CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA

In The Supreme Court of South Carolina
From the Court of Appeals

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MAY 03 2018

S.C. SUPREME COURT

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

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

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

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

South Carolina Law Enforcement Division

Appelate case # 2016-002024

WRIT OF CERT & NOTICE OF APPEAL

NOW COMES DAVID Lynd who hereby appeals the order filed and entered, and filed on 3-22-18. This ordered entered is a partial order, a motion to reconsider and en-banc was filed, on 4-10-18 and fees paid. The clerk of the court of appeals has refused to deposit the fee paid by postal money order, and therefore as of 4-11-18 the motion has been left un acted upon.. that inaction of 4-11-18 is being appealed here.

David Lynd hereby files this notice of writ of cert to the south Carolina Supreme Court, on the grounds that Lynd has meet every time deadline and filing deadline through the trial process, to be meet with flat out lies and false statements, to include fraud by court officers, whom have actual made up and sent letters with their own made up rules.

The writ needs to be heard by the supreme Court to clarify some inaccuracies and law novelties outlined in the brief to follow

(1) Where there are novel questions of law.

State statute says failure to give proper notice on titled property before destruction, is an act of conversion,
Conversion is theft and no statute of limitations exists in S.C, for that.
But the civil courts hear such complaints and try to imply a civil S.O.L. time table.

The time table applied is incorrect as well, as the 3yr SOL would apply due to I.O.P. filing the claim with its insurance company, and hiring counsel to represent it in that insurance claim. That clearly makes it a verified claim,. I.O.P. ACTED ON THE CLAIM FILED by acts and admission verified the claim.

(2) Where there is a dissent in the decision of the Court of Appeals.

In this instance there are several dissents and misapplications of the precedents. This court in **Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004** tried to reconcile those in its ruling but the courts fail to adhere to that opinion, and the COA refuse to adhere to it concerning the filing of post judgment motions.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
Same as above the Court of Appeals has seen and been provided that ruling but have ruled against it in its order despite numerous case law, this is done in a case against the City Police and SLED's failure to act. Trying to claim notice of appeals should have been filed when the clerks refused to accept it till the case had ended.

This goes on to be proven by a new order 19 months later that the clerks again refused to accept notice of appeal on.

(4) Where substantial constitutional issues are directly involved.
The failure to act and follow the statutes governing destruction of titled property is a direct an unequivocal equal protection and due process violation.

The case is Lengthy spans years of conduct involves numerous state and city agencies, multiple parties, multiple counsels, and multiple fillings and conflicting orders.

The length of the petition mirrors that, due to cause and effect of the lengthy proceeding.

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<u>Appellant</u>

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STATEMENT OF ISSUES ON APPEAL.

Note: This brief is filed by MEMEORY, I have made 9 requests for the record to the clerks and still have not received the record, or files of any kind, including my file in possession of my former atty. This is an intentional act to impede my filing and winning of the appeal. I have 2 transcripts with giant double spaced text one 6 pages, and one 12 pages, that is all I have to base this FAIR AND JUST appeal on.

Tolled statute of limitations

Equitable estoppell

Fraudulent inducement

Lynd filed A verified claim to enact the 3 yr statute of limitations was made.

Conduct of IOP employees to commit fraud is a material fact

Conduct of Atty (officers of the court) is a material fact

Due diligence to do pre-suit investigation does not start SOL running

All 3 parties cannot use the same SOL dates

Failure to follow notification statues constitutes conversion under the law.

Conversion nullifies any Sol argument under which IOP claims their duties were fulfilled

Does a numerous volume of errors that must be sorted through prior to suit, toll SOL

A material fact exist on disclosure under the FIOA that nullifies Summary Judgment

Can a court just pick a random date to start the tolling of the SOL without facts

Due diligence of the facts surrounding an issue must be done prior to filing suit

Does IOP claims of 'no wrongdoing' finding by SLED force Lynd must wait to verify that prior to filing suit to avoid a frivolous suit?

In effective assistance of counsel

STATEMENT OF THE CASE.

In 2004 a pair of Jet skis owned by David Lynd were stolen in Texas, and ultimately ended up in South Carolina. The skis were impounded by IOP det. Caldwell from a 3rd party *(thief)* without cause, due to an officers belief they were stolen. Even though the officer felt the action was helping to save the jet skis, the subsequent act in turn caused their destruction without notice to Lynd, or proper S.C. impound procedure and notifications followed.

The statute requires notification of the owner of the titled property as shown on the title, and the impounding department, and/or 3rd party designee *(private impound lot)*, both, to notify by certified mail, the owner listed on the title, and is required to do an exhaustive search to locate the titled owner, even if title records cannot be found. In this instance the owner was shown on the title and could have easily been found by either the TX styled registration numbers on the jet skis, or the hull I.D. number. Both of which are shown in the police records.

I.O.P. not only did not notify Lynd of them being impounded, they subsequently **failed in every single step the statutes require to protect property owners**, all the way from notice, to paperwork and documentation required to destroy "unclaimed" property.

The jet skis in question were stolen from TX where Lynd lives, an arrest was made and a statement was given by the alleged thief as to the jet skis location in S.C. down to a specific address. *This becomes a very important fact in this appeal.* Upon being giving a copy of this statement made, Lynd contacted the IOP police department and spoke to a then Det. Caldwell, Caldwell was faxed a copy of the statement and on 3 separate occasions by her claims went to the address and searched for the Jet Skis, even speaking with the property owners on the 3rd occasion.

Caldwell then sent a statement to the police dept. in TX **and stated as a fact** that she had gone to the address 3 times and spoke to the owners, and stated the owners claimed the thief had stayed there but at no time did he have any jet skis in his possession. Caldwell stated IOP had done all it could do in searching for the skies and that the skis in question were not on the Isle of Palms. This entire investigation took approx. 3 weeks. In this time Lynd and Caldwell had numerous conversations. Lynd was known to Caldwell and IOP as the stolen properties owner, and the correct address and phone numbers were in IOP possession.

Nowhere does any of this action or conduct exist in the I.O.P. file.

Upon Caldwell's notice to the TX local PD that the statement given, and address given were false, the thief was confronted in TX on the skis not being where stated. The thief then tried to take the skis from TX to SC and was assumed going to try and leave them there someplace. Caldwell claims to have noticed them and stopped the person with them.

June 1 2004 Caldwell stopped the thief with the skis and instead of documenting it and having them returned to TX, impounded them and failed at that point, to follow the statues of impounded titled property. The skis at the time were not listed in the NCIC as stolen and should not have been impounded. Subsequently Caldwell claimed they were hauled off from the IOP pound by a non-existent salvage company, and non-existent person. This destruction is a mere handwritten note in the IOP file and was signed off on by her superiors. NOT A SINGLE required document was filled out, title search done, or any of the documents and procedures the statutes require followed. It appears she just had it done without records if you believe the altered file.

All of this is admitted to by Caldwell in 3 separate statements, 2 of which are sworn statements.

(that itself is an entire separate issue, the statutes and code requires IOP and subsequently SLED, to take action upon an admission of conversion by an officer and they failed to do so)

This type of police and court conduct, and the courts covering by excuse of such conduct is exactly why the country is in an uproar of the justice system.

All of this is fact, documented, sworn to, and undisputed and cannot be excused or dismissed under a manufactured SOL date.

Fast-forward to 2012, all this time the skis are still listed as titled to Lynd and the estimate value considered an asset of Lynd. In an action to remove them as an asset Lynd contacted the ***Texas Parks & Wildlife Dept.*** Now on referenced as the **TPWD.** The clerk told him the notes showed they were impounded by the I.O.P. police dept. It turned out the notation was made by the local police due to the earlier mentioned false statement, not any papers submitted by the I.O.P.

But the clerk statement made Lynd again 8 yrs. later contact I.O.P.to inquire.

Subsequently caused the start of the Fraud by IOP, SLED, and Caldwell. At no time did any of the involved parties admit to the errors made and resolve the issue, instead they went on a massive and extensive cover-up to include lies and false statement by their own attorneys in an attempt to reach some imaginary SOL date. Even though later it is all admitted too, in SLED sworn statements.

As the original trial briefs and this brief outlines, the went on a campaign of lies, falsifying records, altering the official file, and closing investigations prematurely to further their own agenda in prosecuting Caldwell. The FACTS that IOP altered the police file, and SLED closed the investigation **in which Caldwell agave a sworn statement admitting to the conduct, conversion, and failure to follow state procedures,,,, IS UNDISPUTED.**

The fact they altered the file and official state record, and SLED excused that, cannot be allowed, that ACTION in and of itself is grounds for the COA to step in and investigate, or hear argument of the conduct, or assign the appropriate party to do so.

At this point in the issue Lynd called and emailed several times following a FIOA request to IOP, IOP appeared to be stalling the production of the file, and facts prove out they were. Lynd's FOIA request went to Tracy Waldron, secretary to the IOPPD Chief of Police. Contained within her file are inter-office emails to Defendant Caldwell explaining that certain documents, including, but not limited to destruction documents, Certified Mailing Notices, and insurance adjuster notes were not in the file. Also contained therein is a reply from Defendant Caldwell stating ***"that she has the documents on her personal flash drive, will add them to the file, and deal with Plaintiff personally".*** This very disturbing in and of itself.

Defendant IOPPD complied with Plaintiff's FOIA request and provided him with file # 04-18619. The file itself is dated June 1, 2004. However, the page dates jump back and forth. The facts now show the delay was due to Defendant Caldwell altered this particular file on September 11, 2012. After Tracy Waldron explained what was missing. Each page of the report, though in numeric order, has different dates accompanying its entry. Pages one and three for instance have the date 6-1-2004. Pages 2 and 4 have the date 9-11-2012. Most importantly, Defendant Caldwell and IOPPD added two (2) additional pages (five and six) to the file on 9-11-2012. The facts show the file was altered and changed in violation of the law. The computer program automatically changed the dates as Caldwell or someone at IOP made changes to the file to cover-up the original errors.

**** **A huge point here on the SOL is this alleged flash drive Caldwell claims to have the documents on, has never been produced after numerous request, which tolls the SOL under the due diligence required before filling suit. If it exist or not, and/or the contents and the ex-fil dates of the origination of the file dates would be the entire foundation of a case, and premature filing without those facts and proof would hindered Lynd's ability to properly prosecute the case.**

On pages five and six of the file, Defendant Caldwell and IOP added a "Supplementary Report," on September 12, 2012, roughly eight (8) years after the initial report. Despite eight years having passed from the original date, Defendants Caldwell and IOP seem to have a precise recollection of the events described therein.

However, as will be evident from her later interview with SLED agents, Defendant Caldwell admits to fabricating a majority of the information contained on pages five and six. Defendant Caldwell claims to have sent Plaintiff three (3) letters. Again, these purported letters were not present in the original file, but later altered and added by IOP on September 11, 2012. The letters appear to be an attempt to notify Lynd that he had ninety (90) days to pick up his property. These letters were allegedly mailed regular us mail, not certified as required, and show an incorrect address. Caldwell and IOP had the correct address in the file. This falsification of the record was done intentionally to try and claim some clerical error as an excuse why the destruction happened without notice to Lynd. This too is undisputed.

Caldwell and IOPPD's rendition of the alleged facts in their Supplementary Report states that Caldwell met with an insurance adjuster on behalf of Lynd on July 21, 2004. As stated earlier, these particular water craft were not insured at the time of loss. No such insurance adjuster would have come out to Isle of Palms on behalf of Lynd. Defendant Caldwell asserts that she had telephone contact with Lynd on June 24, 2004 advising him the water craft were at the IOPPD office, and that he needed to make arrangements to pick them up, that the condition of the jet skis was poor, and that he'd likely need a flat-bed tow truck to transport them, as "the trailer, and most importantly the axle was rusted to the point of breaking."

Lynd was not, and did not make any such insurance claim on this property. This is further proof that Defendants Caldwell and IOP created a bogus rendition of the facts some eight years after the fact to cover up their malfeasance. **IOP and Caldwell knew they would be required to make restitution under the statutes** and made this false addition to the file, to try and generate a false and fraudulent value of the skis they would have to pay for. The file shows no

record of this adjuster, nor a condition report, or appraisal; no adjuster would have looked at them and not documented it in some way or taken photos. IOP and Caldwell just assumed they would have been insured, and manufactured this for a cover-up.

Again comes in the Question of this alleged flash drive and its contents which is required for a complete pre-suit investigation of the issue. Therefore no SOL has been reached.

IOP at this time had filed Lynd's claim/complaint with its insurance program, On October 18, 2012, Chief Buckhannon requested that SLED review this particular case as well, referenced as OCA # 04-18619. SLED did open an investigation, **but did not notify Lynd of said investigation, nor did they interview him.** *(that act is highly questionable in and of itself, why not call the complainant?)* Instead, <u>they appear to have conducted an investigation in secret wherein they interviewed only Caldwell</u> and reviewed file # 04-18619 , and then administratively closed it, without even so much as mentioning the addition of documents and reports some eight (8) years after the fact, At no time did SLED mention, note, or investigate IOP's failure to comply with statutory notice requirements, or the numerous discrepancies contained in IOP's numerous documented account of events.

Defendant Caldwell provided a Statement to Chief Buckhannon on September 12, 2012 in connection with the SLED Investigation. These statement, and the account provided on September 11, 2012 in the Supplementary Report are not even close to the same story or facts.

On the same date, Defendant Caldwell provided an Affidavit of Fact to the Texas Parks & Wildlife Department. This statement also conflicts with her other renditions. **3 separate reeditions in a 2 day span.**

On or about August 5, 2013, Defendant SLED notified Defendants Caldwell and IOP that they had administratively closed their investigation without finding any wrongdoing. However, Lynd was not provided the same notice. <u>The facts are at that time Capt. Neil of SLED had started an investigation of Caldwell and IOP</u> and closed the Lynd investigation to show the appearance of the matter closed to Caldwell and IOP, all the while having them under investigation.

<u>The act of closing to pursue a criminal investigation subsequent result was to nullify Lynd's complaint</u> that was fwd. to them from IOP without a proper investigation; <u>All the while</u>

Lynd is not told and is completely unaware of any investigation ongoing or being closed. IOP in an attempt to avoid liability and continue the cover-up IOP conspired with SLED's Capt. Neil to transfer Caldwell to Charleston PD before Capt. Neil acted. This was to give IOP cover, distance, and deniability when the story broke, while using Lynd's complaint and facts un covered, to terminate Caldwell before the transfer.

That conduct shows IOP and SLED knew the Lynd claim was valid, used Lynd's *claim (because it was known to Caldwell)* closed it administratively to alleviate Caldwell anxiety, use her failures to follow statutes as an excuse to transfer her out, all the while investigating her for the other acts discovered by Lynd's complaint.

On or about July 8, 2014, Caldwell was arrested by SLED for allegedly selling evidence, and her service weapon, to a pawn shop while she was still employed with the police department. Court records indicate that Defendant Caldwell, while employed as a police captain with the IOPPD, fraudulently pawned and sold a number of items taken from the police department's evidence room to the Money Man Pawn Shop.

This pawn Shop evidence and the persons used to pawn items prior to Money Man were never disclosed to Lynd. The missing jet skis could well have gone there or to the prior pawn shop Caldwell used, but those facts and names have been withheld from Lynd, those facts or material and for a jury to decide.

In an attempt to generate a SOL start date by the cert letter, IOP and Lynd's email response to it. IOP sent a letter stating they had turned it over to SLED and SLED found 'no wrong doing'. Lynd's email response shows he is unsure and questions IOP's claims but the court uses this email as the start of the SOL by literally just taking IOP's word on it in the SJ hearing, and references no other date in the record as a SOL start date. Even when that response clearly states the info in the letter and claims of a Sled investigation cannot be found.

At this time in **2014 well within the SOL 2yr; Lynd has no knowledge of the SLED investigation;** facts are Lynd did not even know what the acronym SLED meant when he was first informed. Lynd has made a verified claim to IOP and IOP turned over this claim to its INS. Co. As of this date no claim denial has been provided.

Lynd was only notified of SLED's existence and involvement on 5-16-13 when he received the letter dated 4-26-13. IOP and SLED, claims an email dated 5-16-13 is the start of the SOL. Barely 3 weeks to contact and investigate the claims that SLED found no wrong doing. And SLED's investigation, failures, and file were not turned over to Lynd till April 2014 well within the 3yr SOL and even the 2yr SOL. The FIOA request to sled was filed April 2014 while Lynd's due diligence requirement was being met.

So SLED's MSJ, which was granted using the same dates as IOP was error. **The Sled SOL did not start till 2014.**

Lynd was then in contact with Tim Domin the Atty, that would represent the IOP INS co. By email and phone, starting on 10/02/13 at 12:41 PM, requesting the claim information. Domin *(an officer of the court)* repeatedly claim the SOL had already passed and refused to act on Lynd's claim, **stating he did not represent IOP**. The facts prove out, **in fact he was the attorney for IOP** and was stalling to try and get past some imaginary SOL date. Once Domin thought the date had passed, he sent an email with no facts and a vague account of the skis being destroyed, Feb of 2014. Lynd's emails to Domin both IOP's Atty, and the Ins. Programs Co. Atty shows still no records fwd to Lynd as of Feb 2014, **no way a SOL countdown could have started back in 2013, either 3yr or 2 yr.**

Lynd's verified claim to IOP and the IOP insurance program, and reiterated to IOP's counsel and (court officer) Domin constitutes a 3yr statute of limitations standard not a 2yr SOL . Then the most important document is the email IOP and Domin provide with their SJ brief, **dated Feb. 3 2014 from Domin to Lynd.** Domin acknowledges the claim to IOP and The IOP ins. Program, and that he was subsequently hired. He goes on to fraudulently state the SOL calculations and expiration date for filing suit, *(this is fraud on the court),* Domin makes a single statement that the claim is without merit, but does not deny the Ins. Claim. So even being liberal with IOP's time arguments **the Ins. Claim itself is a verified claim which as of this date has not been denied,** and is only stated to be without merit in Feb 3 2014 email, well within the 3yr SOL and also well within the 2yr SOL. No way under the law can, or could Lynd file suit with the Ins. Claim pending. So the running of the Sol would not have started in 2013.

No party, individual or a municipality, or government agency can lie and intentionally stall to prolong an event pass a SOL date. The lies and misrepresentation would fall under fraudulent inducement even if the dates were not crystal clear, and the verified claim to the Ins. Co not crystal clear.

ARGUMENT

IOP claims the 2ys Sol had expired prior to Lynd filing suit. That is inaccurate to the facts Lynd had filed a verified claim with the Government entity that claim was forwarded to the insurance company and never action taken on it, nor denied. That verified claim also claimed an act of malfeasance by IOP so was forwarded to SLED for investigation.

When the 'claim' was sent to both the Ins. Co. who hired counsel to defend it, and Sled whom started an official investigation it is clearly a verified claim under the rules. That claim is still un-denied or disallowed. The only time it was even mentioned as to any form of denial was Domin email statement that it was without merit in Feb 2014.

The Sol argument made by IOP references no known date, or instance. (*See transcripts 9-2-15 pg. 4, line13)* IOP references a 'magic date' by going back 2 yrs. from the dater of filing, but IOP does not reference any known notice or certified mail giving notice to Lynd that would start the SOL, as required in the statutes listed below on the impoundment, and destruction of the skis in question. IOP has basically picked a date out of the air stating that any contact prior to that date starts the SOL. That is a jury question and a material fact question that nullifies a Summary judgment in favor of the non-movant.

The SOL limits starts when IOP noticed Lynd according to the statue, and/or notice Lynd of the upcoming destruction, and/or noticed by the salvage/destruction facility they were turned over too. All of these notices are required by South Carolina Statute, IOP did none of them, **and IOP can't claim a statutory argument** when it failed to follow the statutes required in the first place. You cannot ignore dozens of statues and then try and excuse yourself from those errors by claiming you are protected by another statute, a statute that you are manipulating for your own benefit. Especially when the prior statutes, are what invoke the statue

you are relying on. This is the exact reason why the public is protesting in the street, *(a Police dept. ignores the rule of law under dozens of statutes, then claims it's not at fault, and manufactures a fault to place on the victim for an excuse and way out, and a court rubber stamps with no evidence.)*

As well as the statutes named below involving the destruction, **not only can IOP not produce those documents required, it cannot even produce an existing salvage company that allegedly destroyed them.** This goes to the original IOP PD file that has yet to be produced; only the altered file has been fwd. to Lynd. The Tracy Waldron memo *(see Lynd's response to IOP's motion for summary Judgment)* clearly references the prior file, but Caldwell altered it, and that altered version is what was fwd. to Lynd.

A summary judgment is granted when no material fact exist, 1) the fact the statues were not followed, 2) no certified letters sent, 3) no impounded documents and 4) title search done, 5) no destruction documents or 6) court order for abandonment 7) nor notices from the alleged salvage yard exist. **The statute calls IOP's failures conversion or theft, and that statute by law does not involve Lynd's filing date. All of these are material facts and questions for the jury! And must be ruled in favor of the non-movant by law.**

The court must weight Non-movant Lynd's extensive due diligence against the time Statutes, and IOP lack of any form of diligence against numerous statutes that as the Governmental Police Dept. must and should know by heart!

The court must weight Non-movant Lynd's extensive due diligence against the time Statutes, and the knowledge by IOP of the verified claim, that was both turned over to SLED for investigation and the Insurance co for processing, that is a verified claim under every precedent listed.

The statue and precedents are clear as to the **Suit is barred from being filed!!!!!** Till one of the 3 prongs is meet. And this invokes the 3 year SOL.

So in any argument the 3 yr. statute prevails.

SECTION 15-78-90. Settlement of claims and actions; institution of action where claim has or has not been filed.

(b) Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision. Provided, however, **if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity, (2) the governmental entity's disallowance of the claim, or (3) the governmental entity's rejection of a settlement offer.**

SECTION 15-78-110. Statute of limitations.

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based **upon <u>the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered</u>**

<u>Braudie v. Richland County, 219 S.C. 130, 64 S.E. (2d) 248 (1951)</u>

<u>Searcy v. SC DEPT. OF EDUCATION, 402 SE 2d 486 - SC: Court of Appeals 1991</u>

Section 15-78-80 expressly requires the person to file a "verified claim." A twofold purpose is served by a requirement of this kind. First, the governmental entity is put on notice so that it can both conduct an investigation while the facts are fresh and preserve the evidence. <u>Cochran v. City of Sumter, 242 S.C. 382, 131 S.E. (2d) 153 (1963)</u>, *overruled on other grounds*, <u>*McCall v. Batson*, 285 S.C. 243, 329 S.E. (2d) 741 (1985)</u>. Second, a verification serves to discourage the filing of false claims because a verification permits a prosecution for perjury if the claim is fraudulent. *See State v. Cockran*, 17 S.C.L. (1 Bail.) 50 (1828) (perjury prosecution allowed under what is now S.C. Code Ann. Section 16-9-30 (1976) for making a false affidavit).

In an effort to ward off needless litigation, Section 15-78-90(b) places a restriction on a person choosing the first method regarding when the person may initiate suit. **<u>The section bars the person from bringing an action until one of the following three events occurs</u>: (1) 180 days elapses between the date the person files the claim and institutes the action; (2) the governmental entity involved disallows the claim; or (3) the governmental entity involved rejects a settlement offer from the claimant.**

To encourage a person to file a claim before bringing suit, Section 15-78-100(a) gives a person whose claim is later disallowed or rejected three rather than two years from the date the loss was or should have been discovered to commence an action under the Tort Claims Act. Section 15-78-110, which parallels Section 15-78-100(a), **bars a person who has "first filed a claim pursuant to [the Tort Claims Act]," from bringing an**

action under the Tort Claims Act "unless the action is commenced within three years of the date the loss was or should have been discovered."

Sections 15-78-90(b), 15-78-100(a) and 15-78-110 must be read with Section 15-78-80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time affording a governmental entity a measure of protection against fraudulent claims.

("Where the statute...requires verification, failure to comply with such requirement will invalidate the notice or statement ... even though no prejudice to the municipality results from the omission.");

contra Braudie v. Richland County, 219 S.C. 130, 64 S.E. (2d) 248 (1951) (wherein the Supreme Court held that an appearance before the County Board of Commissioners and a letter to the county attorney constituted substantial compliance with** a statute **requiring the filing of a verified claim as a prerequisite to suit).

In this instance Non-movant Lynd filed the verified claim, it was fwd. to not only SLED for investigation, but filed with the Insurance company as well, AND ALSO Lynd was in contact with the Ins. Co. Atty and IOP *(gov. entity)* Atty; the same as in the ***Braudie v Richland*** standard above where a letter to the county Atty constituted substantial compliance. **Lynd did not only that, but well past those standards outlined in Braudie.**

Therefore no court, in good conscience, can deny the 3 yr. statute of limitations applies. IOP's wishful thinking and incorrect calculations in its attempt to stall pass the 2year date were in error. Not to forget IOP hired Domin as counsel knowing it was a verified claim.

It puts non-movant Lynd and other plaintiffs in a dammed if you do and dammed if you don't situation, due diligence is common knowledge to the general public, and performing such diligence does not start a SOL counting down, especially when records requested have still not been surrendered. As of this date the alleged destruction is just alleged, there are no produced records on such acts, and the statutes require the 'salvage co.' to also do these notices to Lynd as well. **So it would be this extraordinary coincidence!!!, that IOP failed in every notice, and**

yet they <u>picked the one salvage co. in the state</u> that just happened to fail on notification as well.

PLUS that salvage co just conveniently goes under, and the alleged owner dies during the interim of 2004 -2012 when they finally disclose it to Lynd.

The sheer odds of all those coincidences is astronomical, it is more likely that that salvage co. was used as an excuse, because in 2012, IOP while needing a cover-up knew it, nor its owner can be questioned. So that was conveniently added as a cover-up and claimed entity they were turned over too. When reality is the never were turned over to any salvage co. So the court would have to ***weigh under the law the*** facts in light of the non-movant Lynd, and not take IOP's word for it. That is a material fact in question, and a fact still undiscovered, unknown, and a material fact that is still under research by Lynd.

> **SECTION 56-5-5635.** Law enforcement towing and storage procedures; notification of registered owner; disposition of vehicle and personal property.
>
> (B) Within ten days following a law enforcement's towing request, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop must provide to the sheriff or chief of police a list describing the vehicles remaining in the possession of the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop. **A person who fails to provide the law enforcement agency with this list forfeits recovery of any storage fees that have accrued from the date of towing until the day after the mailing of the notification to the owner and all lienholders by certified or registered mail, return receipt requested, pursuant to Section 29-15-10.** Within ten days of receipt of this list, **the sheriff or chief of police must provide to the towing company or storage facility, the current owner's name, address, and a record of all lienholders along with the make, model, and identification number or a description of the vehicle at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop.** The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop having towed or received the vehicle **<u>must notify by registered or certified mail, return receipt requested, the last known registered owner and all lienholders of record that the vehicle has been taken into custody.</u>**
>
> (C) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, the proprietor, owner,

or operator of the towing company, storage facility, garage, or repair shop must provide notice by one publication in one newspaper of general circulation in the area from which the vehicle was abandoned which is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles.

(D) **Before a vehicle is sold, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must apply to the appropriate titling facility including, but not limited to, the Department of Motor Vehicles or the Department of Natural Resources for the name and address of any owner or lienholder**. For nontitled vehicles, where the owner's name is known, **a search must be conducted through the Secretary of State's Office to determine any lienholders. The application must be on prescribed forms as required by the appropriate titling facility or the Secretary of State. If the vehicle has an out-of-state registration, an application must be made to that state's appropriate titling facility. When the vehicle is not titled in this State and does not have a registration from another state, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may apply to the sheriff or chief of police in the jurisdiction where the vehicle is stored to determine the state where the vehicle is registered. The sheriff or chief of police shall conduct a records search. This search must include, but is not limited to, a search on the National Crime Information Center and any other appropriate search that may be conducted with the vehicle's identification number. The sheriff or chief of police must supply, at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the name of the state in which the vehicle is titled.**

(E) The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop that has towed and stored a vehicle has a lien against the vehicle and may have the vehicle sold at public auction pursuant to Section 29-15-10. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may hold the license tag of any vehicle until all towing and storage costs have been paid, or if the vehicle is not reclaimed, until it is declared abandoned and sold. Storage costs may be charged that have accrued before the notification of the owner and lienholder, by certified or registered mail, of the location of the vehicle. **Notification to the owner and lienholder by the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must occur within five days, after receiving the owner's and lienholders' identities from the appropriate law enforcement agency. If the notice is not mailed within this period, storage costs after the five-day period must not be charged until the notice is mailed. If the vehicle is not reclaimed within thirty days after the day the notice is mailed, return receipt requested, the vehicle is considered abandoned and may be sold by the magistrate**

pursuant to the procedures set forth in Section 29-15-10.

(F) After the vehicle is in the possession of the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the owner of the vehicle as demonstrated by providing a certificate of registration has one opportunity to remove from the vehicle any personal property not attached to the vehicle. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

(G) **When a law enforcement agency stores a vehicle at a law enforcement facility, the agency must follow the notification procedures contained in this section and submit vehicle information to a magistrate in the county where the vehicle is stored to provide for the sale of the vehicle at public auction.** A law enforcement agency is exempt from paying filing fees in any matter related to the towing and storing of a vehicle.

Lynd skis were impounded and this statue was not followed. IOP has no records of this request and the TPWD were the titles are held does not show the request. There is no notice to the magistrate in the file as required; no title search in the file as required; IOP would have obtained Lynd's correct name and address, if it had attempted any of these procedures in the required statutes. NO ONLY would the statutes been followed Lynd would have been notified by certified mail at numerous times during the procedures. Multiple notifications to Lynd should have taken place, yet IOP claims they did it correctly and none of this is in the file, and all of them never made it to Lynd, ridiculous! AND IT IS UNDISPUTED! **Caldwell admitted in both a statement to Chief Buchannan, and to SLED in a sworn affidavit.** *(see Lynd's response to motion for summary judgment)*

These are material facts that exist. These are also facts and records that are required to be researched under the due diligence requirement.

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. **Rule 56(c), SCRCP.** When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the

light most favorable to **the non-moving party**. ***Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)**. Lynd here is the non-moving party and the mountains of record errors, FIOA request and verified claims amounts to undisputable evidence, not a mere scintilla of evidence. As the non-movant with this mountain of material fact, even just the material fact amounting to the calculation of date is more than a mere scintilla.

> *at the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit **a "scintilla of evidence warranting a determination by a jury."** (citing Hill v. York County Sheriff's Dep't, 313 S.C. 303, 437 S.E.2d 179 (Ct.App.1993) for support).*

Here in this case is documented proof from, the IOP file, the SLED investigation notes, etc. the contact between the Government entities counsel, and the pending Insurance Claim are clear proof that the evidence in weight for the non-movant Lynd was substantial and was more than a preponderance of evidence.

> *Hancock v. Mid-South Management Co., Inc., 673 SE 2d 801 - SC: Supreme Court 2009*
>
> The rule followed in the federal court system provides that "a `mere scintilla of evidence' is not sufficient to withstand the challenge." ***Rogers v. Norfolk Southern Corp.*, 356 S.C. 85, 92, 588 S.E.2d 87, 90 (2003), quoting *Crinkley v. Holiday Inns*, 844 F.2d 156, 160 (4th Cir.1988)**. We recognize that the court of appeals has been somewhat inconsistent on whether a mere scintilla of evidence will overcome a motion for summary judgment.[1] This Court, however, has consistently held that where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgement. **Accordingly, we hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.**
>
> In our view, the court of appeals erred in affirming the trial court's grant of summary judgment. Petitioner's testimony, Daughter's testimony, and the former employee's affidavit showed that the parking lot was in a state of disrepair. **Thus, taken in a light most favorable to Petitioner, evidence shows that Respondent knew or should have known that a dangerous condition existed on its premises and that invitees would have to encounter this condition.** *See* Henderson, 303 S.C. at 180, 399 S.E.2d at 769 (reversing the trial court's grant of a JNOV motion because the plaintiff presented evidence that a hospital failed to keep its parking lot reasonably safe

In this case IOP is basing its summary Judgment motion on an email response to a letter. **The letter itself does not meet the statutory requirements of notice for the title property.** The statues below clearly outline the duties required of the impounding agency and its failure by IOP to follow them. Those duties would create a document trail that could easily be followed. Undone there is nothing but an altered files, a single scribbled note in said file that they were destroyed. The note speaks of a non-existent salvage company and a deceased person that supposedly the skis went too.

Non-movant Lynd's evidence of numerous FIOA request, doggedly pursuit of records, and facts clearly outline more than a scintilla of evidence, much more than the lone email response IOP referenced to get a SJ granted. **Lynd the non-moving party's** evidence clearly out weights the IOP evidence in stating a material fact still exist, on any grounds claimed notwithstanding the date argument.

The verified claim constitutes a 3ys statute of limitations, the mountain of unanswered errors answers any other material fact of law question or if such material facts still exist.

SECTION 56-5-5660. Repealed by 2012 Act No. 242, Section 7, eff December 15, 2012.

Former Section 56-5-5660 was entitled "Application for and issuance of disposal authority certificates" and was derived from 1962 Code Section 46-490.16; 1972 (57) 2459; 2004 Act No. 269, Section 6.

South Carolina Code 56-5-5660. Application for and issuance of disposal authority certificates

(A) Any person or unit of government upon whose property or in whose possession is found an abandoned vehicle, or any person who is the owner of a vehicle whose title certificate is faulty, lost, or destroyed, may apply to the sheriff or chief of police of the jurisdiction in which the vehicle is located for authority to sell or give the vehicle to a demolisher.

(B) The application must give the name and address of the applicant, the year, make, model, and identification number of the vehicle, if ascertainable, along with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment, or that the title of the vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant must execute an affidavit stating that the facts alleged are true and that no material fact has been withheld.

(C) If the sheriff or chief of police determines that the application is executed in proper form, and demonstrates that the vehicle has been abandoned upon the property of the applicant, the notification procedures set forth in Section 56-5-5630 must be followed. If the vehicle is not reclaimed in accordance with Section 56-5-5630, the sheriff or chief of police must follow the procedure set forth in Section 56-5-5660(D) for issuance of disposal authority certificates.

(D) If the application demonstrates that the vehicle is not abandoned but that the applicant appears to be the rightful owner, the sheriff or chief of police must give the applicant a certificate of authority to sell or give the vehicle to any demolisher for demolition, wrecking, or dismantling. A disposal authority certificate may contain multiple listings. The demolisher must accept such certificate in lieu of the certificate of title to the vehicle.

This section of the statue is repealed ,but was required in 2004 when the skis were impounded, but these records do not exist in the file either and just ads to the laundry list of missing records the law requires IOP have.

SECTION 56-5-5940. Seizure, sale or disposal of vehicle in violation of article constitutes conversion.

(a) Seizure, sale, or disposal of an abandoned or derelict motor vehicle in a manner inconsistent with the provisions of this article shall constitute conversion for which the owner shall have redress in any court of competent jurisdiction.

Conversion

n. a civil wrong (tort) in which one converts another's property to his/her own use, which is a fancy way of saying "steals." Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's) hands, or purposely giving the impression the assets belong to him/her. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, as well as going to law enforcement authorities since conversion usually includes the crime of theft.

Under this statute the IOP policed department violated, **the skis are considered stolen. Conversions definition is theft**. No way a 2 year SOL defense could have even been made and argued much less granted summary judgment on. The statues remedies when failed to be adhered

too are invoked. Also the SLED investigation and 'no wrong doing' finding are questioned and clearly present a material fact to deny SJ.

> Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to **another to the exclusion of the owner's rights.** ***Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E. (2d) 116 (1975). Powell v. A.K. Brown Motor Co., 200 S. C. 75, 20 S.E.2d 636 (1942).***Conversion may arise by some illegal use or misuse, **or by illegal detention of another's chattel**. Id. Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified. ***Id; 89 C.J.S. Trover and Conversion § 23 (1955).*** **To establish the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property.** *Oxford Fin. Cos. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991). A* **claim for conversion can be based on an unauthorized detention of property,** after demand. Castell v. Stephenson Finance Co., 244 S.C. 45, 135 S.E. (2d) 311 (1964). **Punitive damages are recoverable in conversion cases in the event it is determined the defendant's acts have been willful, reckless, and/or committed with conscious indifference to the rights of others**. Hunt v. Jordan, 286 S.C. 340, 333 S.E. (2d) 569 (Ct. App. 1985).
>
> Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights. Ray v. Pilgrim Health & Life Ins. Co., 206 S.C. 344, 34 S.E. (2d) 218, 34 S.E. (2d) 218 (1945). Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel. Castell v. Stephenson Finance Co., 244 S.C. 45, 135 S.E. (2d) 311 (1964).
>
> Conversion § 84 (1985); McPherson v. Neuffer & Hendrix, 45 S.C.L. (11 Rich.) 267, 281 (1858) **(if a party wrongfully assumes property belonging to another or wrongfully uses it, it amounts to a direct conversion and a demand and refusal are not necessary before bringing an action).**
>
> "An action for conversion may be maintained by persons having the immediate right to possession of the article converted. Indeed, ordinarily, **an immediate right to possession at the time of conversion is all that is required in the way of title or possession to enable the plaintiff to maintain his action."**

In this case every single aspect of the conversion precedents specifically applies to this case. 1) The skis were wrongfully impounded. 2) Lynd had an immediate right to the skis in question, 3) the skis are clearly titled to Lynd. IOP's failures to notify and destruction without any of the required documentation done are notification to Lynd is a clear *'willful, reckless, and/or committed with conscious indifference to the rights of'* Lynd

This is also a clear material fact left unanswered that negates a Summary judgment it is also a question for the jury, which negates Summary Judgment and also negates a 2year SOL calculation.

SECTION 56-5-5945. Duties of demolishers; disposal of vehicle; title requirements; records; penalties.

(B)(1) Except as provided by subsections (C), (D), and (E), **a person or entity may not dispose of a vehicle to a demolisher or secondary metals recycler without a valid title certificate for the vehicle in the person or entity's name. The person or entity shall provide the vehicle's title certificate to the demolisher or secondary metals recycler.**

(C)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler **with a valid magistrate's order of sale in lieu of a title certificate,** if the person or entity purchases the vehicle at a public auction pursuant to Section 56-5-5640. **The person or entity shall provide the magistrate's order of sale to the demolisher or secondary metals recycler.**

(D)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler **with a valid sheriff's disposal authority certificate in lieu of a title certificate,** if the vehicle is abandoned upon the person or entity's property or into the person or entity's possession and the vehicle does not meet the requirements of subsection (E)(1). The person or entity shall provide the sheriff's disposal authority certificate to the demolisher or secondary metals recycler.

(2) **The person or entity shall apply to the sheriff of the jurisdiction in which the vehicle is located for a disposal authority certificate to dispose of the vehicle to a demolisher or secondary metals recycler. The application must provide, at a minimum, the person or entity's name and address, the year, make, model, and identification number of the vehicle, if ascertainable, along with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment. The person or entity shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld.** If the sheriff determines that the application is executed in proper form, and the application demonstrates that the vehicle has been abandoned upon the person or entity's property or into the person or entity's possession, the notification procedures set forth in Section 56-5-5630 must be followed. If the vehicle is not reclaimed pursuant to Section 56-5-5630, the sheriff shall give the applicant a certificate of authority to dispose of the vehicle to a demolisher or secondary metals recycler. A disposal authority certificate may contain multiple listings.

(4) **The South Carolina Law Enforcement Division shall design a uniform sheriff's disposal authority certificate for purposes of this subsection and shall make the certificate available for distribution to the sheriffs. The Department of Motor Vehicles shall issue forms and regulations governing the surrender of sheriffs' disposal authority certificates as appropriate.**

IOP altered the file to claim the jets skis were destroyed by a salvage yard, **even if that was true** the salvage yard was required to notify and and those records should be in the file as well, or exist in some form in South Carolina. IOP as the Gov. Entity was required to provide all of these required documents, and none exist in the file. AT NO TIME did IOP even make an attempt according to all available records. All told there are numerous statute requirements that were REQUIRED to be met and none were. These requirements would have generated dozens of official records and documents and none can be found. To try and defend the lack of all these records ,**and then try and claim an email response is the end-all be-all on the SOL is ridiculous and not what the SOL statues are intended.**

Transcript error that led to the granting of the order;

The trial court judge/and Attys in the first order misunderstands the letters being discussed, Greenberg is referencing the letter Caldwell added to the file and not the letters from Lynd, the court is asking for verification that Lynd wrote the letter IOP was referencing to the Chief . Then the hearing just ends, without any form of explanation with an odd statement by the judge on the last page "this is a case if they want to modify it they can". The motion is granted" **No one can seem to understand what was, or is going on at the end of this hearing, and what that statement means, to even explain how to approach it on appeal.**

IOP's counsel Domin, *the same that did the intentional act of stalling of Lynd*, argues that these letters and dates of Lynd's contact with IOP starts the SOL running. That in no way is correct. Knowing in your heart something wrong was done too you is different, than knowing factually. So therefore **not doing** your due diligence is filing of a frivolous suit. If according to Domin and IOP, Lynd had filed prior to any of the record requests, they then could have asked for a dismissal or SJ on that, claiming Lynd could not prove an element of the case, and Lynd would have had no facts to base an argument on the fight the dismissal, or facts to base a brief on to file the original suit. The law cannot be determined both ways the code allows a 3yr statute of limitations on verified claims to avoid suits. Lynd made every attempt to do so.

There is under the law and statue a fine line of when a person "knows or should have known" of a tort, not when a person has a "gut feeling" a tort has been

done. The fact finding and FIOA request, and numerous emails gathering documents is all done to have a full and complete understanding of the facts and what transpired to file an accurate brief. This is also needed to avoid a frivolous filing when all opposing parties are claiming such a suit would be frivolous. And to avoid possible dismissal, by being unprepared to defend in SJ on 'proving and element.'

IOP claims non-movant Lynd should have filed off a gut feeling not waiting on facts, all the while Domin is making claims *to Lynd he has no case, IOP through the Chief are making claims SLED investigated it and found no wrong doing, and he has no case..* All this are facts that dictate the SOL start date. If IOP's SLED investigation claims were accurate, and correct, Lynd would have filed a frivolous suit if filed prematurely. Lynd feels the entire date revolves around the SLED file being sent under the FIOA which disproved all the claims of 'no wrong doing' the parties were stating through the document gathering period, April-2014.

There is a fine line between inaction due to laziness, and delay awaiting documentation to disprove the claims of IOP and Domin. Lynd could have jumped the gun and filed earlier being the facts of a tort did turned ultimately in his favor, but it could have turned out that the SLED 'no wrong doing' claim was correct and therefore Lynd's suit if filed earlier would have been a frivolous suit. Again something IOP could complain about. Lynd on the other hand felt they were lying and went to great length to gather the facts to support it before filing of the suit to

1) Avoid a frivolous suit, and

2) To do the due diligence and proper gathering of facts to support the filing of the suit. **All of this cumulated with the SLED file being sent in April 2014,** NOT this 'magic date' IOP's Domin refers to in the transcripts of 5-18-13.

IOP has taken the file date of the lawsuit, and gone back 2 years and picked a 'Magic date' and is now trying to claim, any and all contact prior to that date constitutes enough knowledge to start the SOL running. **That is not the statute, or the intent of the statute**.

The fact is the filling date Domin thinks should exist is based on his knowledge of facts, but those were not disclosed to Lynd. That is based on IOP's and Domin's knowledge, **they all knew back then,** and were counting days, **Lynd did not KNOW then**. They were well aware they had committed a tort and were watching the calendar to get to some 'magic date'. Lynd did not know then and was given numerous claims of no case and doubts which had to be factually checked under due diligence. This calculation date is based on facts in Domin's head known to him, not facts in Lynd's head that he knows.

If any defendant can go back from a filing date and just make anything, or any contact a start date the SOL, it becomes open season on the littlest of things to claim knowledge on. Every defense Atty would be doing it on a daily basis. Lynd knew something seemed not right and strange about their claims, but knowledge of tort didn't exist till 2014 when the sled file was turned over and arrived. In it were Caldwell's sworn affidavits admitting to the wrongdoing and errors, plus letters to the Chief admitting to it as well. That was when full knowledge happened, all the rest prior to that is gut feeling with no facts to back it up or use to base and support filing a suit on.

The courts have always walked the fine line of 'frivolous suit', vs 'due diligence', vs 'should have knowledge' of a tort vs 'good faith', all based on the facts and actions in a particular cases set of facts. These facts are clear, Lynd was told "no case" and "frivolous suit" did his due diligence to check and verify those stated facts, and obtained full knowledge in 2014 to file suit in good faith. No dispute, and all the while of doing due diligence had filed a verified claim on the gut feeling he had. All of which nullifies this magic date and verified claim argument as to material facts in favor of non-movant.

Now IOP could have confessed to the acts up front to Lynd, and then the SOL would have started, but they didn't they denied any wrong doing, made intentional acts to falsify the records and cover it up, claimed SLED had found no wrong doing, and had an *officer of the court*, Domin claim it is all without merit. **But to get a SJ granted,** they then turn around and state, using the same time period in which they are stating 'no wrong doing', **that Lynd should have known then and there and filed,** all while they are clearly denying everything Lynd is asking about. You can't have it both ways, but the court ruled this is the SOL start time with

enough evidence that no material fact exist to grant it, ridiculous. IT is clear by the transcripts and the ending mentioned earlier that the Atty were discussing one thing and the court focused on another and neither understood the other. There is no other explanation of the granting of a summary judgment based on an email response, nor when the transcripts show confusion of the parties understanding of the discussion.

Secondly the statues clearly state the conduct and actions required on titled property, none of these were meet, **till they are meet the SOL has not started according to those statutes in question**. The conversion of the titled property starts a different SOL under the criminal code, and civil code for IOP failure to notify Lynd. The court did not answer or determine what those statutes do to the SOL in granting IOP's Summary Judgment, **all of which leave several material facts in question, and several or matters for the jury to decide.**

Even if the court ignores the verified claim, or some ground exists where the verified claim to IOP that was turn over to its Insurance Co, and then to SLED for investigation, is somehow ruled not a claim under the law to invoke the 3 year statute of limitations, then the court must decide IOP's, IOP's counsel Domin, and SLED's conduct to delay due diligence by Lynd in discovery of a tort.

Anonymous Taxpayer v. Dept. of Revenue, 661 SE 2d 73 - SC: Supreme Court 2008

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996).

The limitations period begins to run when a party knows or should know, **through the exercise of due diligence,** that a cause of action might exist. RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007)

Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) ("Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, **by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.").**

It is a standard in South Carolina law that the SOL starts to run when party knows or should know , **but it also states that knowledge comes after due and reasonable diligence**. In this case *Lynd v IOP*, Lynd did and was at the time of filing, doing due diligence. IOP on the other hand had turned it over to its INS. Co. & SLED, all of which would have actions influencing Lynd's diligence. The pending INS. Claim as IOP has disclosed would equably toll the statute of limitations, and the verified claim to the Ins. Co., invokes the 3year statute of limitations. IOP and IOP ins. Programs Council, Tim Domin repeatedly stalled and delayed Lynd, as well as being *an officer of the Court* misinformed Lynd of the facts and results of the pending Ins. claim, and his rights to file.

That conduct creates an **estoppel** to the SOL claims of IOP. That conduct also forced Lynd into more, and lengthy due diligence, to discover and disprove the facts claimed and stated by IOP. IOP and Domin both stated for the record that the SOL expired in 2004 and that SLED had investigated and found 'no wrong doing' that is an estoppel barring the SOL defense when it falsely creates doubt of the claims of Lynd that require more and lengthy due diligence to avoid a frivolous filing.

The claims of SLED finding 'no wrong doing' specifically intervene into the time statutes. At that time, that particular claim By IOP and Domin, SLED was a mere acronym to Lynd, and no investigation or facts of their existence was even known. As well as Lynd had no idea when, date wise, this alleged investigation even took place. *Be aware SLED should, under its own due diligence, contacted Lynd for an interview, and at that time Lynd would have known, it chose not to.* IOP should have disclosed to Lynd the fact it had fwd. the investigation to SLED, instead they chose to keep it a secret. The surprise bombshell of that well into Lynd's due diligence research was intended to delay Lynd longer. In doing proper due diligence and research Lynd in good conscience had to find out what that investigation was, and what the true outcome was to avoid filing of a frivolous suit. That meant FIOA request to SLED.

A point to remember is Lynd is doing this long distance, from Texas, no option to walk into an agency and browse or collect documents and records.

It turns out the SLED investigation was a farce and just a mere cover-up for IOP between Neil and Buchanan, to project an appearance of investigation. But the result of that statement to

Lynd, forced Lynd's hand in following up as a matter of due diligence, if SLED has truly done an exhaustive investigation and had discovered facts leading to the no wrong doing found, **then Lynd would have filed a frivolous suit if filed in the interim.**

The courts frown on frivolous suits, and also frown on time barred suits, in this case we have a perfect example of all the main precedents controlling these matters, and they become intertwined, verified claim 2yr or 3yr SOL, tolling, estoppel, and due diligence, as well as liability created by a statute, conversion, and a statutory failing of that by IOP. Any dispute of the 2 or 3 yr. Statute of Limitations under the law has to be given to the longer of the 2 periods, not to mention the conversion SOL, and ruled in favor of the non-movant.

State v. Life Ins. Co. of Georgia, 175 SE 2d 203 - SC: Supreme Court 1970

Additionally, it is established in this State that where there is any doubt as to which of two statutes of limitation applies, **the doubt must be resolved in favor of the longer period**. We quote the following from *Scovill v. Johnson*, 190 S.C. 457, 3 S.E. (2d) 543 (1939).

"Strictly speaking, a statute of limitation when applicable is not a defense to an action, but when pleaded, which it must be in order for a defendant to benefit therefrom, is a bar to the action. A limitation statute is a statute of grace, permitting the avoidance and evasion of the liability; and while given recognition when pleaded, it has never been favored by the Courts.

"If there is any doubt as to which of two statutes applies, that doubt must be resolved in favor of the longest period, according to the great weight of authority."

Hooper v. Ebenezer Senior Services, 659 SE 2d 213 - SC: Court of Appeals 2008

If a statute's terms are clear, the court must apply the terms according to their literal meaning. *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). "An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute."

n *Hopkins v. Floyd's Wholesale*, 299 S.C. 127, 382 S.E.2d 907 (1989), our Supreme Court determined the statute of limitations is tolled for a workers' compensation claim during a reliance period in **"which an employee is induced by the employer to believe his claim is compensable and will be taken care of without the employee filing a claim."** *Id.* at 129, 382 S.E.2d at 908. The Court announced:

We believe the rule ... which tolls the statute of limitations during the reliance period is the better rule. **The fact finder in these types of cases must necessarily determine that a reliance period existed and that the claim is otherwise compensable.** To hold that claims must be filed within a reasonable time following the end of the reliance period would add yet another layer of fact finding resulting in greater uncertainty as to which claims are compensable.

In this case it is clear IOP filed the claim with its Ins. Co. of which never an outcome has been made, that not only tolls the 2yr statute but impose the 3yr statue due to a verified claim. And during this time Domin **an officer of the court is lying, plain and simple to Lynd**, creating a form of reliance. As it continues below as "to a diligent plaintiff" no one <u>can dispute Lynd's</u> diligence and perseverance in discovering the facts. In this instance Lynd was diligent, and IOP delayed, IOP's counsel lied, and both IOP and SLED delayed in forwarding of the files under FIOA request, it does not get more rare and exceptional that 2 separate Gov., entities conspiring to stall.

> **The doctrine of equitable tolling is articulated with exactitude:**
>
> **The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.**
>
> **Equitable tolling has been deemed available where—**
>
> **—extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.**
>
> **—the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.**
>
> **<u>—the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.</u>**
>
> **It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights. <u>However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation.</u>**

In this case not only has misrepresentation been done by defendants, but multiple and ongoing acts. The introduction of the SLED investigation at such a late date after it was started

and completed cause a restart by Lynd of due diligence with another gov. agency separate from whom he is already dealing. ***"—the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim."***

Lynd still has not received the original file from IOP, only the altered file, Lynd has not been giving the outcome of the INS. claim. Lynd has not been giving the file of the criminal complaint against Caldwell. Lynd has not been given the name and location of the impound lot, salvage co, or how the skis in question were destroyed. So it is clear Lynd's due diligence suffices and the defendant's interference and delay hindered the suit, exactly as the precedent states that equitable tolling applies.

> For example, Seattle Audubon Society v. Robertson [931 F.2d 590 (9th Cir.1991), *rev'd on other grounds,* 503 U.S. 429, 112 S.Ct. 1407, 118 L.Ed.2d 73 (1992)] **stated that equitable tolling may be applied when plaintiffs are "prevented from asserting their claims by some kind of wrongful conduct on the part of the defendant." But it is only equitable estoppel that requires wrongful conduct on the part of the defendant, i.e., fraud or misrepresentation.** The federal equitable tolling doctrine, on the other hand, does not require any conduct by the defendant.
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> *Abbott v. State,* 979 P.2d 994, 997-998 (Alaska 1999) (footnotes omitted).
>
> The United States Supreme Court elucidated: Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, **or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.** We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.
>
> *Irwin v. Dep't of Veterans Affairs,* 498 U.S. 89, 96, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990)
>
> **Courts often apply equitable tolling when a plaintiff has timely pursued his rights through an administrative body** or where a plaintiff was enjoined or otherwise legally prohibited from bringing his claims in a timely manner.
>
> The Supreme Court enunciated:
>
> Equitable tolling is a judge-made doctrine which operates independently of the literal wording of the Code of Civil Procedure to suspend **or extend a statue of limitations as necessary to ensure fundamental practicality and fairness.** This court has applied equitable tolling in carefully considered situations to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice.

The doctrine of equitable tolling was developed to permit under certain circumstances the filing of a lawsuit that otherwise would be barred by a limitations period. *See* Bailey v. Glover, 88 U.S. (21 Wall.) 342, 22 L.Ed. 636 (1874). **a plaintiffs right to assert a meritorious claim when equitable circumstances have prevented a timely filing.** Equitable tolling is a type of equitable modification which "'focuses on the plaintiff's excusable ignorance of the limitations period and on [the] lack of prejudice to the defendant.'" *Cocke v. Merrill Lynch & Co.*, 817 F.2d 1559, 1561 (11th Cir.1987) (quoting *Naton v. Bank of California*, 649 F.2d 691, 696 (9th Cir.1981)). Contrary to the analysis of the majority below, equitable tolling, unlike estoppel, does not require active deception or employer misconduct, but focuses rather on the employee with a reasonably prudent regard for his rights. *Machules v. Dep't of Admin.*, 523 So.2d 1132, 1133-1134 (Fla.1988)

The doctrine of equitable estoppel is distinct from the doctrine of equitable tolling. In cases of equitable estoppel, the statute of limitations has expired and the defendant asserts the running of the statute of limitations as a defense. **The defendant, however, is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a way as to cause the claimant to forego filing a timely cause of action.** See Vacuum Sys., Inc. v. 240*240 Bridge Constr. Co., 632 A.2d 442, 444 (Me.1993); Hanusek v. Southern Me. Medical Ctr., 584 A.2d 634, 637 (Me.1990). **In contrast, in cases involving the doctrine of equitable tolling, the defendant does not have the statute of limitations as a valid defense because it has not yet run. Rather, the statute of limitations is tolled when strict application of the statute of limitations would be inequitable. Lambert v. United States, 44 F.3d 296, 298 (5th Cir.1995).**

This Court previously expounded upon equitable estoppel in *Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555 (Ct.App.1985), *overruled on other grounds, Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 462 S.E.2d 858 (1995).

In a proper case, the doctrine of **equitable estoppel may prevent resort to the statute of limitations**. *Servomation Corporation v. Hickory Construction Co.*, 70 N.C.App. 309, 318 S.E.2d 904 (1984), *remanded*, 312 N.C. 794, 325 S.E.2d 632 (1985); *City of Bedford v. James Leffel & Co.*, 558 F.2d 216 (4th Cir.1977); 51 Am.Jur.2d *Limitation of Actions* § 431 at 900 (1970); *see Clements v. Greenville County*, 246 S.C. 20, 142 S.E.2d 212 (1965). **A defendant will be estopped to assert the statute of limitations in bar of a plaintiffs claim when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct. 53 C.J.S. Limitations of Actions § 25 at 962-64 (1948).**

Our Supreme Court defined the essential elements of equitable estoppel:

Elements of equitable estoppel as to the party estopped are: **(1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3)**

knowledge, actual or constructive, of the true facts. ***Ingram v. Kasey's Assocs.*****, 340 S.C. 98, 531 S.E.2d 287 n. 2 (2000)**. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position. *Mayes v. Paxton*, 313 S.C. 109, 437 S.E.2d 66 (1993). "Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 15, 532 S.E.2d 876, 878 (2000).

In the case before the court all 3 grounds exist,

1) IOP and Domin, falsely stated numerous times that the claim was barred, and that it had been investigated and 'no wrong doing' found, (Lynd acted on those facts)

2) Lynd acted on those while both IOPP and Domin were counting on that as a stall tactic.

3) IOP and Domin both knew those claims to be false and misleading

Zabinski v. Bright Acres Assocs., 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001).

Under South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct. Such inducement may consist of an express representation that the claim will be settled without litigation **or conduct that suggests a lawsuit is not necessary.** The defendant's conduct may also involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without **suit or to forbear exercising the right to sue.**

Finally, the general doctrine of equitable estoppel has been applied to affect the running of the statute of limitations in other situations besides those of unconsummated settlement. Equitable estoppel operates to deny a party "the right to plead or prove an otherwise important fact." *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994).

The other main precedents the court normally routinely rely on is the ground that a plaintiff 'slept on his rights' or 'sitting on his rights', in this case before the court that is clearly not the facts. Lynd was adamant, diligent, and doggedly pursued the true facts, and made ever attempt to find the true facts when records were claimed lost or denied and those such supplied showed to be false and/or altered.

it would be an injustice to the non-movant Lynd **not to weight** the evidence in light most favorable to **Lynd as the non-movant. Especially being movant had statutory duties as the impounding police agency, and as a regular course of duties should have known those statutes.** This is not a novel idea, IOP impounds titled property weekly if not daily, and had for years prior to this instance, and known or should have known the procedures to follow and the statues governing those polices. For IOP to even try and claim these statute errors, all of them was just a mere clerical error that should be excused, well is a slap in the face to the court or a justice expected to believe it. And then once exposed to its errors involving what it routinely should have known, commits a massive case of misrepresentation to imply or cover-up its liability.

These actions are the exact cause of the 100's of anti-police anti-court riots and rallies, just like this case, the police error egregiously, lied about it, stalled any admission of it to avoid liability, denied culpability, and then the courts knowingly or unknowingly covered for them based on their misrepresentation of the facts..

The facts in this case are clear, IOP failed, **they and their counsel lied about it**, SLED as a favor faked an investigation to help cover it up, and then the court refused to hear any proof or argument, and held a 4 minute hearing, on all of these facts, it is inexcusable.

***Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 163-64, 511 S.E.2d 699, 706 (Ct.App.1999), *aff'd*, 341 S.C. 320, 534 S.E.2d 672 (2000).**

One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff **has slept on his rights.**

Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996)

Moreover, limitations periods **discourage plaintiffs from sitting on their rights.** Statutes of limitations are, indeed, fundamental to our judicial system.

Bobb pled the statute of limitations as a bar to the action. After a hearing in which it was stipulated that the statute of limitations had expired as to the Moateses' claim, the trial court held Bobb was equitably estopped from asserting the statute of limitations as a defense. The trial court based its decision on St. Paul's $24,225 "advance towards settlement," **which it found constituted an admission of liability, and on St. Paul's repeated references to "settlement" in its correspondence with Huggins.**

> A defendant may be estopped from claiming a statute of limitations **defense if the defendant's conduct has induced the delay that otherwise would give operation to the statute.** Vines v. Self Memorial Hosp., 314 S.C. 305, 443 S.E.2d 909 (1994). This conduct may be either an express representation that the claim will be settled **without litigation or actions suggesting a lawsuit is unnecessary.** Id. Settlement negotiations commenced but not finalized, however, will not bar a defendant's assertion of the statute of limitations. Gadsden v. Southern R.R., 262 S.C. 590, 206 S.E.2d 882 (1974).

In This case IOP, Domin, stated as claim of fact that the case had "no merit", "was time barred" and had been investigated by "SLED which found no wrong doing". These actions and claims by the Government Agency, an Officer of The Court, are a fraudulent inducement of Lynd under the precedents. Therefore estoppel clearly applies

As to IOP's motion for Summary Judgment, numerous issues exist that denies granting under the Law. Numerous material facts, numerous fact issues for the jury, verified claim, estoppel due to conduct, yet they claim Lynd as the non-movant is at fault somehow.

The only time IOP even acknowledged the destruction as fact was in the only certified letter ever sent in 2013. That does not start a SOL date.

This APPEALS COURT and the SC SUPREME COURT both held in ***Lanham v. Blue Cross and Blue Shield, 563 SE 2d 331 - SC: Supreme Court 2002*** opinions that directly coincides with this case in the case now before the court Lynd was in the discovery stages, even though it was not discovery in a pending case,

The deciding issue is whether IOP lied, and failed to properly notify Lynd before destruction, and if IOP and defendants through the use of multiple parties delayed discovery of the facts. A material fact is any fact that is not decided as a matter of law. This case has numerous issue that are jury questions, starting with the statue stating failure to properly notify Lynd by certified mail is conversion under the statute. That is a jury question as to if they committed conversion. There is numerous material facts unanswered, including Domin's lies, the intentional stalling of the Ins. Claim, the sworn admissions by Caldwell, etc.

A material fact, no agency or body has bothered to address: The statute states if the procedures for notification are not followed it constitutes conversion under the statute.

Then after det. Caldwell admits to the acts in a sworn statement as an IOP officer of the Law, it is an admission that conversion happened, that is a clear material fact left unanswered, and Summary judgment cannot address it. So as in *Latham* it's a jury question. As well as the material fact of her admission of conversion.

The Summary Judgment evidence was actually in Non-Movant Lynd's favor, The admissions plus the conversion statute present evidence that a no material fact exists for IOP, and Summary Judgment evidence would been in Lynd's favor not IOP, if anything, Summary Judgment should have been granted in Lynd's favor on the conversion and admissions if filed. Clear ineffective assistance of counsel on Lynd's attorney Greenberg.

Lanham v. Blue Cross and Blue Shield, 563 SE 2d 331 - SC: Supreme Court 2002

During the hearing on Blue Cross's motion for summary judgment, Blue Cross relied heavily on an unpublished opinion by this court. Blue Cross also presented an affidavit from an employee who stated the insurer would not have issued Lanham's policy had it known of Lanham's liver problems. Lanham argued he had not been allowed adequate discovery and the question of materiality was a jury issue. Lanham renewed his motion to compel discovery. Without ruling on Lanham's discovery motion, the court granted summary judgment in favor of Blue Cross.

338 S.C. at 345-346, 526 S.E.2d at 254-255. **The Court of Appeals reversed the trial court's ruling, finding a genuine issue of material fact existed as to whether Lanham made a false statement with the actual intent to deceive; it also held that whether Lanham's application answers were material was a matter for the jury.** Finally, the Court of Appeals remanded the issue of Lanham's motion to compel to the trial court.

STANDARD OF REVIEW

An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. ***Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).*** Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. Under Rule 56(c), the party seeking summary judgment **has the initial burden of demonstrating the absence of a genuine issue of material fact.** ***Baughman, 306 S.C. at 115, 410 S.E.2d at 545***. With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of

evidence to support the nonmoving party's case. Id. **In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party**. ***Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).*** Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. ***Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000)***. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. ***Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).*** On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. ***Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).***

Viewing the evidence in the light most favorable to Lanham, it cannot be said, as a matter of law, that he made a false statement in his application with the actual intent to deceive. Given the fact that he was repeatedly told that there were only slight elevations, when coupled with the ambiguous language of Question 17D, **we find the issue of whether he made a false representation with the actual intent to deceive presents a jury question.** Accord ***Smiley v. Woodmen of the 366*366 World Life Ins., 249 S.C. 461, 154 S.E.2d 834 (1967)***(jury question as to whether life insurance applicant misrepresented his health with intent to deceive insurer notwithstanding insured's answering "no" to numerous questions regarding hospital treatment and medications, when insured had in fact been hospitalized for six days the year prior to his application).

In order to be entitled to summary judgment, Blue Cross would have to demonstrate that there is no genuine issue of material fact that Lanham made a false statement with the actual intent to deceive and that the statement materially affected either the acceptance of the risk or the hazard assumed. **Given our holding that whether Lanham made a false representation with the intent to deceive is a matter for the jury in this case, Blue Cross was not entitled to summary judgment. Accordingly, we affirm the reversal of summary judgment.**

Sled & Caldwell summary judgment

Sled and Caldwell moved for Summary judgment months later and argued to the court the same date as IOP, The same date cannot apply when the acts on which suit against these parties was filed is different and has a different inception date that IOP.

Lynd filed a FIOA request for the alleged investigation file on 4-14-2014, so there is no way Sled could even claim SOL of 5-18-2015 the same date IOP used, SLED replied to the

FIOA request on 4-23-2017 with a bill for the printing of the file. At that time the file is not even in Lynd's hands yet so no SOL can be started or **calculated from a date a year before**. Even if the court wants to be as generous as possible to SLED and follows the 2yr guideline going back to the Magic date IOP refers too in the transcripts of 5-18-2013 2year prior to the suit filing date, in no way can SLED use that date when the cause of action is separate from IOP's cause of action and inception.

This is very simple and the court should never have granted it, SLED was not even involved till 2014. But SLED and Caldwell's arguments were it was granted for IOP and they were entitled as well.

Caldwell's admission of failing to follow procedure was admitted to in a sworn statement to SLED, which starts Caldwell's SOL date, which too was in the SLED file in April 2014

The court must weight NON-MOVANT Lynd's extensive due diligence against the time Statutes, and SLED's involvement in 2014 and its claim of the same time statute calculation date. The SLED motion for SJ was granted based on IOP's prior SJ, these 2 entities became involved years apart, and in no form of justice can their SOL start date be the same**. 2ndly the court entered no order on SLED SJ motion to even reference for factual reasons for granting SJ. Lynd is left speculating on the grounds used for granting. There is no Order on file, and at this time to attempt to have one generated and signed would be fraud on the court.**

In both matters counsel for Lynd was paid and failed to do research, discovery, investigate the statutes or appear at the hearings, this is all clear ineffective assistance of counsel.

CONCLUSION.

The granting of Summary judgement for IOP was error, Lynd was the non-movant and all doubt on the verified claim or the start date of the SOL must be resolved in favor of the longer period. The verified claim invokes the 3yr SOL, and the contact with IOP's counsel, the SLED investigation, and the Ins. Claim all meet the standard of a verified claim. The SOL are tolled due to IOP and IOP's counsel fraudulent inducement, which also creates an **equitable estoppell** to the motion for summary Judgment, due to IOP's unclean hands and inducement to delay.

Lynd's due diligence and inquiries to IOP does not constitute sufficient knowledge of facts to start SOL. The numerous statutes involving notification and IOPs failure to follow them, the conversion, the verified claim, the due diligence, the files and documents withheld all create numerous material facts and questions for the jury. IOP's argument of the 'magic date' arrived at by counting backwards from the date of filling is not how SOL is/or calculated. IOP had the burden of proof to show Lynd knew or should have known and that he had no verified claim, and no material facts existed. They failed in doing so; Lynd the Non-Movant did not have the burden of proof.

Repeatedly IOP and Domin, IOP's counsel referenced this SLED 'no wrong doing" finding, if true would nullify any suit filed by Lynd, at the mere mention of it, much less the repeated reliance on it, Lynd had a due diligence duty to verify it, or un-verify it, but could not in good faith move fwd. without one or the other.

The notification statues IOP failed to follow before the disappearance of Lynd's skis, all have separate remedies besides a tort, including conversion or theft, and this cannot be dismissed by a SOL argument on a plain tort. And the missing records, requirements, and conversion are all matters for the jury, and clear and convincing material fact questions which nullify summary judgment.

All mean the SJ must be granted in favor of the non-movant Lynd as they each equal more the a scintilla of evidence, as a whole they are more than a preponderance of evidence. Notwithstanding Lynd's counsel ineffectiveness, failure to do research, investigate, file discovery, and appear at the hearings, the transcripts shows the one appearance he did not even understand what the court was asking him.

Appellants Response to I.O.P.'S Motion To Dismiss.

First IOP thru its counsel Domin argues a time barred appeal, but then goes on to state that under some grounds it is not time barred, as well as misstates the facts and filings. IOP is seeking a favor on a filing it admits is timely filed. IOP is asking the court to seek some extreme interpretation to benefit IOP when it is evident in all the filings, and IOPP's own motion that the appeal is timely. IOP is seeking to avoid an Issue it can't defeat on a made up technicality but fails to mention that the motion to dismiss it filed is the one untimely.

IOP goes on to state that under rule 54 that the appeal filed after the final ruling is the correct time to file the appeal. This is also echoed by the COA clerk's office when asked, and the trial court's court administrators office of Rosalyn W. Frierson, that is to avoid numerous and lengthy appeals, that the appeal is taking after the final ruling dismissing the case.

IOP goes on to even caption the motion 'Judge Kristy Harrington' in its motions caption, as the trial judge which is correct and is who issued the final order and ruling, in its motions caption, when it is trying to claim a prior motion ruling by a different Judge is the basis. The ruling it is trying to use to start the appeal clock was not the final ruling. And as stated rule 54 (b) clearly states it was not a final ruling.

RULE 54, (b) Judgment Upon Multiple Claims or Involving Multiple Parties.

In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties

Hagood v. Sommerville, 607 SE 2d 707 - SC: Supreme Court 2005

*An appeal ordinarily may be pursued only after a party has obtained a final judgment. Mid-State Distributors, Inc. v. 195*195 Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993); S.C.Code Ann. § 14-3-330(1) (1976); Rule 72, SCRCP; Rule 201(a), SCACR.*

An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct.App.2002).

Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.

This is IOP, same as the trial level, crying and attempting to create a time issues, because **it cannot face or beat the facts of the case**, those being that IOP destroyed Lynd's property without notice, and in doing so committed conversion under the statute. Unable to deny or defeat that it has embarked on a campaign of ***technical issues creation*** to avoid facing the issue. That is the exact cause of riots in the streets these days, police depts. at fault, and lying to cover it up.

IOP tries to imply this was a final judgement in the case and Lynd is bootstrapping an appeal to a separate case. That is not the facts, this was a motion filed along with other motions filed that was ruled on and the rule 59 and 60 motion filed on the final ruling.

IOP fails to name the motions to rehear that were filed and ruled on by another judge, knowing full well that defeats its argument.

The courts and defendants stretching out of Summary judgement motions and hearings over a year, cannot in any way effect Lynd's right to appeal a final dismissal of a case. As a note, the motion to reconsider was filed after awaiting a signed order that was never entered. AS of this date the final order has never been entered, only a form 4 entry with an attached order to come later, of which never materialized. That caused Lynd's attorney at the time problems that it could only file a motion to rehearor reconsider on what was heard in court, not on facts or opinions found in a written order to reference. The rule 59/60 motion was correct.

Remember the 2nd and 3rd summary judgements were based on the ruling of the first, and the issuance of that ruling, and followed that ruling to the letter, **so an appeal of one on the facts would apply to all three, since they are all granted and based on the same date and occurrence, and the transcripts show and discuss that.**

The South Carolina Supreme Court has held that the motion Lynd filed does apply to start/toll the appeal time limit and the motion in 2015 was not required to be a separate appeal. The Court also outlines the times and cause of order entry's to file the rule 59/60 motions as well as the application of all the previous motions in a particular case. This is the standard precedent the court has set to correlate all the prior precedents.

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004

We take this opportunity to clarify the limits and rationale ***of Quality Trailer, supra,*** and two Court of Appeals' opinions, ***Coward Hund Const. Co. v. Ball Corp.,* 336 S.C. 1, 518 S.E.2d 56 (Ct.App.1999), and *Collins Music Co. v. IGT,* 353 S.C. 559, 579 S.E.2d 524 (Ct.App.2002).** We conclude the Court of Appeals in the present case and ***in Matthews v. Richland County School Dist. One,* 357 S.C. 594, 594 S.E.2d 177 (Ct.App.2004)** has extended the holdings and rationale of those three **cases in a manner which unnecessarily complicates post-trial and appellate practice.**

After studied review, we reject the rationale and result reached by the Court of Appeals in the present case and in *Matthews.* We conclude a party usually is free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely. In essence, we view the use of oral or written JNOV/new trial motions, followed by an initial Rule 59(e) motion, **as part and parcel of a party's "single bite at the apple" in presenting his case to the trial court.**

We believe this view of the propriety of post-trial motions to be the correct approach for several reasons. First, it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See, e.g., Arnold v. State,* 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to 22*22 request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar, Inc.,* 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474-475 (2d ed. 1996). There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also

to revisit a previously raised argument. **It is inherently unfair to disallow such an opportunity.**

Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.[3] Neither contains any provision for a motion for "reconsideration." However, federal courts consider it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." **This view holds true even when a party mislabels a post-trial motion.** *See Blair v. Equifax Check Services, Inc.,* 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule); 12 *Moore's Federal Practice* § 59.30[2][a] and [7]; 11 Wright, Miller & Kane § 2810.1; 20 *Moore's Federal Practice* §§ 304.13[2] and 304.13[4][b] (3d ed. 2003). "\\

In fact, the United States Supreme Court explicitly has described a motion under federal Rule 59(e) as one which "involves *reconsideration* of matters properly encompassed in a decision on the merits." *Osterneck v. Ernst & Whinney,* 489 U.S. 169, 174, 109 S.Ct. 987, 990, 103 L.Ed.2d 146, 154 (1989) 23*23 (a request relating to discretionary prejudgment interest is a part of the plaintiff's compensation and thus a part of the decision on the merits, which means a Rule 59(e) motion raising prejudgment interest tolled the time for appeal; Court cited precedent in which Rule 59(e) motions relating to attorney's fees and case costs are deemed collateral issues, thus such motions did not toll the time for appeal) (emphasis added). The Court explained its decision furthered the goals of avoiding piecemeal appeals and fostering informed appellate review. *Osterneck,* 489 U.S. at 177-178, 109 S.Ct. at 992, 103 L.Ed.2d at 156

The commentators explain that the approach taken in today's rules allowing a motion for reconsideration which addresses the merits of the case at hand originated in the common law. "It is absolutely necessary *to justice,* that there should, upon many occasions, be opportunities of *reconsidering* the cause by a new trial." 11 Wright, Miller & Kane § 2801 (quoting a 1757 opinion written by an English judge) (emphasis in original); 12 *Moore's Federal Practice* 59 App. 102 (even before 1946 amendment adding subdivision (e) to Rule 59, courts routinely found that motions seeking such relief as rehearing or reconsideration were proper under Rule 59, although the motions were not literally or technically motions for a new trial).

Third, our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Fourth, South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. *Dykema v. Carolina Emergency Physicians, P.C.,* 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); *Kennedy v. South Carolina Retirement System,* 349 S.C. 531, 25*25 564 S.E.2d 322 (2001). **Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.**

Fifth, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of *Quality Trailer*. *Cf.* *Gamble v. State,* 298 S.C. 176, 379 S.E.2d 118 (1989)

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.[5]

We reaffirm the principles set forth in *Coward Hund,* 336 S.C. 1, 518 S.E.2d 56; *Quality Trailer,* 349 S.C. 216, 562 S.E.2d 615; and *Collins Music,* 353 S.C. 559, 579 S.E.2d 524. We reverse the Court of Appeals' order in the present case and overrule the Court of Appeals' opinion in *Matthews,* 357 S.C. 594, 594 S.E.2d 177. We conclude SCDOT timely served its notice of appeal after receipt of written notice of entry of the order denying its Rule 59(e) motion.

Let's remember this appeal went from attorney of record, Greenberg, to pro-se Lynd without the attorney suppling the file or record to Lynd. Therefore Lynd due to the actions of a South Carolina court officer was impeded from the start. Lynd contacted and filed all documents the clerks requested, but according to the clerks could not be accepted till the attorney of record was removed, this was later done by an order from the COA. IT is clear on the record that Lynd made a good faith effort to perfect the appeal.

Is equity in the courts what is sought or grounds to absolve Government agencies of its error by the manufacture of SOL dates in contradiction to equity and good faith appeals. This is one of the oldest questions in legal thought, one that can be traced back at least to Aristotle -- and the U.S. Supreme Court weighed in, 5-4, on the side of equity, with Justice Anthony Kennedy providing the deciding vote.

The technical issue before the justices in federal courts case, ***U.S. v. Kwai Fun Wong,*** had to do with what happens when a plaintiff who alleges that he's been injured by the government files suit after the statute of limitations has run its course. The law says, rather biblically, that a suit "shall be forever barred" if the plaintiff misses one of the required deadlines.

The "equitable" part means that the court is exercising the form of justice known as "equity." That's the English translation of what Aristotle had in mind when he proposed that the strict letter of the law **should be overridden when following it would produce an unjust result.**

The Supreme Court had to decide whether the words "shall be forever barred" do or don't permit equitable tolling. The majority decision, analyzed the issue by asking whether Congress had made a "clear statement" that equitable tolling shouldn't apply to a suit brought under the FTCA.

According to the Court, if Congress clearly stated that a court lacked the jurisdiction to proceed on a time-barred claim, then equitable tolling shouldn't be allowed. But it concluded that Congress had made no such clear statement. It followed that equitable tolling is allowed, and that the law can be bent when there is good reason to do so.

The key to the Court's opinion was to establish it as the default position that a statute of limitations may be tolled in a suit against the government. In other words, the Court was implying that the **primary job of the courts is to do substantial justice, which means using equity**.

Under every South Carolina ruling, the recent Supreme Court ruling, and the South Carolina Supreme Court rulings covering both rule 59 & 60 motions, ineffective assistance of counsel, tolling, and Good faith attempts; it is clear Lynd's appeal is timely filed and perfected.

IOP goes on to state, that all this time Lynd was represented by counsel, and notice was made to counsel, and Lynd's receipt of that has no bearing. **On the contrary even though the appeal is timely on all parties, any error that caused an untimely appeal would be the fault of counsel of record.** Not an error on Lynd, and Lynd's good faith appeal would survive an equity ruling. And clearly and unequivocally would fall under the ineffective assistance of counsel standard. That ineffective assistance of counsel is one of the grounds being heard on this appeal. So the court would have to rule on that matter to determine if the appeal was untimely due to Lynd or due to Lynd's counsel.

Lynd's contract with counsel clearly shows the appeal was contracted for, as well as emails discussing the filing of the notice of appeal, and counsel advice that it was not time. Lynd then upon his own contacted all, the court administrator, the COA, and the trial clerk, all of which corroborated Lynd's counsel statement that after all matters were ruled on was the start of the time limit to file a notice of appeal.

Lynd's counsel then refused to file the notice and Lynd to preserve the appeal, filed the notice of appeal himself, as outlined before, the COA clerks would not accept it while Greenberg was still shown as attorney of record, **but do show the filing accepted and as timely by Lynd**. The Court of Appeal clerk has dozens of notices to Lynd counsel discussing Lynd's timely filing and Counsel Responsibility to do it himself.

Lynd made numerous attempts to start the appeal, **and made a clear and concise Good faith effort under the rules** and has perfected a timely appeal on all parties and all matters in the cause of action.

US v. Peak, 992 F. 2d 39 - Court of Appeals, 4th Circuit 1993

In its answer, the government conceded that "*failure to file a notice of appeal when so instructed by the client constitutes ineffective assistance of counsel for purposes of § 2255.*" (emphasis added). In a supplemental memorandum, the government reported that it had been unable to locate attorney Brown to see whether he could contradict

Peak's representation that he had requested the filing of a notice of appeal. Accordingly, said the government, "the court should grant whatever relief it deems necessary in this case under the circumstances."

However effective or ineffective Peak's counsel was before the judgment of conviction, **his failure to file the requested appeal deprived Peak of the assistance of counsel on direct appeal altogether.**

We touched on this issue in *Becton v. Barnett*, 920 F.2d 1190 (4th Cir.1990). In remanding a dismissed ineffectiveness claim based, in part, **on a failure to file a notice of appeal**, we said (920 F.2d at 1195):

The effect of counsel's failure to appeal was that Becton lost his ability to protect his "vital interests at stake." *See Evitts [v. Lucey]*, 469 U.S. [387] at 396, 105 S.Ct. [830] at 836 [1985]. He was unable to attempt to demonstrate that his conviction was unlawful through the appellate process. *See id.* For whatever reason, Becton's appeal was not filed. As a result, Becton might well have been prejudiced by his counsel's ineffective assistance. Therefore, Becton has presented a colorable claim of ineffectiveness based on counsel's failure to appeal.

In *Becton*, there was a potential factual dispute as to whether the petitioner had actually requested his attorney to file the notice of appeal. Hence, we simply remanded for an evidentiary hearing. If *Becton* left any doubt as to the showing required of petitioners raising this type of claim, we dispel it today: we join those circuits that hold that a criminal defense attorney's failure to file a notice of appeal when requested by his client deprives the defendant of his Sixth Amendment right to the assistance of counsel, notwithstanding that the lost appeal may not have had a reasonable probability of success.

The judgment is reversed, and the case is remanded with instructions to vacate Peak's judgment of conviction and enter a new judgment from which an appeal can be taken. *See* Estes, 883 F.2d at 649.

Becton v. Barnett, 920 F. 2d 1190 - Court of Appeals, 4th Circuit 1990

Although Becton did not give notice of appeal at the trial, he alleged in this petition that he contacted counsel three days 1192*1192 after the trial to ask counsel to appeal. **He alleged further that counsel assured him that there was still time to appeal as the ten day period for appeal had not yet run. However, no appeal was ever filed.**

Therefore, the ultimate conclusion of a state or federal court that counsel was effective is not binding upon a court reviewing the issue. *Hyman v. Aiken*, 824 F.2d 1405, 1412 (4th Cir.1987); *Lee v. Hopper*, 499 F.2d 456 (5th Cir.), *cert. denied*, 419 U.S. 1053, 95 S.Ct. 633, 42 L.Ed.2d 650 (1974). As a reviewing court, it is proper for us to address the ineffectiveness claims anew, regardless of the findings of the district court.

Becton alleged that counsel was ineffective for a second reason: failure to appeal. In North Carolina, persons convicted of a criminal charge on a plea of not guilty are entitled to appeal the adverse judgment as a matter of right. N.C.Gen.Stat. § 15A-1444(a) (1988**). In order for the appeal as of right to be adjudicated in accord with due process of law, the appellant must have the effective assistance of counsel. *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985).**

Turner v. North Carolina is another case involving ineffectiveness regarding appeal. 412 F.2d 486 (4th Cir.1969). There, counsel gave oral notice to the court of his desire to appeal at defendant's request. However, counsel never took any further action in connection with the appeal. This court stated that after conviction,

when time is an important factor in obtaining appellate review, no one is in better position to insure the indigent defendant of the appeal which he has requested than counsel who has represented him at trial.

After desire to take an appeal is shown by an indigent defendant the very least which counsel must do is inform the defendant of his right to appeal without cost; of the need for a transcript of the 1195*1195 trial proceedings; and of the availability of this transcript without cost. If at this time appointed trial counsel decides that he cannot or will not continue to represent the defendant he must so inform the defendant, in addition to informing him of his right to appointment of other counsel, and of the procedure through which the trial transcript and appeal may be obtained if assistance of counsel is not desired.

Id. at 489. This court held that petitioner was denied his right to assistance of counsel due to the inaction and neglect of his attorney. *Id.*

Counsel candidly admitted that he cannot remember whether or not he advised Becton of his right to appeal.

The district court stated that it could not say that the failure to appeal resulted in a different outcome. However, this court should properly address the issue of ineffectiveness of counsel anew because it is a mixed question of law and fact. *Strickland*, 466 U.S. at 698, 104 S.Ct. at 2070. Becton asserted that he asked his attorney to appeal. No affirmative evidence refutes that assertion other than counsel's general statement of his habit. Proper records of counsel might have cleared up this issue; however, none were presented.

US v. Poindexter, 492 F. 3d 263 - Court of Appeals, 4th Circuit 2007

In preparation for the appellate phase of the case, an attorney in an appeal waiver case still owes important duties to the defendant. First and foremost, the attorney, as recognized in *Flores-Ortega,* **has the duty to respect the appellate wishes of his client by filing a timely notice of appeal if he is unequivocally instructed to do so.** 528 U.S. at 476, 120 S.Ct. 1029. Second, as further recognized in *Flores-Ortega,* even if his client does not express (or clearly express) a desire to appeal, the attorney may be required to

file a timely notice of appeal after appropriate consultation with the his client. *Id.* at 478.[5]

If a notice of appeal is ultimately filed, an attorney has yet other duties owing to his client. These duties include examining the trial record and identifying and weighing potential issues for appeal. If the appropriate review reveals a meritorious issue for appeal, the attorney is ethically required to prepare a brief on the merits and argue the appeal. If the appropriate review reveals only frivolous issues, the attorney can file a brief in accordance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).[6]

Our decision today is consistent with the four United States Courts of Appeal that have concluded that an attorney renders constitutionally ineffective assistance of counsel if he fails to follow his client's unequivocal instruction to file a notice of appeal. *See Sandoval-Lopez, 409 F.3d at 1195-99 "But even though no one would think a doctor incompetent for refusing to perform unwise and dangerous surgery, the law is that* ***"a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable."*** *[18] Indeed, in Pequero v. United States,[19] the Supreme Court summarized its previous holding in Rodriquez v. United States[20] as "when counsel fails to file a requested appeal, a defendant is entitled to resentencing and to an appeal without showing that his appeal would likely have had merit."[*

In sum, we hold that an attorney is required to file a notice of appeal when unequivocally instructed to do so by his client,

Hill v. Braxton, 277 F. 3d 701 - Court of Appeals, 4th Circuit 2002

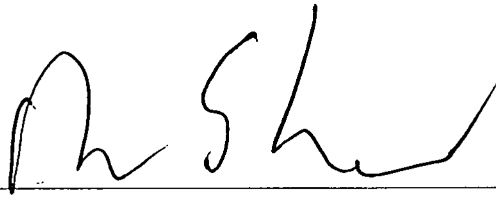
The court's "exercise of ... discretion should not be automatic, but must in every case be informed by those factors relevant to balancing the federal interests in comity and judicial economy against the petitioner's substantial interest in justice." Yeatts, 166 F.3d at 262

second, notice and an opportunity to respond are particularly appropriate when the prisoner is *pro se,* like Hill, and the long-standing practice is to construe *pro se* pleadings liberally. *See* Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam). A seasoned habeas practitioner might try to preempt an anticipated statute of limitations defense by including facts to show that the petition is timely. A *pro se* prisoner, however, is generally less able to anticipate affirmative defenses. This problem was made worse in Hill's case because, as a *pro se* § 2254 petitioner, Hill was required to use a standard government form that did not direct him to address the timeliness issue or ask him to include facts that might be outside of the record but relevant to timeliness under § 2244(d). *See* Acosta, 221 F.3d at 125

There are large quantities of case law, both State of South Carolina and federal that shows Lynd filed the appeal timely and correctly. IOP's attempt to hold Lynd in some false light to seek pity from the court on issues it cannot overcome is a shame. This is once again IOP begging for help from the courts to avoid it having to face its failures. The appeal should move forward to the interest of justice and equity.

The granting of SJ for SLED and Caldwell is simple, the SLED involvement and actions was known to Lynd in April 2014 when the file was turned over, as the evidence shows prior to that Lynd had no knowledge of SLED other than IOPs reference too it. Lynd's replies to that show he called and was told no SLED investigation existed. Till the FIOA request was answered, Lynd knew only of the no wrong doing claim, no facts or records. The verified claim Lynd has also applies as SLED investigated the claim, in such knew of it official existence.

In that FIOA was Caldwell sworn statement to the conversion, and admission, way different than all the prior claims of having done nothing wrong. That SOL time also started in April 2014, and the verified claim covers that as well.



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REQUEST FOR REHEARING ENBANC

MOTION FOR REHEARING

Now comes David Lynd whom hereby requests a rehearing en banc on the dismissal in part order dated 3-22-18 of the above named appeal. The appeal should be heard en-banc due to the nature of the case, and the ongoing Federal Civil rights cases involving the respondents and their actions.

This involves S.C. statues that were not followed, that were ignored, and even lied about their requirements and wording, and the resulting required by law remedy was ignored. This is a theft/conversion by S.C. city and state, government agencies.

The court seems to be applying some hidden standard as if appellant Lynd is a criminal which had his property impounded and destroyeddue to arrest. **Appellant Lynd is not that! Lynd was a Crime victim** that had his property stolen in Texas, and subsequently recovered in S.C. but was never notified it was in South Carolina to recover it. Appellant Lynd is a victim! And has victim rights under federal law.

So this appeal is a cross complaint under both civil and criminal law, the en-banc hearing is needed to determine what is the correct path, when a statutory remedy was not followed or applied. Does the conversion fall under a civil statute if a mandamus type request for enforcement of the statute be needed in a civil court? or does it fall under the criminal statute which has no statute of limitations? S.C. has long held no S.o.l. under the criminal code and can seek prosecution and restitution years later. In this instance the respondents have being trying to apply civil time limit statues to what was a criminal act under the S.C. statute as conversion.

This in-part dismissal of this appeal based on a parties motions is in contradiction to the standing and most current precedents set by the South Carolina Supreme Court, ***Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court*,** and the case will be moving on to the S.C. Supreme Court and Federal Court, both in the future and some current ongoing. For these reasons it is in all parties' best interest to have an en-banc decision on the applications of the precedents in question, and the conflict of those being presented.

These conflicts also are in contradiction of C.O.A opinions, and are not consistent. And are in direct contradiction to the clerk's office procedure of acceptance and filings of appeals, on motions and multiple orders. The chief Justice signed an order dismissing in part all the relevant parts of the appeal in a guise to protect the Government entities named in the cause. This dismissal is not based on fact nor on precedent. Matter of fact the order actual states one of the cases that stands in appellants favor, as a ground for non-dismissal. The order itself contradicts the orders on result. The order clearly states under *SC code 14-3-330(1) and Lancaster v fields 305sc if there is a final judgement and the party timely files his notice of intent to appeal from that judgment under sec 14-3-330(1) this court can review an intermediate order or decree necessarily affecting the judgment not before appealed from.*

It is evident Lynd appealed the case, the motion to dismiss was filed by Isle of Palms stating that the order of 2015 was not appealed, and thereby should be dismissed, as the justice stated in this order, that can be appealed after the final judgment.

It boils down to a loop hole the court can use to dismiss what it chooses, and hear what it chooses. This appeal was dismissed in part stating it was not timely filed with a notice of appeal, even though the appellant's attorneys involved, and the clerks of both the trial court and Mrs Kitchens of the C.O.A stated it was not an interlocutory appeal and appellant must wait till the case was final before appealing any part of it. This was also verified by the Coordinator Mrs. Frierson herself. All of this is covered in Rule 54. And the precedents covering it.

RULE 54, (b) Judgment Upon Multiple Claims or Involving Multiple Parties.

In the absence of such determination and direction, any order or other form of decision, however designated, __which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties__

__**Hagood v. Sommerville, 607 SE 2d 707 - SC: Supreme Court 2005**__

An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory

order from which no immediate appeal is allowed. *Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct.App.2002).*

Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.

Now as well as those attempts to appeal it and being told to wait, appellant also was informed of the Supreme Court precedents that clearly state the appeal must wait till all matters are decided on all parties, and all post trial motions have been heard and ruled on,

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004

After studied review, we reject the rationale and result reached by the Court of Appeals in the present case and in *Matthews.* We conclude a party usually is free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely. In essence, we view the use of oral or written JNOV/new trial motions, followed by an initial Rule 59(e) motion, **as part and parcel of a party's "single bite at the apple" in presenting his case to the trial court.**

Fourth, South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. *Dykema v. Carolina Emergency Physicians, P.C.,* 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); *Kennedy v. South Carolina Retirement System,* 349 S.C. 531, 25*25 564 S.E.2d 322 (2001). **Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.**

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If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. **We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.[5]**

We reaffirm the principles set forth in *Coward Hund,* 336 S.C. 1, 518 S.E.2d 56; *Quality Trailer,* 349 S.C. 216, 562 S.E.2d 615; and *Collins Music,* 353 S.C. 559, 579 S.E.2d 524. We

reverse the Court of Appeals' order in the present case and overrule the Court of Appeals' opinion in *Matthews, 357 S.C. 594, 594 S.E.2d 177*. We conclude SCDOT timely served its notice of appeal after receipt of written notice of entry of the order denying its Rule 59(e) motion.

it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." **This view holds true even when a party mislabels a post-trial motion.** *See Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule);

So the order in question seems to state the appellant Lynd should have filed a notice of appeal on each individual order, even though a post-trial motions was filed**. The SC Supreme Court is clear that is not the case**. *doubly important that litigants generally be freely allowed to file a first, written motion* ***without concern a later appeal will be deemed untimely.*** And *, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of Quality Trailer* , this also holds for the Motion appellants attorney filed and mislabeled, that error is not grounds to dismiss an appeal, nor applicable as an error on pro-se appellant Lynd.

Appellant Lynd is clearly and indisputably in the "trap" the Supreme Court speaks of in its numerous precedents. All the while CLEARLY AND UNECOVICALLY MAKING A GOOD FAITH EFFORT TO PURSUE JUSTICE AND PERFECT AN APPEAL. And the final order closing the case was not entered till 2-26-18.

This is clearly what is happening here. The court must also remember appellant Lynd is pro-se now, but!! at the times being discussed (the 2015 and 2016 orders) Lynd was represented by counsel. NOT ONLY REPRESENTED BY COUNSEL, but refused by the COA clerk's office to file any documents **because he was represented by counsel**. This is a matter of record in this appeal, where the clerk sent pro-se Lynd letters claiming he COULD NOT FILE DOCUMENTS OR NOTICES **because** he has a counsel of

record. At the same time the clerk was sending demand letters to the counsel of record demanding they respond. Unknowingly the Law firm had gone under and was disbanded!

THIS IS A MATTER OF THIS APPEAL COURT RECORD. EASILY VERIFIED!!! You cannot have your cake and eat it too scenario, the clerk of the COA cannot tell Lynd not to file, and then the court dismiss due to not filing, that is just ridiculous on its face.

This exact contradiction in one opinion to another, so the ruling 'desired' can be entered **is why the public is protesting in the streets**. This case it is clear, Lynd is correct, and Isle of Palms and SLED are at fault and liable for damages, and massive civil rights violations of both due process and equal protection. **It is also clear this is not the desired outcome the courts want** and are deeply seeking any form of technicality that it can apply to make it go away.

This is so simple! The conversion committed by Isle of Palms and SLED is a criminal matter, THERE IS NO STATUTE OF LIMITAYTIONS IN SCOUTH CAROLINA ON THAT CRIME. No amount of digging and word play can make some defunct civil precedent apply to dismiss the case **and the criminal theft/conversion.** REMEMBER THIS IS NOT APPELLANTS OPINION THAT IT HAPPENED BUT FACT, ADMITTED TO FACT, IN BOTH ORAL AND WRITTEN DEPOSITIONS!

The act complained of and remedy sought is conversion/theft according to S.C. statute, and this act is admitted to by the officer in question in 3 separate statement's 2 under oath. Those acts have NO STATUTE OF LIMITATIONS NOR A FILING DEADLINE.

Appellant Lynd as stated earlier was represented by counsel thru both the 2015 order, the 2016 order, and the post trial motion and order. Even up too and thru the initial notice of appeal to the COA clerk's office. THIS APPEALS COURT granted the motion to allow counsel withdraw itself.

Under no precedent can the C.O.A. after its own clerks numerous times made request to the attorney of record without a response, can the hold a pro-se appellant making a good faith appeal, to alleged errors and time limits errors that Counsel of Record ***(an officer of the courts)*** might have made. Even if the court disregards every single argument on the post-trial motions, or

interlocutory appeal filings, these failings were done by counsel, **NOT! pro-se appellant Lynd.** Every precedent that exists in South Carolina, clearly state that an attorney that fails to file a timely notice of appeal if not the fault of the client or now pro-se applicant.

There is no justification of this dismissal if the error was made by counsel, when pro-se Lynd was clearly wanting and seeking to appeal. Appellant Lynd even when represented by counsel called clerks and administrators to verify what his counsel was stating that the appeal had to wait for a final judgment. Now the court wants to counter the precedents and state Lynd fails in his attempt to appeal, on counsel of record's alleged error, even though the clerks would not and even refused Lynd's first filing attempts.

Butler v. State, 334 SE 2d 813 - SC: Supreme Court 1985

The United States Supreme Court's decision in Strickland, supra, is clearly the preeminent authority for all other courts, state and federal, in determination of appeals arising out of allegations of lawyer incompetence.

*Writing for the majority of the court, Justice O'Connor defines the standard for judging ineffectiveness, **then cautions against hindsight and second-guessing review by appellate tribunals:***

The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

In this instance it is clear, counsel failed to file a notice of appeal on the 2015 order, and thereby forfeited appellants Lynd's right to appeal, and was specifically instructed too, not only did counsel not file it but gave a lengthy explanation as to why it was not due to be filed. **Appellant Lynd relied on that, and believed a licensed office of the court.** So at no time did appellant Lynd fail to timely file a notice of appeal. Appellant Lynd even did his own inquires with the clerks to verify those statements. To all parties it was not due till the case was closed. **Here failure to proper file a notice to preserve a parties right to appeal fails the standard in *Strickland*, doubly so when specifically asked or inquired by client.** ***The effect of counsel's failure to appeal was that Becton lost his ability to protect his "vital interests at stake."***

This doubled the injustice when you count in the court claiming the post-conviction motion also filed by counsel is claimed to be untimely as well. Again an error by counsel, that swore to his client it was not time to file it. These are not errors by appellant Lynd but counsel a SC bar licensed attorney and attorney of record on the case.

US v. Peak, 992 F. 2d 39 - Court of Appeals, 4th Circuit 1993

*However effective or ineffective Peak's counsel was before the judgment of conviction, **his failure to file the requested appeal deprived Peak of the assistance of counsel on direct appeal altogether***

We touched on this issue in Becton v. Barnett, 920 F.2d 1190 (4th Cir.1990). In remanding a dismissed ineffectiveness claim based, in part, on a failure to file a notice of appeal, we said (920 F.2d at 1195):

The effect of counsel's failure to appeal was that Becton lost his ability to protect his "vital interests at stake."

Becton v. Barnett, 920 F. 2d 1190 - Court of Appeals, 4th Circuit 1990

*. **He alleged further that counsel assured him that there was still time to appeal as the ten day period for appeal had not yet run. However, no appeal was ever filed.***

In order for the appeal as of right to be adjudicated in accord with due process of law, the appellant must have the effective assistance of counsel. Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985)

US v. Poindexter, 492 F. 3d 263 - Court of Appeals, 4th Circuit 2007

*In preparation for the appellate phase of the case, an attorney in an appeal waiver case still owes important duties to the defendant. First and foremost, the attorney, as recognized in Flores-Ortega, **has the duty to respect the appellate wishes of his client by filing a timely notice of appeal if he is unequivocally instructed to do so.***

Skinner v. Westinghouse Elec. Corp., 668 SE 2d 795 - SC: Supreme Court 2008

The issue and complaints of respondent all and always make this false claims that appellant Lynd is somehow at fault and failed to do this or that, when in reality they all 3 know it **was Lynd's attorney not appellant Lynd** that might have failed in what they are using for grounds in their motions. Even though clerks and others all claim it was filed the correct and proper way to have filed the appeal. They rehash this lame claim of technical issues, instead of stating the facts and admitting to the original errors and conversion.

NEVER IN THIS MOUNTAIN OF FILINGS has I.O.P. stated why they are not liable for the conversion of the property in question, why they didn't send the required certified letters, nor the truthful disposition of the property.

Never once have the offered the statutory restitution or compensation.

Never once have they even so much as apologized for their error and loss it caused.

Yet everyone in the justice system wants to claim the public outcry and riots in the streets, over the police and courts misconduct, and failures to act on such misconducts, is hogwash, exaggerated, and non-existent. But right here is the proof.

Sled administratively closed the investigation of IOP's actions, for what was to be a brief time period, to secretly watch and investigate Det. Caldwell.; **This ENTIRE MATTER falls in SLEDS lap!!! All they had to have done** was reopen the Investigation enter a finding of conversion based on Det. Caldwell's admission under oath, and order the restitution and Interest. **That was the law, the statue, S.C. procedure, and the right and just thing to do**. Everyone could have gone their separate ways and no case would have ensued.

This entire case, appeal, and years of filings is due to SLED"s single employee, that closed and refused to reopen the investigation!! It is that simple and cut and dried! Even at this stage of the **case SLED still has that duty to fulfill,** and could end the entire matter, they know it, their counsel knows it, the courts know it, but everyone's refuses to admit it. The preverbal elephant in the room. This court has a mandamus duty, and the jurisdiction to order that action, a mandamus action ordering the statutory remedy be applied and followed.

This is one of the main reasons this should be heard EN-BANC, every justice on the court will be summarily held or tied to this ruling, that once again lets a corrupt police officer and a corrupt Police dept off the hook, without justice

to the public, and therefore should hear the facts and enter a consent or dissent on the outcome.

The individual notices of Appeal on each and every order is not the procedure the C.O.A. clerks follow, this case is an example thru this process every party has complained that a separate appeal on the 2015 order was required. As example the 2-26-18 order, issued after this appeal has already started and proceeded would also require its own separate notice of appeal.

Appellant Lynd did file that separate notice of appeal on the 2-26-18 order mailed 3-6-18, the clerk's office refused to file or accept it an issue a separate appeal case number and just list it as a generic filing in the current case, shown on the docket as filed 3-8-18 "notice of appeal".. But according to the chief Justices order in question here, every order by the trial court requires its own separate appeal. Appellant Even going so far as to have Mrs Kitchens, call, The head clerk of the coa in a phone call; 4-4-18 at 4:57 p.m. EST from ph# 803-734-1891 stated I did not get a separate appeal on the filing or every order filed, nor an appellate case number on that filing to even proceed on, and don't show it as a notice of appeal.

The Appeals Court's order and implication of how it should have been done, is in conflict to how the clerk's office operates, a hypothetical is this;

if appellants Lynd's counsel at the time of the 2015 order, had actually filed a notice of appeal, then subsequently the following two parties each receiving separate orders over ayear later would have been required to have a separate notice of appeal filed. All based on the exact same fact, *(with motions actually copiedfrom each other)* So while the appeal on the 2015 is progressing, new appeals of the 2016 would have to have been started.

So under either scenario,

one the 2016 would be added to the ongoing 2015 appeal,

or the 2015 would be added to the new and current 2016 appeals.

None are outlined in the rules but truithfully **Neither exists it would be based on 'how" the clerk of the court accepted and filed them.** So the entire argument of filing dates and

separate appeals is moot when the clerk's office will not and does not file them that way. Clearly evident by the 2nd notice of appeal, not being accepted and filed separately from the current case.

That is exactly what Appellant Lynd encountered when discussing it with counsel at the time of the 2015 order, and with the clerk and administrator the following day. Mrs. Frierson can corroborate this entire matter as she was c.c. on most of it. All stated you do not file individual appeals on each order, only on the final order, which was never entered.

That final order was entered only after Lynd's initial brief outlined that it was never entered by the court.

So the dismissal of the trial case parts against I.O.P. , S.L.E.D. and Dawna Caldwell leaving only the post judgment motion to appeal is incorrect and not the normal procedure, and flies in the face of court precedent, it is a clear due process violation, and clearly even if deemed correct not the fault of Lynd but ineffective assistance of counsel. ***lost his ability to protect his "vital interests at stake."***

These repeated filing deadlines that are alleged missed are the fault of counsel, if the court uses them, saying as appellant they were missed file dates, that falls on counsel, and Lynd now Pro-se is not subject to suffer that counsels errors, it is the courts own created catch 22. If the court claims they are filing errors they are the fault of counsel of record, **and are acts committed by counsel that denied the client his right to appeal.** That without question meets the ineffective assistance of counsel standard in *strickland*, and does so allegedly on several different occasions of missed dates. It cannot be both; it cannot be errors on filing but not be an error by paid counsel, an error of the most basic, timely filing of documents.

It is also quiet insulting to appellant, and the public that everyone up to the Chief justice is dictating statues and laws, and this so called **strict adherence** to it**, but somehow there is no adherence strict or otherwise to the statues violated that caused this case in the first place**. Statue that still have jurisdiction even as this appeal proceeds!!

That is why an en-banc decision is needed to determine who, whom, and what entity failed in enforcing the conversion after it was confessed too: this falls upon all the justices of the court, and all should have a say and an opinion on the record.

> ***SECTION 56-5-5940. Seizure, sale or disposal of vehicle in violation of article constitutes conversion.***
>
> ***(a) Seizure, sale, or disposal of an abandoned or derelict motor vehicle in a manner inconsistent with the provisions of this article shall constitute conversion for which the owner shall have redress in any court of competent jurisdiction.***

There is no time limit under this statue and the ones that follow; that issue being what the original trial order being claimed was not timely appealed was based on. It makes the filing time statue the respondents argued a moot point. **They filed a summary judgment motion on a time limit that didn't exist and had a sympathetic judge grant it based on civil statute of Limitations standard not the conversion statute**. that does not exist on this act.

Thereby putting appellant Lynd in a system loop of appeals, filings, and technicalities, claiming time limit failures, on a matter that had **no time limit to begin with.**

ODD!! Out of all the these rulings; determining all these technical issues; nobody seems to see the most relevant one!!!

> **SECTION 56-5-5660.** Repealed by 2012 Act No. 242, Section 7, eff December 15, 2012.
>
> Former Section 56-5-5660 was entitled "Application for and issuance of disposal authority certificates" and was derived from 1962 Code Section 46-490.16; 1972 (57) 2459; 2004 Act No. 269, Section 6.
>
> **South Carolina Code 56-5-5660. Application for and issuance of disposal authority certificates**
>
> (A) Any person or unit of government upon whose property or in whose possession is found an abandoned vehicle, or any person who is the owner of a vehicle whose title certificate is faulty, lost, or destroyed, may apply to the sheriff or chief of police of the jurisdiction in which the vehicle is located for authority to sell or give the vehicle to a demolisher.
>
> (B) The application must give the name and address of the applicant, the year, make, model, and identification number of the vehicle, if ascertainable, along with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment, or that the title of the vehicle is lost or destroyed, or the reasons for the

defect of title in the owner. The applicant must execute an affidavit stating that the facts alleged are true and that no material fact has been withheld.

(C) If the sheriff or chief of police determines that the application is executed in proper form, and demonstrates that the vehicle has been abandoned upon the property of the applicant, the notification procedures set forth in Section 56-5-5630 must be followed. If the vehicle is not reclaimed in accordance with Section 56-5-5630, the sheriff or chief of police must follow the procedure set forth in Section 56-5-5660(D) for issuance of disposal authority certificates.

(D) If the application demonstrates that the vehicle is not abandoned but that the applicant appears to be the rightful owner, the sheriff or chief of police must give the applicant a certificate of authority to sell or give the vehicle to any demolisher for demolition, wrecking, or dismantling. A disposal authority certificate may contain multiple listings. The demolisher must accept such certificate in lieu of the certificate of title to the vehicle.

> *Conversion*
>
> *n. a civil wrong (tort) in which one converts another's property to his/her own use, which is a fancy way of saying "steals." Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's) hands, or purposely giving the impression the assets belong to him/her. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, as well as going to law enforcement authorities since conversion usually includes the crime of theft.*

Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to **another to the exclusion of the owner's rights. *Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E. (2d) 116 (1975). Powell v. A.K. Brown Motor Co., 200 S. C. 75, 20 S.E.2d 636 (1942).*** Conversion may arise by some illegal use or misuse, **or by illegal detention of another's chattel**. Id. Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified***. Id; 89 C.J.S. Trover and Conversion § 23 (1955).*** **To establish the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property. *Oxford Fin. Cos. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991).* A claim for conversion can be based on an unauthorized detention of property,** after demand. Castell v. Stephenson Finance Co., 244 S.C. 45, 135 S.E. (2d) 311 (1964). **Punitive damages are recoverable in conversion cases in the event it is determined the defendant's acts have been willful, reckless, and/or committed with conscious indifference to the rights of others.** Hunt v. Jordan, 286 S.C. 340, 333 S.E. (2d) 569 (Ct. App. 1985).

Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights. Ray v. Pilgrim Health & Life Ins. Co., 206 S.C. 344, 34 S.E. (2d) 218, 34 S.E. (2d) 218 (1945). Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel. Castell v. Stephenson Finance Co., 244 S.C. 45, 135 S.E. (2d) 311 (1964).

Conversion § 84 (1985); McPherson v. Neuffer & Hendrix, 45 S.C.L. (11 Rich.) 267, 281 (1858) **(if a party wrongfully assumes property belonging to another or wrongfully uses it, it amounts to a direct conversion and a demand and refusal are not necessary before bringing an action).**

"An action for conversion may be maintained by persons having the immediate right to possession of the article converted. Indeed, ordinarily, **an immediate right to possession at the time of conversion is all that is required in the way of title or possession to enable the plaintiff to maintain his action."**

The words maintain his action somehow seems to escape everyone involved in this.

SECTION 56-5-5635. Law enforcement towing and storage procedures; notification of registered owner; disposition of vehicle and personal property.

(B) Within ten days following a law enforcement's towing request, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop must provide to the sheriff or chief of police a list describing the vehicles remaining in the possession of the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop. ***A person who fails to provide the law enforcement agency with this list forfeits recovery of any storage fees that have accrued from the date of towing until the day after the mailing of the notification to the owner and all lienholders by certified or registered mail, return receipt requested, pursuant to Section 29-15-10.*** *Within ten days of receipt of this list,* ***the sheriff or chief of police must provide to the towing company or storage facility, the current owner's name, address, and a record of all lienholders along with the make, model, and identification number or a description of the vehicle at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop.*** *The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop having towed or received the vehicle must notify by registered or certified mail, return receipt requested, the last known registered owner and all lienholders of record that the vehicle has been taken into custody.*

(C) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, the proprietor, owner, or operator of the towing company,

storage facility, garage, or repair shop must provide notice by one publication in one newspaper of general circulation in the area from which the vehicle was abandoned which is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles.

(D) ***Before a vehicle is sold, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must apply to the appropriate titling facility including, but not limited to, the Department of Motor Vehicles or the Department of Natural Resources for the name and address of any owner or lienholder.*** *For nontitled vehicles, where the owner's name is known,* ***a search must be conducted through the Secretary of State's Office to determine any lienholders. The application must be on prescribed forms as required by the appropriate titling facility or the Secretary of State. If the vehicle has an out-of-state registration, an application must be made to that state's appropriate titling facility. When the vehicle is not titled in this State and does not have a registration from another state, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may apply to the sheriff or chief of police in the jurisdiction where the vehicle is stored to determine the state where the vehicle is registered. The sheriff or chief of police shall conduct a records search. This search must include, but is not limited to, a search on the National Crime Information Center and any other appropriate search that may be conducted with the vehicle's identification number. The sheriff or chief of police must supply, at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the name of the state in which the vehicle is titled.***

(E) The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop that has towed and stored a vehicle has a lien against the vehicle and may have the vehicle sold at public auction pursuant to Section 29-15-10. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may hold the license tag of any vehicle until all towing and storage costs have been paid, or if the vehicle is not reclaimed, until it is declared abandoned and sold. Storage costs may be charged that have accrued before the notification of the owner and lienholder, by certified or registered mail, of the location of the vehicle. ***Notification to the owner and lienholder by the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must occur within five days, after receiving the owner's and lienholders' identities from the appropriate law enforcement agency. If the notice is not mailed within this period, storage costs after the five-day period must not be charged until the notice is mailed. If the vehicle is not reclaimed within thirty days after the day the notice is mailed, return receipt requested, the vehicle is considered abandoned and may be sold by the magistrate pursuant to the procedures set forth in Section 29-15-10.***

(F) After the vehicle is in the possession of the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the owner of the vehicle as demonstrated by providing a certificate of registration has one opportunity to remove from the vehicle any personal property not attached to the vehicle. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

(G) ***When a law enforcement agency stores a vehicle at a law enforcement facility, the agency***

must follow the notification procedures contained in this section and submit vehicle information to a magistrate in the county where the vehicle is stored to provide for the sale of the vehicle at public auction. *A law enforcement agency is exempt from paying filing fees in any matter related to the towing and storing of a vehicle.*

The order goes on to list a footnote (1) *claiming " although appellant was unable to inform this court"* again clearly showing the court is aware that now the appellant Lynd, **was at the time represented by counsel, and counsel would have received the notice not Lynd.** And that counsel refused to forward Lynd his case file, notes or the original documents supplied to counsel.

This after the court ILLEGALLY, gave the respondents time to go back to the trial court and get a new order signed over a year after the appeal was started, **and after Lynd's brief was already filed !!!** And they had been served a copy of Lynd's brief and were able to carefully word the new order to counter that brief. **Oh! so fair and just!** Inexcusable!No cloud over that act.

But the Court can do that but can't call in the counsel of record to find out why he didn't file the notice of appeal to preserve Lynd's rights, why he allegedly filed the post relief motion late, **or when he received the notice in question**.

The order goes on to state the only order left before the court is the post judgment motion order. And that being so a new brief is required, the court clearly failed to view those motions, **in them is every argument listed in the initial brief on file, there is no need to do a new brief**, those arguments are what is in the post judgment motion, even the respondents response make that claim. So the initial brief covering the basis for the summary judgment is correct because that is the arguments in the post judgment brief, and is need to preserve appeal to the supreme court.

It appears to be the court, thru that part of the order, is trying to make an excuse or alleviate the parties from having to answer on the conversion, the closing of the SLED investigation, and the certified letter never sent. If those parts are removed from the brief, they cannot be argued on further appeal. But being that is the gist of the case, and if removed from the

brief will not be allowed to be argued before the Supreme Court as a ground, and the upcoming Federal Court, they cannot be removed from the brief. So the need for a new initial brief is moot, the brief on file is needed as is to preserve the grounds argued in that brief, and are directly correlated to the post judgment motion on file and the grounds in it that this court order is referring too.

Most attorneys familiar with appeals and writs in South Carolina state this should have been removed to the Supreme Court long ago. It is dealing with theft and collusion of two different state sponsored police agencies. Maybe this court should consider doing so, in the name of equity and speediness.

David Scot Lynd

VS

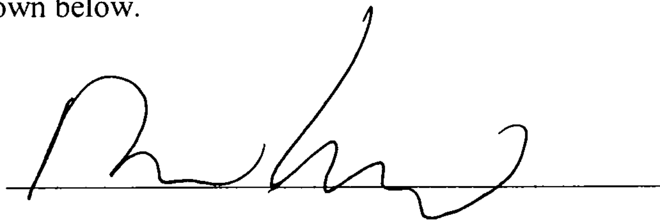
Isle of Palms

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

South Carolina Law Enforcement Division

PROOF OF SERVICE

I hereby certify that the above named partied were served this reply by **U.S.P.S. mail on 4-30-2018** to the address on file with the court shown below.



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