifically § 15-78-60(5). This section provides a governmental entity is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee...." S.C. Code Ann. § 15-78-60(5) (Supp.2001).

First, Defendant's reliance on 15-78-60(25) is misplaced. At the time of Plaintiff's arrest, he was not a student, patient, prisoner, inmate, or client of any governmental entity. Plaintiff's arrest was not carried out pursuant to a warrant. Moreover, the courts have unambiguously held that none of the exceptions from liability impose a standard of gross negligence on the torts of false arrest and imprisonment. *Wortman v. Spartanburg*, 310 S.C. 1, 425 S.E. 2d 18 (1992). Therefore, Defendant's liability arises under S.C. Code § 15-78-40, and a negligence standard applies.

Next, 15-78-60(5) (discretionary immunity) doesn't fit our facts. This much is clear in that Defendant failed to cite one unlawful arrest case in support of this argument. SC Code § 15-78-60(5) carves out an exception to limited waiver of immunity when the decision at issue is within the discretion or judgment granted to the particular state actor, and only to the extent the act does not violate a parties constitutional right. "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." *Sabb v. South Carolina State Univ.*, 350 S.C. 416; 428, 567 S.E.2d 231, 237 (2002). To establish discretionary immunity, the governmental entity must prove its employees, faced with alternatives, actually weighed

competing considerations and made a conscious choice. *Pike v. Dept. of Transp.*, 343 S.C. 224, 540 S.E.2d 87 (2000). Total immunity from liability on the part of the government is not desirable, S.C. Code § 15-78-20; see, *McCall v. Batson*, 285 S.C. 243 (1985). "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727 2738, 73 L.Ed.2d 396, 410 (1982).

Discretionary immunity is wholly inapplicable under our given facts. Officer Arroyo and Officer King were not vested with the discretion to make an unlawful arrest, or the discretionary authority to use excessive force. Therefore, Defendant is unable to carry its burden that that decision at issue is within the discretion or judgment granted to police officers. Defendants will also be unable to cite one unlawful arrest case where the discretionary immunity exception has been applied.

Even if it were held that the Defendant's officer's actions fell within the limited exception afforded by 15-78-60(5), the evidence shows that the Plaintiff's constitutional and statutory rights were violated when he was arrested and imprisoned without probable cause. At a minimum, there is a factual dispute as to whether the evidence demonstrate that Officer Arroyo and Officer King violated Plaintiff's established right to be free from unreasonable search and seizure, and that a reasonable police officer would know that his actions violated Plaintiff's rights.

D. THE EVIDENCE SUPPORTS THE CLAIM OF MALICIOUS PROSECUTION

Defendants argue that Plaintiff cannot prove malice or that the arrest was without probable cause, and for this reason Plaintiff's claim of malicious prosecution should be

dismissed. However, Defendant's interpretation of evidence required to prove malice in this context is erroneous, and Plaintiff has posited sufficient evidence that his arrest was unlawful and without probable cause.

The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845 (SC Appt. 2010), (citing *Law*, 368 S.C. at 435, 629 S.E.2d at 648). In a malicious prosecution case "malice" is the "deliberate intentional doing of a wrongful act without just cause or excuse. *Id.* (citing, *Eaves v. Broad River Elec. Coop., Inc.*, 277 SC 475, 289 SE2d 414 (1998)). "One need not show actual malice in order to successfully maintain an action for malicious prosecution." *Id.* "In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution," *McBride*, 389 S.C. 546.

Here, Plaintiff has shown sufficient evidence of all elements of malicious prosecution. Officer Arroyo and NCPD instituted an action, at its own instance, the action was dismissed in favor of Plaintiff, malice is inferred by lack of probable cause, and Plaintiff was harmed insofar as Plaintiff lived with pending charges for over a year and was forced to hire an attorney. There exists additional evidence that Officer Arroyo's actions were driven by a more traditional understanding of malice, but under the law in South Carolina, as instructed by the S.C. Court of Appeals in *McBride*, Plaintiff need not present additional evidence to survive summary judgment on this claim because he has presented sufficient evidence that his arrest was without probable cause and malice may be inferred from a lack of probable cause to institute the prosecution.

E. NEGLIGENCE IN HIRING, SUPERVISION, AND RETENTION

An employer's legal duty to supervise an employee sounds in tort and the ensuing duty is limited to the employee's actions undertaken in his capacity as an agent for the employer. *Degenhart v. Knights of Columbus*, 420 S.E. 2d 495 (1992).

Plaintiff's negligent supervision claim is premised on the basis that NCPD officers received no training with regard to law enforcement duties in an off-duty (secondary employment) role, and that Defendant was negligent in the investigation of Plaintiff's initial complaint insofar as the Office of Professional Standards and Internal Affairs failed to interview Officer Arroyo and failed to view the surveillance footage of the incident before concluding Officer Arroyo observed all NCPD policies in effecting the arrest of Plaintiff. Defendant's negligence investigation of Plaintiff's arrest allowed charges to be pursued against Plaintiff for greater than a year before ultimately being dismissed. Moreover, because Plaintiff's arrest was without probable cause, Plaintiff is entitled to the presumption that Officer Arroyo's training on the formation of probable cause was insufficient.

F. DEFENDANT'S POSITION REGARDING ASSAULT AND BATTERY IS UNSUPPORTED, BUT PLAINTIFF RESERVES THE RIGHT TO VOLUNTARILY DISMISS THIS CLAIM

If an arrest is unlawful, the arrestee has the right to resist it, and it makes the officer attempting such arrest liable for assault and battery and false arrest. *State v. Francis*, 152 S.C. 17, 149 S.E. 348, 355-56 (1929). An unlawful arrest, or an attempt to make an unlawful arrest, stands upon the same footing as any other nonfelonious assault, or as a common assault and battery. *State v. McGowan*, 347 S.C. 618 (2001). "South Carolina appears to be in the minority of jurisdictions where an unlawful arrest, even in the absence of excessive force, can support a claim for assault and battery." *Horton v. City of Columbia*, 408 S.C. 27, 757 S.E. 2d 537 (2014).

Here, Plaintiff has alleged excessive force was used in effecting an unlawful arrest. Plaintiff alleges that the both officers were negligent and/or grossly negligent "in using unreasonable excessive force to effectuate the unlawful arrest... and in using unreasonable and excessive force against the Plaintiff after the Plaintiff was unlawfully placed under arrest." (Plaintiff's Amended Complaint, p. 9). This allegation is supported by the Plaintiff's testimony, the affidavit of witness Laura Fitzpatrick, the surveillance video showing Officer Arroyo slam the Plaintiff face first into a tile floor, and Officer Arroyo and Officer King using the Plaintiff's head like a battering ram to open two glass doors.

Notwithstanding the above, Plaintiff reserves the right to voluntarily dismiss the claim of assault and battery against the Defendant prior to trial.

G. PLAINTIFF RESPECTFULLY MOVES TO STRIKE AFFIDAVITS SUBMITTED BY DEFENDANT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AS SHAM AFFIDAVITS, AFFIDAVITS IMPROPERLY WITHHELD BY DEFENDANT, AND/OR AFFIDAVITS PRODUCED OUTSIDE OF THE WINDOW FOR DISCOVERY.

Defendant has submitted in support of its Motion for Summary Judgment four (4) affidavits, which are either signed by an undisclosed witness, improperly withheld during discovery, untimely, and/or are contradictory to previously provided sworn testimony.¹ (See, Def. Memo. In Supp. of Sum. J., Exhibit M, Exhibit N, Exhibit P, and Exhibit Q).

First, the affidavits of Laura Fitzpatrick (Def. Exhibit P), and Taylor McCullough (Def. Exhibit N) submitted by Defendant in support of its Motion for Summary Judgment are unreservedly contradictory to previous sworn testimony provided by affiants Fitzpatrick and McCullough. The Fitzpatrick and McCullough contradictory affidavits in question were both

¹ Counsel for Plaintiff was first made aware of the existence of the four new affidavits on May 10, when they were received by mail. The period for discovery in this matter, agreed to by the parties and memorized in a Consent Scheduling Order, expired on March 16, 2017.

executed on March 8, 2017. The period for discovery expired on March 16, 2017. (Pl. Exhibit 6).

Both affidavits were withheld by Defendant until May 10, 2017.

Significantly, the Affidavit of Taylor McCullough was produced and obtained by Counsel for Defendant on its date of execution, March 8, 2017. However, McCullough's March 8, 2017 affidavit was not disclosed to Counsel for Plaintiff prior to her deposition on March 16, 2017, when McCullough gave sworn testimony favorable to Plaintiff and contradictory to this undisclosed and untimely affidavit. (See, Def. Mot. in Support of Sum. J., Depo. Tran of Taylor McCullough, Exhibit O).

Similarly, the previously undisclosed affidavit of Laura Fitzpatrick, also clearly manufactured and obtained by Defendant on its date of execution (March 8, 2017), was improperly withheld until after the period for discovery had expired, and it also is shamelessly contradictory to the witness's original sworn affidavit, dated January 17, 2017. (See, Pl. Exhibit 2; Def. Exhibit P).²

Additionally, the third affidavit in question was signed by Lt. Andrew Glover (Def. Exhibit Q) on April 4, 2017. Lt. Glover was not previously disclosed by Defendant in discovery, and as of April 15, 2017 Lt. Glover has not been identified by defendant as a witness in this matter. (Pl. Exhibit 7). Finally, the affidavit of Officer Arroyo, signed May 5, 2017, is untimely.

Federal and state courts regularly disregard contradictory or "sham" affidavits that conflict with a witness's prior sworn testimony. See e.g., *Rohrbough v. Wyeth Labs. Inc.*, 916 F.2d 970, 976 (4th Cir. 1990) (holding that district court was justified in disregarding plaintiff's expert's affidavit on injury causation that conflicted with the expert's earlier deposition

² Plaintiff will provide the court a summary exhibit prior to the hearing for efficiency in resolving this issue.

testimony in which he declined to testify on that issue). A trial court may strike an affidavit that materially and directly alters a fact witness's deposition testimony. *McMaster v. Dewitt*, 411 S.C. 138 (2014) (citing, *Cothran v. Brown*, 357 S.C. at 218, 592 S.E.2d at 633.) (See, also *Ins. Prods. Mktg., Inc. v. Conseco Life Ins. Co.*, No. 9:11-cv-01269-PMD, 2012 WL 3308368, at *7 n.9 (D.S.C. Aug. 13, 2012);

The South Carolina supreme court delineated the following considerations for "distinguishing between a sham affidavit and a correcting or clarifying affidavit":

(1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted.

Here, the unreservedly contradictory, undisclosed and untimely affidavits of witnesses Laura Fitzpatrick and Taylor McCullough should be excluded and/or struck by this court as sham affidavits, and on the basis they were improperly withheld in discovery. The affidavit of Lt. Andrew Glover (Def. Exhibit Q) should be excluded and/or struck because it was obtained from a previously undisclosed witness after the period for discovery expired on March 28, 2017.

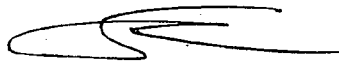
Plaintiff reserves the right to question Officer Arroyo regarding the substance of his May 5, 2017 affidavit, however for purposes of Defendant's Mot. for Summary Judgment Plaintiff respectfully posits this affidavit should be excluded by the court as untimely.

CONCLUSION

The evidence and all reasonable inferences viewed in the light most favorable to Plaintiffs clearly shows the existence of a scintilla of evidence sufficient to defeat summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801-803. Summary judgment is only appropriate when it is "perfectly clear no issue of fact is involved. Etheredge v. Richland Sch. Dist. 1, 220 S.C. 447, S.E.2d 238 (Ct. App. 1998). Accordingly, Defendants' Motion for Summary Judgment as to all claims should be denied.

Respectfully Submitted,

STRATOS LAW, LLC



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(843) 216-0804 (f)
milt@stratoslaw.com

ATTORNEYS FOR THE PLAINTIFF

May 15, 2017
Charleston, South Carolina

PLAINTIFF'S EXHIBIT	DOCUMENT
1	NCPD Policy, A-23
2	Aff. of Laura Fitzpatrick
3	Photo of Plaintiff, Norris White
4	Crim. Disposition, Nol Prossed
5	Surveillance Video
6	Consent Sch. Order
7	Def. Discovery Reponses

Exhibit 1

North Charleston Police Department Policy and Procedure Manual

POLICY # A - 23



Subject: Secondary and Off-Duty Employment	Issue/Rev. Date: Dec. 17, 2013
Approved by: <i>E. E. [Signature]</i>	Effective Date: Dec. 17, 2013
CALEA Reference: 22.3.3, 22.3.4	Page(s): 1 of 5

I. Purpose

To establish a policy and procedure to govern secondary and off-duty employment by employees of the North Charleston Police Department.

II. Policy

It is the policy of the North Charleston Police Department to provide its employees guidelines and procedures in reference to secondary and off-duty employment. These requirements are essential for the efficient operation of the agency, the protection of employees, and the overall safety of the community as it relates to secondary and off-duty employment.

III. Definitions

- A. **Employment:** The provision of a service, whether or not it is in exchange for a fee or other service. The definition of Employment does not include volunteer work for charitable organization.
- B. **Secondary Employment:** Any other employment that will not require the use or potential use of law enforcement powers by an employee.
- C. **Off-Duty Employment:** Any employment, requested by an outside source, in which the actual or potential use of law enforcement powers will be exercised.
- D. **Off-Duty Employment Manager:** A supervisor, with the rank of Lieutenant or above, who is designated by the Chief of Police to handle the coordination of all off-duty matters within the police department.
- E. **Detail Coordinator:** The officer who is designated by the Off-Duty Employment Manager to handle scheduling and daily operations of off-duty employment at a specific detail.

IV. Procedure

A. Administrative

1. The North Charleston Police Department has a legitimate interest in regulating its employee's secondary and off-duty employment. While the agency will not unreasonably restrict secondary and off-duty employment, it will require responsibility and accountability of the employees to the agency.
2. The Chief of Police will designate one supervisor with the rank of Lieutenant or above as the Off-Duty Employment Manager.
3. The City of North Charleston is the primary employer and will take precedence over any secondary or off-duty employment. When called upon by the department, due to an emergency situation, employees will leave any secondary or off-duty employment and respond as needed.
4. No sworn police officer shall work off-duty employment when in an on-duty status.
5. Sworn personnel must be released from the Field Training Program prior to working secondary or off-duty employment.

6. Police officers will not work more than sixteen (16) hours within a twenty-four (24) hour time period, whether working on-duty assignment, approved overtime, off-duty, or secondary employment.
7. A police officer will not work more than fifty (50) hours in excess of his/her normal eighty-six (86) hours within any bi-weekly pay period.
8. It will be the duty of the individual employee to fully comply with federal and state laws concerning the reporting of secondary or off-duty employment income.

B. Secondary Employment

1. Employees may engage in secondary employment in which vested police powers are not a condition of employment; the work provides no real or implied law enforcement service to the employer and is not performed during assigned duty hours.
2. The secondary employment will not:
 - (a) physically or mentally exhaust the employee to the point that his/her performance as an employee of the North Charleston Police Department is affected;
 - (b) require that any special consideration be given to the scheduling of the employee's regular duty hours;
 - (c) bring disgrace upon the agency or employee; and
 - (d) impair the operation or efficiency of the agency.
3. Secondary employment will not present a conflict of interest or a potential conflict of interest between the duties as an agency employee and the duties performed for the secondary employer. Examples of secondary employment that present a conflict of interest or potential conflict of interest includes, but is not limited to:
 - (a) any business or employment involving bail bond agencies or private security services;
 - (b) investigative work for insurance agencies, collection agencies, or attorneys; or
 - (c) secondary employment at any establishment holding an on premises ABC license, except when the agency has a contractual agreement with the establishment to provide law enforcement services.
4. Although civilian personnel are prohibited from working private security services, they may engage in secondary employment working for a business in a loss prevention position.
5. All officers wishing to work secondary employment must complete and sign a North Charleston Police Department Off-Duty Employment/Secondary Authorization and Disclaimer Form. The employee will then forward this form through their Shift Supervisor to the Off-Duty Employment Manager. This form is available on the City's Computer Network "I" share drive under Forms (I:\Forms).

C. Off-Duty Employment

1. Personnel may work off-duty employment of a law enforcement nature, pursuant to applicable law, providing that the government, for-profit, or non-profit entity must have a contract with the North Charleston Police Department for personnel to exercise law enforcement.
2. Personnel are prohibited from working off-duty or secondary employment for the following:
 - (a) any employment or business involving bail bond agencies or private security services;
 - (b) investigative work for insurance agencies, collection agencies, or attorneys; or

(c) off-duty employment at any establishment holding an on premises ABC license except when the agency has a contractual agreement with the establishment to provide law enforcement services.

3. Contracts will not be drawn with an establishment holding an on premises ABC license unless the principal business is the provision of lodging and/or the service of food and not entertainment unless otherwise approved by the Chief of Police.
4. Agency personnel are prohibited from soliciting business for contracted off-duty employment opportunities. Agency personnel may direct interested parties to the Off-Duty Employment Manager.
5. The standard hourly rate is determined by the Chief of Police. The Off-Duty Employment Manager will present any hourly rate change or adjustment to the Chief of Police or the Duty Chief after hours for approval. A minimum of four (4) hours of assessment will be applied to every request, with the exception of a long term contract which will have a minimum two (2) hour assessment contingent upon officer availability. For the purpose of this exception, a long term contract is defined as a commitment by the business for weekly scheduling of multiple days for a period of six months or more.
6. A supervisor will be mandated for any detail that requires four or more officers working a detail at the same time. The supervisor shall be paid at a rate determined by the Chief of Police.
7. To be eligible to hire off-duty officers; the off duty employer must provide workman's compensation coverage.
8. Any stipulations may be waived, when it is believed to be advantageous to the agency, at the discretion of the Chief of Police.

D. Duties of the Off-Duty Employment Manager

1. The Off-duty Employment Manager will be responsible for the review, and preparation, for the Chief of Police's signature or his designee, of all approval and revocations of the contractual agreements with the North Charleston Police Department for the off-duty exercise of law enforcement powers.
2. All requests for personnel to work off-duty employment of a law enforcement nature, whether by letter, telephone, or in person will be referred to the Off-duty Employment Manager.
3. The Off-duty Employment Manager is responsible for determining that the proposed employment is not of such nature as is likely to bring disrepute on the agency or agency personnel.
4. The Off-Duty Employment Manager will carefully explain the criteria for off-duty employment to each prospective employer before the detail is approved.
5. The Off-Duty Employment Manager will maintain a rotational roster of all officers who would like to be a Detail Coordinator. Officers with the status of Patrolman First Class or greater may add their name to the roster by sending a memorandum indicating their interest to the Off-Duty Employment Manager.
6. Any off-duty employer may request a specific officer to serve as the Detail Coordinator. This request will be honored by the Off-Duty Employment Manager pending any unusual circumstances.
7. Absent a specific request from the off-duty employer, the Off-Duty Employment Manager will select the Detail Coordinator from the rotational roster of available personnel.
8. The Off-Duty Employment Manager will keep a file for each off-duty employment site, which will contain the following:
 - (a) Incidents involving arrests or the use of force.

- (b) Injury to sworn personnel.
 - (c) Complaints received involving sworn personnel.
 - (d) Liability and insurance issues stemming from actions during employment.
 - (e) Monthly schedules listing the date, time, and place of employment.
9. The Off-Duty employer has the option of requesting specific qualified personnel. Absent such request, the Detail Coordinator will maintain a roster of personnel requesting to work at that specific detail and will fill available positions from that roster.
 10. Upon notification that an employee has failed to report for off-duty employment, the Off-Duty Employment Manager will notify, via memorandum, the employee that they are suspended from working off-duty employment for a period of thirty (30) days.

E. Duties of the Detail Coordinator

1. The Detail Coordinator will be responsible for maintaining the scheduling of all employees at that off-duty detail site and will handle coordination between personnel working that site.
2. The Detail Coordinator will report any significant events or problems with the off-duty employment site to the Off-Duty Employment Manager. This includes the following information:
 - (1) Incidents involving arrests and the use of force.
 - (2) Injury to sworn personnel.
 - (3) Complaints received involving sworn personnel.
 - (4) Liability and insurance issues stemming from actions during employment.
3. The Detail Coordinator will be responsible for the posting of all available open positions they may have concerning their detail. They will also be responsible for sending out an e-mail to all supervisors when positions are available.
4. The Detail Coordinator will report via memorandum any employee who fails to report to any off-duty assignment without notice or cause to the Off-Duty Employment Manager.

F. Duties and Responsibilities of Officers working Off-Duty Details

1. Personnel working off-duty employment are bound by agency policies and procedures and the laws of the State of South Carolina applicable to off-duty employment.
2. Sworn personnel will not enforce or threaten to enforce any rule or order of an employer governing customer behavior where the customer's conduct does not constitute a violation of the law.
3. Personnel will report for off-duty employment in the uniform of the day as directed for uniformed patrol officers.
4. Police officers will be permitted to engage in apartment complex security off-duty employment, where a reduction in the monthly rent is provided in lieu of an hourly salary, subject to the same approval process required for any other off-duty employment.
5. Employees on any form of imposed leave of absence or suspension, for any reason, will be prohibited from working contracted off-duty employment for the duration of such leave or suspension.
6. Employees who are on sick leave, light duty, on the job injury, or otherwise unable to perform the functions of their primary employment, are prohibited from engaging in any form of off-duty employment.
7. The off-duty police officer will respond as the primary officer with regard to any call for service at

the off-duty employment location brought to his/her attention while he/she is in an off-duty employment capacity.

8. The off-duty police officer will submit all required paperwork at the conclusion of his/her shift of off-duty employment work.
9. Court appearances which are the result of off-duty employment will be handled during the officer's scheduled court date.
10. Officers engaged in law enforcement related off-duty employment, serving as a police officer, will:
 - (a) notify dispatch of the location and badge number of the officer(s) working; and
 - (b) be located within the legal boundaries of the City of North Charleston.
11. The off duty employer may limit the number of officers allowed to work on a job. If this is requested by the off-duty employer then the detail will not be posted and the Detail Coordinator will establish a roster and make the assignments for that detail.
12. Any officer failing to report to a scheduled off-duty assignment without notice or cause will be suspended from working any off-duty assignment for a period of 30 days.
13. All officers wishing to work an Off-Duty Employment detail must complete and sign a North Charleston Police Department Off-Duty Employment/Secondary Authorization and Disclaimer Form. The employee will then forward this form through their Shift Supervisor to the Off-Duty Employment Manager. This form is available on the City's Computer Network "T" share drive under Forms (I:\Forms).

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Exhibit 2

MEMORANDUM FOR THE RECORD

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Hendon
Mr. Pennington
Mr. Quinn
Mr. Nease
Miss Gandy

RE: [illegible]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

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AFFIDAVIT OF LAURA FITZPATRICK

COMES NOW, the affiant, Laura Fitzpatrick, and first being duly sworn upon her oath under the pains and penalties of perjury now states the following:

1. I am the above-named affiant, I am over the age of 18, and I reside at 320 Janice Street, City of Goose Creek, South Carolina 29445.
2. I am making the following sworn statement about an arrest of a black male that I viewed at the Waffle House on 12/28/2013.
3. On 12/28/2013 I was working an early morning shift as a waitress at the Waffle House on Ashley Phosphate Rd., in North Charleston, South Carolina.
4. I recall that it was a normal early morning weekend shift. We had the normal party crowd eating in the restaurant. It's the kind of weekend crowd you would expect in the early morning hours. It's not a family friendly type atmosphere at that time.
5. That morning we had a police officer for security and he was sitting with a woman in a booth. I was not very familiar with the police officer.
6. At around 4 am I recall two black males eating breakfast with two black females in a booth near the cash register. They appeared to be friends.
7. I recall that they were speaking in a normal tone like everyone else in the restaurant. I also recall they were friendly. I may have heard a cuss word from their table, such as "fuck," but they were not acting drunk and they were not bothering the staff or other people in the restaurant.
8. I recall the police officer walking up to the booth where the two black males and two black females were eating. I do not know why the police officer decided to go to their

table. I did not ask him to and I did not make eye contact, or motion for him to go to their table.

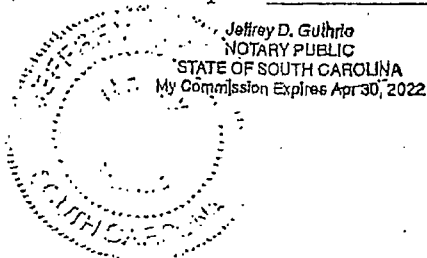
9. While the officer was standing over their table I recall the officer saying something like, "be quiet or I will arrest you."
10. I also recall the officer saying to the black male who he later arrested, "you're going to jail."
11. The black male was still seated and responded to the officer by saying "no, I haven't done anything wrong."
12. That must have made the officer mad because he forcefully came at the man and they kind of wrestled around a bit until he threw the man on the floor hard.
13. After the officer had the man on the floor another officer came in and the two officers arrested him.
14. I declare that I have examined this affidavit and, to the best of my knowledge and belief, it is true, correct and complete.

BEFORE ME, the undersigned authority, on this day personally appeared Laura Fitzpatrick, known to me to be the person whose name is subscribed to the foregoing Affidavit, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Sworn to and Subscribed before me
This 17th day of JANUARY, 2016.

Notary Public for Berkeley Co. S.C.

My Commission expires _____



Laura Fitzpatrick
Laura Fitzpatrick

Date: 1-17-17

Laura Fitzpatrick
LAURA FITZPATRICK

Date: 1-17-17

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

IN SENATE

Exhibit 3

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Exhibit 4

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Exhibit 5

Exhibit 6

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Norris Earl White, Jr.,

Plaintiff,

vs.

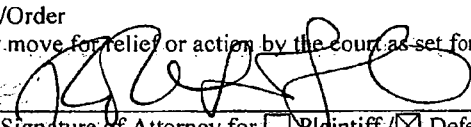
City of North Charleston, et al.

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06561

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Milton D. Stratos, II., Bar No. 102108 Address: 1041 Johnnie Dodds Blvd., Suite 14-A, Mt. Pleasant, SC 29464 Phone: 843-216-7739 Fax 843-216-0804 E-mail: milt@stratoslaw.com Other: _____		Defendant's Attorney: Robin L. Jackson, Bar No. 16948 Address: P.O. Box 12279 Charleston, SC 29422 Phone: 843-556-4045 Fax 843-556-4046 E-mail: Robin@sennlegal.com Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Consent Amended Scheduling Order Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		01/24/2017 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,
Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

CONSENT AMENDED
SCHEDULING ORDER

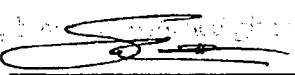
FILED
2017 JAN 31 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to the South Carolina Rules of Civil Procedure, the following amended schedule is established for this case. This order is entered to administer the trial of cases in a manner consistent with the ends of justice, in the shortest possible time, and at the least possible cost to litigants.

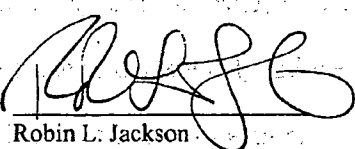
1. Discovery: Discovery shall be completed no later than **March 16, 2017**. All discovery requests shall be served in time for the responses thereto to be served by this deadline. All depositions must be taken before this deadline.
2. Dispositive Motions: All dispositive motions shall be filed on or before **April 5, 2017**.
3. Mediation: Mediation shall be completed by **April 12, 2017**, with each side bearing half the cost.
4. Trial: This case be eligible for trial not before **May 10, 2017**.
5. All dates in this scheduling order may be amended with consent of the parties except for #3 and #4.


Honorable Deadra L. Jefferson
Chief Administrative Judge

1/26, 2017


Milton D. Stratos, II, Esquire
Stratos Law, LLC
1041 Johnnie Dodds Blvd., Suite 14A
Mt. Pleasant, SC 29464

Attorney for Plaintiff


Robin L. Jackson
Senn Legal, LLC
3 Wesley Drive
P.O. Box 12279
Charleston, SC 29422

Attorney for Defendants

Exhibit 7

RESPONSE: None known to the City of North Charleston. This would be a matter of public record through SLED, equally available to the plaintiff.

9. Please state in comprehensive narrative detail Police Officer Christopher Arroyo version of exactly what happened before, during and after the occurrence alleged in the Complaint.

RESPONSE: To be supplemented.

10. Please state the full name and address of the female Police Officer Christopher Arroyo was with at the Waffle House on the night of the incident in question, and Police Officer Christopher Arroyo's relationship to this woman and her occupation.

RESPONSE: This request is unclear. Defendant asks plaintiff to restate.

11. Please state Police Officer Christopher Arroyo's work schedule on the night of the incident in question, and his work schedule for the preceding 30 days.

RESPONSE: Christopher Arroyo was not working for North Charleston Police Department on the night of this incident. During the thirty (30) days prior, he worked on 11/29, 12/01, 12/02, 12/06, 12/07, 12/08, 12/09, 12/13, 12/14, 12/15, 12/16, 12/20, 12/21, 12/22, 12/23 and 12/24.

12. If within ten (10) years prior to the time of this claim, Police Officer Christopher Arroyo suffered any type of mental injury, illness or other complaint please state the following:

- a) Name and address of the treating physician;
- b) Description of the injury or illness;
- c) The date of diagnosis and treatment;
- d) The treatment provided to defendant for the injury or illness, to include prescription medication;

RESPONSE: North Charleston can only provide information relating to the time period Christopher Arroyo was working for them. No mental injury known to the City of North Charleston. As to the request for "illness or other complaint" this is vague and unclear. The City of North Charleston does not keep track of when its officers feel ill unless they call in sick. The term "other complaint" is completely unclear.

13. Give the names, email addresses, phone numbers, and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

Christopher Arroyo C/O Robin L Jackson, Esquire P.O. Box 12279 Charleston SC 29422	This officer was working in an off-duty capacity at the Waffle House. He is expected to have knowledge and information regarding his observations of and interactions with the plaintiff.
Anthony King NCPD 2500 City Hall Drive North Charleston, SC	This officer arrived on scene at the Waffle House as Officer Arroyo was struggling with the Plaintiff. He is expected to have information regarding the same.
Norris White 472 Winter Drive Summerville, SC 29483	The Plaintiff is expected to have knowledge and information about his interactions with Officers Arroyo, King, Kaufman and Pierce.
Capt. J.L. Stephens NCPD 2500 City Hall Drive North Charleston, SC	This officer oversaw the internal affairs investigation and drafted the final report to the deputy chief.
Officer Kaufman NCPD 2500 City Hall Drive North Charleston, SC	This officer is identified in the report as having sat with the plaintiff at Trident Hospital while he received treatment and is expected to have information regarding the same.
Officer Pierce NCPD 2500 City Hall Drive North Charleston, SC	This officer is identified in the report as the officer who transported the plaintiff from the hospital to the Detention Center. He is expected to have information regarding the same.
Sgt. D. Allen NCPD 2500 City Hall Drive North Charleston, SC	This officer performed the internal affairs investigation. He is expected to have information regarding the same.
John Hawkins Waffle House 2571 Ashley Phosphate Road North Charleston, SC 29418	This person is identified as the manager. It is unknown what information he may have.

Grant Mizner - EMT - P Charleston County EMS Lonnie Hamilton, III Public Service Building 4045 Bridge View Drive, Suite B309 North Charleston, SC 29405	This person is expected to have information about his interaction with the plaintiff and the officer.
Jeri Seal - EMT - B Charleston County EMS Lonnie Hamilton, III Public Service Building 4045 Bridge View Drive, Suite B309 North Charleston, SC 29405	This person is expected to have information about his interaction with the plaintiff and the officer.
Taylor McCullough 2019 Haver Hills Cir. North Charleston, SC	This person is identified in the police report as a witness. It is unknown at this time what information this witness may have.
George Jenkins 7263 Stall Rd. 19 North Charleston, SC	This person is identified in the police report as a witness. It is unknown at this time what information this witness may have.
Laura Fitzpatrick 162 Apache Dr. Summerville, SC	This person is identified in the police report as a witness. It is unknown at this time what information this witness may have.

14. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of the party that relate to the claim or defense in the case.

RESPONSE: Defendant is in possession of the following:

IA Investigation (1-28)
White Interview 2013044810 CD (29)
Incident Report (30-35)
Booking Report (36)
Off Duty Waffle House Contract (37)
Policy #A-23 Off Duty Policy in Effect 12/28/2013 (38-42)
Trident Medical Records (43-106)
Charleston County EMS Records (107-111)
CCDC Medical Records for Plaintiff (112-131)
CCDC Inmate Records for Plaintiff (132-164)
Officer Arroyo's Employee File 2006-2009 (1st Tenure) Confidential (165-197)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

NORRIS EARLY WHITE, JR.)

Plaintiff,)

vs.)

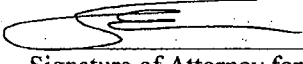
CITY OF NORTH CHARLESTON)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-6561

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: MILTON D. STRATOS II, Bar No. 102108 Address: 1041 JOHNNIE DODDS BLVD., SUITE 14A CHARLESTON, SC 29464 Phone: 843.216.7739 Fax 843.216.0804 E-mail: MILT@STRATOSLAW.COM Other:		Defendant's Attorney: ROBIN JACKSON, Bar No. _____ Address: PO BOX 12279 CHARELSTON, SC 29422 Phone: 843.556.4045 Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Mot. to Reconsider Estimated Time Needed: 20 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		06/19/2017 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☒ Other: Mot. to Reconsider			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NORRIS EARL WHITE JR.

Plaintiff,

v.

CITY OF NORTH CHARLESTON,
NORTH CHARLESTON POLICE
DEPARTMENT

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

) CASE NO.: 2015-CP-10- 6561
)

) **MOTION TO RECONSIDER, ALTER, OR**
) **AMEND, PURSUANT TO RULE 59(E)**
)

FILED
2017 JUN 16 PM 4:29
CLERK OF DISTRICT COURT
SOUTH CAROLINA
BY

COMES NOW the Plaintiff, Norris Earl White Jr., by and through undersigned counsel, prays this Court reconsider, alter, or amend its Order granting summary judgment and entered June 8, 2017, pursuant to Rule 59(e), SCRPC, based upon grounds that will be supported further by submission of memorandum once the hearing transcript is obtained.

As a general matter, but without limiting the scope or basis hereof, this motion to reconsider is based upon the grounds that the grant of summary judgment was improper, and that the Plaintiff established facts and evidence which surpass the "scintilla" standard in South Carolina. Plaintiff further respectfully requests specific rulings on the issues presented, and posits that reconsideration is warranted to correct a clear error of law and to prevent manifest injustice. More specifically, the grounds for this motion follow:

1. The order granting summary judgment fails to clearly articulate the reasons for granting summary judgment on the record by including those facts, evidence and inferences in the light most favorable to the nonmoving party, which the court finds relevant, determinative of the issues and undisputed, and accompanying legal analysis.
2. Summary judgment is inappropriate as there are material issues of fact disputed by the parties. The question of whether the facts observed by Officer Arroyo supported probable

cause to arrest Plaintiff is at the crux of this case, and Plaintiff has presented substantive evidence, witness testimony and affidavits, that go to prove Plaintiff's arrest was without probable cause. Plaintiff respectfully requests that this Court specifically rule on the issue of probable cause, how the evidence giving rise to probable cause is undisputed, and the effect of court's finding as to probable cause with respect to all of Plaintiff's causes of action.

3. The Court's finding that "no private right of action" exists for the Plaintiff's claims of false arrest, false imprisonment, and unlawful search and seizure is based on an error of law, as well as untimely argument first presented by Defendant on May 17, 2017.

4. Whether the Defendant is entitled to qualified immunity is a legal question that depends entirely on a credibility determination, the testimony of Defendant's employees as compared to Plaintiff's testimony and the affidavits and testimony of witnesses.

5. This Court's dismissal of Plaintiff's gross negligence claim is based on an error of law.

6. This Court's order granting immunity to the City of North Charleston pursuant to the SC Torts Claim Act, 15-78-60, is based on an error of law and misconstruction of the facts.

7. This Court's order granting Defendant's motion for summary judgment with respect to Plaintiff's malicious prosecution claim is controlled by an error of law.

8. Plaintiff respectfully requests that the Court specifically rule on Plaintiff's request to strike wrongfully withheld, untimely, and sham Affidavits submitted by Defendant in support of its Motion for Summary Judgment.

9. Finally, Plaintiff respectfully requests that the Court specifically rule on Plaintiff's negligence cause of action, Plaintiff's entitlement to defend himself against an

unlawful arrest, and the application of respondeat superior with respect to the Defendant's liability for the action of Officer Arroyo.

This motion will be supported by memoranda, briefs and evidence, which may be received and/or required by the Court.

This motion is respectfully submitted and it is requested that a hearing be scheduled to address the matters raised herein and by forthcoming memoranda.

Respectfully Submitted,

STRATOS LAW, LLC



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milt@stratoslaw.com

ATTORNEYS FOR THE PLAINTIFF

May 17, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NORRIS EARL WHITE JR.

Plaintiff,

v.

CITY OF NORTH CHARLESTON,
NORTH CHARLESTON POLICE
DEPARTMENT

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

) CASE NO.: 2015-CP-10- 6561
)

) **PLAINTIFF'S MEMORANDUM IN**
) **SUPPORT OF ITS MOTION TO**
) **RECONSIDER, ALTER OR AMEND**
) **PURSUANT TO RULE 59(E)**

FILED
2017 JUL 10 PM 4:52
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Plaintiff, Norris Earl White Jr., by and through undersigned counsel, and respectfully submits this Memorandum in Support of Plaintiff's Motion to Reconsider, Alter or Amend the Court's order granting Defendant's Motion for Summary Judgment. Plaintiff prays this Court reconsider, alter, or amend its Order granting summary judgment and entered June 8, 2017, pursuant to Rule 59(e), SCRPC, based upon grounds that summary judgment is inappropriate because a genuine issue of material fact exists as to whether there was probable cause to arrest Plaintiff, and on the basis that this court's order is based on errors of law and fact. The Plaintiff incorporates its previously submitted Motion, Memorandum, exhibits, and argument.

PROCEDURAL HISTORY

This action was filed in Charleston County Circuit Court on December 4, 2015, and removed to District Court on January 19, 2016. Plaintiff thereafter amended his complaint to remove claims arising under federal subject matter jurisdiction, and the case was remanded back to state court on February 19, 2016. Plaintiff's amended complaint alleges that he was arrested without probable cause, that the City of North Charleston is responsible for the acts of its officers by virtue of the doctrine of respondent superior and the South Carolina Torts Claims Act.

Plaintiff's claims before this court on Defendant's motion for summary judgment are: (1) Assault and Battery; (2) False Arrest ("unlawful arrest"); (3) False Imprisonment; (4) Negligence / Gross Negligence; (5) Excessive Force; (6) Malicious Prosecution. Plaintiff voluntarily withdraws his claim for Negligent Hiring, Training, and Supervision; wrongful detainment; and, unlawful search and seizure.

Defendant first filed a motion for summary judgment on December 9, 2016. The second hearing on Defendant's motion for summary judgment was heard May 19, 2017, before the Honorable Kristi Harrington. This court granted Defendant's motion for summary judgment, and entered its judgment by filing a Form 4 Order with the Clerk of Court on June 8, 2017. Attached, as Exhibit A,

Plaintiff timely filed a Rule 59(e) Motion to Reconsider, Alter or Amend, on June 19, 2017 and requested that this court reconsider, alter or amend its opinion to deny Defendant's motion for summary judgment on all grounds and to rule on substantive argument more specifically set forth in Plaintiff's motion.

STANDARD OF REVIEW

"A motion to reconsider may be granted for three reasons: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or a manifest injustice." Tetrev v. Pride Intern., Inc., 444 F.Supp.2d 524, 527 (D.S.C. 2006). "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." P'On, LLC v. Town of Mt. Pleasant, 338 SC 406, 422, 526 S.E.2d 716, 724 (2000).

ARGUMENT

Reconsideration of this court's order granting summary judgment is warranted to correct clear errors of law, to correct misapprehension of facts, and to prevent manifest injustice. This court's order granting Defendant's Motion for Summary Judgment, filed June 8, 2017, does not clearly articulate its rationale for granting summary judgment, fails to consider the facts in a light most favorable to Plaintiff, and rests upon misapplication of the law. See, Form 4 Order, Attached as Exhibit A.

The substance of this Court's Order granting summary judgment is parsed below:

1. "Defendant demonstrated there is no genuine issue of material fact;
2. Plaintiff's claims for false arrest ("unlawful arrest"), false imprisonment, and unlawful search and seizure must fail as no private cause of action exists for these claims;
3. Plaintiff's cause of action for gross negligence must fail, as evidence of "slight care" is present;
4. Defendant enjoys immunity under SC Tort Claims Act, SC Code 15-78-60, from (a) intentional torts, (b) losses resulting from discretionary judgment of government employee, and (c) punitive damages;
5. No evidence of malice has been presented to support malicious prosecution claim;
6. No evidence to support a claim for negligent hiring, training or supervision has been presented;
7. The Plaintiff has voluntarily withdrawn his claim for intention infliction of emotional distress."

I. THE EXISTENCE OF PROBABLE CAUSE IS DISPOSITIVE TO THE OUTCOME OF THIS CASE AND RESTS ON THE RESOLUTION OF COMPETING VIEWS OF WHAT OCCURRED BEFORE AND DURING PLAINTIFF'S ARREST

The dispositive issue before the court is whether there was probable cause to arrest Plaintiff for charged and uncharged offenses. However, this Court's Order granting summary judgment reaches no conclusion concerning whether Plaintiff failed to present evidence that his arrest was without probable cause. Because there are factual disputes regarding the existence of probable cause, summary judgment on Plaintiff's claims of unlawful arrest, excessive force, negligence and unlawful imprisonment is inappropriate and should be amended to deny summary judgment on this causes.

(a) Disputed Facts

The Defendant alleges that the Plaintiff was arrested because he was loud and boisterous, and used profanity and racial slurs in a public place. The only evidence in support of this assertion properly before this court is the testimony of the arresting officer, Officer Arroyo. There is no audio in a surveillance video which captured the incident to support Officer Arroyo's version of the facts. There is no audio or video from Officer King's patrol car because he did not turn it on in violation of NCPD policy. Further, Officer Arroyo's wife, who was present and witnessed the entire event, has provided zero testimony in support of Defendant's position.

The Plaintiff, on the other hand, has testified that he was not being loud, that he was not using profanity, that he was not using racial slurs, and that the officer had absolutely no legal purpose for approaching his table and arresting him. Secondly, Plaintiff's witness Jamal Omar, testified that Plaintiff was not being loud and boisterous, was not using profanity or racial slurs, complied with the officer, and did not resist arrest. Counsel for Plaintiff made this fact known in previously submitted memorandum, in oral argument on this motion, and a very brief supplemental

memorandum submitted after the summary judgment hearing, which this court refused to review.

See, Attached as Exhibit C.

Secondly, Wafflehouse employee Fitzpatrick supplied a properly executed affidavit stating, "I recall that they were speaking in normal tone like everyone else in the restaurant..." Pl. Memo in Opp., Exhibit 2. Moreover, Wafflehouse employee McCullough testified that Plaintiff's behavior before he was arrested was nothing to be concerned about, that he wasn't threatening or using fighting words, and that he was not bothering other patrons. See, Pl. Memo in Opp. to Sum. J., p. 10-11.

Thirdly, Defendant's sole witness with respect to the facts of the arrest, Officer Arroyo, testified that no one asked Plaintiff to leave the Wafflehouse before he decided to tell Plaintiff to go outside and to arrest Plaintiff. Officer Arroyo also testified that Plaintiff did not threaten anyone in the Waffle house, and that he did not use fighting words or threatening language. Finally, Defendant's charge of disorderly conduct was nolle prossed by the City's attorney.

(b) Probable Cause

The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). To prevail on a false arrest claim, a plaintiff must establish that his arrest was not lawful. Wortman v. Spartanburg, 310 S.C.1, 425 S.E.2d 18 (S.C. 1992). "The fundamental question in determining whether an arrest is lawful is whether there was 'probable cause' to make the arrest." Id. Martin v. Lott, 2010 U.S. Dist. LEXIS 13813, *6, 2010 WL 597209 (D.S.C. Feb. 16, 2010) (quoting, Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992)).

"In assessing the existence of probable cause, courts examine the totality of the circumstances known to the officer at the time of the arrest." Taylor v. Waters, 81 F.3d 429, 434 (4th Cir. 1996). To succeed on a claim of wrongful arrest, Plaintiff must allege facts that make it "unjustifiable for a reasonable

officer to conclude" that he violated the disorderly conduct statute to demonstrate that defendants did not have probable cause to arrest him. Smith v. Cooper, 2011 U.S. Dist. LEXIS 39687, *15, 2011 WL 1376100 (D.S.C. Apr. 12, 2011) (Quoting, Brown v. Gilmore, 278 F.3d 362, at 368 (4th Cir. 2002). "Probable cause exists when the facts and circumstances known to the officer would warrant the belief of a prudent person that the arrestee had committed or was committing an offense." *Id.* "Probable cause must be supported by more than a mere suspicion, but evidence sufficient to convict is not required." Hurlbert v. City of N. Charleston, 2010 U.S. Dist. LEXIS 35777, *11, 2010 WL 1492868 (D.S.C. Apr. 12, 2010).

"South Carolina follows the minority rule that the issue of probable cause is a question of fact and ordinarily one for the jury." Jones v. Columbia, 389 S.E.2d 662, 662, 301 S.C. 62, 63, 1990 S.C. LEXIS 49, *1 (S.C. Feb. 26, 1990); See, Gathers, 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984); Parrott v. Plowden Motor Co., 246 S.C. 318, 143 S.E.2d 607 (1965)

Here, there are issues of material fact concerning whether Plaintiff violated the disorderly conduct statute, or violated any law whatsoever. The video surveillance evidence does not objectively show Plaintiff violating any law, and it does not objectively show Plaintiff resisting arrest. The facts of what actually happened before and during Plaintiff's arrest, and the degree of force deployed by the officers, is disputed by the parties. The facts, testimony and affidavits show that the parties dispute each and every detail, and it is on the disputed facts that the court instructs the jury to rely to find whether or not there was an objective basis to form a good faith belief that Plaintiff was guilty of any crime.

There is a genuine issue of material fact as to what Plaintiff said prior to Officer Arroyo approaching his table, and what Plaintiff said during his arrest. There is no audio evidence to provide a concrete resolution of this issue, and multiple conflicting witness accounts of what was said by both the arresting officer, Plaintiff, and the witnesses seated at Plaintiff's table. There is a

genuine issue as to what Officer Arroyo said to Plaintiff, whether Officer Arroyo told Plaintiff why he was being arrested, whether Officer Arroyo asked Plaintiff to leave, under what authority he told Plaintiff to leave, and why he asked Plaintiff to leave. There is a genuine issue as to what witnesses Fitzpatrick and McCullough heard and observed before and during Plaintiff's arrest. In sum, there is a genuine issue of material facts as to probable cause, which should be determined by a jury.

If Plaintiff's allegations, as well as witness testimony of Jamal Omar, Laura Fitzpatrick and Taylor McCullough concerning the Defendants' conduct and Plaintiff's resulting injuries, are proven, then they constitute an actionable claim of wrongful arrest, excessive use of force, and unlawful imprisonment. Consequently, viewing the evidence in a light most favorable to Plaintiff, summary judgment is inappropriate because a genuine issue of material fact exists as to whether there was probable cause for Plaintiff's arrest, and thus whether the Plaintiff's arrest was lawful. In other words, the existence of probable cause is a question of fact material to the lawfulness of Plaintiff's arrest, and this question is one that must be decided by a jury. Jones, 389 S.E.2d 662, 662, 301 S.C. 62, 63, (S.C. Feb. 26, 1990).

II. PLAINTIFF'S CLAIMS UNDER THE TORT CLAIMS ACT

This action is governed by common law, South Carolina Tort Claims Act ("TCA"), common law and the South Carolina Constitution. This Court's order granting summary judgment is flawed to the extent it is based on the following principals: (i) no private right of action for false ("unlawful") arrest and imprisonment, and unlawful search and seizure; (ii) gross negligence standard; and (iii) immunity under the TCA; (iv) the malice standard under malicious prosecution.

See, Exhibit A.

(a) The Order Granting Summary Judgment is Based on Multiple Errors of Law

This Court's Order granting summary judgment with respect to false arrest ("unlawful arrest"), and false imprisonment ("unlawful imprisonment") on the basis that there is no private right of action for these causes of action is unclear, unsupported by the law, and based on what appears to be a mistake of law or misapprehension of Plaintiff's claims and/or the facts involved. Plaintiff's claims are based in common law, they are further supported by the South Carolina Constitution, Declaration of Rights, Sec. 2 and Sec. 3. Further, they are not prohibited by the South Carolina TCA. See, S.C. Constitution, Declaration of Rights, Sec. 23

The only cause of action expressly prohibited by the Tort Claims Act ("TCA") is intentional infliction of emotional distress. S.C. Code § 15-78-30(f).

"Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, *but does not include the intentional infliction of emotional harm.* Id.

Otherwise, under our facts the TCA holds government entities, specifically local police officers, to the same standard as everyone else.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exceptions from liability and damages contained therein.

S.C. Code Ann. § 15-78-40 (Supp. 1998).

In addition, Plaintiff's complaint includes a claim for "Negligence / Gross Negligence." It would be error to grant summary judgment on the basis that Plaintiff must show, and has failed to prove, "gross negligence," because the Tort Claims Act does not impose a gross negligence standard. "None of the exceptions from liability impose a standard of gross negligence on the torts of false arrest and imprisonment." Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 619, 521 S.E.2d 163, 167, (S.C. Ct. App. Aug. 2, 1999) ("We find the gross negligence standard is not applicable to the present case."); See S.C. Code Ann. § 15-78-60 (Supp. 1998). Nonetheless, Plaintiff posits that there are abundant facts that at least create an issue as to whether Defendant's acts were negligent or grossly negligent, which is defined as "the absence of care that is necessary under the circumstances." Clark v. Dept. of Public Safety, 53 S.C. 291, 578 S.E.2d 16 (S.C. App., 2002).

In addition, summary judgment is improper and based on an error of law if it is premised on the granting of immunity under S.C. Code 15-78-60, specific to intentional acts. First, 15-78-60 is raised as an affirmative defense. The Defendant has not claimed that Defendant's officers acted outside of the scope of employment, but quite the opposite. Plaintiff has not argued that Defendant's officers acted outside the scope of employment or with actual malice. Therefore, granting summary judgment on this basis is improper.

Furthermore, the application of discretionary immunity under Section 15-78-60(5) is wholly disconnected and unsupported. The affirmative defense of discretionary immunity is applicable to decisions which involve local and state planning, and for this reason it is not applicable to this case.

The burden of establishing a limitation of liability is upon the governmental entity asserting it as an affirmative defense. This section provides that a government entity is not liable from a

loss resulting from the exercise of discretion, actually weighing competing considerations and making a conscious choice. Clark v. Dept. of Public Safety, 53 S.C. 291, 578 S.E.2d 16 (S.C. App., 2002). However, this exception does not include any and all acts which require a conscious decision.

“Decisions involving the assessment of competing priorities, weighing of budgetary considerations, or allocation of scarce resources are generally considered planning activities and are subject to [discretionary] immunity... However, the fact that a governmental function involves an elements of choice or judgment, or require the ability to make responsible decisions, does not automatically bring that activity within the discretionary function exception. Instead the function must entail planning or policy decisions. Id., (citing 57 Am.Jur.2d Municipal, County, School, and State Tort Liability § 78 (2001)).

Police officers' actions in the field, in effecting stops, pursuing suspects, and effecting arrests, are not defined by our courts as “planning” activities. See, Clark v. Dept. of Public Safety, 53 S.C. 291, 578 S.E.2d 16 (S.C. App., 2002). Broadly interpreting discretionary immunity to apply to acts which are operational in nature would result in blanket immunity, as nearly all actions taken by police officers involve some degree of decision-making. Therefore, it's application under our fact is improper.

(b) Plaintiff's Claims Under the Tort Claims Act

(i) Unlawful Arrest / False Arrest

In order to recover under a theory of false arrest in South Carolina the plaintiff must prove:

(1) the defendant caused the plaintiff to be arrested; (2) the decision to arrest was intentional; and

(3) the arrest was unlawful in that it was done without probable cause. Gist v. Berkeley County

Sheriff's Dep't, 336 S.C. 611, 521 S.E.2d 163 (S.C. Ct.App.1999). The fundamental issue in

determining the lawfulness of an arrest is whether there was probable cause to make the arrest.

Law v. S.C. Dep't of Corr., 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2008). State v. McGowan,

347 S.C. 618, 557 S.E.2d 657, 659 (S.C. 2001). ("[A] person may not be convicted of resisting

arrest . . . where the underlying arrest [was] unlawful.").

Here, the Defendant arrested Plaintiff, the decision was intentional, and the facts with

respect to probable cause are highly disputed. Therefore, whether or not Plaintiff's arrest was

based on probable cause is a question of fact for the jury to determine.

(ii) Unlawful Imprisonment / False Imprisonment

"The essence of the tort of false imprisonment consists of depriving a person of his liberty

without lawful justification." Jones v. City of Columbia, 301 S.C. 62, 64, 389 S.E.2d 662, 663

(1990). False imprisonment is "deprivation of a person's liberty without justification." Caldwell v.

K-Mart Corp., 306 S.C. 27, 410 S.E.2d 21, 23 (S.C. Ct.App.1991). To prevail on a claim for false

imprisonment, the plaintiff must establish: 1) the defendant restrained the plaintiff, 2) the restraint

was intentional; and 3) the restraint was unlawful. Gist v. Berkeley County Sheriff's Dep't, 336

S.C. 611, 521 S.E.2d 163 (S.C. Ct.App.1999).

The first two elements are undisputed. The issue is whether the Plaintiff has alleged

sufficient facts to show that the restraint or arrest was unlawful. Determining whether an arrest

was lawful turns on whether there was probable cause to make the arrest. Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992). Again, the facts surrounding probable cause are in dispute and it would be improper to dismiss this claim on summary judgment.

(iii) Excessive Force and Assault and Battery

As with all other claims, Plaintiff's excessive force and assault and battery claims are controlled by the existence of probable cause to arrest Plaintiff. It is well settled that "[a]lthough a law enforcement officer is privileged to use lawful force, he is nevertheless liable for assault if he uses force greater than is reasonably necessary under the circumstances." Moody v. Ferguson, 732 F.Supp. 627, 632 (D.S.C.1989); see also Roberts v. City of Forest Acres, 902 F.Supp. 662, 671-72 (D.S.C. 1995).

In South Carolina, an arrest which is unlawful, even in the absence of excessive force, can support a claim for assault and battery. Id. "If an arrest is unlawful, the defendant had the right not only to resist it, but it made the person or officer attempting such arrest liable for assault and battery and false arrest." Horton v. City of Columbia, 408 S.C. 27, 35, 757 S.E.2d 537, 541, (S.C. Ct. App. Feb. 26, 2014) (unpublished) (quoting, State v. Francis, 152 S.C. 17, 149 S.E. 348, (S.C. Jan. 25, 1929).

An unlawful arrest, or an attempt to make an unlawful arrest, stands upon the same footing as any other nonfelonious assault, or as a common assault and battery. State v. McGowan, 347 S.C. 618, 623, 557 S.E.2d 657, 660 (2001). The person who is so unlawfully arrested, or against whom such an unlawful attempt is directed, is not bound to yield, and may resist force with force. . . Id.

Again, the analysis collapses into whether or not the Defendant's officer possessed probable cause to arrest Plaintiff. Plaintiff argues that there is at least a scintilla of evidence showing his arrest was without probable cause.

III. REQUEST FOR SPECIFIC RULINGS

The form order granting defendant's motion for summary judgment, executed on May 24, 2017, and filed June 8, 2017, fails to articulate the reasons for its action on the record by including those facts, evidence and inferences in the light most favorable to the nonmoving party, which the court finds relevant, determinative of the issues and undisputed, and accompanying legal analysis.

As to dispute facts, the order states in part that "Defendant has demonstrated that there is no genuine issue of material fact." Plaintiff respectfully requests that this court specifically rule on the issue of probable cause, and its effect on all of Plaintiff's causes of action.

In addition, because the order does not contain reference to any law or citation to support its finding, Plaintiff must assume that the Court came to this decision by finding Defendant's memorandum in support of summary judgment persuasive. However, Defendant's discretionary "private right of action" argument is not only unfounded and based on an unrelated, disconnected and unpublished opinion; it was not timely made by Defendant. This argument was raised for the first time in Defendant's third Memorandum in Support of Summary Judgment, which was first filed on or about May 17, 2017, the same date of the summary judgment hearing from which this court ruled. Therefore, this affirmative defense was not properly presented to this court 10 days prior to the hearing pursuant to the SCRCP, and it should not serve as a basis for summary judgment.

Finally, Plaintiff respectfully requests that the court make specific rulings with regard to the following issues:

1. Whether the Defendant is entitled to qualified immunity is a legal question that depends entirely on a credibility determination, the testimony of Defendant's employees as compared to Plaintiff's testimony and the affidavits and testimony of witnesses.

2. This Court's dismissal of Plaintiff's gross negligence claim is based on an error of law.

3. This Court's order granting immunity to the City of North Charleston pursuant to the SC Torts Claim Act, 15-78-60, is based on an error of law and misconstruction of the facts.

4. This Court's order granting Defendant's motion for summary judgment with respect to Plaintiff's malicious prosecution claim is controlled by an error of law.

5. Plaintiff respectfully requests that the Court specifically rule on Plaintiff's request to strike wrongfully withheld, untimely, and sham Affidavits submitted by Defendant in support of its Motion for Summary Judgment. Further, Plaintiff requests that the Court specifically identify if its ruling is supported by said affidavits.

6. Finally, Plaintiff respectfully requests that the Court specifically rule on Plaintiff's negligence cause of action, Plaintiff's entitlement to defend himself against an unlawful arrest, and the application of respondeat superior with respect to the Defendant's liability for the action of Officer Arroyo.

CONCLUSION

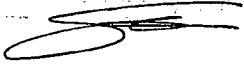
The factual clarifications and legal considerations fall squarely within the scope of matters appropriate for reconsideration. A motion for reconsideration is not an opportunity for a dissatisfied party to re-litigate issues already ruled upon. City of Charleston, S.C. v. Hotels.com, LP, 586 F. Supp. 2d 538, 541 (D.S.C. 2008). Nor is it a vehicle to raise arguments or introduce evidence that could have previously been presented or addressed. Hotels.com, 586 F.Supp.2d at

541 (citing Pac. Ins. Co., 148 F.3d at 403). This motion does neither. From the beginning of this case, Plaintiff has maintained that he was doing nothing wrong, that he was not speaking loudly or using profanity, and that he did not resist arrest. This dispute, as highlighted by conflicting testimony, is well highlighted in the filings with the Court.

Accordingly, for the reasons set forth above, Plaintiff requests that the Court reconsider the Order awarding summary judgment, allow for oral argument on this matter, and amend its Order to deny summary judgment as to Plaintiff's claims of unlawful arrest, excessive force, and false imprisonment, and to award such relief as the Court deems just and proper.

Respectfully Submitted,

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ATTORNEYS FOR THE PLAINTIFF

July 10, 2017

Charleston, South Carolina

PLAINTIFF'S RULE 59(E) MOTION

EXHIBIT INDEX

EXHIBIT A	FORM 4 ORDER
EXHIBIT B	AFF. OF FITZPATRICK
EXHIBIT C	PL. SUPP. MEMO (DEP. WITNESS OMAR)
EXHIBIT D	PL. MEMO IN OPP. TO SUM. J.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

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1. Address _____
 2. City _____
 3. State _____
 4. Zip _____
 5. Phone _____
 6. Age _____
 7. Gender _____
 8. Occupation _____
 9. Education _____
 10. Marital Status _____
 11. Number of Children _____
 12. Number of Pets _____
 13. Number of Vehicles _____
 14. Number of Hobbies _____
 15. Number of Friends _____
 16. Number of Relatives _____
 17. Number of Neighbors _____
 18. Number of Acquaintances _____
 19. Number of Strangers _____
 20. Number of Enemies _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NORRIS EARL WHITE, JR.,

Plaintiff,

v.

CITY OF NORTH CHARLESTON,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-06561

DEFENDANT'S REPLY TO PLAINTIFF'S
BRIEF IN SUPPORT OF MOTION TO
RECONSIDER

FILED
2017 JUL 13 PM 3:31
JULIE J. ARMSTRONG
CLERK OF COURT

By way of brief reply to the plaintiff's brief in support of his motion to reconsider which was received on July 11, 2017, Defendant City of North Charleston, reasserts the arguments made in its brief and further submits specific responses to the following. Plaintiff has alleged that the court's order is based on errors of law and misapprehension of facts. Plaintiff's arguments, however, are merely restatements of arguments previously made or arguments that could have been made at summary judgment but were not.

The court granted summary judgment on false arrest, false imprisonment and unlawful search and seizure, based on the fact that there is no private right of action under the South Carolina Constitution, which is how these claims were alleged in the Amended Complaint. This does not require the court to make any determinations about probable cause and is a correct position on the law. Plaintiff further argues in this brief that the determination that no private right of action exists is unsupported by the law, but cites to no case, statute or law that refutes the court's position. To the contrary, the plaintiff states repeatedly that he brings these causes of action pursuant to the constitution (pg. 7, 8). It is clear that there is no private right of action based on the history provided in defendants memorandum in support of summary judgment. Additionally, although plaintiff

complains that this argument is not timely, it is not an affirmative defense, and while it could have been asserted in a motion to dismiss, is not improper in a motion for summary judgment. It was made in the brief that was submitted to both the court and opposing counsel several days before the hearing, and plaintiff has no basis to have the argument, based on the law of South Carolina, excluded.

This court found that the defendant was entitled to immunities pursuant to the Tort Claims Act. Plaintiff's arguments are ones that could have been made at summary judgment, but were not. Defendant did assert the Tort Claims Act as an affirmative defense in its Answer and included the arguments in its brief. Additionally, plaintiff's new arguments about the immunities discretionary judgment and intentional acts are simply incorrect. Any arguments about the immunities should have been made at summary judgment and are not proper as part of a motion to reconsideration.

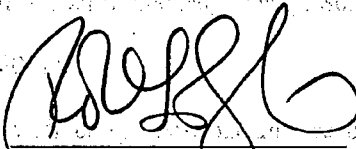
Plaintiff argues that the court's ruling that gross negligence fails due to evidence of slight care is error because the Tort Claims Act does not impose a gross negligence standard. What he both acknowledges and fails to acknowledge in his brief is that the Amended Complaint includes a separate claim for Gross Negligence. If a plaintiff alleges it, he must prove it. It has nothing to do with the Tort Claims Act. Plaintiff's claim for gross negligence fails as its own cause of action, not because a gross negligence standard was imposed on false arrest and false imprisonment. They are separate causes of action. False arrest and false imprisonment were dismissed because there is no private right of action under the South Carolina Constitution, not because of gross negligence.

Finally, plaintiff asks for specific rulings. Plaintiff's request exceeds what is required from the Court for an order. The defendant asserts the court has issued a proper order. As to the specific items plaintiff has requested a ruling on: (1) Qualified immunity relates to federal claims against individual officers, and therefore is not applicable here; (2), (3), (4) These are mere statements of

the plaintiff's position and not 'issues' as he alleges; (5) Plaintiff has made no legal argument relating to the affidavits. The defendant submits that the affidavits were properly submitted to be considered with summary judgment; (6) Plaintiff made all of his arguments at the summary judgment hearing and should not be permitted to re-argue them here. There is no need for further rulings on these improper and repetitive arguments.

CONCLUSION

Plaintiff now voluntarily withdraws the motion as to the causes of action for negligent hiring, training and supervision, wrongful detainment and unlawful search and seizure. Therefore, as to these causes of action, summary judgment stands. Defendant asks the court to deny the motion to reconsider and allow summary judgment to stand on all causes of action as it was properly ordered.



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July 12, 2017

Attorney for Defendant City of North Charleston

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001930

Norris Earl White Jr.,

Appellant,

v.

City of North Charleston

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 27, 2018.

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