

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

JOCelyn NEWMAN, CIRCUIT COURT JUDGE

RECEIVED

JUN 15 2018

CASE No. 2012-CP-40-02456

APPELLATE CASE No. 2017-001124

SC Court of Appeals

REGINALD ANDRE BLANDING, WANDA
BLANDING, AND BRITTANI BLANDING,
BY AND THROUGH HER GUARDIAN AD
LITEMS, REGINALD ANDRE BLANDING
AND WANDA BLANDING,

PLAINTIFFS,

OF WHOM REGINALD ANDRE
BLANDING WANDA BLANDING, AND
BRITTANI BLANDING ARE

APPELLANTS,

V.

LEON LOTT, IN HIS OFFICAL
CAPACITY,

RESPONDENT.

RECORD ON APPEAL, VOLUME I

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding, and
Brittani Blanding, by and through her Guardian
ad Litem, Reginald Andre Blanding and Wanda
Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, and Lieutenant Cowan,

Defendants.

IN THE COURT OF COMMON PLEAS

OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2012-CP-40-02456

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 DEC -9 PM 2:54

RICHLAND COUNTY
FILED

Plaintiffs have asked the Court for an Order allowing them to amend their complaint pursuant to Rule 15(a), SCRCP. Plaintiffs have amended their claims to seek recovery from Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant. Plaintiffs assert negligence causes and civil rights causes of actions under 42 U.S.C. §1983.

Rule 15(a) requires that leave to amend a complaint "be freely given if justice so requires..." Our Courts have interpreted the rule liberally. "Leave to amend pleadings pursuant to Rule 15, SCRCP shall be liberally and freely given when justice so requires and does not prejudice any other party." *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (S.C. App. 1998). "This rule strongly favors amendments and the Court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (S.C. App. 1987).

I find good cause to allow Plaintiffs to amend their complaint.

ROA 001

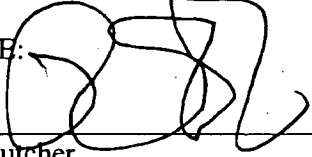
AND IT IS SO ORDERED.

L. Cusly Manning
Circuit Court Judge

Columbia, South Carolina

13 November, 2013

I SO MOVE:


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CONSENT UNDER AMENDING COMPLAINT
C/A # 12-CP-40-2456 -106

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

Reginald Andre Blanding; Wanda)
Blanding; Brittani Blanding, *by and through*)
her Guardian ad Litem Reginald Andre)
Blanding and Wanda Blanding,)

Plaintiffs,)

v.)

Richland County Sheriff's Department;)
Leon Lott; Rickey E. Johnson, Jr.; Frida)
W. Wyatt; Adrian P. Thompson; Adam C.)
Cornwell; Sara N. Giron; George C. Becker;)
Unknown Confidential Informant;)
Lieutenant Cowan; Micheal C. Nawrockyj,)

Defendants.)

2012CP4008456

Civil Action No. 3:14-cv-00299-JMC

ORDER AND OPINION

2015 JUL 21 PM 2:32

Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding (collectively "Plaintiffs") filed the underlying action alleging a violation of their constitutional rights under 42 U.S.C. § 1983 by Defendants George C. Becker, Adam C. Cornwell, Lieutenant Cowan, Sara N. Giron, Rickey E. Johnson, Jr., Leon Lott, Micheal Nawrockyj, Richland County Sheriff's Department, Adrian P. Thompson, and Frida W. Wyatt (collectively "Defendants"). (ECF No. 1-1.) Plaintiffs also allege state law tort claims against Defendants. This matter is before the court pursuant to Defendants' Motion for Summary Judgment (ECF No. 19).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2)(g) (D.S.C.), the matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On July 15, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that the court (1) grant Defendants' Motion for Summary Judgment, in part, as to

all of the federal claims, and as to the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment; (2) decline to exercise supplemental jurisdiction over the remaining state law claims; and (3) remand the remaining state law claims of gross negligence and defamation to the Richland County Court of Common Pleas. (ECF No. 29.) Plaintiff did not file objections to the Magistrate Judge's recommendation. For the reasons set forth herein, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings.

I. JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's Amended Complaint asserts claims under 42 U.S.C. § 1983.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The following relevant facts are viewed in a light most favorable to Plaintiffs.

Plaintiffs' claims all arise from an incident on October 20, 2011, when Defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched Plaintiffs' residence pursuant to a search warrant. On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. (ECF No. 19-1 at 1.) Senior Deputy Ricky Johnson was assigned and

spearheaded the investigation into Hutchinson's complaint. (*Id.* at 2.) Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (*Id.* at 3.) This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes. (*Id.*)

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. (*Id.*) Johnson employed his confidential informant ("CI") in this investigation. At this point, the CI had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. (*Id.*) The CI was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. (*Id.*) The CI returned twenty to thirty minutes later. (*Id.*) The CI's debriefing yielded the following: The CI had a conversation with a male on a bicycle concerning the purchase of narcotics. The male on a bicycle escorted the CI to one of the trailers in question, where the CI made a purchase from "a black male named, Peanut." (*Id.* at 4.) The CI also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." (*Id.*) The CI then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base. (*Id.*)

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. (*Id.* at 5.) Johnson additionally ascertained that Blanding was the last name of the owner

of the house. (*Id.*) Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house. (*Id.*)

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Carolina W. Streater who issued the search warrant at about 12:20 p.m. (*Id.*) The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. (*Id.*) Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. (*Id.* at 6.) Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. (*Id.*) Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. (*Id.*)

Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. (*Id.*) Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. (*Id.*) Wyatt conducted a frisk search of the females with negative results. (*Id.*)

This action was originally brought in the Richland County Court of Common Pleas by Plaintiffs against the named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1-1 at 16 ¶ 85-17 ¶ 93.) Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. (*Id.* at 8 ¶ 30-15 ¶ 80.) Defendants assert they were acting within the course and scope of their official duties, and as a result, all named RCSD Defendants are entitled to employee immunity under S.C. Code Ann. § 15-78-70(a) and (b) (1976) and Plaintiffs' claims must be dismissed as a matter of law. (ECF No. 19-1 at 7 n.2.) Defendants assert that Plaintiffs' Amended Complaint challenges the

adequacy of the information relied upon by the DST, the sufficiency of the search warrant, and the nature and scope of the frisk search with respect to Brittani, as well as alleged statements made by Defendant Cowan directly or on behalf of the Defendant Sheriff concerning this residence being involved with drug transactions. (ECF No. 19-1 at 7.) Defendants further assert that they acted appropriately and reasonably at all relevant times and categorically deny that they violated Plaintiffs' constitutional rights. Consequently, Defendants' RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Fed. R. Civ. P. 56 on the following grounds: (1) Plaintiffs Reginald and Wanda Blanding have failed to state causes of action against Defendants for illegal seizure and false imprisonment under 42 U.S.C. § 1983, (2) Defendant investigators were justified in detaining and searching Brittani, (3) pursuant to *Harlow v. Fitzgerald*, Defendant investigators are entitled to qualified immunity from all liability, (4) Defendants RCSD and Sheriff Lott are not amenable to suit, (5) Plaintiffs have not stated a negligence claim and these causes of action should be dismissed, (6) Brittani failed to state a claim against Defendants for battery, and (7) Plaintiffs have failed to state a claim for defamation against Defendants. (ECF No. 19-1 at 7-8.) Plaintiffs filed a Response in Opposition to Defendants' Motion for Summary Judgment (ECF Nos. 24, 25) and Defendants filed a Reply (ECF No. 27).

III. LEGAL STANDARDS AND ANALYSIS

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo*

determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636 (b)(1).

Objections to the Report and Recommendation must specifically identify portions of the Report and Recommendation and the basis for those objections. Fed. R. Civ. P. 72(b). "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Failure to timely file specific written objections to a report and recommendation will result in a waiver of the right to appeal from an order from the court based upon the report and recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). If the plaintiff fails to properly object because the objections lack the requisite specificity, then *de novo* review by the court is not required.

Fed. R. Civ. P. 56(a) mandates the entry of summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts

that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” (*Id.* at 248.) The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. (*Id.* at 324.) Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. (*Id.*) Under this standard, the existence of a mere scintilla of evidence in support of the non-movant’s position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 251. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc’ns Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989).

Summary judgment is particularly appropriate in cases involving the qualified immunity defense because qualified immunity exists to protect government officials not only from liability, but also from trial. *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The Fourth Circuit has also strongly announced a preference to resolve civil rights cases involving qualified immunity through dismissal short of trial. *Pittman v. Nelms*, 87 F.3d 116 (4th Cir. 1996). The court will thoroughly address each of Plaintiff’s objections in turn.

In Plaintiffs’ Response in Opposition to Defendants’ Motion for Summary Judgment (ECF No. 24, 25), Plaintiffs concede that Defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (ECF No. 24-1 at 1-2, 19.) Plaintiffs further concede that all Defendants are entitled to summary judgment as to the following state

law claims: negligent supervision (Count Two); negligent training (Count Three); trespassing (Count Four); assault (Count Five); battery (Count Six); and false imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are Plaintiffs' claims of gross negligence (Count One) and defamation (Count Eight). Plaintiffs ask the court to remand this case to state court for further proceedings. (*Id.* at 19.)

In Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (ECF No. 24), Brittani confirms that Plaintiffs' neighborhood "was known as a high-drug area." (ECF No. 24-2 at 111:15-18.) Brittani further confirms that "Richland County Sheriff's Department maintained a visible police presence in [Plaintiffs'] neighborhood and would park marked patrol cars across the road and to the right of [Plaintiffs'] home." (*Id.* at 109:2-18; 111:1-18; 112:4-10; 112:24-113:16.) Additionally, "Once the police officers learned from Aunt May (Reginald Blanding's sister) that they had the wrong house, they began wrapping up the search." (*Id.* at 93:17-94:12.) As Defendants were finishing the search, Reginald Blanding arrived home. (*Id.* at 91:8-10, 21-92:2.) According to Brittani, Defendants were rude and unapologetic, and it took about a week before the house was cleaned up. (*Id.*)

Brittani confirmed that Gregory Samuels is also known as "Peanut." (*Id.* at 35:3-9.) Gregory Samuels is a first cousin of Brittani and the nephew of Reginald and Wanda Blanding. (*Id.* at 10-16.) Gregory Samuels was not in jail at the time of the raid on the home. (*Id.* at 38:2-9.) Plaintiffs believed that [Gregory Samuels] had been in and out of jail and that he was involved with drugs. (*Id.* at 84:3-18.) Gregory Samuels sometimes lives in a trailer behind Plaintiffs' property, about 80 to 100 yards from Plaintiffs' home. (*Id.* at 98:10-100:6; 103:9-12; ECF No. 24-3 at 86:12-16.)

In the Report and Recommendation, the Magistrate Judge observed that in light of

Plaintiffs' concession to Defendants' Motion for Summary Judgment as to all federal claims and the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment, the court should exercise discretion and remand the remaining state law claims of gross negligence and defamation for further proceedings. (ECF No. 29 at 3 (citing 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal)).) Plaintiffs did not file objections to the Magistrate Judge's recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). After carefully reviewing the record and the applicable law, the court agrees with the Magistrate Judge's findings. Accordingly, Defendants' Motion for Summary Judgment should be granted as outlined by the Magistrate Judge.

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings. The court adopts the Magistrate Judge's Report and Recommendation (ECF No. 29) and incorporates it herein by reference.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

July 6, 2015
Columbia, South Carolina

A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK

BY: *Mary-Helen Walker*
DEPUTY CLERK



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Reginald Andre Blanding; Wanda)
Blanding; Brittani Blanding, *by and through*)
her Guardian ad Litem Reginald Andre)
Blanding and Wanda Blanding,)

Plaintiffs,)

v.)

Richland County Sheriff's Department;)
Leon Lott; Rickey E. Johnson, Jr.; Frida)
W. Wyatt; Adrian P. Thompson; Adam C.)
Cornwell; Sara N. Giron; George C. Becker;)
Unknown Confidential Informant;)
Lieutenant Cowan; Micheal C. Nawrockyj,)

Defendants.)

Civil Action No. 3:14-cv-00299-JMC

AMENDED ORDER AND OPINION

Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding (collectively "Plaintiffs") filed the underlying action alleging a violation of their constitutional rights under 42 U.S.C. § 1983 by Defendants George C. Becker, Adam C. Cornwell, Lieutenant Cowan, Sara N. Giron, Rickey E. Johnson, Jr., Leon Lott, Micheal Nawrockyj, Richland County Sheriff's Department, Adrian P. Thompson, and Frida W. Wyatt (collectively "Defendants"). (ECF No. 1-1.) Plaintiffs also allege state law tort claims against Defendants. This matter is before the court pursuant to Defendants' Motion for Summary Judgment (ECF No. 19).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2)(g) (D.S.C.), the matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On July 15, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that the court (1) grant Defendants' Motion for Summary Judgment, in part, as to

all of the federal claims, and as to the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment; (2) decline to exercise supplemental jurisdiction over the remaining state law claims; and (3) remand the remaining state law claims of gross negligence and defamation to the Richland County Court of Common Pleas. (ECF No. 29.) Plaintiff did not file objections to the Magistrate Judge's recommendation. For the reasons set forth herein, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings.

I. JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's Amended Complaint asserts claims under 42 U.S.C. § 1983.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The following relevant facts are viewed in a light most favorable to Plaintiffs.

Plaintiffs' claims all arise from an incident on October 20, 2011, when Defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched Plaintiffs' residence pursuant to a search warrant. On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. (ECF No. 19-1 at 1.) Senior Deputy Ricky Johnson was assigned and

spearheaded the investigation into Hutchinson's complaint. (*Id.* at 2.) Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (*Id.* at 3.) This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes. (*Id.*)

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. (*Id.*) Johnson employed his confidential informant ("CI") in this investigation. At this point, the CI had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. (*Id.*) The CI was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. (*Id.*) The CI returned twenty to thirty minutes later. (*Id.*) The CI's debriefing yielded the following: The CI had a conversation with a male on a bicycle concerning the purchase of narcotics. The CI then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." (*Id.* at 4; *see also* ECF No. 19-14 at 11-12; ECF No. 19-16 at 3.) The CI also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." (*Id.*) The CI then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base. (*Id.*)

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. (*Id.* at 5.) Johnson additionally ascertained that Blanding was the last name of the owner

of the house. (*Id.*) Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house. (*Id.*)

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Carolina W. Streater who issued the search warrant at about 12:20 p.m. (*Id.*) The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. (*Id.*) Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. (*Id.* at 6.) Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. (*Id.*) Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. (*Id.*)

Meanwhile, Plaintiff Brittani Blanding (“Brittani”) and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. (*Id.*) Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. (*Id.*) Wyatt conducted a frisk search of the females with negative results. (*Id.*)

This action was originally brought in the Richland County Court of Common Pleas by Plaintiffs against the named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1-1 at 16 ¶ 85–17 ¶ 93.) Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. (*Id.* at 8 ¶ 30–15 ¶ 80.) Defendants assert they were acting within the course and scope of their official duties, and as a result, all named RCSD Defendants are entitled to employee immunity under S.C. Code Ann. § 15-78-70(a) and (b) (1976) and Plaintiffs’ claims must be dismissed as a matter of law. (ECF No. 19-1 at 7 n.2.) Defendants assert that Plaintiffs’ Amended Complaint challenges the

adequacy of the information relied upon by the DST, the sufficiency of the search warrant, and the nature and scope of the frisk search with respect to Brittani, as well as alleged statements made by Defendant Cowan directly or on behalf of the Defendant Sheriff concerning this residence being involved with drug transactions. (ECF No. 19-1 at 7.) Defendants further assert that they acted appropriately and reasonably at all relevant times and categorically deny that they violated Plaintiffs' constitutional rights. Consequently, Defendants' RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Fed. R. Civ. P. 56 on the following grounds: (1) Plaintiffs Reginald and Wanda Blanding have failed to state causes of action against Defendants for illegal seizure and false imprisonment under 42 U.S.C. § 1983, (2) Defendant investigators were justified in detaining and searching Brittani, (3) pursuant to *Harlow v. Fitzgerald*, Defendant investigators are entitled to qualified immunity from all liability, (4) Defendants RCSD and Sheriff Lott are not amenable to suit, (5) Plaintiffs have not stated a negligence claim and these causes of action should be dismissed, (6) Brittani failed to state a claim against Defendants for battery, and (7) Plaintiffs have failed to state a claim for defamation against Defendants. (ECF No. 19-1 at 7-8.) Plaintiffs filed a Response in Opposition to Defendants' Motion for Summary Judgment (ECF Nos. 24, 25) and Defendants filed a Reply (ECF No. 27).

III. LEGAL STANDARDS AND ANALYSIS

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo*

determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636 (b)(1).

Objections to the Report and Recommendation must specifically identify portions of the Report and Recommendation and the basis for those objections. Fed. R. Civ. P. 72(b). "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Failure to timely file specific written objections to a report and recommendation will result in a waiver of the right to appeal from an order from the court based upon the report and recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). If the plaintiff fails to properly object because the objections lack the requisite specificity, then *de novo* review by the court is not required.

Fed. R. Civ. P. 56(a) mandates the entry of summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts

that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” (*Id.* at 248.) The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. (*Id.* at 324.) Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. (*Id.*) Under this standard, the existence of a mere scintilla of evidence in support of the non-movant’s position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 251. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc’ns Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989).

Summary judgment is particularly appropriate in cases involving the qualified immunity defense because qualified immunity exists to protect government officials not only from liability, but also from trial. *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The Fourth Circuit has also strongly announced a preference to resolve civil rights cases involving qualified immunity through dismissal short of trial. *Pittman v. Nelms*, 87 F.3d 116 (4th Cir. 1996). The court will thoroughly address each of Plaintiff’s objections in turn.

In Plaintiffs’ Response in Opposition to Defendants’ Motion for Summary Judgment (ECF No. 24, 25), Plaintiffs concede that Defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (ECF No. 24-1 at 1-2, 19.) Plaintiffs further concede that all Defendants are entitled to summary judgment as to the following state

law claims: negligent supervision (Count Two); negligent training (Count Three); trespassing (Count Four); assault (Count Five); battery (Count Six); and false imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are Plaintiffs' claims of gross negligence (Count One) and defamation (Count Eight). Plaintiffs ask the court to remand this case to state court for further proceedings. (*Id.* at 19.)

In Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (ECF No. 24), Brittani confirms that Plaintiffs' neighborhood "was known as a high-drug area." (ECF No. 24-2 at 111:15-18.) Brittani further confirms that "Richland County Sheriff's Department maintained a visible police presence in [Plaintiffs'] neighborhood and would park marked patrol cars across the road and to the right of [Plaintiffs'] home." (*Id.* at 109:2-18; 111:1-18; 112:4-10; 112:24-113:16.) Additionally, "Once the police officers learned from Aunt May (Reginald Blanding's sister) that they had the wrong house, they began wrapping up the search." (*Id.* at 93:17-94:12.) As Defendants were finishing the search, Reginald Blanding arrived home. (*Id.* at 91:8-10, 21-92:2.) According to Brittani, Defendants were rude and unapologetic, and it took about a week before the house was cleaned up. (*Id.*)

Brittani confirmed that Gregory Samuels is also known as "Peanut." (*Id.* at 35:3-9.) Gregory Samuels is a first cousin of Brittani and the nephew of Reginald and Wanda Blanding. (*Id.* at 10-16.) Gregory Samuels was not in jail at the time of the raid on the home. (*Id.* at 38:2-9.) Plaintiffs believed that [Gregory Samuels] had been in and out of jail and that he was involved with drugs. (*Id.* at 84:3-18.) Gregory Samuels sometimes lives in a trailer behind Plaintiffs' property, about 80 to 100 yards from Plaintiffs' home. (*Id.* at 98:10-100:6; 103:9-12; ECF No. 24-3 at 86:12-16.)

In the Report and Recommendation, the Magistrate Judge observed that in light of

Plaintiffs' concession to Defendants' Motion for Summary Judgment as to all federal claims and the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment, the court should exercise discretion and remand the remaining state law claims of gross negligence and defamation for further proceedings. (ECF No. 29 at 3 (citing 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal)).) Plaintiffs did not file objections to the Magistrate Judge's recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). After carefully reviewing the record and the applicable law, the court agrees with the Magistrate Judge's findings. Accordingly, Defendants' Motion for Summary Judgment should be granted as outlined by the Magistrate Judge.

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings. The court adopts the Magistrate Judge's Report and Recommendation (ECF No. 29) and incorporates it herein by reference.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

August 17, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding,
And Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding
and Wanda Blanding,

Plaintiffs,

v.

Richland County Sherriff's Department, Leon
Lott, Lieutenant Cowan, Rickey E. Johnson,
Jr., Frieda W. Wyatt, Adrian P. Thompson,
Adam C. Cornwell, Sara N. Giron, George C.
Becker, Michael C. Nawrockyj, and Unknown
Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2012-CP-40-02456

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

RICHLAND COUNTY
FILED
2016 MAR -4 AM 8:00
JEANETTE W. MCGRIDG
C.C.P. & G.S.

This case came before the Court on January 13, 2016, on the Motion for Summary Judgment filed by Defendants. Counsel for both parties were present at the hearing. Plaintiff opposed the motion.

STANDARD

Summary judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of

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evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial. *Garvin v. Bi-Lo, Inc.*, 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

PROCEDURAL HISTORY

On December 23, 2013, this action was originally brought in this Court by Plaintiffs against named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. On February 4, 2014, Defendants removed the matter to U.S. District Court.

On September 22, 2014, Defendants filed its motion for summary judgment. On August 17, 2015, and following litigation in federal court for eighteen months, District Court Judge J. Michelle Childs issued an Amended Order and Opinion ("District Court Order") with respect to the present facts. In the District Court Order, Judge Childs granted Defendants' Motion for Summary Judgment in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The District Court declined to exercise supplemental jurisdiction over the remaining state law claims. The Court also remanded this case to the Richland County Court of Common Pleas for further proceedings.

Following remand of Plaintiffs' claims of gross negligence and defamation, Defendants RSCD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Rule 56, SCRCP.

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FINDINGS OF FACT

Plaintiffs' claims arise from an incident on October 20, 2011, when Defendants who at all relevant times were employees with Defendant Richland County Sheriff's Department ("RCSD"), searched Plaintiffs' residence pursuant to a search warrant.

On Friday, October 14, 2011, the RCSD Drug Suppression Team ("DST") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson Complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into Hutchinson's complaint.

Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes.

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. Johnson employed his confidential informant ("informant") in this investigation. At this point, the informant had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results.

The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later. The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on

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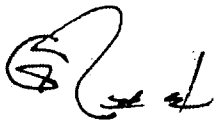
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the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." The informant then specifically pointed out to Johnson and Cornwell the location where the purchase was made. The substance was field tested and returned positive results for cocaine base.

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Caroline W. Streater who issued the search warrant at about 12:20 p.m. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants.

Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. Meanwhile, Plaintiff Brittani Blanding and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. Officers approached Brittani Blanding and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. Wyatt conducted a frisk search of the females with negative results.



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Additionally, in the light most favorable to Plaintiffs, the Court recognizes the following background relating to Plaintiffs' defamation claim. Within an hour after Ms. Wanda Blanding returned home following the execution of the search warrant, she contacted two local television news stations. Ms. Blanding coordinated and invited the television news media into her house and permitted them to publicize personal information on television, including hers and her husband's names, their places of employment, and information related to her minor children. Ms. Blanding allowed an investigative journalist with a news camera to enter her house and film the interior. WIS-TV produced and aired the new segment depicting the condition of each room following the execution of the search warrant. As part of this segment, Major Chris Cowan, the Public Information Officer for the Sheriff was questioned by a local television reporter as to the relevant events. Cowan's knowledge of the investigation stemmed solely from representations from Defendant investigators. Specifically, Cowan indicated that, "the drugs were purchased from that home – we purchased from a family member out of the house."

ANALYSIS

I. Absolute Sovereign Immunity

The South Carolina Tort Claims Act provides that a governmental entity is not liable for a loss resulting from the "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." S.C. Code Ann. §15-78-60(3).

On October 20, 2011, Defendant Johnson appeared before the Richland County magistrate judge who issued the search warrant of Plaintiffs' residence. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. Participating in the execution of the search warrant were Defendants Johnson, Wyatt, Thompson, and Giron.



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S.C. Code Ann. § 15-78-60(3) provides that a governmental entity cannot be held liable for the execution of a lawful search warrant, regardless of a loss allegedly resulting therefrom. It is uncontroverted in this matter that the search was effectuated pursuant to a facially valid search warrant. Therefore, under the South Carolina Tort Claims Act, Defendants are entitled to absolute sovereign immunity in its execution of the facially valid search warrant.

II. Gross Negligence Claim

It is further undisputed that at the relevant times, Defendant investigators conducted a narcotics investigation followed by obtaining and executing a search warrant at Plaintiffs' residence. Plaintiffs assert that Defendant investigators were grossly negligent in performing their investigation.

In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." *Id.* at 486, 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation.

Moreover, it is well settled under South Carolina law that intentional torts "cannot be committed in a negligent manner." *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (2000). Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), the Supreme Court explained that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liability for injury to person or property, when

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such injury is not the result of premeditation and formed intention." *Id.* at 22, 134 S.E. at 135. Thus, intent and negligence are mutually exclusive; and there is no claim of negligence that flows from intentionally tortious conduct.

This Court finds that the entire investigatory process as well as the obtaining and execution of the search warrant are functions which, by their very nature, are conducted with premeditation and formed intention. Thus, these acts fall within one of the established tort classifications that includes intent to commit the act complained of as an element. As a consequence, intent to commit a wrongful act, such as intent to harm, is not a material element of ordinary actionable negligence.

Therefore, because allegations of intent to commit a wrongful act are irrelevant in a negligence action, these Defendants are not liable for their intentional acts at the relevant times and there is no claim for negligence stemming from the acts.

III. Employee Immunity Under The South Carolina Tort Claims Act

The South Carolina Tort Claims Act is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. S.C. Code Ann. §15-78-200. In interpreting this statute, the South Carolina Court of Appeals concluded that tort claims against a governmental employee must be brought against "the governmental entity rather than the individual governmental employee." *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413, 417 (Ct. App. 2004).

Plaintiffs have presented no evidence that these deputies or investigators were not acting within the scope of their official duties as law enforcement officers for the RCSD during the investigation, procuring, or execution of the search warrant. Moreover, Plaintiffs have not shown that any of the exceptions set forth in Section 15-78-70(c) are applicable. Consequently,

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Defendants Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Mawrockyj are entitled to absolute employee immunity under the South Carolina Tort Claims Act and Richland County Sherriff should be substituted in their stead.¹

IV. Defamation Claim

The cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.3d 497, 501 (1998). To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). However, under the law of defamation, certain communications give rise to qualified privileges, including the privilege to publish fair and substantially accurate reports of judicial and other governmental proceedings without incurring liability. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.3d 30 (1982).

Based on the arguments of counsel and the parties' pleadings, memoranda of law, and related documents, this Court determines there are disputed issues of fact regarding Plaintiff's defamation claims. Consequently, summary judgment is denied as to Plaintiffs' defamation claim.

¹ It is clear under the laws of the State of South Carolina, including the State Constitution, that the Richland County Sheriff is the proper legal entity subject and amenable to suit. *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992). In South Carolina, there is no legal entity known as the Richland County Sheriff's Department.



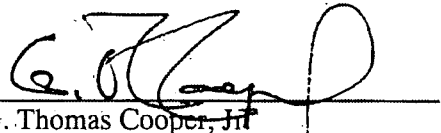
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Therefore, it is Ordered that:

- A. Defendants' Motion for Summary Judgment as to Plaintiffs' Gross Negligence Claim is hereby GRANTED and the claim is dismissed with prejudice.
- B. Defendants' Motion for Summary Judgment as to Plaintiffs' Defamation Claim is hereby DENIED.
- C. Defendants Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Michael C. Nawrockyj are dismissed with prejudice and the Richland County Sheriff is substituted in their stead.

IT IS SO ORDERED.

Cowan, R, South Carolina


G. Thomas Cooper, Jr.
Presiding Judge

March 3, 2016

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 12 -CP-40-2456

Reginald A. Blanding, et al

Richland County Sheriff's
Department, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 4(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Case dismissed. Formal Order to follow.

Dated at Columbia, South Carolina, this 30th day of November, 2016.

Jocelyn Yerman
PRESIDING JUDGE

This judgment was entered on the 2 day of December, 2016, and a copy mailed first class this 2 day of December, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Robert J. Butcher

Robert Garfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
CLERK OF COURT ROA 032

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) Civil Action No.: 12-CP-40-2456

)
)
) Reginald Andre Blanding, Wanda Blanding, and
) Brittani Blanding, by and through her Guardian
) ad Litem, Reginald Andre Blanding and Wanda
) Blanding,

)
) Plaintiffs,

ORDER

)
) v.

)
) Leon Lott, in his official capacity,

)
) Defendant.
)
)
)

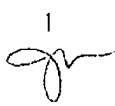
This matter came before the Court for trial on November 28, 2016 at the Richland County Judicial Center for the sole cause of action of defamation. Present at the trial were counsel for Defendant, Robert D. Garfield, Esq. and Jasmine D. Wyman, Esq.; and for Plaintiffs, Robert J. Butcher, Esq. and Deborah J. Butcher, Esq. For the reasons discussed below, the Court grants Defendants' Renewed Motion for Summary Judgment.

I. PROCEDURAL BACKGROUND

On April 2, 2012, this action was originally brought in this Court by Plaintiffs against Defendants Richland County Sheriff's Department ("RCSD"), Sheriff Lott, and Lt. Chris Cowan for causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation.

On December 23, 2013, Plaintiffs filed an Amended Complaint against Defendants RCSD, Leon Lott, Lieutenant Cowan, Rickey Johnson, Jr., Frieda Wyatt, Adrian Thompson, Adam Cornwell, Sara Giron, George Becker, Michael Nawrockyj, and the unknown confidential informant, for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983 as well as the aforementioned state court causes of action. On February 4, 2014, Defendants removed the matter to U.S. District Court.

On September 22, 2014, Defendants filed their motion for summary judgment in District Court. On August 17, 2015, District Court Judge J. Michelle Childs issued an Amended Order

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and Opinion ("District Court Order") with respect to the present facts. *See, Blanding v. RCSD, et al.*, 2015 WL 4929251 (D.S.C.)(unpublished). In the District Court Order, Judge Childs granted Defendants' motion for summary judgment in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The District Court declined to exercise supplemental jurisdiction over the remaining state law claims. The Court also remanded this case to this Court for further proceedings.

Following the remand of Plaintiffs' claims of gross negligence and defamation, the then-named Defendants moved for summary judgment pursuant to Rule 56, SCRPC. On March 4, 2016, the Honorable G. Thomas Cooper issued an order granting in part and denying in part Defendants' motion for summary judgment. The Court dismissed Plaintiffs' gross negligence claim with prejudice while denying the motion as to the defamation cause of action. Finally, all individuals were dismissed with prejudice and the Richland County Sheriff in his official capacity, was substituted in their stead. On March 18, 2016, the Defendant Sheriff filed a motion for reconsideration pursuant to Rule 59(e), SCRPC, respectfully addressing several items in which Judge Cooper overlooked when denying summary judgment as to the defamation claim. On April 22, 2016, the Court issued an Order denying this motion.

This matter was called for trial on November 28, 2016. Prior to the selection of the jury, this Court heard arguments concerning Defendant's motion in limine seeking preclusion of certain evidence in light of the earlier final judgments in the case which were valid and decided on the merits. Defendant's motion was based on grounds of collateral estoppel, judicial estoppel, and/or issue preclusion. On November 29, 2016, this Court made specific rulings as to the motion in limine as well as other rulings of law. On December 1, 2016, Defendant renewed his motion for summary judgment and this Court has agreed to hear and rule upon Defendant's dispositive motion.

II. RELEVANT FACTUAL BACKGROUND

The District Court Order contained certain factual findings within the section entitled, "Relevant Factual and Procedural Background." The following recitation is primarily derived from these findings of fact as outlined in the District Court's Order.

On Friday, October 14, 2011, the RCSD Drug Suppression Team ("DST") received a written complaint from then-County Councilperson Val Hutchinson about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Senior Deputy Johnson was assigned and spearheaded the investigation into Hutchinson's complaint.

Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. This process involved uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes.

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. Johnson employed his confidential informant ("informant") in this investigation. At that point, the informant had been involved in approximately thirty narcotics investigations and was considered to be extremely trustworthy given his past results.¹

The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later. The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." The informant then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base.

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping, used for tax purposes, which returned a location of 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

¹ In an Order issued on October 1, 2013, the Honorable Alison R. Lee denied Plaintiffs' motion to compel discovery of the identity of the informant and associated information with respect to this individual.

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Caroline W. Streater who issued the search warrant at about 12:20 p.m. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants.

Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. Participating in the execution were Johnson, Wyatt, Thompson, and Giron. Once the investigators discovered the home was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. Officers approached Brittani, questioned her, and told her to contact her parents to have them return home as soon as practicable. Wyatt conducted a frisk search of the females with negative results. The search of the premises also yielded negative results, however, it was during this execution that the investigators discovered that "Peanut" (positively identified as Gregory Samuel) was actually Brittani's cousin.

Within an hour after Plaintiff Wanda Blanding returned home following the execution of the search warrant, she contacted two local television news stations. Ms. Blanding coordinated and invited the television news media into her house and permitted them to publicize personal information on television, including hers and her husband's names, their places of employment, and information related to her minor children. Ms. Blanding allowed an investigative journalist and a news camera to enter her house and film the interior. WIS-TV produced and aired the news segment depicting the condition of each room.

As part of this news segment, Major Cowan, then-Public Information Officer for the Defendant Sheriff was questioned by Jody Barr, a WIS-TV reporter as to the relevant events. Cowan's knowledge of the investigation stemmed solely from representations from Defendant investigators. Specifically, Cowan indicated that, "the drugs that we purchased out of that home -- we purchased from a family member of that home -- we purchased the drugs out of the home."

III. STANDARD OF REVIEW

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRPC. In ruling on a motion for

summary judgment, the Court considers the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

"Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper." *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing *Bloom v. Ravoir*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000)). A party opposing summary judgment may not rest upon the mere allegations of the pleadings but must instead set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (Ct. App. 1994).

A motion for summary judgment may be renewed and heard in the discretion of the Court. See, Rule 56(b), SCRCP ("[a] party against whom a claim ... is asserted ... may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."); see also, *Dorrell v. SCDOT*, 361 S.C. 312, 325, 605 S.E.2d 12 (2003) ("The trial judge had the discretionary authority to hear APAC's renewed motion for summary judgment. That a different trial judge previously denied the motion did not preclude APAC from renewing its motion once new evidence came to light."); *Croswell Enter., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992) ("If the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial."); *PPG Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331 (Ct. App. 1998) ("Sanford argues that the trial court erred in reconsidering its initial denial of summary judgment because there is no such motion under the South Carolina practice. We find no merit to this contention. ... A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.")

IV. COURT'S RULINGS IN LIMINE

On November 29, 2016, this Court issued multiple rulings as to Defendant's motion in limine as well as other rulings of law. This Court determined, *inter alia*, that Plaintiffs were estopped from presenting certain evidence and testimony unrelated to the sole remaining claim of defamation. This Court additionally considered the issue as to whether a qualified privilege attached to Cowan's remarks.

The cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.3d 497, 501 (1998). To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). However, under the law of defamation the defendant may assert the affirmative defense of qualified privilege. *Murray v. Holnam, Inc.*, 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001). The Supreme Court in *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641 (1946) found that a communication is qualifiedly privileged:

When one has an interest in the subject matter of a communication, and the person (or persons) to whom it was made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.

See, *Id.* at 495-95, 38 S.E.2d at 643. Stated another way, the essential elements of a qualifiedly privileged communication are: (1) good faith; (2) an interest to be upheld; (3) a statement limited in its scope to this purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only. See generally, *Murray, Supra.* at 749. ("It is the duty of the trial judge to determine if the statement is privileged.")

In performing its assessment as to whether qualified privilege applies in this matter, this Court, in light of the *Murray* criteria, has evaluated the ensuing facts in a light most favorable to Plaintiffs:

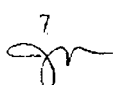
Whether Cowan's statement was made in good faith: Cowan was initially contacted by Curtis Wilson, whose duties included being a public information liaison with the media. Wilson advised Cowan that the local news outlet was pursuing information concerning the Defendant investigators executing a search warrant at a local residence. Wanting to ensure that the information provided was accurate, Cowan reasonably relied upon representations of Defendant's personnel, having reviewed Wilson's written notes and then having twice conferred with Inv. Wyatt, the DST supervisor. He additionally had a telephone conversation with Barr (prior to his statement later on camera) to clarify the facts. During this process, Cowan ascertained that the search warrant was executed at Plaintiffs' residence.

Whether Cowan had an interest in communicating the information: Cowan understood that the issue related to an active RCSD narcotics investigation in Richland County. RCSD had received numerous complaints that drugs were being sold in the subject residential area. Accordingly, RCSD conducted a controlled purchase from 402 Gibbs Road whereupon the sale of crack cocaine was made from the back door of the residence. Consequently, the local law enforcement agency with jurisdiction over the incident location possessed an interest in the subject matter.

Whether the media outlet had a corresponding interest: The facts demonstrate that this neighborhood, where Plaintiffs lived at the relevant times, had previous complaints of drug activity. At the request of a county councilperson to investigate this issue, RCSD's subsequent investigation revealed that crack cocaine was being sold from a residential property. The local media outlets deliver news to the public and -- at minimum -- the public has an interest in knowing about drug activity in residential neighborhoods in its own community.

Whether the statement was limited in its scope to this purpose: Cowan's remarks ("The drugs that we purchased out of that home -- we purchased from a family member of that home -- we purchased the drugs out of the home") were strictly limited to the scope of the drug purchase itself. The term "family member" referred to Plaintiff Reginald Blanding's brother's son and the drug transaction occurred on Plaintiffs' back porch. See, e.g., S.C. Code Ann. §16-11-430 ("Dwelling" means a building or conveyance of any kind, including an attached porch ...")

Whether the occasion was proper: Cowan, a trained public information officer, had been working in that capacity for approximately nine years at the relevant times. He made the

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comments at RCSD headquarters and within the course and scope of his duties while conversing with a reporter of an established local media outlet.

Whether the statement was made in a proper manner and only to proper parties: No one at RCSD initiated contact with any press outlets. Cowan, only responding to direct questions from Barr, the news reporter, made statements which were captured on camera. Defendant did not generate a media release, nor was a press conference conducted. Based upon these uncontroverted facts, this Court ruled in limine that the circumstances under which Cowan made these remarks were one of qualified privilege.

V. ANALYSIS

In Defendant's renewal of his motion for summary judgment, Defendant points out that his renewed motion is made only after the posture of the case has been significantly modified and/or limited. As a result, if the trial were to proceed, Plaintiffs would be unable to present any evidence to the jury of the only triable issue of fact, specifically, whether Cowan acted with actual malice at the relevant times in Plaintiffs' Amended Complaint.

In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if: (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded. *Fulton v. Atlantic Coast Line R. Co.*, 220 S.C. 287, 67 S.E.2d 425, 485 (1951); *see also*, 53 C.J.S. *Libel and Slander* § 79 (1987).

When qualified however, the plaintiff may recover if he shows the communication was actuated by malice. *Id.* One publishing under a qualified privilege is liable upon proof of actual malice. *Constant v. Spartanburg Steel Products*, 316 S.C. 86, 447 S.E.2d 194 (1994); *see also*, *Hainer v. Am. Med. Int'l. Inc.*, 328 S.C. 128, 135, 492 S.E.2d 103, 106-07 (1997). To prove actual malice, the plaintiff must show that the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were

published with such recklessness as to show a conscious disregard for plaintiffs rights. *Holtzscheiter, Supra*, at 502; *see also, Swinton Creek Nursery, Supra*, at 134.

Following this Court's pretrial rulings, the Court explored in detail the issue of defamation with all counsel for Plaintiffs and Defendant. Based upon the proffers of evidence,² the Court finds that the record is devoid of any evidence that Cowan was acting with actual malice, *to wit*:

There is no evidence that Cowan was actuated by ill will. Conversely, the facts reveal that Cowan was acting in good faith to address what was in the mutual interest of law enforcement and the public. Similarly, there is no evidence of improper or malicious motives on the part of Cowan or an otherwise desire by Defendant or anyone on his behalf to target Plaintiffs.

There is no evidence that Cowan intended to harm Plaintiffs. Cowan had neither personally known nor had any previous information, interactions, or familiarity with Plaintiffs. Moreover, Cowan never identified or personally accused Plaintiffs of a crime or wrongdoing. By way of example, Cowan did not furnish any personal or identifying information such as pictures of the home, places of employment, or school affiliations.

There is no evidence that Cowan acted recklessly. Cowan's statement was based upon what he had learned from fellow RCSD investigators and solely centered on objective information reported to him, rather than subjective beliefs and opinions. Additionally, Cowan acted with due diligence and sufficiently checked the accuracy of his information before making his statement. *United States v. Pitt*, 382 F.2d 322, 324 (4th Cir. 1967) ("[P]robable cause can rest on the collective knowledge of the officers involved in an operation rather than solely on that of the officer who makes the arrest; *see also, United States v. Wells*, 98 F.3d 808, 810 (4th Cir. 1996) ("Under the collective knowledge doctrine, law enforcement officers cooperating in an investigation are entitled to rely upon each other's knowledge of facts when forming the conclusion that a suspect has committed or is committing a crime."))

In light of this Court's ruling that the statement made by Cowan was qualifiedly privileged, such a determination serves to rebut any inference of malice. Therefore, in order for Plaintiffs to overcome the defense, a showing would be required as to the existence of actual

² In the Amended Answer, Defendant raised the affirmative defenses for truth and qualified privilege. Following the Court's pretrial rulings, Defendant withdrew truth as an affirmative defense in this matter.

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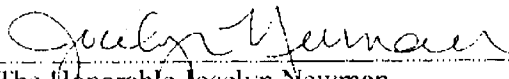
malice on part of Cowan toward Plaintiffs when making the statement. *Conwell v. Spur Oil Co. of Western South Carolina*, 240 S.C. 170, 125 S.E.2d 270 (1962). Thus, in light of discussions with counsel and in review of Plaintiffs' proffer of evidence,³ this Court finds that there was no evidence showing that Cowan was actuated by ill will or malice in making his statement to the media. See, *Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981) ("While abuse of privilege is ordinarily an issue for the jury ... in the absence of a controversy as to the facts ... it is for the court to say in a given instance whether or not the privilege has been abused or exceeded.")

WHEREAS, Plaintiffs will be unable to present a scintilla of evidence to the jury that Cowan acted with actual malice at the relevant times in Plaintiffs' Amended Complaint and

WHEREAS, in the interest of avoiding the waste of litigants' time as well as Court resources in continuing this litigation and proceeding with the trial, this Court finds that the motion for summary judgment should be granted.

THEREFORE the motion for summary judgment is hereby **GRANTED** and the above-entitled action is hereby **DISMISSED** with prejudice.

AND IT IS SO ORDERED.


The Honorable Jocelyn Newman
Presiding Judge, Fifth Judicial Circuit

April 7
~~February~~ 20, 2016
Columbia, South Carolina

³ Critically, and subsequent to this Court's pre-trial rulings, counsel for Plaintiffs were unable to point to any competent evidence for which to demonstrate actual malice on the part of Cowan.

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

Reginald Andre Blanding; Wanda Blanding;	)	C/A No. 3:14-299-JMC-PJG
Brittani Blanding, <i>by and through her</i>	)	
<i>Guardian ad Litem</i> Reginald Andre Blanding	)	
<i>and Wanda Blanding,</i>	)	
	)	
Plaintiffs,	)	
	)	REPORT AND RECOMMENDATION
v.	)	
	)	
Richland County Sheriff's Department; Leon	)	
Lott; Rickey E. Johnson, Jr.; Frida W. Wyatt;	)	
Adrian P. Thompson; Adam C. Cornwell; Sara	)	
N. Giron; George C. Becker; Unknown	)	
Confidential Informant; Lieutenant Cowan;	)	
Micheal C. Nawrockyj,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding filed this action alleging a violation of their constitutional rights by the defendants under 42 U.S.C. § 1983. The Blandings also allege state law tort claims against the defendants. The defendants removed this action from the Richland County Court of Common Pleas. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the defendants' motion for summary judgment. (ECF No. 19.) The Blandings filed a response in opposition (ECF Nos. 24 & 25) and the defendants filed a reply (ECF No. 27.)

The Blandings' claims all arise from an incident on October 20, 2011, when the defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched the Blandings' residence pursuant to a search warrant. Having carefully considered the parties' submissions and the applicable law, the court concludes that the defendants' motion should be

granted, in part, as to all federal and state claims conceded by the Blandings. The court further concludes that the remaining two state law claims should be remanded.

DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party “shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by “citing to particular parts of materials in the record” or by “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth

specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322.

B. Blandings' Claims

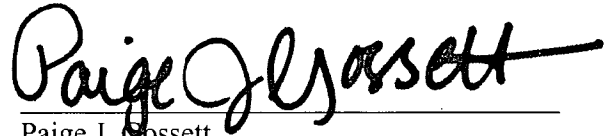
In their response in opposition to the defendants' motion for summary judgment, the Blandings concede that the defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (Blandings' Resp. Opp'n Summ. J. at 1-2, 19, ECF No. 24-1 at 1-2, 19.) The Blandings further concede that all defendants are entitled to summary judgment as to the following state law claims: Negligent Supervision (Count Two); Negligent Training (Count Three); Trespassing (Count Four); Assault (Count Five); Battery (Count Six); and False Imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are the Blandings' claims of gross negligence (Count One) and defamation (Count Eight). The Blandings ask the court to remand this case to state court for further proceedings. (Id. at 19.)

In light of the Blandings' concession to the defendants' motion for summary judgment as to all federal claims, the court should exercise its discretion to remand the remaining state law claims of gross negligence and defamation. See 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal).

RECOMMENDATION

Accordingly, the court recommends that the defendants' motion for summary judgment (ECF No. 19) be granted, in part, as to all of Blandings' federal claims, and as to Blandings' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false

imprisonment. It is further recommended that the court decline to exercise supplemental jurisdiction over the remaining state law claims, Blandings' claims of gross negligence and defamation, and that the court remand those claims to the Richland County Court of Common Pleas.

A handwritten signature in black ink, reading "Paige J. Gossett", with a long horizontal flourish extending to the right.

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

June 15, 2015
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding, and
Brittani Blanding, by and through her Guardian
ad Litem, Reginald Andre Blanding and Wanda
Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, and Lieutenant Cowan,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

Case No.:

SUMMONS

JEANETTE W. McBRIDE
C.C.P. & G.S.

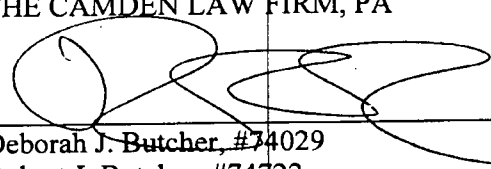
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RICHLAND COUNTY
FILED

TO: DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this matter,
a copy of which is herewith served upon you, and to serve a copy of your Answer to the said
Complaint on the subscribers at their office, 1042-A Broad Street, Post Office Box 610, Camden,
South Carolina 29021, within thirty (30) days after the service hereof, exclusive of the day of
such service, and if you fail to answer the Complaint within the time aforesaid, judgment by
default will be rendered against you for the relief demanded in the Complaint.

THE CAMDEN LAW FIRM, PA


Deborah J. Butcher, #74029
Robert J. Butcher, #74722
Attorneys for Plaintiff
1042-A Broad Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599

ROA 048

Facsimile: 803.432.7466

Camden, South Carolina
August 31, 2010

MARCH 29, 2012

RICHLAND COUNTY
FILED

2012 APR -2 AM 11:29

JEANETTE M. MCBRIDE
C.C.P. & G.S.

ROA 049

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding, and
Brittani Blanding, by and through her Guardian
ad Litem, Reginald Andre Blanding and
Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, and Lieutenant Cowan,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

Case No.:

COMPLAINT
(Jury Trial Demanded)

2012 APR -2 AM 11:29
JANETTE H. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Plaintiffs, complaining of the above- named Defendants, state the following:

I. PARTIES AND JURISDICTION

1. Plaintiff Reginald Andre Blanding is a citizen and resident of Richland County, South Carolina and lives at 402 Gibbs Road, Elgin, South Carolina on the Richland County side of Elgin.
2. Plaintiff Wanda Blanding is a citizen and resident of Richland County, South Carolina and lives at 402 Gibbs Road, Elgin, South Carolina on the Richland County side of Elgin.
3. Plaintiff Brittani Blanding is a citizen and resident of Richland County, South Carolina and lives at 402 Gibbs Road, Elgin, South Carolina on the Richland County side of Elgin.
4. Defendant Richland County Sheriff's Department is a governmental entity in the State of South Carolina and subject to the South Carolina Tort Claims Act.

ROA 050

5. Leon Lott is the Richland County Sheriff.
6. Lieutenant Cowan is an employee of the Richland County Sheriff's Department.

BACKGROUND

7. Plaintiffs incorporate paragraphs 1 - 6 as if stated herein verbatim.
8. Reginald Andre Blanding works for Pepsi Beverages Company and Wanda Blanding is employed with the South Carolina Department of Corrections. Their daughter, Brittani Blanding, is a student at Ridge View High School in Columbia, South Carolina where she is a student-athlete and plays AAU Basketball.
9. None of the Blandings have never been arrested or convicted of a crime. None of the Blandings use drugs or associate with people who abuse drugs.
10. At no time has Reginald Andre Blanding, Wanda Blanding, or Brittani Blanding sold drugs in or outside their home at 402 Gibbs Road, Elgin, South Carolina.
11. On or about October 20, 2011 Senior Deputy Ricky Johnson signed a sworn affidavit in support of a search warrant to search the premises of 402 Gibbs Road, Elgin, South Carolina.
12. In the affidavit, Senior Deputy Ricky Johnson swore, under oath, that "The RCSD [Richland County Sheriff's Department] Drug Suppression Team received a complaint about illegal drug sales at the [Blanding's home]...In the past 72 hours, a confidential reliable informant working for the Richland County Sheriff's Department made a controlled purchase of crack cocaine from an unknown black male at the location. The confidential reliable informant returned and turned over one (1) white rock like substance which field tested positive for cocaine base. The confidential informant was deemed reliable after turning over evidence on at least 10

separate occasions which led to the arrests of at least 30 individuals and the seizure of approximately \$50,000.00 in narcotics.”

13. A magistrate court judge signed the search warrant at 1220 hours on October 20, 2012.

14. The Richland County Sheriff's Department's Drug Suppression Team, Lieutenants Wyatt, Deputy Thompson, Deputy Johnson, and Deputy Cornwell executed the search warrant at 1420 hours by kicking in the front door.

15. The Richland County Sheriff's Department's Drug Suppression Team searched every room, pulling out clothing and items from drawers, emptying closets, emptying out cereal boxes and food items.

16. Brittani Blanding returned home from school around 1420 hours and was detained and searched. A Richland County Sheriff's Deputy even searched under the young lady's bra and emptied out her purse. Richland County Sheriff's Department also searched the vehicle she was driving and another vehicle in the yard.

17. Richland County Sheriff's Department Deputies told the Blanding's friends, relatives, and neighbors that they were searching for drugs and that the homeowners sold drugs.

18. Lieutenant Cowan made statements about Plaintiffs on the behalf of Leon Lott, the Richland County Sheriff.

19. Lieutenant Cowan of the Richland County Sheriff's Department claimed that a drug dog entered the house and “could tell that drugs were once in the house.” Lieutenant Cowan also falsely claimed that only one room in the house was searched while Plaintiff possess pictures and video showing that the house was ransacked by the Richland County Sheriff's Department.

20. Plaintiffs informed the Richland County Sheriff's Department that they had entered the wrong home and Richland County Sheriff's Department continued to search the home and detain Brittani Blanding.

21. No one at the Richland County Sheriff's Department has apologized to the family or offered to pay for the damage it caused Plaintiffs.

**FOR A FIRST CAUSE OF ACTION
(Gross Negligence and Negligence Per Se)**

22. Plaintiffs incorporate paragraphs 1-21 as if stated herein verbatim.

23. The employees of Defendant Richland County Sheriff's Department and its agents had a duty to properly identify a residence before signing sworn affidavits that drugs are being sold at the residence, before obtaining a search warrant, before executing a search warrant, before ransacking a home, and before detaining, searching, and imprisoning the residents.

24. The employees of Defendant Richland County Sheriff's Department breached this duty even after Plaintiffs told them they were on the wrong property and that no drugs were sold. Employees of Defendant Richland County Sheriff's Department forced their way into Plaintiffs' home, damaged Plaintiffs home and personal belongings, and violated Plaintiffs' sense of safety and privacy.

25. In breaching this duty the employees of Defendant Richland County Sheriff's Department conducted themselves in a negligent, grossly negligent, willful, reckless, and wanton manner.

26. Plaintiffs assert that Defendants breach is per se because in breaching this duty Defendant Richland County Sheriff's Department violated Amendment Four of the

United States Constitution, Article I, § 10 of the South Carolina Constitution, S.C. Code Ann. § 17-13-140, S.C. Code Ann. § 16-11-311, as the Defendants' employees were armed and they assaulted Plaintiff Brittani Blanding, S.C. Code Ann. § 16-3-910, and S.C. Code Ann. § 16-11-510

27. Because this duty was breached by the employees of Defendant Richland County Sheriff's Department, Plaintiffs were injured to include emotional distress, alteration of their lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, deprivation of property, injury to property, and a loss of enjoyment of life.

28. Plaintiffs seek damages and costs against Defendant Richland County Sheriff's Department.

**FOR A SECOND CAUSE OF ACTION
(Negligent Supervision – Employees, Agents, and Contractors)**

29. Plaintiffs incorporate paragraphs 1-28 as if stated herein verbatim.

30. Defendant Richland County Sheriff's Department owed a duty of care to Plaintiffs to properly and adequately supervise its employees, agents, and contractors to insure they did not harm the citizens they are sworn to protect.

31. Defendant Richland County Sheriff's Department have created policies, procedures, customs, and an operating environment wherein the Fourth Amendment Rights and Article I, § 10 Rights of the South Carolina Constitution, and the property rights of citizens and residents of Richland County are not observed by the officers and leadership of the agency.

32. Defendant Richland County Sheriff's Department owed a duty of care to Plaintiffs to properly and adequately supervise their employees in not violating citizens' rights in entering citizens' homes without probable cause or a valid warrant and with making up probable cause or permission after the fact when called to task for such violations.

33. Defendant Richland County Sheriff's Department knew or should have known that they were required to supervise these employees to insure that the rights of the citizens and residents of Richland County are protected.

34. Defendant Richland County Sheriff's Department knew or should have known that their staff and employees were incapable of not transgressing the rights and constitutional privileges enjoyed by the citizens and residents of Richland County.

35. Defendant Richland County Sheriff's Department was negligent, grossly negligent, reckless, willful, and wanton in the performance of the duties and/or its failure to act in the duties by failing to supervise its deputies when they were dealing with the public and citizens and residents of Richland County.

36. Defendant Richland County Sheriff's Department's negligent, grossly negligent, reckless, willful, and wanton performance of its duties and/or its failures to act in the duties were a breach of its duties because Defendant Richland County Sheriff's Department was responsible for properly and adequately supervising the employees, agents, and contractors in order to stop and prevent the violation of Plaintiffs' rights and constitutional protections. Because Defendant Richland County Sheriff's Department was negligent, grossly negligent, reckless, willful, and wanton in the performance of its duties, Plaintiffs' damages include emotional distress, alteration of their lifestyle,

psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, deprivation of property, injury to property, and a loss of enjoyment of life.

37. Plaintiff seeks actual damages and costs from the Defendant Richland County Sheriff's Department for the negligent, grossly negligent, reckless, willful, and/or wanton performance of the duty and/or its failure to act in the performance of its duty.

**FOR A THIRD CAUSE OF ACTION
(Negligent Training – Employees, Agents, and Contractors)**

38. Plaintiffs incorporate paragraphs 1-37 as if stated herein verbatim.

39. Defendant Richland County Sheriff's Department owed a duty of care to Plaintiffs to properly and adequately train their employees, agents, and contractors and protect Plaintiffs as it knew or should have known that without adequate training the employees, agents, and contractors would violate the rights and constitutional protections of Plaintiffs' and other citizens' and residents' of Richland County.

40. Defendant Richland County Sheriff's Department failed to properly and adequately train the employees, agents, and contractors wherein this failure to properly and adequately train allowed Defendant Richland County Sheriff's Department to wrongfully enter Plaintiffs' home, ransack the home, wrongfully seize Plaintiff Brittani Blanding, and damage Plaintiffs' property.

41. Defendant Richland County Sheriff's Department were negligent, grossly negligent, reckless, willful, and wanton in the performance of the duties and/or its failure to act.

42. Defendant Richland County Sheriff's Department's negligent, grossly negligent, reckless, willful, and wanton performance of its duties and/or its failures to act

in the duties were a breach of its duties because Defendant Richland County Sheriff's Department was responsible for properly and adequately training the employees, agents, and contractors in order to protect Plaintiffs' and citizens' and residents' who come in contact with their employees.

43. Plaintiffs' damages include emotional distress, alteration of lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, deprivation of property, injury to property, and a loss of enjoyment of life.

44. Plaintiffs seek actual damages and costs from Defendant Richland County Sheriff's Department for the negligent, grossly negligent, reckless, willful, and/or wanton performance of the duty and/or its failure to act in the performance of its duty.

FOR A FOURTH CAUSE OF ACTION (Trespassing)

45. Plaintiffs incorporate paragraphs 1-44 as if stated herein verbatim.

46. Plaintiffs were in legal possession of their property.

47. Defendant Richland County Sheriff's Department and their employees, voluntarily entered Plaintiffs' property and refused to leave after being told to do so and Defendant forced its way into Plaintiffs home without legal authority to do so.

48. This entry was without Plaintiffs' permission and Plaintiffs explicitly told Defendants they could not enter and to leave the premises once they were aware Defendants had wrongfully entered their home.

49. Plaintiffs' damages include emotional distress, alteration of their lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, and a loss of enjoyment of life.

50. Plaintiffs seek actual damages and costs from the Defendant Richland County Sheriff's Department for trespass.

**FOR A FIFTH CAUSE OF ACTION
(Assault)**

51. Plaintiffs incorporate paragraphs 1-50 as if stated herein verbatim.

52. A Defendant Richland County Sheriff's Department Deputy placed Plaintiff Brittani Blanding in reasonable fear of bodily injury.

53. Plaintiffs' damages include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life.

54. Plaintiff Brittany Blanding seeks actual damages and costs from Defendant Richland County Sheriff's Department for assault.

**FOR A SIXTH CAUSE OF ACTION
(Battery)**

55. Plaintiffs incorporate paragraphs 1-54 as if stated herein verbatim.

56. The actions and conduct of Defendant Richland County Sheriff's Department in seizing Plaintiff Brittani Blanding and inflicting forcible contact on the person of Plaintiff Brittani Blanding in that Defendant Richland County Sheriff's Department searched Plaintiff Brittani Blanding including under her bra.

57. Plaintiff Brittani Blanding's damages include emotional distress, alteration of his lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life.

58. Plaintiff Brittani Blanding seeks actual damages and costs from the Defendant Richland County Sheriff's Department for battery.

**FOR A SEVENTH CAUSE OF ACTION
(False Imprisonment)**

59. Plaintiffs incorporate paragraphs 1-58 as if stated herein verbatim.

60. Due to the actions and conduct of Defendant Richland County Sheriff's Department and its employees, Defendant Richland County Sheriff's Department wrongfully restrained and searched Plaintiff Brittani Blanding during an illegal search and seizure of Plaintiffs' home.

61. The restraint of Plaintiffs by Defendant Richland County Sheriff's Department and its employees was intentional, illegal, and unlawful.

62. Plaintiff Brittani Blanding's damages include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life

63. Plaintiff Brittani Blanding seeks actual damages and costs from the Defendant Richland County Sheriff's Department for false imprisonment.

**FOR A EIGHTH CAUSE OF ACTION
(Defamation)**

64. Plaintiffs incorporate paragraphs 1 - 63 as if stated herein verbatim.

65. Sheriff Leon Lott employed Lieutenant Cowan and part of his job functions are to make statements on behalf of Sheriff Lott and the Richland County Sheriff's Department.

66. Richland County Sheriff's Department and Lieutenant Cowan made statements about Plaintiffs that were defamatory in meaning.

67. These allegations include statements that Plaintiffs were involved in the sale and distribution of illegal narcotics.

68. These statements were made to neighbors, relatives, and the media.

69. These statements are actionable per se as a false allegation of crime.

70. The statements made by Richland County Sheriff's Department and Lieutenant Cowan were published with actual and/or implied malice.

71. The statements made by Richland County Sheriff's Department and Lieutenant Cowan were false.

72. The statements made by Richland County Sheriff's Department and Lieutenant Cowan were published by Lieutenant Cowan and other deputies of the Richland County Sheriff's Department on behalf of Sheriff Leon Lott.

73. The statements concerned the Plaintiffs.

74. Plaintiffs' damages include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life.

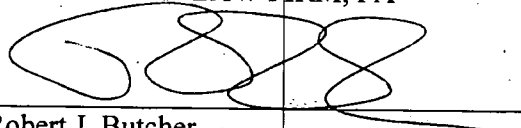
75. Plaintiffs seek damages, punitive damages, and costs from the Defendants.

WHEREFORE, Plaintiffs respectfully pray for the following relief:

- A. For judgment against Defendant Richland County Sheriff's Department for actual damages to be determined by the Court and a jury;
- B. For the costs and disbursements in the pursuit of this action; and

C. For such other and further relief as this Court may deem just and proper.

THE CAMDEN LAW FIRM, PA



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Camden, South Carolina
March 26, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding,
and Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department,
Leon Lott, and Lt. Cowan,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

ANSWER

(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2012 JUN 13 AM 10:09
JENNIFER W. MCBRIDE
C.C.P. & C.S.

The Defendants Richland County Sheriff's Department (hereinafter, "RCSD"), Leon Lott, and Lt. Cowan hereby answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Summons and Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. The Defendants are immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*, and specifically, § 15-78-60 (1), (2), (3), (4), (5), (20) and (23).

FOR A THIRD DEFENSE

3. The Defendants deny each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained.

1 

ROA 062

4. That as to Paragraphs One (1) Two (2), Three (3), Eight (8), Nine (9), and Ten (10), the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, deny same and demand strict proof thereof.

5. That as to Paragraph Four (4), the Defendants deny that the RCSD is a legal entity of the State, but asserts that the proper entity is the Sheriff of Richland County in his official capacity and that same is subject to jurisdiction under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

6. That as Paragraph Five (5), the Defendant Lott alleges that he is a constitutional officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina. Further responding, the Defendant Lott admits that he is the duly elected Sheriff of Richland County and upon information and belief that all times herein his officers were acting within the course and scope of their employment and official duties as deputies. Finally, this Defendant asserts that his office constitutes a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act.

7. That as to Paragraph Six (6), the Defendant Cowan only alleges that he was acting in the course and scope of his official duties as a Sheriff's deputy with the RCSD at all relevant times in the Plaintiff's Complaint.

8. That as to Paragraph Seven (7), the Defendants reassert and reallege all previous allegations and defenses.

9. That as to Paragraph Eleven (11), the Defendants admit same upon information and belief.

10. That as to Paragraph Twelve (12), the Defendants deny same as stated. The Defendants further crave reference to the exact contents within said affidavit for the best evidence of what is contained therein.

11. That as to Paragraph Thirteen (13), the Defendants only admit upon information and belief that at the relevant date and time, a duly authorized Richland County Magistrate Judge issued the search warrant with respect to the incident location.

12. That as to Paragraph Fourteen (14), the Defendants only admit upon information and belief that at approximately 2:20 p.m., the aforementioned search warrant was executed by and through several RCSD deputies. Except as stated herein, the Defendants deny this paragraph and demand strict proof thereof.

13. That as to Paragraph Fifteen (15), the Defendants only admit upon information and belief that the deputies executing the search warrant conducted a search of the interior of the subject residence. Except as stated herein, the Defendants deny this paragraph as stated and demand strict proof thereof.

14. That as to the first and second sentences of Paragraph Sixteen (16), the Defendants only admit upon information and belief that during the execution of the search warrant, one or more RCSD deputies conducted a search of her person and the purse in her possession. Except as stated herein, the Defendants deny these first two sentences of this paragraph as stated and demand strict proof thereof. That as to the third sentence of Paragraph Sixteen (16), the Defendant admits same upon information and belief.

15. That as to Paragraph Seventeen (17), the Defendants deny same and demand strict proof thereof.

16. That as to Paragraphs Eighteen (18), Nineteen (19), and Sixty-five (65), Sixty-eight (68), and Seventy-three (73), the Defendants only admit that the Defendant Cowan was a Captain with the RCSD at all relevant times and any and all statements were made in his official capacity as the Public Information Officer for the RCSD. The Defendants further crave reference to the actual statements and/or the official transcripts of any such statements for the best evidence of what is contained therein. Except as stated herein, the Defendants deny these paragraphs as stated and demand strict proof thereof.

17. That as to Paragraphs Twenty (20) and Twenty-one (21), the Defendants deny same as stated upon information and belief and demand strict proof thereof.

18. That as to Paragraphs Twenty-two (22), Twenty-nine (29), Thirty-eight (38), Forty-five (45), Fifty-one (51), Fifty-five (55), Fifty-nine (59), and Sixty-four (64), the Defendants reassert and reallege all previous allegations and defenses.

19. That as to Paragraphs Twenty-three (23), Thirty (30), and Forty-six (46), the Defendants allege upon information and belief that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, the Defendants crave reference thereto. To the extent that these paragraphs assert material allegations with respect to the Defendants, the Defendants deny same and demand strict proof thereof.

20. That as to Paragraphs Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-nine (39), Forty (40), Forty-one (41), Forty-two (42), Forty-three (43), Forty-four (44), Forty-seven (47), Forty-eight (48), Forty-nine (49), Fifty (50), Fifty-two (52), Fifty-three (53), Fifty-four (54), Fifty-six (56), Fifty-seven (57), Fifty-eight (58), Sixty (60), Sixty-one (61), Sixty-two (62), Sixty-three (63),

Sixty-six (66), Sixty-seven (67), Sixty-nine (69), Seventy (70), Seventy-one (71), Seventy-two (72), Seventy-four (74), and Seventy-five (75), the Defendants deny same in its entirety and demand strict proof thereof.

21. Any and all allegations inconsistent with the foregoing are denied. Further, and that as to the prayer of the Complaint, the Defendants assert that the Plaintiffs are not entitled to the relief requested in the Complaint, or any other relief against the Defendants.

FOR A FOURTH DEFENSE

22. The Defendant Cowan alleges that at all relevant times he was acting within the course and scope of his official duties as a police officer, pursuant to lawful authority, and therefore is immune from suit pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-70(c).

FOR A FIFTH DEFENSE

23. The Defendants allege that they are immune from suit and liability under the doctrine of sovereign immunity.

FOR A SIXTH DEFENSE

24. The Defendants allege upon information and belief that at all times herein that they were acting within the course and scope of their employment in a discretionary manner, in good faith, without bad faith or malicious motives in the performance of their official duties, and therefore, the Defendants are immune from suit.

FOR A SEVENTH DEFENSE

25. The Defendant Richland County Sheriff's Department (RCSD) is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

FOR AN EIGHTH DEFENSE

26. The Defendants, upon information and belief, allege that any injuries or damages allegedly suffered by the Plaintiffs, without admitting same to be true, were due to and caused entirely by the negligence of the Plaintiffs or the Plaintiffs' negligence which is more than these Defendants' negligence, and that such is a complete bar to the Plaintiffs' recovery herein. Further, the Defendants, upon information and belief, allege that if the Plaintiffs' negligence was less than the Defendants' negligence, that such negligence should be compared to that negligence of the Defendants, so as to apportion the relative fault as to each party.

FOR A NINTH DEFENSE

27. The Defendants allege, upon information and belief, that any alleged defamatory statements were made in accordance with an absolute privilege and, therefore, such claims of the Plaintiffs are barred by such privilege.

FOR A TENTH DEFENSE

28. The Defendants allege, upon information and belief, that any alleged defamatory statements were made in accordance with qualified privilege and, therefore, such claims of the Plaintiffs are barred by such privilege.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendants Richland County Sheriff's Department (hereinafter, "RCSD"), Leon Lott, and Lt. Cowan pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

[signature appears on following page]

DAVIDSON AND LINDEMANN, P.A.

BY: Robert D. Garfield / by del

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Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendants

Columbia, South Carolina

June 11, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding,
and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding
and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, Lieutenant Cowan, Rickey E. Johnson,
Jr., Frida W. Wyatt, Adrian P. Thompson,
Adam C. Cornwell, Sara N. Giron, George C.
Becker, Micheal C. Nawrockyj, and Unknown
Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2012-CP-40-02456

AMENDED COMPLAINT
(Jury Trial Demanded)

2013 DEC 23 11:11:03

Plaintiffs, complaining of the above- named Defendants, state the following:

I. PARTIES AND JURISIDICITION

1. Plaintiff Reginald Andre Blanding is a citizen and resident of Richland County, South Carolina and lives at 402 Gibbs Road, Elgin, South Carolina on the Richland County side of Elgin.

2. Plaintiff Wanda Blanding is a citizen and resident of Richland County, South Carolina and lives at 402 Gibbs Road, Elgin, South Carolina on the Richland County side of Elgin.

3. Plaintiff Brittani Blanding is a citizen and resident of Richland County, South Carolina and lives at 402 Gibbs Road, Elgin, South Carolina on the Richland County side of Elgin

4. Defendant Richland County Sheriff's Department is a governmental entity in the State of South Carolina and subject to the South Carolina Tort Claims Act.

5. Leon Lott is the Richland County Sheriff.

6. Lieutenant Cowan is an employee of the Richland County Sheriff's Department.

7. Rickey E. Johnson, Jr. is an employee of the Richland County Sheriff's Department.

8. Frida W. Wyatt is an employee of the Richland County Sheriff's Department.

9. Adrian P. Thompson is an employee of the Richland County Sheriff's Department.

10. Adam C. Cornwell is an employee of the Richland County Sheriff's Department.

11. Sara N. Giron is an employee of the Richland County Sheriff's Department.

12. George C. Becker is an employee of the Richland County Sheriff's Department.

13. Micheal C. Nawrockyj is an employee of the Richland County Sheriff's Department.

14. Unknown Confidential Informant is an employee, contractor, and/or agent of the Richland County Sheriff's Department.

BACKGROUND

15. Plaintiffs incorporate paragraphs 1 - 14 as if stated herein verbatim.

16. Reginald Andre Blanding works for Pepsi Beverages Company and Wanda Blanding is employed with the South Carolina Department of Corrections. Their daughter, Brittani Blanding, is a student at Ridge View High School in Columbia, South Carolina where she is a student-athlete and plays AAU Basketball.

17. None of the Blandings have never been arrested or convicted of a crime. None of the Blandings use drugs or associate with people who abuse drugs.

18. At no time has Reginald Andre Blanding, Wanda Blanding, or Brittani Blanding sold drugs in or outside their home at 402 Gibbs Road, Elgin, South Carolina.

19. On or about October 20, 2011 Senior Deputy Ricky Johnson signed a sworn affidavit in support of a search warrant to search the premises of 402 Gibbs Road, Elgin, South Carolina.

20. In the affidavit, Senior Deputy Ricky Johnson swore, under oath, that "The RCSD [Richland County Sheriff's Department] Drug Suppression Team received a complaint about illegal drug sales at the [Blanding's home]...In the past 72 hours, a confidential reliable informant working for the Richland County Sheriff's Department made a controlled purchase of crack cocaine from an unknown black male at the location. The confidential reliable informant returned and turned over one (1) white rock like substance which field tested positive for cocaine base. The confidential informant was deemed reliable after turning over evidence on at least 10 separate occasions which led to the arrests of at least 30 individuals and the seizure of approximately \$50,000.00 in narcotics."

21. A magistrate court judge signed the search warrant at 1220 hours on October 20, 2012.

22. The Richland County Sheriff's Department's Drug Suppression Team, Lieutenants Wyatt, Deputy Thompson, Deputy Johnson, and Deputy Cornwell executed the search warrant at 1420 hours by kicking in the front door.

23. The Richland County Sheriff's Department's Drug Suppression Team searched every room, pulling out clothing and items from drawers, emptying closets, emptying out cereal boxes and food items.

24. Brittani Blanding returned home from school around 1420 hours and was detained and searched. A Richland County Sheriff's Deputy even searched under the young lady's bra and emptied out her purse while she stood outside the home in the driveway. Richland County Sheriff's Department also searched the vehicle she was driving and another vehicle in the yard.

25. Richland County Sheriff's Department Deputies told the Blanding's friends, relatives, and neighbors that they were searching for drugs and that the homeowners sold drugs.

26. Lieutenant Cowan made statements about Plaintiffs on the behalf of Leon Lott, the Richland County Sheriff.

27. Lieutenant Cowan of the Richland County Sheriff's Department claimed that a drug dog entered the house and "could tell that drugs were once in the house." Lieutenant Cowan also falsely claimed that only one room in the house was searched while Plaintiff possess pictures and video showing that the house was ransacked by the Richland County Sheriff's Department.

28. Plaintiffs informed the Richland County Sheriff's Department that they had entered the wrong home and Richland County Sheriff's Department continued to search the home and detain Brittani Blanding.

29. No one at the Richland County Sheriff's Department has apologized to the family or offered to pay for the damage it caused Plaintiffs.

**FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, and Negligence Per Se)**

30. Plaintiffs incorporate paragraphs 1-29 as if stated herein verbatim.

31. The employees, agents, and contractors of Defendant Richland County Sheriff's Department and Defendant Unknown Confidential Informant had a duty to properly identify a residence and report that they had purchased drugs from the correct residence before signing sworn affidavits that drugs are being sold at the residence, before obtaining a search warrant, before executing a search warrant, before ransacking a home, and before detaining, searching, and imprisoning the residents.

32. The employees, agents, and contractors of Defendant Richland County Sheriff's Department and Defendant Unknown Confidential Informant breached this duty even after Plaintiffs told them they were on the wrong property and that no drugs were sold. Employees of Defendant Richland County Sheriff's Department forced their way into Plaintiffs' home, damaged Plaintiffs home and personal belongings, and violated Plaintiffs' sense of safety and privacy.

33. Defendant Unknown Confidential Informant had a duty to accurately report where, when, and from whom he or she purchased drugs and to take proper precautions, notes, and effort to properly identify the location or residence from where he or she purchased drugs.

34. In breaching these duties the employees of Defendant Richland County Sheriff's Department and Defendant Unknown Confidential Informant conducted themselves in a negligent, grossly negligent, willful, reckless, and wanton manner.

35. Plaintiffs assert that Defendants breach is per se because in breaching this duty Defendant Richland County Sheriff's Department violated Amendment Four of the

United States Constitution, Article I, § 10 of the South Carolina Constitution, S.C. Code Ann. § 17-13-140, S.C. Code Ann. § 16-11-311, as the Defendants' employees were armed and they assaulted Plaintiff Brittani Blanding, S.C. Code Ann. § 16-3-910, and S.C. Code Ann. § 16-11-510.

36. Because this duty was breached by the employees of Defendant Richland County Sheriff's Department, Plaintiffs were injured to include emotional distress, alteration of their lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, deprivation of property, injury to property, and a loss of enjoyment of life.

37. Plaintiffs seek damages and costs against Defendant Richland County Sheriff's Department.

**FOR A SECOND CAUSE OF ACTION
(Negligent Supervision – Employees, Agents, and Contractors)**

38. Plaintiffs incorporate paragraphs 1-37 as if stated herein verbatim.

39. Defendant Richland County Sheriff's Department owed a duty of care to Plaintiffs to properly and adequately supervise its employees, agents, and contractors and Defendant Unknown Confidential Informant to insure that those people did not harm the citizens they are sworn to protect or harm citizens in the process of executing their duties.

40. Defendant Richland County Sheriff's Department have created policies, procedures, customs, and an operating environment wherein the Fourth Amendment Rights and Article I, § 10 Rights of the South Carolina Constitution, and the property rights of citizens and residents of Richland County are not observed and respected by the officers and leadership of the agency.

41. Defendant Richland County Sheriff's Department owed a duty of care to Plaintiffs to properly and adequately supervise their employees and agents and Defendant Unknown Confidential Informant in not violating citizens' rights in entering citizens' homes without probable cause or a valid warrant and without making up probable cause or permission after the fact when called to task for such violations.

42. Defendant Richland County Sheriff's Department knew or should have known that they were required to supervise these employees and agents and Defendant Unknown Confidential Informant to insure that the rights of the citizens and residents of Richland County are protected.

43. Defendant Richland County Sheriff's Department knew or should have known that their staff, employees, and agents and Defendant Unknown Confidential Informant were incapable of not transgressing the rights and constitutional privileges enjoyed by the citizens and residents of Richland County.

44. Defendant Richland County Sheriff's Department was negligent, grossly negligent, reckless, willful, and wanton in the performance of the duties and/or its failure to act in the duties by failing to supervise its deputies and agents and Defendant Unknown Confidential Informant when they were dealing with the public and citizens and residents of Richland County.

45. Defendant Richland County Sheriff's Department's negligent, grossly negligent, reckless, willful, and wanton performance of its duties and/or its failures to act in the duties were a breach of its duties because Defendant Richland County Sheriff's Department was responsible for properly and adequately supervising the employees, agents, and contractors and Defendant Unknown Confidential Informant in order to stop

and prevent the violation of Plaintiffs' rights and constitutional protections. Because Defendant Richland County Sheriff's Department was negligent, grossly negligent, reckless, willful, and wanton in the performance of its duties, Plaintiffs' damages include emotional distress, alteration of their lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, deprivation of property, injury to property, and a loss of enjoyment of life.

46. Plaintiff seeks actual damages and costs from the Defendant Richland County Sheriff's Department for the negligent, grossly negligent, reckless, willful, and/or wanton performance of the duty and/or its failure to act in the performance of its duty.

**FOR A THIRD CAUSE OF ACTION
(Negligent Training – Employees, Agents, and Contractors)**

47. Plaintiffs incorporate paragraphs 1-46 as if stated herein verbatim.

48. Defendant Richland County Sheriff's Department owed a duty of care to Plaintiffs to properly and adequately train their employees, agents, and contractors and Defendant Unknown Confidential Informant and protect Plaintiffs as it knew or should have known that without adequate training the employees, agents, and contractors and Defendant Unknown Confidential Informant would violate the rights and constitutional protections of Plaintiffs' and other citizens' and residents' of Richland County.

49. Defendant Richland County Sheriff's Department failed to properly and adequately train the employees, agents, and contractors and Defendant Unknown Confidential Informant wherein this failure to properly and adequately train allowed Defendant Richland County Sheriff's Department to wrongfully enter Plaintiffs' home,

ransack the home, wrongfully seize Plaintiff Brittani Blanding, and damage Plaintiffs' property.

50. Defendant Richland County Sheriff's Department were negligent, grossly negligent, reckless, willful, and wanton in the performance of the duties and/or its failure to act.

51. Defendant Richland County Sheriff's Department's negligent, grossly negligent, reckless, willful, and wanton performance of its duties and/or its failures to act in the duties were a breach of its duties because Defendant Richland County Sheriff's Department was responsible for properly and adequately training the employees, agents, and contractors and Defendant Unknown Confidential Informant in order to protect Plaintiffs' and citizens' and residents' who come in contact with their employees.

52. Plaintiffs' damages include emotional distress, alteration of lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, deprivation of property, injury to property, and a loss of enjoyment of life.

53. Plaintiffs seek actual damages and costs from Defendant Richland County Sheriff's Department for the negligent, grossly negligent, reckless, willful, and/or wanton performance of the duty and/or its failure to act in the performance of its duty.

**FOR A FOURTH CAUSE OF ACTION
(Trespassing)**

54. Plaintiffs incorporate paragraphs 1-53 as if stated herein verbatim.

55. Plaintiffs were in legal possession of their property.

56. Defendant Richland County Sheriff's Department and their employees, voluntarily entered Plaintiffs' property and refused to leave after being told to do so and Defendant forced its way into Plaintiffs home without legal authority to do so.

57. This entry was without Plaintiffs' permission and Plaintiffs explicitly told Defendants they could not enter and to leave the premises once they were aware Defendants had wrongfully entered their home.

58. Plaintiffs' damages include emotional distress, alteration of their lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, monetary loss, and a loss of enjoyment of life.

59. Plaintiffs seek actual damages and costs from the Defendant Richland County Sheriff's Department for trespass.

**FOR A FIFTH CAUSE OF ACTION
(Assault)**

60. Plaintiffs incorporate paragraphs 1-59 as if stated herein verbatim.

61. A Defendant Richland County Sheriff's Department Deputy placed Plaintiff Brittani Blanding in reasonable fear of bodily injury.

62. Plaintiffs' damages include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life.

63. Plaintiff Brittany Blanding seeks actual damages and costs from Defendant Richland County Sheriff's Department for assault.

**FOR A SIXTH CAUSE OF ACTION
(Battery)**

64. Plaintiffs incorporate paragraphs 1-63 as if stated herein verbatim.

65. The actions and conduct of Defendant Richland County Sheriff's Department in seizing Plaintiff Brittani Blanding and inflicting forcible contact on the person of Plaintiff Brittani Blanding in that Defendant Richland County Sheriff's Department searched Plaintiff Brittani Blanding including under her bra.

66. Plaintiff Brittani Blanding's damages include emotional distress, alteration of his lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life.

67. Plaintiff Brittani Blanding seeks actual damages and costs from the Defendant Richland County Sheriff's Department for battery.

**FOR A SEVENTH CAUSE OF ACTION
(False Imprisonment)**

68. Plaintiffs incorporate paragraphs 1-67 as if stated herein verbatim.

69. Due to the actions and conduct of Defendant Richland County Sheriff's Department and its employees, Defendant Richland County Sheriff's Department wrongfully restrained and searched Plaintiff Brittani Blanding during an illegal search and seizure of Plaintiffs' home.

70. The restraint of Plaintiffs by Defendant Richland County Sheriff's Department and its employees was intentional, illegal, and unlawful.

71. Plaintiff Brittani Blanding's damages include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life

72. Plaintiff Brittani Blanding seeks actual damages and costs from the Defendant Richland County Sheriff's Department for false imprisonment.

**FOR AN EIGHTH CAUSE OF ACTION
(Defamation)**

73. Plaintiffs incorporate paragraphs 1 - 72 as if stated herein verbatim.

74. Sheriff Leon Lott employed Lieutenant Cowan and part of his job functions are to make statements on behalf of Sheriff Lott and the Richland County Sheriff's Department.

75. Richland County Sheriff's Department and Lieutenant Cowan made statements about Plaintiffs that were defamatory in meaning.

76. These allegations include statements that Plaintiffs were involved in the sale and distribution of illegal narcotics.

77. These statements were made to neighbors, relatives, and the media.

78. These statements are actionable per se as a false allegation of crime.

79. The statements made by Richland County Sheriff's Department, Leon Lott, and Lieutenant Cowan were published with actual and/or implied malice.

80. The statements made by Richland County Sheriff's Department, Leon Lott, and Lieutenant Cowan were false.

81. The statements made by Richland County Sheriff's Department, Leon Lott, and Lieutenant Cowan were published by Lieutenant Cowan and other deputies of the Richland County Sheriff's Department on behalf of Sheriff Leon Lott.

82. The statements concerned the Plaintiffs.

83. Plaintiffs' damages include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life.

84. Plaintiffs seek damages, punitive damages, and costs from the Defendants.

**FOR A NINTH CAUSE OF ACTION
(Violation of 42 U.S.C. §1983)**

85. Plaintiffs incorporate paragraphs 1 - 84 as if stated herein verbatim.

86. At all times Sheriff Leon Lott, Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant acted under color of law as law enforcement officers, or in the case of Unknown Confidential Informant, as an agent or contractor of the Richland County Sheriff's Department.

87. Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant acted with utter incompetence or with deliberate indifference in identifying where drugs were sold, whether drugs were sold at Plaintiff's home, and as to who sold drugs in the neighborhood.

88. Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown

Confidential Informant failed to determine if the home they applied to search was actually the home where Unknown Confidential Informant purchased drugs.

89. Upon information and belief, when Plaintiffs arrived home during the raid, Defendants Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and/or Micheal C. Nawrockyj, asked Brittany Blanding, "Where's Peanut."

90. Peanut is a neighborhood drug dealer who has never lived in Plaintiffs' home, never sold drugs out of Plaintiffs' home or on their property, and was not selling drugs on Plaintiffs' property.

91. Defendant Rickey E. Johnson provided the magistrate false information in his application for a search warrant by claiming he had "made over 800 drug related cases" over a twenty month period. He also provided false information by claiming drugs were sold at

92. Defendants Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant violated Plaintiffs' Fourth Amendment rights by obtaining a search warrant with false information and entering and destroying Plaintiffs' home without probable cause and unlawfully searching Brittani Blanding's person outside the home in the driveway.

93. Defendants' actions have caused physical damage to Plaintiffs' home, include emotional distress, alteration of her lifestyle, psychological trauma, apprehension, anxiety, depression, embarrassment, shame, and a loss of enjoyment of life and Plaintiffs ask for actual damages, punitive damages, and attorney's fees and costs.

WHEREFORE, Plaintiffs respectfully pray for the following relief:

- A. For judgment against Defendant Richland County Sheriff's Department, Defendant Leon Lott, Defendant Lieutenant Cowan, Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj and Defendant Unknown Confidential Informant for actual and punitive damages to be determined by the Court and a jury;
- B. For attorney's fees and costs;
- C. For the costs and disbursements in the pursuit of this action; and
- D. For such other and further relief as this Court may deem just and proper.

THE CAMDEN LAW FIRM, PA



Robert J. Butcher
Deborah J. Butcher
Attorneys for Plaintiff
509 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
Facsimile: 803.432.7466
S.C. Bar No.: 74029/74722

Camden, South Carolina

~~October 29, 2013~~

12/13/13

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

Reginald Andre Blanding, Wanda)
Blanding, and Brittani Blanding, by and)
through her Guardian ad Litem,)
Reginald Andre Blanding and Wanda)
Blanding,)

Plaintiffs,)

v.)

Richland County Sheriff's Department,)
Leon Lott, Lieutenant Cowan, Rickey E.)
Johnson, Jr., Frida W. Wyatt, Adrian P.)
Thompson, Adam C. Cornwell, Sara N.)
Giron, George C. Becker, Micheal C.)
Nawrockyj, and Unknown Confidential)
Informant,)

Defendants.)

Civil Action No.: 3:14-cv-00299-JFA-PJG

2012CP4002456

**NOTICE OF REMOVAL ON BEHALF
OF DEFENDANTS RCSD, LOTT,
COWAN, JOHNSON, WYATT,
THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ**

JEANETTE W. McBRIDE
C.C.P. & G.S.

2014 FEB 10 AM 10:05

RICHLAND COUNTY
FILED

The notice of the Defendants Richland County Sheriff's Department (hereinafter, "RCSD"), Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Micheal C. Nawrockyj above-named respectfully show unto this Honorable Court:

1. The above-entitled action was brought in the Court of Common Pleas, County of Richland, by the Plaintiff to recover from these Defendants judgment as reflected in the Complaint for the causes of action of negligence, gross negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, defamation, and violations of 42 U.S.C. § 1983.

2. Upon information and belief, at the time of the commencement of the action and at all times since then, the Plaintiffs are citizens and residents of the State of South Carolina.

3. These Defendants shall pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the said action was not removable or was improperly removed. Pursuant to United States Code Ann. 28 U.S.C. § 1331, the District Courts have original jurisdiction in all civil actions arising under the Constitution, laws, or treaties of the United States. This action alleges federal questions and/or claims which come within the original jurisdiction of the United States District Court.

4. Upon information and belief, said action was commenced by the service of a Summons and Complaint, attached hereto, upon these Defendants on or about January 9, 2014. Notice of Removal is filed pursuant to 28 U.S.C. § 1446 within thirty (30) days of the receipt by these Defendants of the initial pleading setting forth the demand upon which relief is claimed.

5. The attorney of record for these Defendants/Petitioners signs this Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, these Defendants/Petitioners pray that this Court accept this Notice of Removal which is being filed and that this Honorable Court take jurisdiction of the above-entitled cause and all further proceedings in said cause in the Court of Common Pleas, County of Richland, State of South Carolina, bearing Civil Action Number 2012-CP-40--2456 be stayed.

DAVIDSON & LINDEMANN, P.A.

BY: s/ Robert D. Garfield
ROBERT D. GARFIELD
Federal I.D. No. 7799
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
e-mail: rgarfield@dml-law.com

*Counsel for the Defendants RCSD, Lott,
Cowan, Johnson, Wyatt, Thompson,
Cornwell, Giron, Becker, & Nawrockyj*

Columbia, South Carolina

February 4, 2014

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

Reginald Andre Blanding, Wanda)
Blanding, and Brittani Blanding, by and)
through her Guardian ad Litem, Reginald)
Andre Blanding and Wanda Blanding,)

Plaintiffs,)

v.)

Richland County Sheriff's Department,)
Leon Lott, Lieutenant Cowan, Rickey E.)
Johnson, Jr., Fieda W. Wyatt, Adrian P.)
Thompson, Adam C. Cornwell, Sara N.)
Giron, George C. Becker, Micheal C.)
Nawrockyj, and Unknown Confidential)
Informant,)

Defendants.)

Civil Action No.: 3:14-cv-00299-JFA-PJG

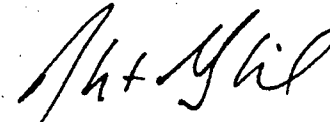
**AFFIDAVIT OF
ROBERT D. GARFIELD**

2014 FEB 10 AM 10:05
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

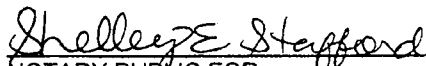
PERSONALLY APPEARED BEFORE ME, Robert D. Garfield, the attorney of record for the Defendants RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, & Nawrockyj who being duly sworn deposes and states as follows:

1. I am the attorney of record for these above-referenced Defendants and am fully authorized and competent to make this Affidavit.
2. The allegations in the Notice of Removal are true and correct of my own knowledge except for those matters alleged upon information and belief and, as to those, I believe them to be true.



ROBERT D. GARFIELD

SWORN TO BEFORE ME THIS
4th DAY OF FEBRUARY 2014.


NOTARY PUBLIC FOR
STATE OF SOUTH CAROLINA

COMMISSION EXPIRES: 6-13-15

ROA 087

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding,
Wanda Blanding, and
Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department,
Leon Lott,
Lieutenant Cowan,
Rickey E. Johnson, Jr.,
Frieda W. Wyatt,
Adrian P. Thompson,
Adam C. Cornwell,
Sara N. Giron,
George C. Becker,
Michael C. Nawrockyj, and
Unknown Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT ON
BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT,
THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ

2015 DEC -3 PM 4:19
JEANETTE W. WOOD
C.C.P. 2015
RICHLAND COUNTY
FILED

TO: ROBERT J. BUTCHER, ESQUIRE, ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Richland County Sheriff's Department (hereinafter, "RCSD"), Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Michael C. Nawrockyj will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order

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#1

pursuant to Rule 56, SCRPC, granting summary judgment to these Defendants and dismissing with prejudice the causes of actions set forth in the Plaintiffs' Complaint.

The Defendant RCSD's motion is based upon the following grounds:

1. Pursuant to the doctrine of issue preclusion (*i.e.*, *res judicata* / collateral estoppel) this action is barred by the decision entered in the companion case brought in United States District Court for the State of South Carolina. [See, Exh. A]

2. The individual Defendants are entitled to absolute employee immunity under the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity is immune from liability for tortious acts committed within the scope of her official duties. *See, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Therefore, the Plaintiffs' allegations, as to the individual Defendants, must be dismissed as a matter of law.

3. The Defendants Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj are not proper parties to this suit pursuant to the provisions of S.C. Code Ann. § 15-78-70(c).

4. The Defendant Lott is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(1).

5. The Defendant Lott is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(2).

6. The Defendant Lott is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(3).

7. The Defendant Lott is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(4).

NO
#2

8. The Defendant Lott is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(5).

9. The Defendant Lott is entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(20).

10. The Plaintiffs are unable to prove these Defendants acted with gross negligence with regards to the circumstances relevant to the Plaintiffs' claim.

11. The Plaintiffs have failed to state a claim since South Carolina law does not recognize a cause of action for a negligent arrest or investigation on the part of a law enforcement officer.

12. Any damages alleged in the Complaint were due to, occasioned by, or caused by intervening criminal acts on the part of someone other than these Defendants, without which acts Plaintiffs would not have sustained any damages as set forth in the Complaint.

13. The cause of action for defamation/slander should be dismissed as any statements made by the Defendant Sheriff and/or his employees were subject to an absolute and/or qualified privilege.

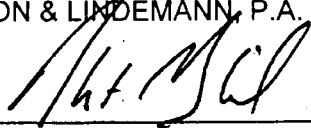
14. As to the defamation cause of action, there has been no conclusive showing that the statements at issue were false, nor that these Defendants knew or should have known they were false.

15. The Defendant RCSD is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

These Defendants' motion is based upon the pleadings filed in this case; the unappealed Amended Order and Opinion of the Honorable J. Michelle Childs dated August 17, 2015 [Exh. A]; excerpts from the June 23, 2014 deposition of the Plaintiff Wanda Blanding [Exh. B]; excerpts from the June 17, 2014 deposition of the Defendant Cowan

[Exh. C]; WIS-TV news segment containing comments by the Defendant Cowan [Exh. D];
the rules of court, and such other matters as may be presented to the Court at the time of
the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: 

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rgarfield@dml-law.com

*Counsel for Defendants RCSD, Lott,
Cowan, Johnson, Wyatt, Thompson,
Cornwell, Giron, Becker, & Nawrockyj*

Columbia, South Carolina

December 8, 2015

ND
#4

Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding and Wanda Blanding v. Richland
County Sheriff's Department, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr.,
Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C.
Becker, Micheal C. Nawrocky, and Unknown Confidential Informant

Civil Action Number: 12-CP-40-2456

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT, THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ**

EXHIBIT A

2015 WL 4929251

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Columbia Division.

Reginald Andre BLANDING; Wanda
Blanding; Brittani Blanding, by and through
her Guardian ad Litem Reginald Andre
Blanding and Wanda Blanding, Plaintiffs,

v.

RICHLAND COUNTY SHERIFF'S DEPARTMENT;

Leon Lott; Rickey E. Johnson, Jr.; Frida
W. Wyatt; Adrian P. Thompson; Adam C.
Cornwell; Sara N. Giron; George C. Becker;
Unknown Confidential Informant; Lieutenant
Cowan; Micheal C. Nawrockyj, Defendants.

Civil Action No. 3:14-cv-00299-
JMC. | Signed Aug. 17, 2015.

Attorneys and Law Firms

Deborah J. Butcher, Robert J. Butcher, Camden Law Firm,
Camden, SC, for Plaintiffs.

Robert David Garfield, Davidson Morrison and Lindemann,
Columbia, SC, for Defendants.

AMENDED ORDER AND OPINION

J. MICHELLE CHILDS, District Judge.

*1 Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding (collectively "Plaintiffs") filed the underlying action alleging a violation of their constitutional rights under 42 U.S.C. § 1983 by Defendants George C. Becker, Adam C. Cornwell, Lieutenant Cowan, Sara N. Giron, Rickey E. Johnson, Jr., Leon Lott, Micheal Nawrockyj, Richland County Sheriff's Department, Adrian P. Thompson, and Frida W. Wyatt (collectively "Defendants"). (ECF No. 1-1.) Plaintiffs also allege state law tort claims against Defendants. This matter is before the court pursuant to Defendants' Motion for Summary Judgment (ECF No. 19).

In accordance with 28 U.S.C. § 636(h) and Local Rule 73.02(B)(2) (g) (D.S.C.), the matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling.

On July 15, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that the court (1) grant Defendants' Motion for Summary Judgment, in part, as to all of the federal claims, and as to the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment; (2) decline to exercise supplemental jurisdiction over the remaining state law claims; and (3) remand the remaining state law claims of gross negligence and defamation to the Richland County Court of Common Pleas. (ECF No. 29.) Plaintiff did not file objections to the Magistrate Judge's recommendation. For the reasons set forth herein, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings.

I. JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's Amended Complaint asserts claims under 42 U.S.C. § 1983.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The following relevant facts are viewed in a light most favorable to Plaintiffs.

Plaintiffs' claims all arise from an incident on October 20, 2011, when Defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched Plaintiffs' residence pursuant to a search warrant. On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. (ECF No. 19-1 at 1.) Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into Hutchinson's complaint. (*Id.* at 2.) Johnson began collecting information with respect to the two trailers,

and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (*Id.* at 3.) This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes. (*Id.*)

*2 On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. (*Id.*) Johnson employed his confidential informant ("CI") in this investigation. At this point, the CI had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. (*Id.*) The CI was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. (*Id.*) The CI returned twenty to thirty minutes later. (*Id.*) The CI's debriefing yielded the following: The CI had a conversation with a male on a bicycle concerning the purchase of narcotics. The CI then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." (*Id.* at 4; *see also* ECF No. 19-14 at 11-12; ECF No. 19-16 at 3.) The CI also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." (*Id.*) The CI then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base. (*Id.*)

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. (*Id.* at 5.) Johnson additionally ascertained that Blanding was the last name of the owner of the house. (*Id.*) Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house. (*Id.*)

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Carolina W. Streater who issued the search warrant at about 12:20 p.m. (*Id.*) The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. (*Id.*) Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. (*Id.* at 6.) Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. (*Id.*) Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. (*Id.*)

Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. (*Id.*) Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. (*Id.*) Wyatt conducted a frisk search of the females with negative results. (*Id.*)

This action was originally brought in the Richland County Court of Common Pleas by Plaintiffs against the named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1-1 at 16 ¶ 85-17 ¶ 93.) Plaintiffs, additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. (*Id.* at 8 ¶ 30-15 ¶ 80.) Defendants assert they were acting within the course and scope of their official duties, and as a result, all named RCSD Defendants are entitled to employee immunity under S.C.Code Ann. § 15-78-70(a) and (b) (1976) and Plaintiffs' claims must be dismissed as a matter of law. (ECF No. 19-1 at 7 n. 2.) Defendants assert that Plaintiffs' Amended Complaint challenges the adequacy of the information relied upon by the DST, the sufficiency of the search warrant, and the nature and scope of the frisk search with respect to Brittani, as well as alleged statements made by Defendant Cowan directly or on behalf of the Defendant Sheriff concerning this residence being involved with drug transactions. (ECF No. 19-1 at 7.) Defendants further assert that they acted appropriately and reasonably at all relevant times and categorically deny that they violated Plaintiffs' constitutional rights. Consequently, Defendants' RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Fed.R.Civ.P. 56 on the following grounds: (1) Plaintiffs Reginald and Wanda Blanding have failed to state causes of action against Defendants for illegal seizure and false imprisonment under 42 U.S.C. § 1983, (2) Defendant investigators were justified in detaining and searching Brittani, (3) pursuant to *Harlow v. Fitzgerald*, Defendant investigators are entitled to qualified immunity from all liability, (4) Defendants RCSD and Sheriff Lott are not amenable to suit, (5) Plaintiffs have not stated a negligence claim and these causes of action should be dismissed, (6) Brittani failed to state a claim against Defendants for battery, and (7) Plaintiffs have failed to state a claim for defamation against Defendants. (ECF No. 19-1 at 7-8.) Plaintiffs filed a Response in Opposition to

Defendants' Motion for Summary Judgment (ECF Nos. 24, 25) and Defendants filed a Reply (ECF No. 27).

III. LEGAL STANDARDS AND ANALYSIS

***3** The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Objections to the Report and Recommendation must specifically identify portions of the Report and Recommendation and the basis for those objections. Fed.R.Civ.P. 72(b). “[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir.2005) (quoting Fed.R.Civ.P. 72 advisory committee's note). Failure to timely file specific written objections to a report and recommendation will result in a waiver of the right to appeal from an order from the court based upon the report and recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 155, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir.1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir.1984). If the plaintiff fails to properly object because the objections lack the requisite specificity, then *de novo* review by the court is not required.

Fed.R.Civ.P. 56(a) mandates the entry of summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(c). In considering a motion for summary judgment, the

evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” (*Id.* at 248.) The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. (*Id.* at 324.) Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. (*Id.*) Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 251. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Comm'n's Satellite Corp.*, 759 F.2d 355, 365 (4th Cir.1985), *overruled on other grounds*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989).

***4** Summary judgment is particularly appropriate in cases involving the qualified immunity defense because qualified immunity exists to protect government officials not only from liability, but also from trial. *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). The Fourth Circuit has also strongly announced a preference to resolve civil rights cases involving qualified immunity through dismissal short of trial. *Pittman v. Nelms*, 87 F.3d 116 (4th Cir.1996). The court will thoroughly address each of Plaintiff's objections in turn.

In Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (ECF No. 24, 25), Plaintiffs concede that Defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (ECF No. 24–1 at 1–2, 19.) Plaintiffs further concede that all Defendants are entitled to summary judgment as to the following state law claims: negligent supervision (Count Two); negligent training (Count Three); trespassing (Count Four); assault (Count Five); battery (Count Six); and false imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are Plaintiffs' claims of gross negligence (Count One) and defamation (Count

Eight). Plaintiffs ask the court to remand this case to state court for further proceedings. (*Id.* at 19.)

In Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (ECF No. 24), Brittani confirms that Plaintiffs' neighborhood "was known as a high-drug area." (ECF No. 24-2 at 111:15-18.) Brittani further confirms that "Richland County Sheriff's Department maintained a visible police presence in [Plaintiffs'] neighborhood and would park marked patrol cars across the road and to the right of [Plaintiffs'] home." (*Id.* at 109:2-18; 111:1-18; 112:4-10; 112:24-113:16.) Additionally, "Once the police officers learned from Aunt May (Reginald Blanding's sister) that they had the wrong house, they began wrapping up the search." (*Id.* at 93:17-94:12.) As Defendants were finishing the search, Reginald Blanding arrived home. (*Id.* at 91:8-10, 21-92:2.) According to Brittani, Defendants were rude and unapologetic, and it took about a week before the house was cleaned up. (*Id.*)

Brittani confirmed that Gregory Samuels is also known as "Peanut ." (*Id.* at 35:3-9.) Gregory Samuels is a first cousin of Brittani and the nephew of Reginald and Wanda Blanding. (*Id.* at 10-16.) Gregory Samuels was not in jail at the time of the raid on the home. (*Id.* at 38:2-9.) Plaintiffs believed that [Gregory Samuels] had been in and out of jail and that he was involved with drugs. (*Id.* at 84:3-18.) Gregory Samuels sometimes lives in a trailer behind Plaintiffs' property, about 80 to 100 yards from Plaintiffs' home. (*Id.* at 98:10-100:6; 103:9-12; ECF No. 24-3 at 86:12-16.)

In the Report and Recommendation, the Magistrate Judge observed that in light of Plaintiffs' concession to Defendants' Motion for Summary Judgment as to all federal claims and the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment, the court should exercise discretion and remand the remaining state law claims of gross negligence and defamation for further proceedings. (ECF No. 29 at 3 (citing 28 U.S.C. §

1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349-50, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal)).) Plaintiffs did not file objections to the Magistrate Judge's recommendation.

*5 In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Canby v. Davis*, 718 F.2d 198, 199 (4th Cir.1983). After carefully reviewing the record and the applicable law, the court agrees with the Magistrate Judge's findings. Accordingly, Defendants' Motion for Summary Judgment should be granted as outlined by the Magistrate Judge.

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings. The court adopts the Magistrate Judge's Report and Recommendation (ECF No. 29) and incorporates it herein by reference.

IT IS SO ORDERED.

All Citations

Slip Copy, 2015 WL 4929251

Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding and Wanda Blanding v. Richland
County Sheriff's Department, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr.,
Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C.
Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant

Civil Action Number: 12-CP-40-2456

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT, THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ**

EXHIBIT B

ROA 097

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

REGINALD ANDRE BLANDING,
WANDA BLANDING, AND BRITTANI
BLANDING, BY AND THROUGH HER
GUARDIAN AD LITEMS, REGINALD
ANDRE BLANDING AND WANDA BLANDING,

Plaintiffs,

vs. Civil Action No.: 3:14-cv-00299-JFA-PGJ

RICHLAND COUNTY SHERIFF'S
DEPARTMENT, LEON LOTT, LIEUTENANT
COWAN, RICKEY E. JOHNSON, JR.,
FRIDA W. WYATT, ADRIAN P. THOMPSON,
ADAM C. CORNWELL, SARA N. GIRON,
GEORGE C. BECKER, MICHAEL C.
NAWROCKYJ, AND UNKNOWN CONFIDENTIAL
INFORMANT,

Defendants.

DEPOSITION OF WANDA BLANDING

DATE TAKEN: Monday, June 23, 2014

TIME BEGAN: 3:33 p.m.

TIME ENDED: 4:56 p.m.

LOCATION: Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204

REPORTED BY: Yvonne R. Thurston-Bohannon
Registered Merit Reporter, Certified
Realtime Reporter, Georgia Certified
Court Reporter

1 A. I can't recall. I just can't recall a
2 date or a time frame that he actually been in the
3 house.

4 Q. Was he welcome in the house?

5 A. We don't have anything against him,
6 not -- not coming in the house.

7 Q. Okay. Every time it seems like I've
8 asked that question I've never gotten a direct
9 answer and I don't think that's on purpose, but
10 I'll ask it again.

11 Was he welcome -- was he welcome in
12 your house?

13 A. He was welcome.

14 Q. Okay. So you didn't have anything
15 against him?

16 A. No.

17 Q. Okay. And he was welcome in your
18 house?

19 A. Uh-huh.

20 Q. Is that yes?

21 A. Yes. Yes.

22 Q. Okay. Was he welcome around your
23 children?

24 A. I mean, as far as in the sense, I
25 mean, as far as when you say around my children --

1 really concern you as a parent?

2 A. Because it was only going to be on
3 speculation. I could not actually say what
4 probably was going on.

5 Q. Was there -- when you had this traffic
6 that was going on Marjorie, a stone's throw from
7 your house, driving by going -- proceeding behind
8 your house?

9 A. It was going behind.

10 Q. And would that be going towards the
11 direction of Peanut's trailer?

12 A. It would be going that direction.

13 Q. Okay. And Peanut's sister's house or
14 trailer?

15 A. Her house would be down that way too.

16 Q. And your brother-in-law's house is
17 down there as well? Is it Donnie or Darrell?
18 Darrell?

19 A. Darrell's, uh-huh.

20 Q. Okay.

21 A. Yes. Yes.

22 Q. Okay. And these would be all blood
23 relatives of your husband?

24 A. Yes.

25 Q. All right. Was there -- with all due

1 A. Probably to bring -- bring something
2 from Ms. Blanding or something like that maybe.

3 Q. Okay. How about before then?

4 A. I don't know.

5 Q. Let me ask it this way. How often
6 does he come around your house?

7 A. He doesn't come not -- not too often.
8 I mean, if it is, you know, he's bringing
9 something Ms. Blanding wants or something like
10 that. You know, we -- since we're next door
11 neighbors, if we need to borrow sugar and stuff
12 like that.

13 Q. Is he the kind of individual that you
14 would characterize similar to Peanut that you
15 wouldn't necessarily want around your children
16 based on, you know, possible negative influence
17 and things like that?

18 A. I never did see Ronnie as like that.
19 I mean, as far as brother-in-law, we probably more
20 closer, you know, since that would be more
21 brother-in-law than a nephew.

22 Q. I don't understand that. I'm sorry.
23 Could you explain that.

24 A. Since that's the brother-in-law, it's
25 not -- the rapport probably was more than a

1 nephew.

2 Q. Such as Peanut. I understand that.

3 Okay.

4 You said he doesn't come to your house
5 often, but could you characterize more than once a
6 month, less than six times a year? Could you give
7 my any kind of inference, just --

8 A. Maybe -- if I had to give one, maybe
9 six times a year.

10 Q. Okay. So every other month, would
11 that be fair to say?

12 A. Well, maybe a little much, but --

13 Q. Okay. Three or four times a year?
14 You said...

15 A. I don't know. If I have to estimate,
16 I mean, that would be closer than anything else.

17 Q. Okay. Would he ever come over for --
18 for a meal?

19 A. He hasn't been over for a meal.

20 Q. At all? Ever?

21 A. I won't say ever. Normally if I be
22 cooking and, you know, taking -- everything was
23 done over Ms. Blanding's house. So that was the
24 meeting place. So that's where the majority
25 everybody met. It wasn't at a particular person's

1 address --

2 A. Correct.

3 Q. -- or the wrong residence?

4 A. Correct.

5 Q. Okay. No one was accusing you and
6 your husband or your daughters of using or selling
7 drugs, specifically by name; is that correct?

8 A. They said drugs were sold out that
9 house.

10 Q. Okay. Well, did they say who was
11 selling the drugs at that house? Did they say
12 Wanda Blanding was selling drugs at that house?

13 A. They didn't -- they didn't say my name
14 specifically.

15 Q. Okay. Did they say any name
16 specifically that would include your three
17 daughters, you or your husband?

18 A. Not to my knowledge.

19 Q. Okay. So how would your reputation
20 have been hurt if your names were not involved?
21 Just because they said it was -- drugs were sold
22 at the house?

23 A. Because they actually came to the
24 house.

25 Q. Okay. Was your reputation damaged

1 Q. You were very upset?

2 A. Yes.

3 Q. It says in your statement you were
4 very upset?

5 A. Yes.

6 Q. There was a decision made to reach out
7 to the local media; is that correct?

8 A. Yes.

9 Q. And the decision was whose decision?

10 A. Mine.

11 Q. Okay. What, if anything, did your
12 husband have to do with your reaching that
13 decision?

14 A. Based on -- I kind of had that -- that
15 feeling when I spoke with him over the phone.
16 Just -- just the tone of his voice, I could tell
17 that he -- you know, he was upset. You know, you
18 just can tell in his voice.

19 And then when I got home and actually
20 seen the place for myself, you know, it was -- it
21 was devastating just how -- the condition of the
22 how the house was, and, you know, I had made a
23 determination because it was unjust that they were
24 at 402 Gibbs Road.

25 Q. Okay. I guess -- I'll go back to my

1 original question. What, if -- what, if anything,
2 did your husband play in your decision to contact
3 the media; in other words, you --

4 A. Oh, no. Well, nothing.

5 Q. It was all your decision?

6 A. My decision based on what I saw in the
7 home.

8 Q. Did you talk with anyone else to
9 say -- like, for instance, talk with a friend or
10 family member to say, "I'm thinking about calling
11 the news," and did you get their input, for
12 instance; or is this just something you thought
13 about and you decided that that's what you wanted
14 to do and you did it?

15 A. Like I say, I -- I kind of had that
16 notion that I wanted to do it on my way driving
17 home after I got the phone call from my husband,
18 but at that time it was just a conversation he
19 just told -- I said, you know, "What happened?"
20 and he explained the condition of the home and I
21 got there and saw it for myself.

22 Q. Okay. You saw it for yourself. How
23 much time between you seeing it, processing it,
24 looking at everything, and deciding to pick up the
25 phone and call the media?

1 A. (No response.)

2 Q. Just do the best you can with it.

3 A. I don't know, maybe 30 minutes, an
4 hour, I don't know. 30 minutes to an hour.

5 Q. Your statement says, "I told my
6 husband this was unjust treatment and people
7 needed to know, you can't treat innocent people
8 like crap. I'm going to call the news." Is that
9 true?

10 A. Yes.

11 Q. All right. And that's what you did,
12 right?

13 A. Yes.

14 Q. And you called WLTX first?

15 A. Right.

16 Q. And that's the local television
17 station?

18 A. Correct.

19 Q. Why did you call LTX [sic] first?

20 A. Because I remember them saying that
21 they on your side.

22 Q. Okay.

23 A. They have a slogan that says that.
24 "WLTX is on your side."

25 Q. And that was enough for you to give

1 them a -- give them a call and let them see what
2 they thought about things?

3 A. Yes. Yes.

4 Q. And you told someone on the phone what
5 happened?

6 A. Yes.

7 Q. Do you remember who you spoke with?

8 A. No.

9 Q. Okay. Were you waiting on a phone
10 call back from them or were you supposed to follow
11 up and --

12 A. No, they said -- they said they would,
13 you know, get back with me, and no one never did
14 call back.

15 Q. Okay. In your statement it says, "No
16 one ever called back and my sister-in-law (Lorena
17 Gripper) said" --

18 A. Yeah, my sister-in-law.

19 Q. -- "then just call WIS."

20 A. At that time, yes.

21 Q. So your sister-in-law actually called
22 WIS?

23 A. Yes, she did.

24 Q. And then WIS responded to that one,
25 didn't they?

1 structure to say that someone made a mistake down
2 below even?

3 A. I don't know. No.

4 Q. And I mean this because I'm trying to
5 understand your thinking. Had you made a mistake
6 that affected someone's recordkeeping at the SCDC,
7 would you have wanted your immediate supervisor to
8 be contacted or someone go directly to the news
9 about you?

10 A. Oh, I don't -- I don't know.

11 Q. I don't know either. I'm just trying
12 to -- I'm trying to understand what your thinking
13 was, whether it was right or wrong.

14 A. Just at the time how everything fell
15 in place, I just didn't trust the police
16 department. So I wanted to go to a neutral party.

17 Q. Okay. So in wanting to -- I wrote
18 down what you said -- "make people aware that law
19 enforcement makes mistakes." Okay?

20 A. Uh-huh.

21 Q. Is that -- did I read that right, what
22 you said?

23 A. Yes, that they can make mistakes.

24 Q. Okay. Well, in making these people
25 aware that they made mistakes, it kind of sets the

1 whole machine in motion in which cameras came to
2 your house, correct?

3 A. Yes.

4 Q. And videoed the interior of your
5 house?

6 A. Yes.

7 Q. And put your names on the television?

8 A. Yes.

9 Q. And actually had the correct spelling
10 of your names on the correct television?

11 A. I'm assuming they did, yes.

12 Q. Right. And had your residence, your
13 402 Gibbs Road, that's -- that was publicized over
14 the television, correct?

15 A. Correct.

16 Q. And you talked about both of you gave
17 specific details to Jody Barr, was it?

18 A. Yes.

19 Q. Okay. Of everything that happened?

20 A. Uh-huh.

21 Q. Right?

22 A. Yes.

23 Q. And you actually told Jody Barr that
24 you have children, correct? And then that came on
25 the news; is that right? Did it mention that you

1 had children living in the house?

2 A. I don't know if -- I don't know if
3 that was on television or not about the children.

4 Q. That you went by the children's room
5 and that that room was --

6 A. About as far as what I did --

7 Q. Correct.

8 A. -- yes.

9 Q. Okay. So would the news have been out
10 there providing all of this information in -- in a
11 public sort of way had you not contacted the news
12 to your -- to your knowledge?

13 A. Oh, it still -- people still would
14 have known.

15 Q. That's not what I'm asking.

16 A. Okay.

17 Q. Would that have been in the public eye
18 such as your name, your address, the
19 allegations -- all this brought to your house with
20 video cameras so the average person can see inside
21 your house with your name attached, would that
22 have been there in your estimation had you not
23 contacted the media?

24 A. I don't know.

25 Q. Is that -- is that an honest

1 statement, that you would had had tens of
2 thousands of people that could have seen all that
3 had you not contacted the media? Is it --

4 A. Well, contacting the media, yes.

5 Q. Well, that's my question.

6 A. Yes.

7 Q. I'm asking. So you agree with me that
8 you contacted the media and put all -- put all
9 that aspect in motion?

10 A. Yeah. But that was after the damage
11 had been done.

12 Q. I understand that.

13 But you wanted people aware that law
14 enforcement makes mistake?

15 A. Right.

16 Q. But that comes with a little bit of a
17 price, doesn't it, because when people learn that,
18 people learn a little bit about you and your
19 family, where you live, see inside your house,
20 have the video cameras there, get to see your
21 kitchen, your kids' rooms? Is that true?

22 A. Well, yeah, that's true.

23 Q. Okay. And that's something you -- you
24 decided to put in motion, right?

25 A. Yes.

1 Q. Okay. So who -- how was your
2 reputation and your family's reputation damaged as
3 a result of what happened in that house on that
4 day other than you setting this in motion?

5 A. Because I wanted everyone to know that
6 that was not true.

7 Q. I guess my thing is -- and this isn't
8 meant to be argumentative, but I'm trying to
9 understand your thought. It was the method that
10 you chose to make people aware of that. There are
11 several ways could you have gone about that, you
12 would agree. One would be like to contact the
13 sheriff himself, and you chose not to do that for
14 whatever reason, right?

15 A. Okay.

16 Q. Is that right?

17 A. That's right.

18 Q. Okay. And you could have gone to
19 maybe the State Law Enforcement Division. For
20 whatever reason, you chose not to do that, for
21 whatever reason?

22 A. That's correct.

23 Q. Okay. And you could have filed an
24 internal affairs complaint about these
25 individuals. You chose not to do that, right?

1 A. That's correct.

2 Q. Okay. You choose the avenue of
3 contacting the local media?

4 A. Correct.

5 Q. And you knew that by doing that and
6 welcoming Jody Barr, an investigative reporter --
7 right, in your home?

8 A. Right.

9 Q. Okay. That -- that -- and him
10 videoing inside your house?

11 A. Yes.

12 Q. Setting up cameras and videoing? Did
13 you lead him from room to room and tell him
14 everything you knew and learned when you got home
15 that day?

16 A. Yes.

17 Q. Okay. So you opened up your entire
18 home to him?

19 A. Yes.

20 Q. Okay. You knew that average folks --
21 the general public was going to see that, right?

22 A. Yes.

23 Q. And form their own conclusions?

24 A. Well, I can't -- yes, they would.

25 I'll leave it at that. Yes.

Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding and Wanda Blanding v. Richland
County Sheriff's Department, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr.,
Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C.
Becker, Micheal C. Nawrocky, and Unknown Confidential Informant

Civil Action Number: 12-CP-40-2456

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT, THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ**

EXHIBIT C

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

Reginald Andre Blanding, Wanda	)	
Blanding, and Brittani Blanding,	)	Civil Action No.:
by and through her Guardian ad	)	3:14-cv-00299-JFA-PGJ
Litems, Reginald Andre Blanding	)	
and Wanda Blanding,	)	
Plaintiffs,	)	
Vs.	)	
Richland County Sheriff's	)	
Department, Leon Lott,	)	Deposition of
Leon Lott, Lieutenant Cowan,	)	Major Chris Cowan
Ricky E. Johnson, Jr., Frieda W.	)	
Wyatt, Adrian P. Thompson, Adam	)	June 17, 2014
C. Cornwell, Sara N. Giron,	)	
George C. Becker, Michael C.	)	
Nawrockyj, and Unknown	)	
Confidential Informant,	)	
Defendants.	)	

Deposition on oral examination of CHRIS COWAN,
reported by Cecelia P. Englert, Court Reporter and Notary
Public in and for the State of South Carolina; pursuant
to Rule 30 of the South Carolina Rules of Civil
Procedure; said deposition was taken at Davidson &
Lindemann, P.A., 1611 Devonshire Drive, Second Floor,
Columbia, South Carolina, on June 17, 2014, and
commencing at the hour of 4:00 p.m.

MAJOR CHRIS COWAN

11

1 to it?

2 A. Star, and then it says "searched one
3 room."

4 Q. And, who told you that only one room was
5 searched?

6 MR. GARFIELD: Object to the form. Go
7 ahead.

8 A. Actually what that's referencing is you'll
9 see that I've also made a note specific to, it says
10 "trained canine." And what I was actually
11 referencing was the fact that the canine searched
12 that room and found drugs in one room, or -- or hit
13 positively on one room. So, that's what I'm
14 referencing in my notes. And, then I'm also
15 referencing what else she told me below that.

16 Q. And, what do the handwritten notes
17 underneath say?

18 A. That we received "numerous citizen
19 complaints that drugs were being sold." "RCSD
20 called them home"; that's referencing to the parents
21 and what -- what specifically that's referring to is
22 the fact that our deputies contacted the parents of
23 the kids that were in the home, to come home. And,
24 then below that it says "bought from a family
25 member," and that's referencing where the RCI bought

MAJOR CHRIS COWAN

12

1 from during that incident.

2 Q. So the statements you made to the media
3 afterwards, did you gather that information or the
4 information that you said on camera, was that from,
5 essentially, this information in speaking with
6 Frieda Wyatt?

7 A. Basically, the public information office
8 does that. We gather the information. And what --
9 what information we receive, then that's what we
10 disseminate.

11 Q. Did you make any notes or any press
12 releases or anything?

13 A. No.

14 Q. No, okay. So you spoke -- then you spoke
15 off the cuff when you were -- or you were prepared,
16 but you spoke without notes when you spoke on
17 camera.

18 MR. GARFIELD: Object to the form. Go
19 ahead.

20 A. I spoke from the information I received.
21 So I -- and, this is the information that I utilized
22 when I was speaking to the reporter over the
23 telephone or in person.

24 Q. During 2011 or presently, have you had any
25 supervisory responsibility for narcotics or drugs

ROA 117

MAJOR CHRIS COWAN

13

1 suppression?

2 A. Not between then and now, no.

3 Q. And, at that time you didn't.

4 A. No, I did not have, at that time.

5 Q. After this incident occurred, did -- you
6 testified earlier, one of your -- one of the
7 employees at Richland County Sheriff's Department
8 had called you and said "Jody Barr had called them,"
9 correct?

10 A. Correct. That's keeping in protocol.

11 Q. Is it the sheriff's department's protocol
12 that when an officer is contacted, they're to
13 contact your office?

14 A. Correct.

15 Q. And, you would be -- did you in turn
16 contact Jody Barr?

17 A. I -- we had a conversation over the
18 telephone. I don't remember whether he called me or
19 I called him.

20 Q. Okay.

21 A. But I did -- I had -- actually had two
22 conversations with him, one was in person and one
23 was over the phone. But I don't remember whether
24 that was I contacted him or he contacted me.

25 Q. Was the first conversation over the phone?

MAJOR CHRIS COWAN

14

1 A. Yes.

2 Q. What did you-all discuss about what
3 happened?

4 A. He basically presented the information
5 that he had. I presented the information that I
6 had, which was different than what he had. I
7 explained to him that his information was inaccurate
8 and that we had a difference of opinion. And, I
9 explained to him that the information he had was --
10 was not with what had occurred or the process behind
11 what had occurred, and that was -- that was the gist
12 of the conversation.

13 Q. What information was inaccurate?

14 A. He specifically had information, that was
15 one of my notes that was referenced, where there was
16 -- the children -- there were young children in the
17 home that were being uncared for during the search
18 warrant, and that the parents or family members had
19 not been contacted. I had made a reference to that
20 specifically because that was a concern to me,
21 because I -- I double-checked that with the agents
22 that were on the scene, that they had actually
23 contacted the -- I believe it was the parents to
24 come to the house while the deputies were there.
25 Also, that the -- that the search of the home, the

ROA 119

MAJOR CHRIS COWAN

15

1 -- the extent of the search and what we -- what
2 actions we had taken, and the actions that -- that
3 he had been -- that had been described to him were
4 inaccurate.

5 Q. What was the difference with the extent of
6 the search, that Jody Barr had relayed to you versus
7 what you corrected him with?

8 A. The things that he had described were far-
9 fetched. They were way behind what any trained
10 officer would do, any deputy would do, the
11 explanations of how it had been done, the -- the
12 comments that were made about what the parents had
13 told him or the family members had told him. Also,
14 that we had not bought drugs from inside the house
15 or at the house, that it was actually another home,
16 which we know were inaccurate, which is -- the fact
17 is that we did buy directly from the home.

18 Q. How do you know it was inaccurate?

19 A. Because that was relayed to me by the
20 officers that were there on the scene, that had been
21 involved in the operation, the long-standing
22 operation, that had been going on.

23 Q. Right now there's a court order that says
24 "the identity of the CI is confidential," and I'm
25 not going to go into that, and I just want to remind

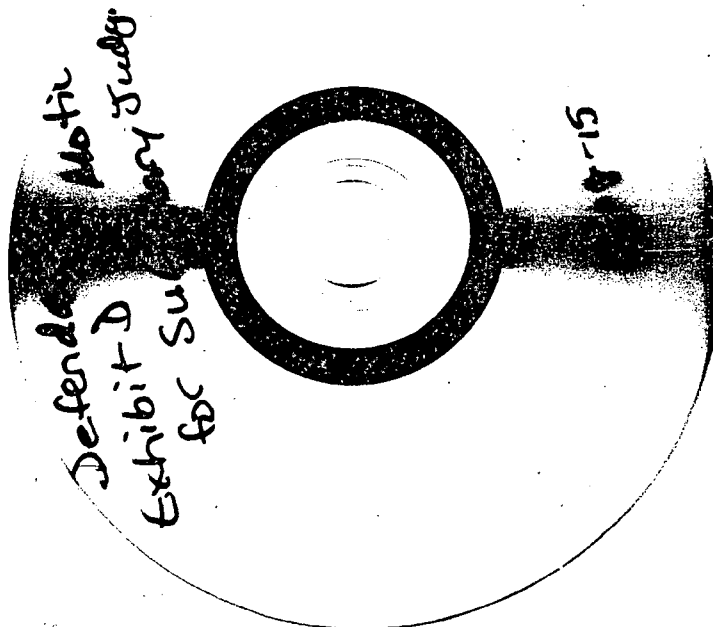
ROA 120

Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding and Wanda Blanding v. Richland
County Sheriff's Department, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr.,
Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C.
Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant

Civil Action Number: 12-CP-40-2456

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT, THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ**

EXHIBIT D



ROA 121

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding,
and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding
and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, Lieutenant Cowan, Rickey E. Johnson, Jr.,
Frida W. Wyatt, Adrian P. Thompson, Adam C.
Cornwell, Sara N. Giron, George C. Becker,
Micheal C. Nawrockyj, and Unknown
Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2012-CP-40-02456

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND INCORPORATED
MEMORANDUM OF LAW**

Plaintiffs file this response in opposition to Defendants' motion for summary judgment and asserts the following:

I. Remaining cause of action.

The following causes of action remain:

1. First Cause of Action – Gross Negligence against Defendant Richland County Sheriff's Department.
2. Eighth Cause of Action – Defamation against Richland County Sheriff's Department, Leon Lott, and Lieutenant Cowan.

II. Procedural history relevant to this motion.

This matter was removed to the United States District Court for the District of South Carolina on February 4, 2014. Exhibit 14. Defendants filed a motion for summary judgment on July 13, 2015. Exhibit 14. In Plaintiffs' response to the motion for summary judgment filed on

October 14, 2014, Plaintiffs conceded numerous causes of action but asked for the Court to remand the negligence and defamation causes of action to state court. Exhibit 15, *1-2. A report and recommendation was issued by the United States Magistrate on June 15, 2015. Exhibit 16. Plaintiffs did not object to the report and recommendation because the report and recommendation granted the relief they requested in their response to Defendants' motion for summary judgment. Exhibit 15 and 16. The District Court issued an order adopting the report and recommendation on July 6, 2015 and amended the order on August 17, 2015. Exhibits 14 and 17.

III. Facts relevant to this motion.

Background of the Blanding Family

Plaintiffs Reginald Andre Blanding and Wanda Blanding reside at 402 Gibbs Road, Columbia, South Carolina with their three children, Brittani Blanding, Breelyn Blanding, and Breon Blanding. Exhibit 1, Deposition of Brittani Blanding [Brittani Depo], 11:17 – 12:11; Exhibit 2, Deposition of Reginald Blanding [Reginald Depo], 178 – 181. Reginald and Wanda Blanding have lived in their 1249 ft² home since 1991. Reginald Depo, 20:6 – 21:10. The Blandings home is neat and orderly and well taken care of by the family. Exhibit 5 at 0:41.

Despite Defendants' assertions that the Blandings live in such a horrible, high drug neighborhood, the Blandings have never had the need to call the police and they have never been to the Blanding residence for other reasons. Reginald Depo, 124:11 – 125:5.

Reginald Blanding has worked for Pepsi since 1993. Reginald Depo, 107:2 – 3. He worked for the South Carolina Department of Corrections for six years before that. Reginald Depo, 105:13 – 18. Wanda Blanding has been an employee of the South Carolina Department of Corrections since 1990. Wanda Blanding Deposition [Wanda Depo], 8:6 – 12. Brittani

Blanding is a college student at Winthrop University. Brittani Depo, 9:8 – 14. She has never been arrested or even stopped for a speeding ticket. Brittani Depo, 18:6 – 17.

None of the Blandings have been arrested or convicted of a crime. Reginald Depo, 46:13 – 17; 117:15 – 18. None of the Blandings use drugs or associate with people who abuse drugs. Reginald Depo, 46:18 – 20; 111:2 – 9.



The Blandings live in the home marked above with a circle. Reginald Depo, 65:2 – 12, 66:16 – 18. Reginald Blanding's mother and father lived in the house marked with a square and the house is located at 316 Gibbs Road. Reginald Depo, 65:13 – 23, 66:16 – 18. Reginald Blanding's sister, Rosa Samuel, lived next door to their parents. Reginald Depo, 65:24 – 66:2,

66:16 – 18. Rosa Blanding also owned a trailer behind and south of the Blandings' property. Reginald Depo, 52:4 – 21, 66:16 – 18.

There was no direct pathway or road from the Blandings' home to the trailer where Gregory Samuels' stayed, identified as the "Blue" trailer in Defendants' motion for summary judgment. Dkt. No. 19-1, *2 fn.1; Brittani Depo, 115:15 – 18. When Reginald Blanding saw people cut through his yard, he would confront them and tell them not to walk through his yard. Reginald Depo, 77:8 – 78:10.

Roosevelt Blanding was Reginald Blanding's father (he has since passed) and Brittani Blanding's grandfather. Brittani Depo, 115:19 – 116:6. Roosevelt Blanding was retired and spent the majority of the time at his home and fixing things and working on his tractor. Brittani Depo, 115:19 – 116:6. Roosevelt Blanding kept an eye on his son's property. Brittani Depo, 124:13 – 19.

Reginald Blanding testified that with his father and other relatives living next door, they would call him at work if somebody pulled up in his driveway when he was away from the home. Reginald Depo, 25:8 – 26:5. Reginald Blanding's relatives did their best to keep close eyes on the house during the day and during the night. Reginald Depo, 26:6 – 23; 88:24 – 89:10; 89:24 – 90:5.

Reginald Blanding testified that the entire family makes sure that the house is locked when they leave. Reginald Depo, 78:11 – 20.

Complaint as to Drug Activity

On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson about illegal narcotics activity sales taking place at two trailers,

both of which are in the vicinity of Plaintiffs' residence. Exhibit 13, Frieda Wyatt Deposition [Wyatt Depo], 67, 68.

Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into the councilperson's complaint. Exhibit 10, Ricky Johnson Deposition [Johnson Depo], 15-16; Wyatt, 49, 50

Knock and Talk

On Monday, October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. See, Id., 16, 37. This process involves uniformed officers making contact with individuals at both trailer locations, address concerns presented in the Hutchinson complaint, and exploring whether there was any validity to the claims. See, Id., p. 16. While no arrests were made at this time, the officers interacted with individuals at the trailers, some of whom were in possession of crack pipes. See, Wyatt Depo, pp. 67-68.

These trailers look like drug trailers and later, after the debacle at the Blanding residence, RCSD raided these homes. Johnson, 35:18 – 36:8; see also

<http://archive.wltx.com/news/story.aspx?storyid=172303>, last visited October 14, 2014.

Plaintiffs ask the Court to contrast the appearance of Plaintiffs' home in Exhibit 5 at 0:25.

The Richland County Sheriff's Department had the knowledge of the patterns of drug activity and the resources to know where the drug using traffic was heading in the Blandings' neighborhood.

Richland County Sheriff's Department maintained a visible police presence in the Blandings' neighborhood and would park marked patrol cars across the road and to the right of the Blandings home. Brittani Depo, 108:2 – 18; 110:1 – 18; 111:4 – 10; 111:24 – 112:16. The Blandings' neighborhood was known as a high-drug area. Brittani Depo, 110:15 – 18.

Confidential Informant's Reliability

Before this matter was removed from the Richland County Court of Common Pleas to District Court, the Court of Common Pleas issued an order allowing Plaintiff to question the Defendant officers about the background of the Confidential Informant [CI] in this matter. Exhibit 11. The responses by Deputy Ricky Johnson, the CI's handler, were at best, self-serving and at the worst, a direct attempt to deny relevant information to Plaintiff. For instance, Johnson did not know the CI's criminal history, how many times he had been arrested, or whether he had prior fraud convictions. Deposition of Ricky Johnson [Johnson Depo], 10:9 – 11:13. The CI was not familiar with the area or the local population. Johnson Depo, 11:18 – 12:9. The CI worked for Johnson to work off charges for his girlfriend and was also paid cash for his work. Johnson Depo, 40:12 – 41:24; 44:25 – 49:6. The CI was not drug tested. Johnson Depo, 46:13 – 14.

Incident at the Blanding Residence

On Thursday, October 20, 2011 Brittany Blanding and her cousin left Ridge View High School, stopped by Bojangles on Clemson Road, and drove her father's Ford Expedition home to 402 Gibbs Road, Columbia, South Carolina. Brittani Depo, 28:6 – 29:2; 134. When she drove into the driveway of her home Brittany Blanding saw a few police cars in the yard and a van in the yard. Brittani Depo, 29:3 – 20, 134. Several police officers ran out of the front door. Brittani Depo, 29:8 – 10, 30:23 – 31:5; 134.

Brittani Blanding's cousin thought that the house had been robbed and the police were responding to a robbery. Brittani Depo, 29:21 – 25; 31:8 – 22. A Caucasian male police officer went over to Brittani Blanding's vehicle and asked if she lived at the residence. Brittani Depo,

32:9 – 12. Brittani Blanding responded, "Yes, I do," and then, speaking of her cousin, said, "...she does not she came with me from school, this is my cousin." Brittani Depo, 32:13 – 16; 134. The officer then asked Brittany Blanding and her cousin to step out of the car and told her to turn the engine off, which she did. Brittani Depo, 134.

The officer asked Brittany Blanding how old she was and she told him that she was seventeen. Brittani Depo, 134. The officer asked Brittani Blanding where her parents worked, if her dad had any nicknames, and who was "Peanut." Brittani Depo, 33:10 – 23; 134. The officer told Brittani to call her parents. Brittani Blanding first called her mother and the call went directly to voicemail. Brittani Depo, 39:17 – 23. Brittani Blanding then called her father. Brittani Depo, 39:20 – 23; Reginald Depo, 175. The officer told Brittani Blanding to tell her father, Reginald Blanding, to come home as soon as possible because the police were at the house and they had search warrants. Brittani Depo, 39:5 – 13; 134; Reginald Depo, 175.

Reginald Blanding began asking his daughter questions and she handed the phone to the officer after Reginald Blanding instructed her to do so. Brittani Depo, 40:12 – 21; 134; Reginald Depo, 175. Reginald Blanding was speaking loudly and was very upset during the phone conversation with the officer. Brittani Depo, 41:4 – 6. The officer told Reginald Blanding that he needed to come home because they were going to search his house. Reginald Depo, 175.

Reginald Blanding told the officer that he was not to search his house until an adult was present and the officer said they would. Reginald Depo, 175. Reginald Blanding repeated that they were not to search his home unless he or his wife were home. Reginald Depo, 175. The officer then said that Brittani Blanding, who is 17, is old enough. Reginald Depo, 175. Reginald Blanding then told the officer that he just could not leave his job without talking to someone and the officer stated that Brittani Blanding was old enough, they were going to conduct the search, and

then he hung up the phone. Reginald Depo, 175.

After the officer finished speaking with Reginald Blanding, he had an attitude and stated, "I'm going to do what I came here to do," and then handed the phone to Brittani Blanding. Brittani Depo, 42:12 – 24. As the officer walked to the porch he stated, "[Reginald Blanding] said we're not searching his house, but if we find something, we can take his daughter in because she is an adult in this situation." Brittani Depo, 42:1 – 10. Reginald Blanding did not make this statement to the officer during the telephone call. Reginald Depo, 175. Reginald called other family members and was relieved from work so that he could go home. Reginald Depo, 175.

Reginald Blanding called his mother, Marjorie Blanding, to tell her to ask his father, Roosevelt Blanding, to go over to the house because his daughter was there by herself. Reginald Depo, 175.

A Caucasian lady walked over to Brittani Blanding and her cousin and escorted the two children into the house. Brittani Depo, 44:22 – 25. As Brittani Blanding walked into the house she was appalled to see the "door busted through and wood lying across the couch." Brittani Depo, 47:22 – 25; 135. They walked as far as the living room and were in the house for a minute or two before they were removed to allow a drug dog to search the home. Brittani Depo, 48:1 – 49:23; 58:5 – 9.

While standing on the porch "[t]he female officer pat searched [Brittani Blanding], took all the contents out of [her] pocket and shook out [her] bra while the [black] male officer searched [her] purse." Brittani Depo, 51:23 – 52:5; 58:24 – 59:3; 135. While sitting on the porch, Brittany Blanding watched another officer search the Ford Expedition Plaintiff drove. Brittani Depo, 60:11 – 15; 61:8 – 14; 135.

At this time, Roosevelt Blanding, Reginald Blanding's father and Brittani Blanding's

grandfather, walked onto the property. Brittani Depo, 61:19 – 62:4; 135. An officer asked Roosevelt Blanding, "Do you live here, sir," and Roosevelt Blanding stated, "No, [I] live next door but received a call from my [son]." Brittani Depo, 61:24 – 62:22; 135. The officer then said, "We have everything under control here. It would be best to go home." Brittani Depo, 62:8 – 22; 135. Roosevelt Blanding began to walk home and said, "I believe you have the wrong house." Brittani Depo, 62:8 – 22; 135. The officer then said, "We have the right house." Brittani Depo, 62:8 – 22; 135. The officer acted ugly towards Roosevelt Blanding. Brittani Depo, 62:23 – 63:3.

After sitting on the porch for six or seven minutes, the officers let her back in the house. Brittani Depo, 61:12 – 14; 68:3 – 12; 135. Upon viewing the home, the "living room, dining room, kitchen was disoriented and messy. Brittani Depo, 68:3 – 7; 135 – 136. Brittani Blanding and her cousin sat at the dining room table with the female officer. Brittani Depo, 68:23 – 69:10; 136. A male officer asked Brittani Blanding for the keys to the Durango which was parked in the driveway and she gave them to him. Brittani Depo, 68:8 – 13; 136. The officers were going through the mail and comparing an identification of Reginald Blanding to the mail. Brittani Depo, 69:11 – 21; 136.

The African-American officer brought the safe that was in Brittani Blanding's room and set down beside the couch. Brittani Depo, 70:18 – 71:12; 136. He asked Brittani Blanding if she knew the combination of the safe and if she did then it would be best to tell him or they would bust it open. Brittani Depo, 71:18 – 72:9; 136. Brittani Blanding told him that her father knew the combination but she did not. Brittani Depo, 71:18 – 23; 136. Brittani Blanding was given permission to call her father to get the combination. Brittani Depo, 72:1 – 4, 136; Reginald Depo, 175.

Reginald Blanding asked to speak with the officer again so Brittani Blanding gave the phone to an officer and they spoke for a while. Brittani Depo, 73:14 – 18, 136. Reginald Blanding asked to speak with the officer again. Reginald Depo, 175. Reginald Blanding told him that he was on his way home and that he did not want them to leave until he arrived home. Reginald Depo, 175. The officer told Reginald Blanding that if they were not done they would still be there but if they were done they were going to leave and a copy of the search warrant would be at the house. Reginald Depo, 175. Reginald Blanding said that he wanted at least one police officer to be there when he got there which would be 45 minutes. Reginald Depo, 175. The police officer then said they would leave if they finished. Reginald Depo, 175.

The officer could not figure out how to open the safe and abandoned the attempt. Brittani Depo, 75:6 – 13; 136. The African American officer came into the kitchen and made a comment about the stairs being down and how he did not think they would be sturdy enough for him. Brittani Depo, 75:22 – 76:7; 136.

At all times, Brittani Blanding was trying to be cooperative. Brittani Depo, 76:8 – 12. Brittani's grandmother came over and other relatives and neighbors. An officer came into the house and stated that he was aggravated with all of the neighbors that were coming over and the he was going to put people in cuffs. Brittani Depo, 78:20 – 79:1; 136 – 137.

The white male officer then asked Brittani Blanding questions such as: did the Blandings know Peanut, how do they know him, when was the last time Brittani had seen him, and did she know where he lives. Brittani Depo, 81:15 – 20; 137.

The police officers let Brittani's Aunt May into the home. She is Reginald Blanding's sister and the mother of Gregory Samuels. Brittani Depo, 84:22 – 85:11; 137. Aunt May asked Brittani Blanding if she was all right and she gave her a kiss on the forehead. Brittani Depo,

87:13 – 16; 137. Aunt May asked the police officers who was responsible for fixing the door.

Brittani Depo, 89:20 – 90:3; 137. Once the police officers learned from Aunt May that they had the wrong house, they began wrapping up the search. Brittani Depo, 92:17 – 93:12.

As the police officers were finishing the search, Reginald Blanding arrived home and was furious. Brittani Depo, 90:8 – 10; 21 – 91:2. The police officers were rude and unapologetic. Brittani Depo, 90:21 – 93:4. An officer stated that someone came out of the back door to his house on the deck and sold an informant drugs. Reginald Depo, 175. Another officer stated that someone had sold drugs in the back yard. Reginald Depo, 175. When Reginald Blanding asked the officers who was going to pay for the damage to his home, they stated in a disrespectful manner, “not us.” Reginald Depo, 176. When he asked for their names, the officers told him that their names were on the warrant and then they left. Reginald Depo, 176.

The officers searched Brittani Blanding’s room. Brittani Depo, 116:15 – 17. The storm door would not close completely, and the front door was completely off of its hinges. Wanda Depo, 78. The bed cover was pulled back and the mattress was pulled to the side. Wanda Depo, 78. Clothes were thrown from every drawer onto the bed. Wanda Depo, 78. Everything from the top shelf of the closet was thrown on the floor and bed. Wanda Depo, 78. The stairs to the attic were pulled down. Wanda Depo, 78. The guest bathroom had everything dumped out from the travel bag and items thrown out from the bathroom counter. Wanda Depo, 78. All of Brittani Blanding’s clothes were out of the drawers and her shoes were all over the place and the safe was taken out of her closet. Brittani Depo, 116:19 – 24. All of her clothes had been taken from the closet and thrown on the bed. Wanda Depo, 78. Cereal boxes were left open on the kitchen floor. Wanda Depo, 78. Brittani Blanding had to stay at a friend’s house for several nights because the door was knocked off of the hinges. Brittani Depo, 123:18 – 124:5. It took about a

week before everything was cleaned up in the house. Brittani Depo, 124:6 – 8.

Gregory Samuels a/k/a Peanut.

Gregory Samuels is also known as "Peanut." Brittani Depo, 34:3 – 9; Reginald Depo, 43:2 – 23. Gregory Samuels is a first cousin of Brittani Blanding and the nephew of Reginald and Wanda Blanding. Brittani Depo, 34:10 – 16; Reginald Depo, 43:2 – 23.

Gregory Samuels was not in jail at the time of the raid on the Blanding's home. Brittani Depo, 37:2 – 9.

Gregory Samuels was not included in family events at the Blanding home. Brittani Depo, 37:13 – 38:1. Gregory Samuels was not welcome at the Blanding home and did not come over. Brittani Depo, 82:24 – 83:6; 94:24 – 95:16. Brittani Blanding had never been over to Gregory Samuels' home. Brittani Depo, 83:19 – 21; 102:13 – 15.

The Blandings believed that he had been in and out of jail and that he was involved with drugs. Brittani Depo, 83:3 – 18; Reginald Depo, 45:23 – 46:8.

Gregory Samuels sometimes lived in a trailer behind the Blandings' property. Brittani Depo, 97:10 – 99:6; 102:9 – 12. The trailer was about 80 to 100 yards from the Blandings' home. Reginald Depo, 85:12 – 16.

The Richland County Sheriff's defamation of the Blanding Family.

At the time of this incident, Chris Cowan was Commander of Public Information and he was in charge of the Public Information Office at RCSD. Exhibit 8, Chris Cowan Deposition [Cowan Depo], 7:8 – 10, 14 – 17. Cowan held this position for nine years. Cowan Depo, 7:18 – 20. Cowan.

After RCSD was contacted by the media about the search of the Blanding home, Chris Cowan received information about the search of the home. Cowan Depo, 8:17 – 9:1; Exhibit 9. Cowan spoke with Frieda Wyatt after he received the email about the raid on the Blandings' home so that he could get firsthand information from the source. Cowan Depo, 9:20 – 10:14. Frieda Wyatt was supervisor of the drug suppression team. Cowan Depo, 10:22 – 24.

The statements by Cowan were "devastating" and some people assumed that the Blandings were involved with drugs. Brittani Depo, 120:14 – 122:6.

When speaking with media, Cowan stated, "[the] drugs that we purchased from that home, we purchased from a family member of that home. We purchased the drugs out of the home." Exhibit 4 at 2:09. Cowan also told the media that, "a drug dog went in and could tell that drugs were once in there." Exhibit 7, p. 3. Lastly, Cowan told the media that "...agents only searched the master bedroom," which is a complete falsehood. Exhibit 7, p. 3.

Finally, despite RCSD's assurances that they bought drugs from the Blanding residence, they did not continue to surveil the residence or attempt to buy drugs from the family members in the home. Johnson, 35:7 – 17. Later, RCSD finally hit the correct house and arrested Peanut and Ronnie Blanding. Johnson, 35:18 – 36:8.

Cowan had time to prepare for his interview before making the defamatory statements. ~~Cowan, 12:12 – 23. Even in his deposition, after having the time to review the videos of the~~ news segments, Cowan continued to assert that RCSD did not tear the rooms apart, search the cereal boxes, and purchase drugs from the house. Cowan, 21:14 – 22. Johnson testified that he searched the master bedroom with Frieda Wyatt. Johnson, 31:14 – 16.

IV. Argument.

a. Summary Judgment standard of review.

Summary judgment is appropriate only where there is no genuine dispute as to any material fact such that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "Summary judgment should not be granted except where it is perfectly clear that no genuine issue of material fact exists and an inquiry into the facts is not desirable to clarify application of the law." *Grooms v. Marlboro County School Dist.*, 414 S.E.2d 802, 803 (S.C. Ct. App. 1992). In evaluation of whether a genuine dispute as to material facts exists, the court must liberally construe all evidence, including all reasonable inferences flowing from that evidence, in the light most favorable to the non-moving party. See, e.g., *David v. McLeod Regional Medical Center*, 626 S.E.2d 1, 3 (S.C. 2006); *Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002); *Grooms*, 414 S.E.2d at 803.

On a motion for summary judgment, the trial judge must take into consideration all documents and evidence contained within the case's record, to include pleadings and discovery documents such as depositions, answers to interrogatories, and admissions, as well as any affidavits submitted by the parties in conjunction with the motion. See *Higgins v. Medical Univ. of South Carolina*, 486 S.E.2d 269, 272 (S.C. Ct. App. 1997). Summary judgment is not appropriate where the parties disagree as to the conclusion to be drawn from facts pertinent to the case, and it "is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues." *Madison ex rel Bryant v. Babcock Center, Inc.*; *S.C. Dep't of Disabilities and Special Needs*; and *Batchelor*, 638 S.E.2d 650, 655 (S.C. 2006); *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672, 675 (S.C. 2000).

Plaintiff will demonstrate herein that Defendant's arguments for summary judgment fail.

b. Objection to Inadmissible Hearsay Evidence.

Almost all of the evidence put forth in this motion by the Defendants that relate to statements by the Confidential Informant is inadmissible. Rule 56(e), SCRCP; Rule 801, SCRE. There is no admissible testimony submitted in support of Defendants' motion for summary judgment and no Defendant witnessed a drug transaction in this matter. Defendants repeatedly assert a drug transaction occurred at the Blanding residence based upon the hearsay testimony of what deputies were told by a confidential informant. Plaintiffs object to this testimony and all assertions that a drug transaction occurred on Plaintiffs' property should be disregarded by the Court in considering this motion, especially when the Court reviews the defamation claims. Additionally, Plaintiff is suing the Richland County Sheriff's Department due to the actions of its agent, the confidential informant. If the Richland County Sheriff's Department wishes to assert his statements for the truth of the matter, it needs to produce him to allow cross examination by Plaintiffs.

c. Issue preclusion through collateral estoppel and res judicata.

Defendants raise the doctrine of issue preclusion through collateral estoppel and res judicata as part of their motion for summary judgment. Although this argument is not explained in their motion for summary judgment, Plaintiffs assert that Defendants do not prevail on this argument.

A review of Plaintiff's District Court response to Defendants' motion for summary judgment (Exhibit 15), Plaintiff asks the Court to dismiss several causes of action and to remand the remaining state claims of gross negligence and defamation to state court. The United States Magistrate agreed in her report and recommendation (Exhibit 16) and the United States District Court Judge adopted the report and recommendation in her order. Exhibit 17. The merits of Defendants' summary judgment arguments were not discussed or addressed by the Court. For

example, Defendants cannot argue that Plaintiffs' negligence claims should be dismissed on the same merits as the determination of the 42 U.S.C. § 1983 claims because the merits were not explored by the Court. Exhibits 16 and 17.

The fact that Plaintiffs conceded the Federal § 1983 and several supervisory negligence claims does not mean that the issue has been litigated, that a determination on the merits has been concluded, and that Plaintiff is estopped from litigating their gross negligence claims.

d. The confidential Informant is an employee as defined by S.C. Code Ann. § 15-78-30(c)

South Carolina Code Ann. § 15-78-30(c) defines an "employee" as:

"any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner..."

The Richland County Sheriff's Department paid the confidential informant cash for his work.¹ Johnson Depo, 40:12 – 41:24, 44:25 – 49:6. Richland County Sheriff's Department Procedure No. 902 states, "Informants are deemed to be agents of the department as a whole." Exhibit 12; Wyatt Depo, 18:16 – 18; Johnson Depo, 40:12 – 41:24, 44:25 – 49:6.

Plaintiffs ask the Court to find, for purposes of this motion, that the confidential informant was an employee or agent of Defendant Richland County Sheriff's Department.

e. Exclusive remedy as defined by S.C. Code Ann. § 15-78-70(a)

South Carolina Code Ann. § 15-78-70 states that:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort

¹ The confidential informant was also working off criminal charges for his girlfriend.

while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, *actual malice*, intent to harm, or a crime involving moral turpitude.

(c)... In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

Emphasis added.

Plaintiffs assert that Defendants Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Michael C. Nawrockyj should be dismissed from this action pursuant to S.C. Code Ann. § 15-78-70(a) and that the agency or political subdivision, the Richland County Sheriff's Department, be substituted in their stead pursuant to S.C. Code Ann. § 15-78-70(c) as to the gross negligence claim.

On the other hand, Plaintiffs believe that Defendants Leon Lott and Chris Cowan should not be dismissed because the remaining defamation claim, count eight, alleges actual malice.

S.C. Code Ann. § 15-78-70(b); Amended Complaint, *12-13.

f. Sheriff Leon Lott's claims of absolute sovereign immunity under S.C. Code Ann. §§ 15-78-60(1-5 and 20).

It is hard to square Sheriff Leon Lott's various assertions of absolute sovereign immunity with the fact that he and his spokesperson uttered defamatory statements about the Blanding

family on WIS-TV with full knowledge that these false statements would be published on

television and on the internet. These acts were certainly not:

(1) legislative, judicial, or quasi-judicial actions or inactions (S.C. Code Ann. § 15-78-60(1));

(2) administrative actions or inactions of a legislative (S.C. Code Ann. § 15-78-60(2));

- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process (S.C. Code Ann. § 15-78-60(3));
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies (S.C. Code Ann. § 15-78-60(4));
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee (S.C. Code Ann. § 15-78-60(5));
- (6) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons. (S.C. Code Ann. § 15-78-60(20));

The office of Sheriff is an executive function, which would make S.C. Code Ann. §§ 15-78-60(1) and (2) irrelevant. There was no court order or enforcement of any law related to defamation of Plaintiffs that would make S.C. Code Ann. § 15-78-60(3) applicable. There was no adoption, enforcement, or compliance with any law or failure to adopt or enforce any law by these Defendants in making defamatory statements to make S.C. Code Ann. § 15-78-60(4) relevant.

Defendants' discretionary immunity defense fails because there is no real weighing of considerations to be had in uttering false statements to the press, other than having the self discipline to keep your mouth shut. "Discretionary immunity is an affirmative defense requiring [the State] to prove [its employee] evaluated competing alternatives and made a "judgment" call based on applicable professional standards." *Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 330, 566 S.E.2d 536 (2002) (citation omitted). The duty is discretionary if

the governmental entity proves it actually weighed competing considerations, faced with alternatives, and made a conscious decision based upon those considerations. *Id.* (citing *Niver v. Dep't Highways & Pub. Transp.*, 302 S.C. 461, 395 S.E.2d 728 (Ct.App. 1990)).

Certainly there were no intervening or criminal acts of other people that caused the Defendants to utter defamatory statements pursuant to S.C. Code Ann. § 15-78-60(20).

Additionally, S.C. Code Ann. § 15-78-70(b) states that Leon Lott is not granted immunity because the defamation was made with malice.

g. Defendants' argument that Plaintiff's cannot prove these Defendants acted with gross negligence with regards to the circumstances relevant to the Plaintiff's claim.

Plaintiffs assert that the facts listed above demonstrate that Plaintiffs have proven gross negligence at this stage of the proceedings.

Defendants had a duty to the Blandings not to enter and sack the Blandings home without some semblance of knowledge that a criminal act occurred. While some Defendants have shown that there was a good faith basis for the raid on Plaintiffs' home simply because they were just participants in the raid, Defendants have failed to prove as a matter of law, with admissible evidence, that Deputy Johnson and his CI acted with due care in determining from which residence the CI purchased drugs, if he purchased drugs at all. Aside from pure speculation, there is absolutely no evidence that anyone sold drugs off of the Blanding's deck.

Plaintiffs assert that Defendants placed a CI in an unfamiliar neighborhood, and failed to verify where the buy occurred other than Deputy Johnson calling a uniform patrol car to drive by a house to get a house number. No reconnaissance was conducted, or pictures of the home were taken and reviewed by the CI or deputy before making the raid on the home.

Defendants knew that without properly verifying the location of the buy with the CI and with the uniformed officer who drove by the residence to get a street address, there was an increased likelihood that RCSD would raid the wrong home.

Defendants duty to verify and verify again that they have the correct residence. It is paramount because life and limb are at stake, for both officers and law abiding private residents, when law enforcement enters the home. The safety in one's own home is one of the most important rights in our country. Defendants breached this duty and have since created numerous falsehoods to justify their gross negligence. Plaintiffs have suffered property damage and have lost the sanctuary that is their home.

Plaintiffs also assert that when the evidence is viewed in a light most favorable to Plaintiffs, no one came out of the Blanding home to serve crack on October 18, 2011 to the agent of RCSD, the CI and it is a fabrication, as no one was home that day. Additionally, the testimony of Johnson regarding what the Confidential Informant told him should be disregarded as inadmissible.

h. Defendant's argument that there is no claim for negligent arrest or investigation.

Plaintiffs agree that there is no cause of action for a negligent arrest or investigation. Law enforcement agencies, however, have certain duties when their employees and agents undertake a criminal investigation, which are listed above and in the amended complaint.

i. Defendants' argument that there was no conclusive showing that their statements were false.

This is really a jury question.

The state law cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about

the plaintiff." *See, Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998); *See also, West v. Morehead*, 396 S.C. 1, 720 S.E.2d 495 (S.C.App. 2011).

Slander per se exists where the defamatory statement involves an allegation of crime. Chris Cowan, the spokesperson for Sheriff Leon Lott prepared for a television interview, spoke with members of RCSD who conducted the raid, and stated, "[the] drugs that we purchased from that home, we purchased from a family member of that home. Exhibit 4 at 2:09. Cowan also told the media that, "a drug dog went in and could tell that drugs were once in there." Exhibit 7, p. 3. There is no doubt that as a matter of law, Plaintiffs have shown that Cowan was accusing the Blandings of distributing drugs from their home. No reasonable person watching the interview would think to themselves, "Maybe he is speaking of Ronnie Blanding or Peanut." Summary judgment on this cause of action should be denied and remanded for further proceedings in state court.

Defendants assertion that Cowan's statements give rise to qualified privileges, such as the fair report privilege is baseless as Cowan's statements were not part of a report, but were made to justify RCSD's raid of the Blanding's home.

It is true that the Blandings embarrassed RCSD by going to the news in an attempt to clear their name. This did not give RCSD the right to embarrass the Blandings by making untruthful statements to the public.

j. Defendants' creative alternate theories.

Defendants have created several alternate theories of facts in order to avoid liability. They are best left for the jury to contemplate.

The most ingenious theory is the theory that either Gregory Samuel, a/k/a Peanut, or Ronnie Blanding burgled Roosevelt and Marjory Blanding's home, stole the hidden key to

Reginald and Wanda Blanding's home, and burgled Reginald and Wanda Blanding's home in order to sell drugs when they could sell drugs in the comfort of their own trailers and off of their own back decks. Dkt. No. 19-1, *14. Plaintiffs have demonstrated above that they live in a neighborhood with nosey relatives/neighbors who keep a lookout on the Blanding residence. The Blandings have further demonstrated that Ronnie Blanding and Gregory Samuel did not reside with Roosevelt and Marjory Blanding and that the key was hidden. Reginald Depo, 39:23 – 40:20. Ronnie Blanding and Gregory Samuel did not live with Roosevelt and Marjory Blanding in October 2011. Reginald Depo, 71:2 – 18; 94:21 – 97:10.

The next creative theory is that the Blandings are not credible because they asserted in their amended complaint, "[n]one of the Blandings...or associate with people who abuse drugs." Dkt. No. 1-1, *6. First, the Defendants surmise that being related to a drug dealer, seeing these relatives at family gatherings, and even hiring one to fix flashing on the roof makes the Blandings associates of people who abuse drugs. Dkt. No. 19-1, *14. Having a bad egg in your family does not take away from ones character or make one an associate of that person. More popular painting of people's character with off-coloured relatives have included the brothers of Barack Obama (Onyango Obama), George Bush (Neil Bush), Bill Clinton (Roger Clinton), and everyone's favorite, Billy Carter, brother of Jimmy Carter.

Another red herring is Plaintiffs' unforgivable sin of living in a high drug area. Dkt. No. 19-1, *14. This must mean that the Blandings associate with drug users and drug dealers instead of sticking their noses to the grindstone and successfully raising children who go on to college. This is a scary notion.

Another theory is that Gregory Samuel would sit on Plaintiff's back deck and peddle drugs all day because Gregory Samuel's trailer was 80-90 yards away, almost the length of a

football field. There is no evidence to show why anyone would set up a crack dealership out in the elements and sit on their neighbors deck to distribute drugs. Additionally, there is no evidence this occurred and it is pure speculation on the part of Defendants.

IV. Conclusion.

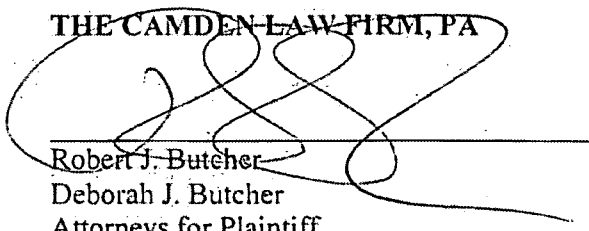
Plaintiff agrees that Defendants Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Michael C. Nawrockyj be dismissed from this action.

Plaintiffs ask the Court to deny Defendants Richland County Sheriff's Office's, Leon Lott's and Lieutenant Cowan's request to be dismissed from this action.

Plaintiffs ask the Court to deny Defendant Richland County Sheriff's Office's, Leon Lott's and Lieutenant Cowan's motion to dismiss the negligence claim and the defamation claim.

Respectfully Submitted,

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Manning, South Carolina
January 12, 2016

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 COLUMBIA DIVISION

4 REGINALD ANDRE BLANDING,
5 WANDA BLANDING, AND BRITTANI
6 BLANDING, BY AND THROUGH HER
7 GUARDIAN AD LITEMS, REGINALD
8 ANDRE BLANDING AND WANDA BLANDING,

9 Plaintiffs,

10 vs

Civil Action No.:
3:14-cv-00299-JFA-PGJ

11 RICHLAND COUNTY SHERIFF'S
12 DEPARTMENT, LEON LOTT, LIEUTENANT
13 COWAN, RICKEY E. JOHNSON, JR.,
14 FRIDA W. WYATT, ADRIAN P. THOMPSON,
15 ADAM C. CORNWELL, SARA N. GIRON,
16 GEORGE C. BECKER, MICHAEL C.
17 NAWROCKYJ, AND UNKNOWN CONFIDENTIAL
18 INFORMANT,

19 Defendants.

20 D E P O S I T I O N

21 WITNESS: BRITTANI NICOLE BLANDING

22 DATE: Monday, June 16, 2014

23 TIME: 11:44 a.m.

24 LOCATION: Law Offices of
Davidson & Lindemann, P.A.
1611 Devonshire Drive, Second Floor
Columbia, South Carolina

25 TAKEN BY: Attorneys for the Defendants

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF

3 REGINALD ANDRE BLANDING, WANDA BLANDING,
4 AND BRITTANI BLANDING, BY AND THROUGH
5 HER GUARDIAN AD LITEMS, REGINALD ANDRE
6 BLANDING AND WANDA BLANDING:

7 CAMDEN LAW FIRM, PA
8 BY: ROBERT J. BUTCHER, ESQ.
9 P.O. Box 610
10 Camden, SC 29021

11 ATTORNEYS FOR DEFENDANT

12 RICHLAND COUNTY SHERIFF'S DEPARTMENT,
13 LEON LOTT, LIEUTENANT COWAN, RICKEY E.
14 JOHNSON, JR., FRIDA W. WYATT, ADRIAN P.
15 THOMPSON, ADAM C. CORNWELL, SARA N.
16 GIRON, GEORGE C. BECKER, MICHAEL C.
17 NAWROCKYJ, AND UNKNOWN CONFIDENTIAL
18 INFORMANT:

19 DAVIDSON & LINDEMANN, P.A.
20 BY: ROBERT D. GARFIELD, ESQ.
21 1611 Devonshire Drive, Second Floor
22 P.O. Box 8568
23 Columbia, SC 29202-8568

24 ALSO PRESENT:

25 SCOTT HAYES, ESQ.
REGINALD BLANDING

(INDEX AT REAR OF TRANSCRIPT)

1 Q. And were you born in Columbia?

2 A. Yes, sir.

3 Q. Okay. You lived in Columbia your entire
4 life?

5 A. Yes, sir.

6 Q. Just going to kind of take things one
7 thing at a time. First is just sort of your
8 educational background. Are you in school
9 anywhere?

10 A. Yes, sir.

11 Q. Where is that?

12 A. Winthrop University.

13 Q. Are you a full-time student at Winthrop?

14 A. Yes, sir.

15 Q. Y'all going to get a new president soon?

16 A. Yes. I think so, to be honest.

17 Q. Okay. Your -- what year are you
18 academically?

19 A. I'm a junior, a rising junior.

20 Q. You will start full-time classes in Rock
21 Hill again --

22 A. This August.

23 Q. This August as a junior?

24 A. Yes, sir.

25 Q. And have you declared a major?

1 Q. And where did you go to school -- middle
2 school and then work backwards from there.

3 A. Okay. I went to middle school at Kelly
4 Mill Middle.

5 Q. And elementary school?

6 A. Bookman Road Elementary.

7 Q. And do you live in the dorms up in Rock
8 Hill or --

9 A. Yes, sir.

10 Q. Have you lived in the university dorms the
11 entire time or have you lived off campus at any
12 time?

13 A. I lived there the entire time.

14 Q. Are you a member of any clubs or
15 sororities or organizations or anything like that?

16 A. No, sir.

17 Q. And do you consider your parents' house
18 your primary residence still?

19 A. Yes, sir.

20 Q. Okay. And what is the address there?

21 A. 402 Gibbs Road.

22 Q. And have you lived at 402 Gibbs Road your
23 entire life?

24 A. Yes, sir.

25 Q. So it's the only family residence you've

1 ever known?

2 A. Yes, sir.

3 Q. You're off at college. Who lives there at
4 402 Gibbs now?

5 A. My father, Reginald Blanding; my mother,
6 Wanda Blanding; and my two younger sisters, Breelyn
7 Blanding and Breon Blanding.

8 Q. You said Breelyn and Breon?

9 A. Yes, sir.

10 Q. Okay. And how old are they?

11 A. Breelyn is 16 and Breon is ten.

12 Q. Okay. Now, I notice your statement,
13 there's mention of an Expedition. Is that a Ford
14 Expedition?

15 A. Yes, sir.

16 Q. Okay. It just wasn't capitalized, so I
17 just wanted to make absolutely sure I have my facts
18 straight.

19 A. Okay.

20 Q. No big deal.

21 So the Ford Expedition, is that a car that
22 you primarily drove in October of 2011?

23 A. Yes, sir.

24 Q. Okay.

25 A. Because I had my car, but my dad used to

1 A. And like right in front of the Kershaw
2 County line.

3 Q. Okay. I have read that somewhere in here,
4 in the documents, and that may be incorrect, so
5 that's something I'll ask someone else about.

6 Have you ever been -- this is something
7 everyone's asked. Have you ever been arrested
8 before?

9 A. No, sir.

10 Q. Okay. Have you ever -- other than the
11 circumstances on October 20, 2011, have you ever
12 been -- have you ever been stopped for a traffic
13 offense?

14 A. No, sir.

15 Q. Okay. Have you ever been detained by law
16 enforcement?

17 A. No, sir.

18 Q. All right. Just ask, law enforcement ask
19 you to stay somewhere or handcuff you for safety
20 reasons, nothing like that has ever happened to
21 you, other than anything that happened on
22 October 20th?

23 A. Yeah, nothing like that has ever happened.

24 Q. Okay. All right. You did have a chance
25 to look at your statement. Do you believe that --

1 Q. Okay. He also goes by Donell. Is that
2 right? Donald? Donell? I was trying to think
3 have I seen a statement. Okay. I'm trying to
4 learn names of your family. All right. I'll find
5 that out.

6 It says you came from Bojangles'. That's
7 where you had been?

8 A. Yes, sir.

9 Q. Which Bojangles' was that.

10 A. We went to the Bojangles' in Blythewood.
11 It's -- well, I call it the one in Blythewood, but
12 it's the one by the Zaxby's on --

13 Q. Clemson Road?

14 A. Yes, sir.

15 Q. Okay.

16 A. But the Zaxby's like closer to Ridge View.

17 Q. I understand. And you had been in school
18 that day?

19 A. Yes, sir.

20 Q. So you came home from Bojangles', you
21 said, to see your house entered in by the police.
22 Would this -- if I'm correct, your driveway, can
23 you -- does your driveway -- well, scratch that
24 question.

25 Tell me how you approached your house to

1 see that there may have been vehicles that you
2 weren't familiar with.

3 A. Okay. I was driving onto Gibbs Road from
4 the -- what street is that -- Kelly Mill, Kelly
5 Mill Road. So I was driving up, and I have like a
6 somewhat long driveway. So as I was approaching
7 the driveway, I saw a few police cars in the yard,
8 and it was like a van in the yard as well. So I
9 had turned in, and when I turned in, I seen a
10 couple of police run out the front door.

11 Q. So you were only in a position to see the
12 front of your house? I mean, you were approaching
13 the front of your house --

14 A. Yes, sir.

15 Q. -- not the back? Okay.

16 From -- as you were driving in off of
17 Gibbs down your driveway, how many vehicles could
18 you see from that point of view?

19 A. I don't really recall, but my best
20 guesstimate would be three.

21 Q. All right. And you wrote in here that
22 your cousin was scared because she thought that
23 there could have been criminal activity like
24 robbers in your house?

25 A. Yes, sir.

1 Q. With three cars in front of your house,
2 was that just thinking that it was like a big
3 operation? I mean --

4 A. Yes. We didn't know what to think.

5 Q. Exactly. I'm not suggesting anything.
6 I'm just trying to understand what the cars looked
7 like and how that impacted you. Okay.

8 So three cars you did not recognize?

9 A. Yes.

10 Q. All right. So there was a van-like police
11 car in the driveway?

12 A. Yes.

13 Q. And what color was that van? Do you
14 recall?

15 A. I recall that it was black.

16 Q. Did you see any sort of insignia or
17 markings or anything on any of these cars?

18 A. Not that I recall. I don't remember if
19 they had any kind of special --

20 Q. So you just don't remember one way or the
21 other?

22 A. Yes, sir.

23 Q. Okay. And then you said in a matter of
24 seconds you see two or three policemen run out the
25 door?

1 A. Yes, sir.

2 Q. Now, is that the first time that it dawned
3 on you or Taylor that these were policemen in your
4 house?

5 A. Yes, sir.

6 Q. All right. Now, what gave away the fact
7 they were policemen?

8 A. Oh, I knew they were policemen from the
9 police car, but I thought that like when she said
10 there was a robber, we thought there was something
11 going on with the house that the police came.

12 Q. I see. I'm sorry. Of course. That's why
13 I didn't understand. Okay. So you were thinking
14 they were there to respond?

15 A. Yes, sir.

16 Q. Okay. That was my mistake. Just as an
17 explanation on a question, I was thinking that
18 maybe you just saw signs of entry and people going
19 in your house. Okay. That makes sense. So you
20 were thinking the policemen were there to respond
21 to a crime in progress. Is that correct?

22 A. Yes, sir.

23 Q. Okay. But you don't remember whether cars
24 were marked, correct?

25 A. Yes, sir.

1 Q. But you did see these two or three police
2 officers exiting the front door?

3 A. Yes, sir.

4 Q. And they were clothed with sheriff's
5 department, you know --

6 A. Yes, sir.

7 Q. -- patrol uniform and that sort of thing?

8 A. Yes, sir.

9 Q. Okay. And then you said one Caucasian
10 male made his way over to you and asked, do you
11 live here. Is that correct?

12 A. That's correct.

13 Q. And you answered, yes, I do. And then you
14 volunteered that your cousin, that she does not
15 live there with you, she's your cousin, right?

16 A. Yes, sir.

17 Q. And she came with you from school?

18 A. Yes, sir.

19 Q. Okay. Was anything else said that you
20 recall other than that initial contact or
21 conversation between you and this white male
22 officer?

23 A. No, sir, not other than what I put in the
24 statement.

25 Q. Did you recognize that officer?

1 A. No, sir.

2 Q. Okay. Did you in fact -- before this
3 particular day, had you recognized any of these
4 officers, male, female, whoever they are?

5 A. No, sir.

6 Q. Your -- you were standing in the driveway,
7 your cousin was in the driveway, and this white
8 male officer was in the driveway. Is that correct?

9 A. That's correct.

10 Q. And the same white male officer asked you
11 about your parents, where they worked. Is that
12 right?

13 A. That's correct.

14 Q. All right. Was he doing pretty much all
15 the talking at this point?

16 A. Yes, sir.

17 Q. Okay. He also asked you, I think you
18 wrote in here, if my dad had any nicknames. Is
19 that right?

20 A. That's correct.

21 Q. And who was Peanut, and you said not in
22 that order?

23 A. Yes, sir.

24 Q. So this officer from very early on had
25 already asked you questions about this individual

1 named Peanut?

2 A. Yes, sir.

3 Q. Okay. I'm going to pause what happened on
4 this day and now I'm just going to ask you
5 questions about Peanut. What is Peanut's real
6 name?

7 A. Greg.

8 Q. Greg what?

9 A. I think it might be Samuel.

10 Q. Greg Samuel. And is he a blood relative
11 of yours?

12 A. Yes, sir.

13 Q. Do you know how he's related to you?

14 A. He is my dad's sister's son.

15 Q. So he was your -- he's your first cousin?

16 A. Yes, sir.

17 Q. Okay. Is he older than you?

18 A. Yes, sir.

19 Q. Okay. Do you know about how old is he now
20 roughly? 20s? 30s?

21 A. Probably 30s.

22 Q. Do you know if he works anywhere
23 presently?

24 A. No, sir.

25 Q. Okay. I don't know why your lawyer's

1 Q. -- of these events in October 2011.

2 A. Okay. No, he wasn't in jail by then.

3 Q. Okay. How did you know that he wasn't in
4 jail?

5 A. Because I would recall maybe seeing him
6 around the neighborhood because, like I said in the
7 statement, like he would drive his motorcycle
8 around, and I really didn't see him too often other
9 than on his motorcycle.

10 Q. Okay. Would y'all ever have family --
11 would he ever be there for a family get-together?

12 A. No, sir.

13 Q. Okay. And I think you said in the
14 statement that he has never been in your house?

15 A. No, sir.

16 Q. Okay. Well, is that a true statement? To
17 your knowledge, because it's not fair to say what's
18 outside of your knowledge. To your knowledge,
19 Peanut has never been inside the house at 402 Gibbs
20 Road?

21 A. No, I didn't see him inside of my house.

22 Q. Okay. You've never seen him inside your
23 house. Is that your testimony? I just want to be
24 clear.

25 A. Okay. Not that I recall... I don't ever

1 remember seeing him in my house.

2 Q. Fair enough. I'll leave it at that.

3 Now, you said right then this officer's
4 asking you questions about your mom and your daddy
5 and Peanut and you said you felt nervous because
6 you didn't know what was going on and why you were
7 being questioned in this way?

8 A. Yes, sir.

9 Q. All right. Okay. Although the fact that
10 you were nervous and although the fact that you had
11 no idea that this was going down, was the officer
12 himself -- you were just talking to this one white
13 male officer at this point, correct?

14 A. Correct.

15 Q. He was asking you direct questions,
16 correct?

17 A. Correct.

18 Q. Serious questions, questions that scared
19 you a little bit, right?

20 A. Yes, sir.

21 Q. Made you nervous?

22 A. Yes, sir.

23 Q. Was he rude or unprofessional to you or
24 was he just being very direct and curt with you
25 about what he was asking?

1 A. At this point, he was being really direct.

2 Q. Okay. Did he ever touch you? Did anyone
3 touch you at this point?

4 A. No, sir.

5 Q. Okay. And he did tell you at this point
6 for you to call your parents, right?

7 A. Yes, sir.

8 Q. And to tell them to come home as soon as
9 possible?

10 A. Yes, sir.

11 Q. Because the police were there and that
12 they had a search warrant?

13 A. Yes, sir.

14 Q. Okay. Did you have an occasion to see the
15 search warrant at this stage?

16 A. No, sir.

17 Q. Okay. And the first person you called was
18 your mother?

19 A. Yes, sir.

20 Q. Is that right? Okay.

21 And it went straight to voice mail so you
22 immediately called your dad. Is that right?

23 A. Yes, sir.

24 Q. Now, this would have been a landline or
25 your cell phone?

1 A. My cell phone.

2 Q. Is it the same cell phone you have now as
3 far as the -- I don't want to say cell phone --
4 cell phone account --

5 A. Yes.

6 Q. -- that you have now?

7 A. It's the same number.

8 Q. Okay. And what -- what is the carrier?

9 A. T-Mobile.

10 Q. You're still with T-Mobile?

11 A. Yes, sir.

12 Q. Okay. So you handed your cell phone, this
13 T-Mobile account cell phone, you handed it over to
14 your father -- I mean, handed it over to the
15 officer so he could speak to your father?

16 A. Yes. Well, at first I was talking to my
17 dad.

18 Q. Okay.

19 A. And then he wanted to speak to the
20 officer, and that's when I gave the officer the
21 phone.

22 Q. Okay. Were the two -- and the two of them
23 had the conversation, right?

24 A. Yes, sir.

25 Q. Were they on speaker?

1 A. No, sir.

2 Q. All right. So you couldn't tell really
3 what your dad was saying?

4 A. No, I couldn't tell directly. I could
5 hear that he was speaking loudly and that he was
6 upset.

7 Q. Understood. But you don't know
8 specifically what he was saying --

9 A. Yes.

10 Q. -- to the officer. Is that right?

11 A. Yes.

12 Q. You wrote, after the officer spoke to your
13 dad, he had an attitude that read, and you're
14 quoting, "I'm going to do what I came here to do,"
15 then handed me my phone.

16 When you say he had an attitude, did he
17 say something or did he just -- I don't understand
18 what that means.

19 A. Yeah, because when you asked me earlier
20 was he like rude or was he direct and I said he was
21 direct, that kind of changed. He did kind of have
22 a rude demeanor about him at this point.

23 Q. After speaking with your father --

24 A. Yes, sir.

25 Q. -- on the cell phone? Okay.

1 And you wrote here, "As he walked toward
2 my porch" -- I'm reading the first part of the
3 second page -- "he said to his colleagues, quote,
4 he said we're not searching his house, but if we
5 find something, we can take his daughter in because
6 she is an adult in this situation"?

7 A. Yes, sir.

8 Q. All right. That's what you heard the
9 officer say?

10 A. Yes, that's what he said.

11 Q. All right. That's a pretty specific
12 quote. I'm impressed that you would -- did you get
13 that quote from your handwritten notes?

14 A. Yes, sir.

15 Q. That's a direct quote that the officer
16 said that you heard?

17 A. Yes, sir.

18 Q. What did that -- why did you feel it was
19 important, if you did, to write down that exact
20 direct quote?

21 A. Because, like you said -- well, like I
22 said, I was nervous, and he didn't say anything to
23 me that like, you know, he can take me --

24 Q. Who's "he"? I'm sorry.

25 A. Oh, the officer.

1 officer was lying? I'm just trying to understand
2 why you wrote that.

3 A. I'm still confused.

4 Q. Okay.

5 A. Okay.

6 Q. I just wanted to know do you believe your
7 father -- do you believe that he actually said that
8 to the officer, something to the nature like that
9 the police could take you in --

10 A. Oh, no, sir.

11 Q. -- because you're an adult?

12 A. No, sir. I don't believe -- I'm not sure
13 or not if the cop had said that to my dad, but in
14 his quote, this is what he's saying to the other
15 police, if that answers your question.

16 Q. Okay. So this was just something that
17 the -- not that your father said, but this was just
18 something that the officer believes that he could
19 have -- you could have been taken into custody if
20 they found anything because you were an adult?

21 A. Yes, sir.

22 Q. Okay. So you and your cousin, you were
23 assisted to the house. Who assisted you?

24 A. I believe it was a Caucasian lady that had
25 walked over there at that point.

1 A. No, sir.

2 Q. Okay. Did Taylor talk to him?

3 A. Nobody talked to him.

4 Q. All right. Do you remember what he was
5 wearing? Because you're being specific here. You
6 say he's in a black vest.

7 A. Yes. I don't really recall his pants. I
8 don't know if they were basketball shorts or if he
9 had on jeans or something. I do remember him
10 having on a white shirt. It was a white T-shirt,
11 and he had the vest on top of the white T-shirt.

12 Q. Have you ever -- did you at any point
13 during this day ever have a chance to interact with
14 him other than just see him in the van?

15 A. No, I haven't had a chance to interact
16 with him.

17 Q. Have you ever seen him since this day?

18 A. No, sir.

19 Q. And you don't know -- never found out what
20 his name is or anything like that?

21 A. No, sir, I haven't.

22 Q. You said as you walked into the house, you
23 were appalled to see the door busted through and
24 wood lying across the couch?

25 A. Yes, sir.

1 Q. Okay. And you said -- so you walked into
2 the house initially. How far in did you walk into
3 the house?

4 A. We did not go far. We probably got to the
5 first couch.

6 Q. Okay. So you went in through the
7 threshold of your front door?

8 A. Yes, sir.

9 Q. And you went into your front room. Is
10 that considered like a living area --

11 A. Yes.

12 Q. -- or a den?

13 A. It's the living room.

14 Q. Living room, okay.

15 And you got to about where the couch is,
16 and you said that's about as far as you got?

17 A. Yes, sir.

18 Q. Do you know about how long you were in the
19 house this first time?

20 A. No, sir. It couldn't have been like more
21 than maybe like a minute or two.

22 Q. And that's why you said we did not stay in
23 the house long. That's what you're talking about,
24 couldn't be more than a minute or two?

25 A. Yes, sir.

1 Q. It said because the narcotics or the drug
2 dog came in. Is that right?

3 A. That's correct.

4 Q. All right. So did someone ask you to
5 leave for the dog to come in or did -- you just saw
6 the dog come in and then you just left on your own?

7 A. The whole time we were with that -- the
8 lady officer.

9 Q. Okay. Had she said anything to you at
10 this point?

11 A. I don't really recall if she said anything
12 because if it was important or -- I would have
13 remembered it and I would have put it in here, but
14 not at this point, not inside the house.

15 Q. That's fair. So you -- at this point, you
16 said, "Everyone exited the house and went into the
17 porch." When you say "everyone," what do you mean
18 by that?

19 A. Okay. By everyone I mean the lady officer
20 and me and my cousin.

21 Q. Okay. So you're on the porch, the front
22 porch, the front of your house?

23 A. Yes, sir.

24 Q. All right. Is that a screen porch or is
25 that an open-air porch?

1 know like a little later on we had some neighbors
2 and them come over.

3 Q. Okay. Where was the van in relation -- or
4 this individual you didn't know who it was, where
5 was he and the car, the vehicle that he was in, in
6 relation to where y'all were on the porch?

7 A. Okay. Our house is like right here, and
8 this is our porch, and then like the van was like
9 right here because we have like a square space
10 where we normally park --

11 Q. Sure.

12 A. -- the car, and that's where the van was.
13 So it was to the right of the porch from where we
14 was at.

15 Q. Okay. Could you see the van at this
16 point --

17 A. Yes, sir.

18 Q. -- standing on the porch? Okay.

19 And you mention -- I'm going read word for
20 word. "The female" -- and you can read with me. I
21 certainly am not trying to put words in your mouth.

22 A. Uh-huh.

23 Q. I'm just reading verbatim as you wrote in
24 Exhibit 1. "The female officer pat searched me,
25 took all the contents out of my pocket and shook

1 out my bra while the male officer searched my
2 purse." Did I read that correctly?

3 A. Correct.

4 Q. Okay. Is that a truthful statement?

5 A. Yes, sir.

6 Q. All right. What were you -- what were you
7 wearing? Just -- I'm sorry for the intrusive
8 nature of this. This is part of what the lawsuit
9 is. Can you just describe what you were wearing
10 from head to toe?

11 A. I know I had a shirt on. I don't really
12 recall --

13 Q. Like a T-shirt or was it a -- like what
14 you're wearing now, like a T-shirt?

15 A. Yes, it was like a regular shirt. I don't
16 think -- don't believe I had a jacket on.

17 Q. Was it -- do you remember what the weather
18 was like on this particular day?

19 A. It wasn't rainy or like cold. It was
20 sunny.

21 Q. Because mid-October, it could be really
22 cold, it could be really hot, so, you know --

23 A. Yeah, so I was -- yeah. I don't believe I
24 had a jacket.

25 Q. Okay. So you had a T-shirt. You were --

1 Q. All right. And at the time that this
2 frisk search was being conducted, you had already
3 been in your house momentarily before walking back
4 out onto the porch?

5 And I'll ask it again to be sure. At the
6 time she was conducting this pat-down, you had
7 already moments before gone into your house
8 momentarily, you got to your couch, and then you
9 got out of your house?

10 A. Yes, sir.

11 Q. And then that's when they searched you?

12 A. Yes, sir.

13 Q. And then at another time, you went back
14 into your house, right?

15 A. Yes, sir.

16 Q. And at the time you were being searched,
17 it was your information that the canine had already
18 been dispatched and was conducting the search
19 inside the house?

20 A. Yes, sir.

21 Q. While you were being -- this frisk search
22 taking place on the porch?

23 A. Yes, sir.

24 Q. All right. Now, I think you said there
25 was the black male officer or said the male officer

1 searched your purse. Do you remember if he was the
2 white male officer or the black male officer?

3 A. I believe it was the black male officer.

4 Q. Okay. And what do you recall, if
5 anything, about him searching your purse?

6 A. I don't really recall anything. He was
7 just searching it. And this is while we were on
8 the porch.

9 Q. Okay. And, again, just not unlike going
10 into a concert or a basketball game where they ask
11 you to hand over your bag, they open your purse and
12 they're looking through it, is it that kind of
13 search?

14 A. Yeah. It was more thorough, though,
15 but --

16 Q. Okay. Did he take everything out and dump
17 it on the porch or did he kind of look through it
18 the same way you would before you enter a sports
19 event?

20 A. I don't believe he dumped out the
21 contents.

22 Q. Okay. Did he take anything from it?

23 A. No, sir.

24 Q. Did he retrieve anything? Okay.

25 Other than pat searching you, frisk

1 searching you, did this -- any officer at any other
2 time on this particular day have physical contact
3 with you?

4 A. No, sir.

5 Q. Okay. Okay. I'm going to take a short
6 break, like five minutes, and just feel free to do
7 whatever you need to take a breath or have a drink.

8 A. Okay.

9 (A recess transpired.)

10 BY MR. GARFIELD:

11 Q. Your next statement here, and I'm reading
12 from the middle of second page when it said, "All
13 four of us were sitting on the porch in the cold
14 while a person searched the Expedition when my
15 grandpa walked over." Did I read that correctly?

16 A. I'm trying to find out where you're at.

17 Q. Oh, I'm sorry.

18 A. Oh, I see. I see. Okay. Yes, sir.

19 Q. Okay. So you believe it could have been a
20 little colder than you thought? Again, I'm not
21 trying to suggest anything, I'm just trying to
22 understand -- get a clear expression of what was
23 going on that day.

24 A. Yes, sir.

25 Q. All right. But you still don't believe

1 you were wearing any sort of jacket or anything?

2 A. Yeah, I don't believe I was wearing a
3 jacket. I don't really recall, but I don't think I
4 do.

5 Q. Okay. But this was in the mid-afternoon,
6 right, about 2:40, three o'clock in the afternoon?

7 A. Yes, sir.

8 Q. You said, all four of us were sitting on
9 the porch while a person searched the Expedition.
10 Do you know about how long you were sitting on the
11 porch? Just, if you do, a rough estimate.

12 A. I really don't recall, but a rough
13 estimate would probably be like -- we were probably
14 out there for like six or seven minutes by then.

15 Q. That's fair enough. And you said searched
16 the Expedition. This was the Ford Expedition that
17 you drove up in?

18 A. Correct.

19 Q. And then you said when your grandpa walked
20 over. This your father's father?

21 A. Yes, sir.

22 Q. And what is his name?

23 A. Roosevelt Blanding.

24 Q. And then you wrote, "The African-American
25 officer first asked my grandpa, 'Do you live here,

1 sir?'" And then you wrote, "My grandpa answered
2 saying no, he lives next door but received a call
3 from my dad." Is that right?

4 A. Correct.

5 Q. And we'll go into just where everybody
6 lives in a moment.

7 A. Okay.

8 Q. But I just wanted to try to get what
9 happened. "The officer then said that, quote, we
10 have everything under control over here. It would
11 be best to go home, end quote. As my grandpa began
12 to walk back home, he said, quote, I believe you
13 have the wrong house. The officer then said, we
14 have the right house." Did I read that correctly?

15 A. Correct.

16 Q. You're putting quotation marks, and again,
17 I'm not challenging you on this, I just want to
18 understand, do you believe that those quotes that
19 you write here in Exhibit 1, were those the
20 statements or quotes you wrote in your handwritten
21 pad?

22 A. Yes, sir.

23 Q. Was the officer and your grandfather --
24 just tell me about that conversation or the
25 demeanor of both. Was the officer being ugly in

1 any way or was it just he's talking to your
2 grandfather about what he believed he had?

3 A. Yes.

4 Q. Okay. Was he shouting at your grandfather
5 saying to go home, screamed at him, or was he just
6 telling him it's best that you go on home?

7 A. Yeah, they were just saying, yeah, you
8 should go home.

9 Q. Okay. Do you recall having a conversation
10 with Taylor around this time?

11 A. Yeah, me and Taylor were probably just
12 talking on the porch.

13 Q. Well, you know at that time that there was
14 no active crime in progress, right? There was no
15 robber at the house?

16 A. Yes, sir.

17 Q. That the officers were there looking for
18 drugs?

19 A. Yes, sir.

20 Q. You were aware at that time that the
21 officers were at least saying they believed that
22 they had hit the right house to look for drugs?

23 A. Yes.

24 Q. Were you and Taylor talking about that
25 aspect of things that you recall?

1 stunned?

2 A. Yes.

3 Q. All right. You were stunned to see the
4 house looking a complete mess. And then you
5 described the condition of the house. Is that
6 right? "The living room, dining room, kitchen was
7 disoriented and messy."

8 And I'm going on the top of the third
9 page. "A different male officer asked me for the
10 keys to the Durango and I gave it to him." Now,
11 tell me about this Durango. Was it already in the
12 driveway?

13 A. Yes, sir.

14 Q. Okay. Was that the only other vehicle in
15 the driveway that was -- that was your family car,
16 considered your family vehicle?

17 A. Yes, sir.

18 Q. Whose car was that or primarily drove that
19 car?

20 A. My mom normally drives that car.

21 Q. Okay. And you gave him the keys?

22 A. Yes, sir.

23 Q. All right. It says, "Taylor, the same
24 female officer and I sat" -- you say the same
25 female officer, the larger white female one, the

1 same one that conducted the frisk search?

2 A. Yes, sir.

3 Q. "And I sat at the dining room table. The
4 African-American officer went into the back room
5 somewhere."

6 So you're sitting at the table. The
7 female officer is at the table with you. She's
8 sitting. Taylor is at that same dining room table.
9 She's sitting with you, correct?

10 A. Correct.

11 Q. And as you're sitting at the table, the
12 female officer moved a pile of mail off the table
13 and was looking at an identification that had --
14 that it appeared to be your father's. There was
15 like a blue strip on the top, I think you said?

16 A. Correct.

17 Q. Is that -- what kind of identification was
18 that? Do you know if it was a driver's license
19 or --

20 A. I really don't recall if it was a driver's
21 license or not.

22 Q. Okay. So at this point the police are
23 searching the house?

24 A. Correct.

25 Q. And you and Taylor are sitting there at

1 the table, right?

2 A. Correct.

3 Q. Okay. Were you eating your Bojangles' at
4 the time?

5 A. I didn't have any Bojangles'. Taylor had
6 her Bojangles'.

7 Q. Okay. So you're sitting at the table and
8 Taylor's eating her Bojangles' at this time?

9 A. Correct.

10 Q. Okay. And you didn't eat yours for what
11 reason?

12 A. I don't recall if I got some or not, but I
13 really didn't have an appetite to eat anything
14 anyway.

15 Q. Is it possible that you ate some something
16 during all this time I'm asking you a question?

17 A. No, sir. I didn't eat anything.

18 Q. Okay. And the -- so you wrote, before
19 long, the African-American officer brought the safe
20 that was in your room and set it down beside our
21 couch. Can you describe the safe?

22 A. It's a big gray safe with like a black
23 dial.

24 Q. Okay. Kind of like an old-fashioned safe,
25 just had the --

1 A. Yes, sir.

2 Q. Okay. Is it really heavy?

3 A. I would assume it's really heavy.

4 Q. How long had you had that safe in your
5 room?

6 A. I think it's always been in there since
7 like before I was born or -- because --

8 Q. Go ahead. I'm sorry.

9 A. Because that wasn't my room initially. I
10 had my own room and then that's when my -- got my
11 two younger sisters, and I moved in there, and so
12 it's always been in there.

13 Q. Had you ever had an occasion to look in it
14 to know what was in it?

15 A. I know what's in it.

16 Q. Okay. Did they -- and you knew the
17 combination?

18 A. I normally don't go in it, so I don't
19 really know the combination by heart, but I know --
20 I always just get my dad to go in it.

21 Q. Okay. All right. And that's what you
22 told the officers. I'm sorry, I didn't read ahead.

23 A. Okay.

24 Q. And you told -- you told them that your
25 dad knew the combination, but you did not. Okay.

1 And so your father was called again. Your
2 father told you the combination you told to the
3 officer?

4 A. Correct.

5 Q. All right. And do you remember which
6 officer? Is this the same --

7 A. Yes.

8 Q. -- black male officer?

9 A. Correct.

10 Q. "My dad also told me that he asked for my
11 Uncle Johnny to come over, but I knew he probably
12 wasn't going to be able to make it over." Could
13 you explain that a little more?

14 A. Okay. My Uncle Johnny, he's my uncle that
15 lives across the street.

16 Q. Do you know his last name?

17 A. I believe it's Gibbs.

18 Q. And is he a brother and sister of one of
19 your parents?

20 A. No, sir.

21 Q. Okay. You just know him as an uncle?

22 A. Yes, sir.

23 Q. He lived across the street on the other
24 side of Marjorie or on the other side of Gibbs?

25 A. On the other side of Gibbs.

1 Q. Okay. Okay. So when you say you knew he
2 probably wasn't going to be able to make it over, I
3 don't understand that.

4 A. Because they weren't letting anybody over
5 in the house or in the yard because the police was
6 basically -- I don't want to say they had it
7 blocked off, but yeah, they weren't allowing
8 permission for people to come over.

9 Q. Oh, I understand. Okay. So when you say
10 probably wasn't going to be able to make it over,
11 it's that he wouldn't be permitted to make it over,
12 is that what you're saying, by the police?

13 A. Correct.

14 Q. "My dad requested to speak to an officer
15 again, so I gave it to the one I was talking to."
16 That's the black male officer, Brittani?

17 A. I don't really recall which officer that
18 was.

19 Q. Fair enough. "They talked for a while,
20 then the officer handed me my phone back." Is
21 that -- that's your cell phone again?

22 A. Yes, sir.

23 Q. Is there a landline in this house?

24 A. Yes, sir.

25 Q. Okay. Did any of y'all ever use the

1 Q. With Taylor while she was eating?

2 A. Correct.

3 Q. Although in the presence of this female
4 officer?

5 A. Correct.

6 Q. All right. You continue to write, "After
7 multiple failed attempts by the officer, he walked
8 back into the back rooms."

9 When you say "failed attempts," that --
10 you're referring to the officers didn't find
11 anything?

12 A. Oh, I meant to him trying to open the
13 safe.

14 Q. Oh, I see. So although he got the
15 combination, for whatever reason, he couldn't get
16 it opened?

17 A. Yeah. I can't get it opened either.
18 That's why I normally get my dad.

19 Q. Okay. I understand. I've never been able
20 to get any of those things open. That's why I was
21 asking you for everything.

22 "The African-American officer came into
23 the kitchen and made a comment about the stairs
24 being down and how he didn't think they would be
25 sturdy enough for him." Now, what stairs are you

1 referring to?

2 A. I'm referring to the stairs to our attic.

3 Q. Oh, okay. Did you say anything to this
4 officer in response to that like the stairs would
5 be fine? You didn't say anything?

6 A. I don't recall, but I don't believe I said
7 anything.

8 Q. Okay. At any point during any of this,
9 did they ask you a question about anything that you
10 refused to give an answer to or were you trying to
11 be as cooperative as you could?

12 A. I was trying to be cooperative.

13 Q. So you didn't like say I'm not going to
14 tell you this or I'm not going to tell you this
15 without my father or a lawyer or it's none of your
16 business? You didn't say anything like that?

17 A. No, sir.

18 Q. They were asking you pretty specific
19 questions?

20 A. Yes, sir.

21 Q. Okay. At any time did you ask a question
22 that they didn't give you an answer to?

23 A. I don't believe so.

24 Q. The other female officer -- you continue
25 to write, Brittani. It says, "The other female

1 A. Yes, because I was in the house and I
2 didn't see anybody, so when she said that, I was
3 like, oh, yeah, grandma probably walked over here
4 since, you know, grandpa walked over here.

5 Q. Okay. And then you wrote, "Then she went
6 into the back rooms also." Is that -- and you're
7 talking about she as in the officer or she as in
8 your grandmother?

9 A. The officer.

10 Q. Okay. "Then the officer went into the
11 back rooms also." The officer came back into the
12 dining room area with the same man that asked us
13 the questions before. Is that the white male
14 officer or the black male officer?

15 A. This is the one that --

16 Q. Originally?

17 A. First spoke to me, yes.

18 Q. In the driveway?

19 A. Correct.

20 Q. "Another officer," you write, "came in the
21 house and made a comment about how aggravated he
22 was at all the neighbors that were coming over and
23 how he was going to put people in cuffs if they
24 continued to come over." Did I read that
25 correctly?

1 A. You read it correctly.

2 Q. All right. Do we -- could you help me
3 figure out who this other officer is? Male?
4 Female?

5 A. I really --

6 Q. Well, you say "he" in the sentence, so --
7 take your time.

8 A. I don't really recall which one it was. I
9 know he was one of the -- one of the two between
10 the first one that initially spoke to me and the
11 black officer, because if it was somebody else, I
12 would have specified, so I just don't really recall
13 which one it was out of those two.

14 Q. Did this officer direct that comment to
15 you and Taylor or the other officers?

16 A. To the other officers.

17 Q. Okay. Well, did he put anybody else in
18 handcuffs?

19 A. I was in the house. I really couldn't
20 see --

21 Q. Okay.

22 A. -- anything outside.

23 Q. That you know of? I'm sorry.

24 A. Oh, no, not that I can see from inside the
25 house.

1 A. Yeah, I believe he was a family member.

2 Q. Okay. I may get back to that.

3 So the officer expressed his -- you said
4 he was aggravated. And then I'm going on the last
5 page, first sentence, and then you say, "By this
6 time, the female officer was looking inside of the
7 grandfather clock on the wall of the dining room."

8 Do you know if that was the larger female
9 officer or the smaller one that you recall?

10 A. I don't recall.

11 Q. All right. "The same officer that met me
12 at the car began to ask more questions." This is
13 the white male officer. Is that right?

14 A. Correct.

15 Q. "He asked questions like do we know
16 Peanut, how do we know him, how often does he
17 visit, when was the last time I seen him and do I
18 know where he lives," and you wrote, "not in that
19 same order." And you gave him answers, didn't you,
20 Brittani?

21 A. Correct.

22 Q. You gave him truthful answers to the best
23 of your knowledge, right?

24 A. Correct.

25 Q. Because you wanted to provide them with

1 truthful information?

2 A. Correct.

3 Q. Okay. You had no reason to hide anything
4 from the officers at this time?

5 A. Correct.

6 Q. Okay. If there was anything you could
7 help them with, you would, wouldn't you?

8 A. Correct.

9 Q. Okay. And that's what you did here, "I
10 answered with he is my cousin." Because you told
11 them truthfully that Peanut was your cousin, right?

12 A. Correct.

13 Q. And then you told them truthfully that he
14 never visits my house?

15 A. Correct.

16 Q. All right. And that's why I asked you
17 those question earlier, just so we can be clear on
18 that.

19 You said the last time you saw him was
20 when he was riding his motorcycle down the street,
21 and then you continued, and that you did not know
22 the exact location of where he lived?

23 A. Correct.

24 Q. All right. With all due respect, Peanut,
25 we figured his name Greg Samuel, was not someone

1 that was welcome in your house, was he?

2 A. Correct.

3 Q. All right. He wasn't welcome in your
4 house because he was probably someone that y'all
5 believed was dealing drugs?

6 A. Correct.

7 Q. And y'all knew that at the time?

8 A. Well, we knew that he had like, I would
9 say, kind of like a bad reputation, like he would
10 be in jail before, and, you know, he'll leave and
11 then he'll come back. And it's just nothing like
12 me and my family wanted to be involved with.

13 Q. Totally understand. So what was your
14 knowledge back in 2011 as to what he was going to
15 jail for?

16 A. I believe it was drug stuff. I'm not
17 sure, but I believe it had something to do with
18 that.

19 Q. Okay. Had you ever been over to Peanut's
20 house, wherever he is, wherever he lived?

21 A. No, sir.

22 Q. All right. All right. During this
23 conversation with the officer, you were then
24 interrupted or he was interrupted by another male
25 officer who informed him that he was leaving. Then

1 you continued to write, "That's when the lady made
2 a comment signalling for the officer that was
3 asking us questions to go over to where she was.
4 She must have thought she found something in the
5 grandfather clock, but the male officer dismissed
6 it."

7 Okay. Nothing was found in the
8 grandfather clock, I assume?

9 A. Correct.

10 Q. Okay. So I'm just leaving that subject
11 behind.

12 "The officers continued to check the house
13 while me and Taylor sat and watched." At any time
14 did either of you have to go to another room, ask
15 to go to another room, go to the bathroom or
16 anything like that?

17 A. No. No, sir.

18 Q. Okay. Did anyone ever deny you to go to
19 the bathroom or anything like that?

20 A. We were just sitting there. We didn't
21 like try to go up for anybody to deny us, so --

22 Q. Okay. "My Aunt May was let into the house
23 as we sat." Now, who is your Aunt May? What's her
24 name?

25 A. My Aunt May -- I think her real name or

1 full name might be Rosa. I'm not really sure. But
2 that's my dad's sister.

3 Q. Okay.

4 A. And this is also Greg's mom.

5 Q. This is Peanut's mom?

6 A. Yes.

7 Q. So while you were in the house with Taylor
8 at the dining room table, your aunt, your dad's
9 sister, May, who is Peanut's mom, came into the
10 house?

11 A. Correct.

12 Q. All right. Do you know what the nature of
13 her relationship is with her son Peanut?

14 A. No, not extensively.

15 Q. I mean, do you know if she kind of cut
16 him -- cut him out of the family because he's been
17 in so much trouble or when he gets out of jail does
18 he live with his mom or what do you know about
19 their relationship?

20 A. I'm really not sure about their
21 relationship.

22 Q. Where does she live?

23 A. She lived next door to my grandmother who
24 lives next door to me, so she's like roughly like
25 three houses down.

1 Q. Okay. And then you wrote, "I thought it
2 was mighty strange because everybody else was
3 getting turned around." You thought it was strange
4 that they allowed her in for some reason?

5 A. Correct.

6 Q. Is that what you're saying, when they
7 didn't allow your grandfather and your grandmother?
8 Is that right?

9 A. Correct.

10 Q. And maybe this other individual you said
11 that was turned away, this male individual?

12 A. Correct.

13 Q. Okay. And then you wrote, "She came in
14 and asked if Taylor and I were all right, and then
15 she gave me a kiss on the forehead." What did you
16 say to your Aunt May?

17 A. Well, yeah, I told her that, you know, we
18 were nervous and that we were scared and I was
19 happy to see her, because with everything going on
20 and how like my parents weren't here and how they
21 weren't letting people like my grandfather and, you
22 know, my dad tried to get my Uncle Johnny to be
23 over here so we didn't have to be by ourself, and I
24 was just really happy to see her, to see somebody
25 that's in a -- you know, authority figure that's

1 A. Correct.

2 Q. You never said anything to her, anything
3 of the nature they're looking for Peanut, all this
4 is about Peanut?

5 A. Yeah, because I know what had happened.
6 Like she had -- I guess they had asked her, you
7 know, do you know Peanut, or anything to that
8 nature, or maybe the neighbors had told her, you
9 know, they're, you know, in Brittani and them house
10 looking for, you know, Peanut or drugs and stuff.
11 And that's when she told them, yes, I'm his mother,
12 and so I guess that's when they let her in and
13 stuff.

14 Q. Okay. But you never said anything to her
15 about it?

16 A. I don't recall.

17 Q. Okay. You see why I'm asking the
18 question?

19 A. I do.

20 Q. Okay. You also wrote, "She also asked who
21 was responsible for fixing the door." In other
22 words, this is your Aunt May asked who was
23 responsible. She's actually asking the officer
24 this?

25 A. She's actually -- yes.

1 Q. Okay. Because the officer response was
2 that the homeowner was responsible?

3 A. Correct.

4 Q. "She did not stay inside for more than
5 five minutes. After my aunt left, the officers
6 were just about done. My dad arrived a short while
7 afterwards. Taylor and I both sat at the table
8 after the officers left the house. Next thing we
9 knew, my dad was home and he was fuming from all
10 the results."

11 Okay. After going through this roughly,
12 is there anything else -- I'm not saying that
13 something happened and if you're saying it didn't,
14 then I'm saying your lying. I just want to know is
15 anything here -- my question is for this, after
16 reading this, is there anything generally that pops
17 into your head that you didn't include that you
18 might find important? Whether I find it important
19 is not necessarily important, whether you find it
20 important.

21 A. Well, I kind of stopped when my dad got
22 here because he can say all his experience, but I
23 was still there, and, yeah, my dad was really
24 upset. And the policemen, yeah, they really --
25 they didn't seem, like, apologetic. They were like

1 really -- they had like this really rude attitude
2 towards the whole experience.

3 Q. Now, I used the word rude, and if rude is
4 the way you would describe it, then I'll accept
5 that. Could they have been rude or could they have
6 just been very indifferent?

7 A. They were rude.

8 Q. They were rude. Did they raise their
9 voice to you or your father?

10 A. Like everything they said had an attitude
11 with it like, you know, we're the police, you know,
12 we have a warrant here, we know what we're doing,
13 you know, this is right, and I really wouldn't say
14 anyone was yelling, but --

15 Q. Did they call anyone names? Did they say
16 that you -- did they say you dealt drugs?

17 MR. BUTCHER: Would you let her answer
18 that question?

19 BY MR. GARFIELD:

20 Q. Oh, sure. Go ahead.

21 A. Okay. What was the question again?

22 Q. That's fair. I'll go back to the original
23 question that I cut you off, and I apologize. When
24 I was asking about did they call you names or when
25 you said that they kind of had an attitude like

1 they were the police and you were saying that's
2 kind of the way they were acting, I think I cut you
3 off there.

4 A. Oh, okay. Yeah, like when my dad was
5 like, you know, whose responsibility is this, you
6 know, I guess the homeowner's, you know, we're here
7 because, you know, this is what we're supposed to
8 do, and like it's just like they just didn't care
9 about like us or our situation or what they put us
10 through. It was just like, you know -- it was just
11 kind of like whatever.

12 Q. Okay. Did they act in your opinion like
13 they didn't believe that the drugs -- that -- did
14 they act -- in your view, did they act in a way
15 that they believed that someone was dealing drugs
16 out of your house?

17 A. Correct. I felt like they were like
18 determined to find, you know, drugs. That's why
19 they were trying to go in the attic. They went in
20 all the rooms. We even have like a little
21 shed-like house in the back, and -- but ever since
22 like when my Aunt May got there, that's when they
23 kind of were like trying to leave and stuff, and
24 they was probably like, oh, you know, Peanut didn't
25 live here, you know, because they never searched

1 the little back house thing. I can't really
2 explain it. And yet they never did make their way
3 up the attic. So that's when they kind of like
4 called it quits.

5 Q. What do you mean -- you said they hadn't
6 checked the shed outside or the attic. You're
7 saying -- why are you saying that?

8 A. Because like you would think like if
9 somebody was selling drugs and they didn't want it
10 to be in the house, that it would be, you know,
11 somewhere like that and not, you know, in the main
12 house or somewhere like hidden or something.

13 Q. Do you have any knowledge that at any
14 point, did anyone -- trying to -- I'm not saying
15 they did -- tried to hide drugs somewhere on the
16 property?

17 A. No, sir.

18 Q. Okay. Whether that be the shed or the
19 attic or anything like that?

20 A. No, sir.

21 Q. All right. Well, so we talked about the
22 officers' demeanor. Okay. I think we -- I think
23 we're good with that.

24 Your two younger sisters, where were they
25 during all this time?

1 A. I believe my sister -- my middle sister,
2 Breelyn, I think she was a freshman at this time,
3 and she goes to Blythewood, and so I believe she
4 was still at school. My baby sister, the house we
5 used to like -- well, the bus used to drop her off
6 in front of our house because she's -- she's
7 like -- has special needs.

8 And so I don't know if it was my grandma
9 or my Aunt May that got her, but yeah, she saw what
10 was going on, because I don't remember what time
11 her bus came, but when it came, like the police and
12 stuff were still here.

13 And even like afterwards, she would be
14 like -- she would be like, yeah, the dogs are in
15 our house and stuff. And like I said, she was like
16 special needs, so she was like sometime -- I guess
17 like if she would see a police or something, she
18 would be like, yeah, the dogs are in our house.

19 And I know that not too long ago, maybe
20 like a month ago or so, I know her teacher had
21 actually called and made sure everything was okay,
22 and we was like, yeah, that happened like a couple
23 years ago, but --

24 Q. I want to understand a little bit about
25 Peanut being welcome over at your house. It was

1 common knowledge back in 2011 that he was not
2 welcome over at your house?

3 A. Correct.

4 Q. Your -- so it was your impression that had
5 he been over at your house for whatever reason,
6 your father and mother would not be very happy with
7 it?

8 A. Correct.

9 Q. Okay. Do you recall your father or mother
10 having any words with Peanut, like, in other words,
11 did he know he wasn't welcome over at your house
12 for whatever reason?

13 A. He never came over. Like, it wasn't like,
14 you know, he just came over to our house. Like I
15 said, I really didn't see too much of him. Like I
16 guess he ran with his own little circle.

17 Q. Okay. Anybody ever come over your
18 house -- I'm talking about around this time or
19 before this time -- that could have been friends
20 with Peanut or friendly with him, a male, could
21 this have been anyone that could say, well, gosh,
22 you know, maybe that person, you know, knew Peanut
23 or had Peanut -- talking to Peanut around our
24 house?

25 A. No, sir.

1 earlier, what do you mean by this trailer? You
2 said something.

3 A. You talking about the trailer or the shed?

4 Q. Well, good question. You said the shed
5 afterwards, but before that you talked about this
6 trailer.

7 A. Okay.

8 Q. And I don't know what you're talking
9 about.

10 A. It was a trailer back there. It still is
11 back there, and --

12 Q. I'm sorry for interrupting you, but when
13 you say "there," is this your parents' property or
14 just in the vicinity of your house?

15 A. No, it's just in the vicinity of our
16 house.

17 Q. Okay.

18 A. It's not my parents' property.

19 Q. Okay.

20 A. Okay. And I know before my uncle used to
21 stay there, but then they got a house made, so they
22 moved and it was kind of empty for a while. And
23 then sometimes like Peanut, he would be back there,
24 and I really wasn't sure if he like lived there or
25 if he just used to visit there or, you know, just

1 have it be like a hangout spot or something.

2 But, yeah, that's what I know of that
3 trailer, but it's like -- it's behind my house.
4 It's not too far behind it. It's like off the
5 little dirt road on the side, Marjorie Court.

6 Q. Is it like a darker trailer, like a red or
7 a brown trailer?

8 A. It's kind of like a grayish color.

9 Q. Okay. So you said your uncle stayed there
10 for a while. Which uncle is this?

11 A. This is my Uncle Darrel.

12 Q. And then he left it and then it was empty,
13 and at the time of these events, October 2011,
14 Brittani, it was -- you believe it was empty at
15 that time or was someone staying there or was
16 Peanut staying there?

17 A. I really wasn't sure. I was like -- I
18 don't know if it was empty or if he was staying
19 there and doing whatever he does there.

20 Q. Okay. That doesn't really -- you may not
21 know the answer to my question.

22 A. Okay.

23 Q. That's fair enough if you don't. I'm not
24 trying to force you to answer that you don't know
25 the answer to.

1 So to the best of your knowledge, in
2 October of 2011, was it completely empty and
3 abandoned or was it your impression that it was
4 empty but Peanut would go there occasionally?

5 A. The second one. It was empty, but he
6 would go there occasionally.

7 Q. Okay. Did you say anything at any time to
8 any of the officers during this execution of the
9 search warrant that Peanut stays right there next
10 door at this trailer occasionally?

11 A. Yes, I believe I did.

12 Q. You did?

13 A. Correct.

14 Q. Okay. Do you remember who you told that
15 to?

16 A. No, sir.

17 Q. All right. What I just asked you and your
18 response, that's nowhere in this statement, is it?

19 A. No, sir, I don't believe so.

20 Q. Okay. Is there a reason why you would not
21 have put that in the statement that you would have
22 provided the officers with specific information
23 about an individual that they were looking for?

24 A. I guess I just didn't want to tell him any
25 wrong information, but yeah, I should have said

1 A. Okay. I think I might have told the
2 female officer when we were at the table, but I
3 don't really recall exactly.

4 Q. Okay. Is it possible that you did not
5 tell them that because you put the important facts
6 down here in your statement that was typed up right
7 after these events?

8 A. Yes, it might be possible.

9 Q. Okay. Now, this trailer we're talking
10 about, have you ever seen -- you've seen Peanut in
11 that trailer?

12 A. Correct.

13 Q. All right. Have you ever been in that
14 trailer?

15 A. No, sir.

16 Q. Has your sisters ever been in that
17 trailer?

18 A. No, sir.

19 Q. Has your mom and dad ever been in that
20 trailer?

21 A. No, sir.

22 Q. Even though your uncle lived there or
23 stayed there for a while?

24 A. Well, when he lived there, that was like a
25 long time ago. Yeah, we did visit when my Uncle

1 circle. It's not like the --

2 Q. Of course. And I'm not even trying to
3 assume or insinuate that it was in your circle.
4 I'm just talking about living next to a problem
5 structure, area, house, that kind of thing. You've
6 seen people that you certainly wouldn't or your
7 parents wouldn't want you involved with socially or
8 anything?

9 A. Correct.

10 Q. All right. Has the police ever responded
11 to the area around that trailer before to your
12 knowledge?

13 A. I don't know if it was the area around the
14 trailer. I know that they would be parked across
15 from my house on the other side of Gibbs Road in
16 front of like my Uncle Johnny's house, and they
17 would just sit there, and I guess they would be
18 like, you know, trying to like patrol and stuff.

19 Q. Okay. Do you know if -- has your dad ever
20 or mother ever commented about -- expressing
21 frustration or comment at all about drugs being
22 sold in the neighborhood as in, Brittani, I know
23 you're a good girl, but you stay away from them or,
24 you know -- or commented that the police are here
25 because they're looking for drugs or anything --

1 A. Well, I shouldn't say always, but they
2 would -- like I said, they would sit across the
3 street, and they would like -- you know, they would
4 wave or they would -- sometimes they would be at --
5 because we have a baseball field on the right of
6 our house. They would like sit there. It would be
7 like -- it would always be between -- well, not
8 always, but it would be between one or two cars.

9 Q. Okay.

10 A. So we knew that the police was there.

11 Q. So they had a -- they maintained a
12 presence in and around your house and your
13 neighborhood?

14 A. Correct.

15 Q. Because it wasn't a secret that this was
16 considered a high-crime -- or, excuse me, a
17 high-drug area?

18 A. Correct.

19 Q. All right. But I'll go back to my
20 original question. Do you know if your parents
21 ever telephoned the police?

22 A. No, not to my knowledge.

23 Q. All right. Has the police ever come out
24 to your house at any point other than this -- on
25 this particular day, not to say they were targeting

1 y'all, but just to ask questions or anything about
2 the investigation in the neighborhood?

3 A. Not to my knowledge.

4 Q. These one to two cars you talked about
5 that maintained a presence, were these marked cars
6 generally?

7 A. Yes, they were.

8 Q. Are these generally Richland County
9 Sheriff's Department?

10 A. Correct. They were the black police cars.

11 Q. And you said you've never given a
12 deposition before?

13 A. Yes, sir.

14 Q. Okay. Have you ever been asked to be a
15 witness in any criminal case?

16 A. No, sir.

17 Q. By like a prosecutor or police officer or
18 anything like that?

19 A. No, sir.

20 Q. Okay. Have you ever called the police to
21 come out to your house or come out to the
22 neighborhood?

23 A. No, sir.

24 Q. Do you know if the police were there --
25 these one to two cars or just them maintaining a

1 steady presence in your neighborhood, what was your
2 understanding as to why that was? In other words,
3 was that perhaps based on people in your
4 neighborhood asking for the police to come to deter
5 crime or arrest people or do you think that's just
6 the police picking on y'all? I say "y'all," just
7 picking on people in the neighborhood.

8 A. Like I said before, like I would have --
9 there would be people in the neighborhood kind of
10 like Peanut and the people in his circle --

11 Q. Right.

12 A. -- that would go to jail and then like
13 they'll come back. So I don't know if they were
14 keeping an eye on them because we had like -- yeah,
15 we had people like that around, so I would assume
16 that they were watching over them.

17 Q. Okay. Now that you've had time to think
18 about it, and if your final answer was the one, I
19 understand, but in all due respect, I want --
20 you've been so specific and clear and truthful in
21 your statement, I want to make sure that when we
22 leave here today that I have a clear expression of
23 what is truthful to you. Is it more likely than
24 not that you did not tell the officer the
25 information about Peanut and the trailer --

1 who -- where did you get that information from?

2 MR. GARFIELD: Object to the form. Go
3 ahead.

4 THE WITNESS: It was kind of like -- I
5 don't want to say a neighborhood thing. It was
6 like people could like kind of like see the -- what
7 was going on. I would mainly say that by like the
8 people around like his circle and how they would
9 like, you know, come around and stuff.

10 BY MR. BUTCHER:

11 Q. Okay. All right. Did anyone in your
12 family ever -- did you ever overhear it or anyone
13 tell you what Peanut was doing?

14 A. No. No, sir.

15 Q. Okay. All right. Your driveway or your
16 house, does it -- does it lead or are there any
17 direct paths to Peanut's house from your house?

18 A. No, sir.

19 Q. Okay. Your grandfather and grandmother
20 live next door, correct?

21 A. Correct.

22 Q. What's your grandfather do?

23 A. I think he's retired, but he used to like
24 pour concrete.

25 Q. Okay. At this time was he retired?

1 A. I believe so.

2 Q. Okay. So he -- do you know if -- what he
3 did during the day when he was retired?

4 A. He used to just like be around. Like he
5 would like walk around and like fix things or he'll
6 be on like his tractor.

7 Q. Okay. All right. And you've got -- how
8 many relatives do you have living around you?

9 A. A lot.

10 Q. Okay.

11 A. Do you want me to like name the houses?

12 Q. Yeah.

13 A. Probably like -- I'd probably say seven or
14 eight.

15 Q. Okay. All right. Did the police go into
16 your room?

17 A. Yes.

18 Q. What did they do to your room?

19 A. They searched my room. I know they went
20 in all my drawers because I had like clothes out.
21 There were like shoes all over the place. A lot of
22 things were moved. The safe was in my closet, so I
23 have like a -- it's like a door that you like open,
24 and that's where they got the safe from.

25 Q. Okay. Was anything broken?

1 A. I don't think there really was a
2 preference, but no like heavy bling or anything.

3 Q. Okay. All right. Did anybody ever
4 apologize to you after this happened?

5 A. No, no apologies.

6 Q. Okay. All right. After this whole thing
7 blew up in the news and everything, did you see the
8 news report where the sheriff's department had
9 accused a male of selling drugs at your house?

10 MR. GARFIELD: Object to the form.
11 Several grounds. Go ahead.

12 THE WITNESS: I did.

13 BY MR. BUTCHER:

14 Q. Okay. And how did that make you feel?

15 MR. GARFIELD: Same objection. Go ahead.

16 THE WITNESS: It was -- it was
17 devastating, like -- because before, you know, I
18 would look for the police to, you know, handle the
19 business with all the stuff going around in the
20 neighborhood because a lot of people didn't like it
21 and a lot of people didn't want it.

22 So when they came and went on the news and
23 said that stuff about our family, I was appalled
24 and I was really frustrated too because, after that
25 happened, I did get like phone calls and people

1 asking me about it, and, yeah, I felt like it was
2 very out of line.

3 BY MR. BUTCHER:

4 Q. Okay. Did anybody at school ask you about
5 that?

6 A. Yes.

7 Q. Is there anything you remember people said
8 to you?

9 A. Well, yeah, people would I guess pick at
10 like my -- where I live and stuff, and they'd be
11 like, yeah, well, you know, it's like this and it's
12 like that, and it was always negative stuff.

13 Q. Okay. Would they imply that your -- what
14 were they implying when you say "this" and "that"?

15 MR. GARFIELD: Object to the form.

16 THE WITNESS: I guess like what they saw
17 on the news and be like, you know -- but a lot of
18 people knew, so they was like, yeah, we know you're
19 a good family and we know nobody in your house
20 sells drugs and we know nobody in your house, you
21 know, use drugs. And so it was kind of nice to
22 know people knew, but still the people who like
23 didn't know would, you know, assume and --

24 BY MR. BUTCHER:

25 Q. Okay. Were there any people that didn't

1 know that assumed that --

2 MR. GARFIELD: Object to the form.

3 BY MR. BUTCHER:

4 Q. -- your family was involved with drugs?

5 MR. GARFIELD: Same objection.

6 THE WITNESS: Yes.

7 BY MR. BUTCHER:

8 Q. Okay. Can you give me any specific names?

9 A. I can't really give you any specific names
10 that I recall.

11 Q. Okay. When you were searched, did they
12 pat -- did they -- what was the order of the pat --
13 were you told to -- I'm sorry. Did they pat you
14 down first and then tell you to empty your pockets?

15 MR. GARFIELD: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. BUTCHER:

18 Q. Okay. Okay. And so you emptied your
19 pockets after being patted down?

20 A. Yes.

21 Q. Okay. And did they pat you down again
22 after they -- after you emptied your pockets?

23 MR. GARFIELD: Object to the form.

24 THE WITNESS: I don't recall.

25 BY MR. BUTCHER:

1 Q. All right. Did -- and being patted down,
2 emptying your pockets, at what point did they tell
3 you to shake out your bra?

4 A. After all that, after both of those.

5 Q. Okay. Was the shirt you had on, was it
6 about as tight as the shirt you have on now?

7 MR. GARFIELD: Object to the form.

8 THE WITNESS: I don't really recall how
9 tight my shirt was.

10 BY MR. BUTCHER:

11 Q. Okay. You were talking earlier that the
12 Richland County Sheriff's Department would have
13 police vehicles parked near your house. Was this
14 before, after or both regarding the incident or
15 related to the incident?

16 A. I would say both.

17 Q. Both.

18 Did you have to help clean up this mess?

19 A. Yes.

20 Q. How long did it take?

21 A. It took a while. I know the first
22 night -- it might have been the first night or the
23 first two nights I didn't stay home because the
24 door was like knocked off, so we had like no front
25 door, and so I stayed at a friend's.

1 But it took a couple days to get
2 everything back to what it used to be. And our
3 door still isn't fixed, so, I mean, my dad tried
4 his best to try to get it back to where it was, but
5 it still isn't like the most secure door.

6 Q. Okay. And when do you think everything
7 was cleaned up?

8 A. Probably like a week later.

9 Q. Okay. All right. Did you go to school on
10 Friday, October 21st?

11 A. I don't remember if I went to school or
12 not, but I believe I did.

13 Q. Okay. Your grandfather came over during
14 this incident. You testified to that earlier,
15 correct?

16 A. Correct.

17 Q. All right. Does he -- is that normal for
18 him to come over and check on things at the house?

19 A. Yes.

20 Q. Okay. All right. They may ask you some
21 more questions.

22 A. Okay.

23 REEXAMINATION

24 BY MR. GARFIELD:

25 Q. Really to clarify the clarification if I

CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 18th day of June, 2014, at Columbia, Richland County, South Carolina.

Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
October 1, 2023.

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Personal Statement



Thursday October 20th, 2011 my cousin, Taylor, and I came from Bojangles around 2:40pm to see my house entered in by the police. As I pulled into the yard my cousin was scared because she thought a robber had broken into the house. I did not know anyone was in the house, I just saw the van like police car in the driveway. In a matter of seconds later I saw around two or three policeman run out the front door. One Caucasian man made his way over to the car and asked "do you live here" I answered "yes I do, she does not she came with me from school, this is my cousin". The officer then asked us to step out of the car, next he told me to go ahead and turn the engine off which I did. Next he asked me how old I was. I told him I was 17 years old. By this time the officer my cousin and I were all standing in the driveway. Next the guy asked me where my parents worked, if my dad had any nicknames and who was Peanut, not in that order. At that moment I felt nervous. I still did not know what was going on and why I was getting questioned so much. The next thing the guy said was to call my parents and to tell them to come home asap because the police were here and that they have a search warrant to search the house.

The first person I called was my mom but it went straight to voicemail. Next I called my dad and he answered. I told him what the officer told me to say. My dad was confused and began asking me a bunch of questions but I was just as confused as he was so I couldn't answer any of his questions. My dad asked to speak to the officer so I gave the officer the phone. After the officer spoke to my dad he had an attitude that read 'I'm going to do what I came here to

do' then handed me my phone. As he walked toward my porch he said to his colleagues "he said we're not searching his house, but if we find something we can take his daughter in because she is an adult in this situation". Next Taylor and I were assisted to the house. Right before I walked onto the steps to the porch I saw a light skinned African American guy in a black vest like structure just sitting in the back of the cop van in the back seat. As I walked into the house I was appalled to see the door busted through and wood lying across the couch. We did not stay in the house long because the drug dog had to come in.

Everyone exited the house and went onto the porch. On the porch it was a female Caucasian officer, an African American male officer, Taylor and I. The female officer pat searched me, took all the contents out of my pocket and shook out my bra, while the male officer searched my purse. All four of us were sitting on the porch in the cold while a person searched the expedition when my grandpa walked over. The African American officer first asked my grandpa "do you live here sir" my grandpa answered saying no he lives next door but received a call from my dad. The officer then said that "we have everything under control over here, it would be best to go home" as my grandpa began to walk back home he said "I believe you have the wrong house" the officer then said "we have the right house". A couple of more minutes past and I began to feel cold and nervous because I was thinking about what would have happened if I didn't bring Taylor and if I would have went straight home after school. Taylor must have noticed because she told me to just be calm and cool. After being on the porch for a while we went into the house. I was in complete shock to see the house looking a complete mess. The living room, dining room and kitchen was disoriented and

messy. A different male officer asked me for the keys to the Durango and I gave it to him. Taylor the same female officer and I all sat at the dining room table, the African American officer went into the back rooms somewhere. As we were sitting at the table the officer moved a pile of mail off the table and was looking at an ID that had a blue strip on the top, it was my dads.

Taylor and I had little small talk as the police searched the house. Before long the African American officer brought the safe that was in my room and set it down beside our couch. He asked me if I knew the combination and if I did then it would be best to tell him or they would bust it open. I told him that my dad knew the combination but I didn't. He gave me permission to call which I did, my dad then told me the combination and I told it to the officer. My dad also told me that he asked for my uncle Johnny to come over but I knew he probably wasn't going to be able to make it over. My dad requested to speak to an officer again so I gave it to the one I was talking to, they talked for a while then the officer handed me my phone back. After multiple failed attempts by the officer he walked back into the back rooms. The African American officer came into the kitchen area and made a comment about the stairs being down and how he didn't think they would be sturdy enough for him.

The other female officer walked in the house from the front door and asked "is that grandma out there" I replied with yes it probably was. Then she went into the back rooms also. She came back into the dining room area with the same man that asked us the questions before. Another officer came in the house and made a comment about how aggravated he was at all the neighbors that were coming over and how he was going to put people in cuffs if they continued to

come over. By this time the female officer was looking inside of the grandfather clock on the wall of the dining room. The same officer that met me at the car began to ask more questions. He asked questions like 'do we know Peanut, how do we know him, how often does he visit, when was the last time I seen him, and do I know where he lives', not in that same order. I answered with, he is my cousin, he never visits my house, the last time I seen him was when he was riding his motor cycle down the street, and that I did not know the exact location of where he lived. He was then interrupted by another male officer who was informed him that he was leaving. That's when the lady made a comment signaling for the officer that was asking us questions to go over to where she was. She must have thought she found something in the grandfather clock but the male officer dismissed it.

The officers continued to check the house while me and Taylor sat and watched. My aunt May was let into the house as we sat. I thought it was mighty strange because everybody else was getting turned around. She came in and asked if Taylor and I were all right then she gave me a kiss on the forehead. She also asked who was responsible for fixing the door; the officer response was that the home owner was responsible. She did not stay inside for more than 5 minutes. After my aunt left the officers were just about done. My dad arrived a short while afterwards. Taylor and I both sat at the table after the officers left the house. Next thing we knew my dad was home and was fuming from all the results.

Brittani Blanding

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 COLUMBIA DIVISION

4 REGINALD ANDRE BLANDING,
5 WANDA BLANDING, AND BRITTANI
6 BLANDING, BY AND THROUGH HER
7 GUARDIAN AD LITEMS, REGINALD
8 ANDRE BLANDING AND WANDA BLANDING,

9 Plaintiffs,

10 vs. Civil Action No.: 3:14-cv-00299-JFA-PGJ

11 RICHLAND COUNTY SHERIFF'S
12 DEPARTMENT, LEON LOTT, LIEUTENANT
13 COWAN, RICKEY E. JOHNSON, JR.,
14 FRIDA W. WYATT, ADRIAN P. THOMPSON,
15 ADAM C. CORNWELL, SARA N. GIRON,
16 GEORGE C. BECKER, MICHAEL C.
17 NAWROCKYJ, AND UNKNOWN CONFIDENTIAL
18 INFORMANT,

19 Defendants.

20 -----
21 DEPOSITION OF REGINALD BLANDING
22 -----

23 DATE TAKEN: Monday, June 23, 2014

24 TIME BEGAN: 11:34 a.m.

25 TIME ENDED: 3:21 p.m.

LOCATION: Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204

REPORTED BY: Yvonne R. Thurston-Bohannon
Registered Merit Reporter, Certified
Realtime Reporter, Georgia Certified
Court Reporter

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1 deadbolted, but chained?

2 A. Yes, sir.

3 Q. Okay. I'm going to just ask you
4 questions about the layout of your house. Do you
5 know how many square foot?

6 A. 1249 pretty much, right around there.

7 Q. And how many bedrooms and bathrooms?

8 MR. BUTCHER: Wait. Are we back on
9 the record?

10 MR. GARFIELD: Oh, sure.

11 MR. BUTCHER: Okay. Sorry.

12 THE WITNESS: Two baths, three
13 bedroom.

14 BY MR. GARFIELD:

15 Q. Okay. Now, ways that you and your
16 family -- when I say ways, methods to get in and
17 out of your house. In other words, front doors,
18 back doors, side doors. Ways -- in other words,
19 doors that could lead to the exterior of the
20 house.

21 Obviously we've talked about the one
22 front door, and that was the one that was
23 entered --

24 A. Yes, sir.

25 Q. -- by law enforcement?

1 Okay. What other ways for you to get
2 out of your house or get into your house?

3 A. Through the kitchen, it's a side door
4 on the side, and on the back it's a back door that
5 leads to the deck.

6 Q. When did you purchase this home?
7 Approximately. You can just tell me the year or
8 approximately.

9 A. It was approximately '91. That's when
10 we got married.

11 Q. Who did you purchase the home from,
12 Mr. Blanding?

13 A. Carl Braswell.

14 Q. Did you have any substantive
15 improvements to the house in the years since you
16 bought it?

17 A. I put that storage shed for my lawn
18 mower.

19 Q. And this is the storage shed that is
20 situated --

21 A. In the back of the house, yes, sir.

22 Q. How about the back deck, was that an
23 improvement or was that with the original sale?

24 A. The original sale.

25 Q. So we're talking about three points of

1 not feel -- or do not feel that it has ever been
2 necessary to install an alarm system in your
3 house?

4 A. I didn't install an alarm system
5 because it's a cost that I couldn't afford with --
6 with my daughters -- it was an extra cost that I
7 just wasn't willing to pay.

8 Q. Do you feel like it -- cost aside, do
9 you feel like it was really necessary, given the
10 fact that your mother and father are a stone's
11 throw away and all these relatives live very close
12 to your house?

13 A. That's correct. If anyone came to my
14 house or in my house -- you know, came to my
15 house -- or like, say, for instance, I'm not there
16 and my daughter is there --

17 Q. Yes, sir.

18 A. -- if someone pull up, my parents
19 would immediately call me if I'm at work. And no
20 one -- no one is allowed to cut through our yard.
21 No one is allowed to be at our house when we're
22 not home. If we're not home and someone comes
23 over there, a repairman, say, if it's like to fix
24 the air or anything, they would call me.

25 And if someone is supposed to come

1 over there for that day, I would go ahead and call
2 them and I would tell them to walk over there if
3 they come -- if they -- when they come, just walk
4 over there and just make sure everything is all
5 right.

6 Q. So it's your understanding that your
7 family -- did they do their best to keep close
8 eyes on the house during the day and during the
9 night?

10 A. Always. My mother would call my
11 wife -- it was so funny. She would call her -- my
12 wife would call me and say, "Your mother called
13 because I didn't go to work today and she was
14 wondering why I didn't go to work today." And she
15 was talking about -- she just thought it was so
16 funny. I mean, that's just how she was.

17 She knew anything -- anything that
18 went on at any of our houses -- my mother and
19 father was retired. They didn't work, so she
20 would always call and check. So if they see a car
21 home that know was supposed to be driven to work,
22 they would call us and ask us if everything was
23 all right.

24 Q. So quite frankly it's not so much the
25 money as it is you basically felt pretty safe in

1 BY MR. GARFIELD:

2 Q. I'm going to show you Exhibit Number

3 3. Okay?

4 A. Okay.

5 Q. I'm going to represent to you that
6 this is a document we pulled off the Public Index
7 for the South Carolina Department of Corrections.
8 Okay? Can you identify who that individual is in
9 Exhibit Number 3?

10 A. That's Gregory Samuels.

11 Q. And what is -- is that Peanut?

12 A. That's -- that's his nickname.

13 Q. All right. Well, have you -- do you
14 know Gregory Samuels?

15 A. Of course. That's my sister's child.

16 Q. That's your blood nephew, correct?

17 A. That's correct.

18 Q. All right. And he goes by Peanut,
19 doesn't he?

20 A. That's what -- that's what we call
21 him.

22 Q. That's what you call him?

23 A. That's what everybody call him.

24 Q. All right. When's the last time
25 you've talked to Peanut?

1 A. Yes. Since October 2011, I did -- I
2 did -- one day I was leaving for work and he said,
3 "Hey, Unc," and I said hi and that was it.

4 Q. Okay. And do you remember when that
5 was?

6 A. And it might not have been for work,
7 but I was just leaving out of the yard.

8 It was after the 11th or whatever --
9 2011, it was after that.

10 Q. Do you remember how long after that?

11 A. Probably before -- before he went --
12 he came out and they got him for jail.

13 Q. Okay. Do you know -- do you know if
14 Peanut is somebody who is involved in some form or
15 fashion with the sale or the use or the abuse of
16 drugs?

17 A. He's been arrested before for it,
18 so --

19 Q. Okay. Well, I'm asking you, Do you --
20 I don't want to ask if he was arrested for it.
21 Did you know, you -- he's your blood nephew.

22 A. That's correct.

23 Q. Your blood nephew -- I'm not saying
24 you were, but did you know he was involved with
25 the sale, the use or the abuse of illegal drugs?

1 A. Oh, yeah, I had an idea he was. I
2 never seen it per se, but, yeah, I had an idea he
3 was.

4 Q. And for how long had you had the idea
5 or the -- the information that he was involved
6 with abusing drugs in some form or fashion?

7 A. In some form or fashion probably about
8 eight, ten years or so.

9 Q. Go to page three, and I'm just going
10 to -- for ease of use, I'm just going to turn it
11 for you. I'm going to show you in -- I'm going to
12 read out paragraph 17. The first sentence says,
13 "None of the Blandings have ever been arrested or
14 convicted of a crime." Did I read that correctly?

15 A. That's correct.

16 Q. And that's a true statement, isn't it?

17 A. That's a true statement.

18 Q. All right. The next sentence says,
19 "None of the Blandings use drugs or associate with
20 people who abuse drugs." Is that true?

21 A. That's correct.

22 Q. All right. Well, if you knew Peanut
23 was abusing drugs for eight or so years --

24 A. That's correct.

25 Q. -- you still had him come to your

1 would be across the street at Marjorie Court and
2 then down some a little ways?

3 A. That's correct.

4 Q. You referred to this structure behind
5 your house. You said that's the -- the trailer
6 that your sister Rosa --

7 A. Rosa Samuels.

8 Q. Rosa Samuel or Samuels?

9 A. Samuels.

10 Q. Rosa Samuels pays for you said or
11 lives in or what?

12 A. Yeah. Yeah, she -- she pays for it.
13 Her and her husband lives in it every now and
14 then. They'll go back and forth because the
15 electricity be so high. So sometimes they live
16 down there and then sometimes they don't, but they
17 paying for it.

18 Q. Is that Peanut's mom?

19 A. That's Peanut's mom.

20 Q. Is it -- is Peanut's name Gregory
21 Samuel or Samuels with an S?

22 A. You know what, I can't -- I'm not sure
23 which one it is, but it -- it's the same as his
24 mom. It's Samuels or Samuel. I'm not, you know,
25 a hundred percent sure. My sister, that's her

1 A. That's correct.

2 Q. Okay. I'm going to circle your house.

3 A. That's --

4 Q. Tell me if I'm doing that correctly.

5 I've circled that.

6 A. Yes.

7 MR. BUTCHER: You're on Exhibit 7?

8 MR. GARFIELD: I'm on Exhibit 7.

9 BY MR. GARFIELD:

10 Q. I've just circled that. What did I

11 circle?

12 A. My house.

13 Q. Okay. And this is your mother's

14 house?

15 A. My mother and father's house -- my

16 deceased father.

17 Q. Your deceased father, that's right.

18 And I'm going to put a square --

19 excuse me, yeah, square.

20 A. Okay.

21 Q. And what am I -- what do we see in the

22 square?

23 A. My mother and father's house.

24 Q. Where does Rosa Samuel or Samuels live

25 in relation to what I have?

1 A. She's here -- no, no. She's here.
2 She's right across from my mother and father.
3 Q. Okay.
4 A. That's their house.
5 Q. I show a 316 Gibbs Road. Could she
6 live back in there or somewhere in this area?
7 A. No, it's -- it's pretty much across
8 from me. That's my brother James. That's
9 Darrell, that's James, that's Rosa.
10 Q. Okay. Darrell, James and Rosa?
11 A. Rosa.
12 Q. Darrell?
13 A. James.
14 Q. James.
15 A. Rosa.
16 Q. I wrote those three names on Exhibit
17 7. Did I -- does that fairly depict who either
18 lives or owns in those house -- owns those homes?
19 A. Let me see. I like to look at it.
20 Gibbs Road. Darrell, James. That's correct.
21 Q. All right. I'm sorry, you said -- who
22 is Jessie Gibbs?
23 A. Jessie is my uncle -- my mother's
24 brother.
25 Q. Let's talk about your father's

1 it's Ronnie's trailer.

2 Q. Would it have been unusual for him to
3 be in your parents' home in October of 2011, just
4 to be in the house, whether he lived there or not?

5 A. No. No. When he had his own place,
6 he didn't never -- he ain't never been over to
7 mama's house. Mama might take him some food. He
8 might get a plate to eat or something, but that's
9 about it.

10 Q. And this is the lady -- this is your
11 mother?

12 A. Marjorie.

13 Q. Marjorie that has the key to your
14 house?

15 A. That's correct.

16 Q. But you don't know where she keeps it?

17 A. No one knows where she keeps it but
18 her.

19 Q. Okay. Who is Willie Belton?

20 A. Willie Belton is someone who live
21 across the -- down the street from Francis -- the
22 people -- some of the people you called. She --
23 he -- I -- I can't -- you can't quote me on where
24 they live because I don't know where they live at,
25 but I just know them from growing up.

1 And you don't even know whether
2 there's undesirables or any issues with The
3 Club --

4 A. Oh, you asking me do you think there's
5 undesirables over there? Yes, I think
6 undesirables be there. I mean, undesirables are
7 at every club, I mean.

8 Q. And do these individuals ever walk
9 intentionally or unintentionally on part of your
10 property?

11 A. If -- in -- during the daytime someone
12 might -- you see how long my driveway is.
13 Somebody might cut through and I will stop them
14 and I will holler at them and tell them, "Don't
15 walk through my yard."

16 My brother Ronnie have a tendency if
17 he's at my mother's house to think he can walk
18 through my yard and I will politely stop him and
19 tell him to go back, "Don't go -- don't cut
20 through my yard."

21 My nephew James Blanding got into an
22 argument with me about I told him, "Do not cut
23 through my yard."

24 And he's like, "I'm -- I'm your
25 nephew."

1 And I'm like, "I don't want anybody
2 cutting through my yard because once they see you
3 do it, they think you can -- they can do it, and I
4 don't -- you know, we don't want -- the fact that,
5 you know, who knows, my girl might not lock my car
6 door. I don't want them going through my cars or
7 doing anything."

8 So no one is committed [sic] at my
9 place, and everyone around there know that, around
10 Pontiac.

11 Q. And it's possible that maybe one of
12 y'all forgot to lock a door to the house as well?

13 A. No, I didn't say they forgot. I said
14 they might not lock a door -- or a car door or
15 something. But as far as the house, who leaves
16 they house unlocked? I don't know. But, no, no
17 one -- my kids know they don't leave -- everything
18 be locked up. Don't leave anything -- secure --
19 secure buildings, my shed. They don't even go in
20 the shed. I'm the only one that goes in the shed.

21 Q. You intercept people occasionally
22 going through your property, and then you said in
23 a nice way you try to go ahead and have them --
24 told them not to go on your property?

25 A. If anybody cuts through my yard, my

1 or gray or something. I'm not sure.

2 Q. Okay. Is that the trailer behind your
3 house?

4 A. This is the trailer behind my house.

5 Q. Okay. And that's the trailer --

6 A. I think -- let me see, yeah.

7 MR. GARFIELD: Let's go ahead and mark
8 that as Exhibit 9.

9 (Blanding Exhibit 9, Photograph,
10 marked for identification.)

11 BY MR. GARFIELD:

12 Q. From your back deck to the trailer we
13 see in Exhibit 9 to your best estimate, what is
14 the distance?

15 A. Probably about a hundred yards, 80 or
16 90 yards.

17 Q. This is the trailer, Exhibit Number 9,
18 that your nephew Peanut has been known to stay in
19 from time to time?

20 A. Yes, that's a good conception, yeah.

21 Q. Is that a true statement, what you
22 just said?

23 A. Yeah, from time -- I guess. I mean,
24 I -- that -- that's where he was known to stay at
25 times.

1 A. That's correct.

2 Q. Okay. That could be in your back
3 yard, correct?

4 A. That's correct.

5 Q. That could be on your back deck even?

6 A. That's correct.

7 Q. All right. Because there's nothing --
8 there's nothing that would signal or alert you
9 immediately when any of these individuals could
10 momentarily be at any of these places, right?

11 A. That's wrong.

12 Q. Okay. That could be during the day
13 when everybody is gone?

14 A. During the day -- during the day my
15 parents would give me a call. If somebody cut
16 through my yard or was in my yard or around my
17 house, I would get a call.

18 Q. I understand that.

19 How could the back of your house, the
20 back deck of your house --

21 A. That's correct.

22 Q. -- can your parents see the back deck
23 from their house?

24 A. Not inside they house, but in they
25 yard, yes. My dad -- my daddy be on his tractor

1 which is kind of -- coincide with my house. So if
2 anybody in the back of my deck -- my dad doesn't
3 be -- he didn't stay in the house. He was always
4 outside walking around, walking to his pond back
5 and forth. So he was always around.

6 And believe it or not he felt like I
7 feel. I mean, he -- he -- he would -- when he's
8 home, he could see stuff. So he actually, believe
9 it or not, would be looking all the time. He's
10 always around.

11 Q. So let's be real clear because, in all
12 fairness to you, you are under oath. You're
13 swearing under oath to a fact.

14 A. That's correct.

15 Q. You're saying that between the
16 hours -- on the weekday between 8:30 a.m. and
17 roughly two o'clock p.m. --

18 A. That's correct.

19 Q. -- your father is never inside of his
20 house --

21 A. I would --

22 Q. -- because you said always, so I'm
23 being real clear.

24 A. Let me be clear with you. To say
25 never, that's -- you know, that's kind of

1 ludicrous, but the majority of my dad' time is
2 spent outside. My mother bes in the house. My
3 dad walks around all the time with his shoes off,
4 just -- just being -- just hanging around outside.
5 He never liked being in the house.

6 Q. Okay.

7 A. He's always -- he's always outside.

8 Q. And you're -- so you're also not
9 saying that between 8:30 and two o'clock during
10 weekdays when you're saying he's outside, he is
11 always focused 100 percent surveying -- surveying
12 the area around your house, or could he maybe be
13 engaged with being on a tractor, walking around
14 his land, doing other things or is he focused on
15 your house for seven hours a day staring at it?

16 A. No, he's never focused on my house.
17 He's -- he's in the area. He's around. So if he
18 sees something, they -- he -- they would give me a
19 call.

20 Q. Of course --

21 A. Now, sitting there watching my house,
22 no, sir. I wouldn't say that he was doing that,
23 but as far as anything that go on around, like I
24 said, if -- if my wife stayed home from work,
25 my -- my mother calls.

1 your mind -- somebody is indicating to you that --
2 one of the officers were indicating to you the
3 belief that someone was coming out of your house
4 selling drugs, right?

5 A. That's correct.

6 Q. And the issue was who would had access
7 to the inside of your house, correct?

8 A. That's correct.

9 Q. All right. And you said that no one
10 would have a key to your home --

11 A. That's correct.

12 Q. -- other than maybe you and your wife
13 and your immediate family?

14 A. Did I say that in here also?

15 Q. Okay. Well, no, I'm just trying to
16 understand.

17 A. Okay.

18 Q. Would that have been important to you?

19 A. What -- what went on or what I went
20 through at that time, I didn't think of it.

21 Q. Okay. Who all stays at your mother
22 and father's house, let's say, in the last five
23 years besides Ronnie Blanding?

24 A. Who all the last five years?

25 Q. Uh-huh, people who have been sort --

1 A. Well, within the last five years
2 Ronnie wouldn't have been there because he was in
3 his own house. But it's probably my nephew. My
4 niece might have been staying there. My nephew
5 might have been before he went to the Army. Might
6 have been. I'm not -- I'm not a hundred percent
7 sure.

8 Q. What's your nephew's name?

9 A. His name is Ronnie Blanding, Ronnie
10 Jr.

11 Q. Okay. And what's your niece's name?

12 A. Her name is Bridgette Blanding.

13 Q. Anyone else you can think of in the
14 last, say, three to five years that have access to
15 the house or inside the house?

16 A. To my parents' house?

17 Q. Sure.

18 A. Anyone who's ever been --

19 Q. Invited over for supper, dinner, felt
20 like they could stay there for a night.

21 A. Could it have been at my mother's
22 house?

23 Q. Sure.

24 A. All I can say, not really anybody that
25 I can really think of. I mean, that's my mother's

1 house. It not mine. I'm not -- I mean, I don't
2 sit here and know who is staying with her and who
3 is not staying with her. I mean --

4 Q. So --

5 A. -- I barely go over there probably
6 once every couple weeks. It's my mother's house.
7 She lives next door.

8 Q. So the truth is any of these names
9 that I've asked you about you really don't know
10 for sure who, if any, may have been invited in
11 their home?

12 A. What specific names are you talking
13 about?

14 Q. Well, you were talking all these folks
15 that are related to you, these uncles and aunts.
16 We've gone over --

17 A. So you're asking me have any of them
18 been over -- uncles and aunts? Her brothers and
19 sisters, yes. Some of those other names that I
20 told you I didn't know and some of the ones I said
21 live up the street, no. If you want to go back
22 and ask me specifically and I'll tell you yes or
23 no, I --

24 Q. I -- I guess it's a smaller question.

25 A. Okay.

1 Q. I'm saying you can't say for sure
2 because you said you don't really know the comings
3 and going at your parents' house exactly?

4 A. That's correct.

5 Q. You can't say for sure that any of
6 these names that we went over may have been at
7 your parents' house at any given time because you
8 do their thing -- you do your thing, they do their
9 thing?

10 A. That's correct.

11 Q. Okay. But you did make the comment
12 early -- and I just want to make sure I
13 understand -- that you said that in recent times
14 your -- is it brother Ronnie? I'm sorry, because
15 I'm learning your family tree just as I'm asking.
16 And I could be specific because I don't want to
17 assume anything.

18 Let me just make it this way. Who is
19 that in the picture?

20 A. That's Ronnie Blanding.

21 MR. GARFIELD: Let's go ahead and make
22 an exhibit out of that.

23 (Blanding Exhibit 10, Identification
24 Card of Ronnie Lewis Blanding, marked for
25 identification.)

1 wasn't home. So I would say no drugs or -- was
2 ever sold at my house or in my backyard or around
3 my yard when I was home, that's correct, isn't
4 that.

5 Q. Well, you could say -- but you're
6 not -- but you've already said that you wake up
7 early in the morning and you're not home for most
8 of the day, correct, daylight hours?

9 A. Correct.

10 Q. All right. You don't really know,
11 like I said, what happens in and around your
12 property after you and your family go to sleep,
13 right?

14 A. No, there's no way. It's not
15 possible.

16 Q. Exactly.

17 A. That's correct.

18 Q. And you don't know what all happens in
19 and around your yard in the curtilage of your
20 house and all of those little areas of your house
21 including your back deck when no one is at home,
22 do you?

23 A. That's correct.

24 Q. It's just not something you would
25 approve it; it's not something you would allow if

1 you knew about it, correct?

2 A. Correct.

3 Q. Okay. This next paragraph, it says,
4 "Defendant Rickey Johnson provided the magistrate
5 false information in his application for a search
6 warrant." Okay? Is that what you're alleging in
7 this case?

8 A. That's correct.

9 Q. All right. By claiming he had, quote,
10 made over 800 drug related cases over a twenty
11 month period.

12 Did I read that correctly?

13 A. That's correct.

14 Q. Okay. What's your basis for that --
15 that -- for you indicating that?

16 A. The time frame, how could he make that
17 many arrestes [sic] over that short period of
18 time. It's virtually -- virtually impossible.

19 Q. Okay. Have you ever had law
20 enforcement training?

21 A. No.

22 Q. Have you been with the Criminal
23 Justice Academy?

24 A. I have.

25 Q. You have?

1 A. I -- I was a correction officer. I
2 went through the Department of Correction
3 training --

4 Q. Okay.

5 A. -- and fire a weapon and -- certified,
6 got 30 out of 30 of my questions right, so I got
7 perfect on it.

8 Q. Okay. When did you go to the South
9 Carolina -- South Carolina Criminal Justice
10 Academy for detention officers --

11 A. For a correction officer?

12 Q. -- for a correction officer?

13 A. It was probably -- it was probably
14 before I went to Pepsi. I've been at Pepsi 20
15 years, and I was at the Department of Correction
16 for six years. So I think I started Pepsi in '93,
17 so had to be like '89, right up in there. Yes,
18 sir.

19 Q. And I understand your wife who is here
20 now works for the Department of Corrections?

21 A. That is correct.

22 Q. All right. And I'm going to ask her
23 these same questions too --

24 A. That's correct.

25 Q. -- but I want to hear from you, you

1 went to the Academy to become a corrections
2 officer?

3 A. That's correct.

4 Q. All right. And you said that's around
5 1989?

6 A. That's correct.

7 Q. And would -- did you actually graduate
8 and become a certified corrections officer?

9 A. Yes, sir.

10 Q. Okay. And where was the first place
11 you worked?

12 A. At Manning, Manning Correctional
13 Institution.

14 Q. They assigned you to Manning to be a
15 correctional officer?

16 A. That's correct.

17 Q. How long did you work in that
18 capacity?

19 A. Six years.

20 Q. And you left in or around 1995?

21 A. '93, so I'm not quite sure the date,
22 but I left there and went straight to Pepsi.

23 Q. So it was more -- more like four years
24 then?

25 A. No, I was there six years, but don't

1 quote me on the date -- the exact date I was
2 there. I just know I started at Pepsi in -- I
3 started working at '93, but I was at the
4 Department of Corrections for six years. I know
5 that.

6 Q. Okay. And what was your -- any other
7 corrections institution you were assigned to other
8 than Manning?

9 A. Just Manning.

10 Q. All right. And what was your reason
11 to leaving the Department of Corrections?

12 A. Got a better job, more money.

13 Q. Very good.

14 And you've been with Pepsi ever since?

15 A. Ever since.

16 Q. Have -- in going to the Academy, did
17 you ever get certified for or did you ever become
18 qualified to become a class one law enforcement
19 officer; in other words, someone who had the power
20 to make arrests like a law enforcement officer?

21 A. No, no.

22 Q. Had you ever made an arrest --

23 A. No, sir.

24 Q. -- or arrests --

25 A. No, sir.

1 people or get what they was looking for.

2 I know at my house we don't sell
3 drugs. We don't do drugs and none of that was
4 there. That's -- that's what I'm talking about.
5 So, for instance, if you say that I came out my
6 back door and sold drugs, I mean, show me where I
7 came out my back door and sold drugs. I mean, the
8 homeowner -- the homeowner is who they was looking
9 for. I was at work.

10 Q. Well, did they say the homeowner?
11 Where -- where -- and I am going to ask you this
12 because, again, all I have is your allegations and
13 all I have in the deposition is to ask you what
14 they -- your allegations are and what's your
15 reasons for it, and so that's my question.

16 Where in any of these documents -- and
17 you can point to anywhere in your -- your own
18 complaint or anything where it says that the
19 homeowner sold drugs.

20 A. It doesn't say.

21 Q. Tell me who told you that the
22 homeown -- the homeowner -- the owner of the house
23 sold drugs?

24 A. No one ever said the homeowner.

25 Q. So I'm asking -- then why would you

1 Q. Without any breaks really?

2 A. Without any breaks. And I was in the
3 Reserves, and I was -- when I was with the
4 Department of Corrections, my wife got pregnant
5 and I had a part-time job at Lowe's, so I actually
6 worked two jobs. So I went from that morning till
7 about ten o'clock at night.

8 Q. Okay. A little more background
9 questions that I ask of everybody at a deposition.

10 A. That's fine.

11 Q. It was asked of my clients. Have
12 you -- I'm going to make it easy and ask it in the
13 negative. You've never been arrested before?

14 A. No, sir.

15 Q. Okay. And no one -- your wife and
16 your children, nobody has ever been arrested
17 before for anything?

18 A. No, sir.

19 Q. Okay. And have you ever brought a
20 lawsuit other than the one that was brought on
21 your behalf here? In other words, even for a car
22 wreck, was a claim --

23 A. Yeah. Yeah, I did a claim in 2000. I
24 was with Pepsi, and a car came around and hit me
25 head on, and they -- they didn't make. So I kind

1 consider yourselves a congregant of any church?

2 A. Yes, sir.

3 Q. And which church is that?

4 A. Oak Road Baptist Church.

5 Q. That's right. I remember your
6 daughter said that.

7 Are you the member of any fraternal
8 organizations, anything -- any professional
9 organizations?

10 A. No, sir.

11 Q. Okay. And you said -- it's your
12 testimony that you and your wife have never in all
13 the years you've lived there ever called out the
14 police for any reason?

15 A. No, we have -- we have -- I think my
16 younger daughter might have called 911 by mistake
17 and they came out there, but that's the only -- we
18 never called about anything.

19 Q. Okay. Have the police ever been to
20 your house for any reason other than what we're
21 talking about in October of 2011? In other words,
22 did they respond to your house, not based on y'all
23 being the target, but just asked questions or
24 anything like that?

25 You're saying there's always, you

1 know, one or two police officers out there. I
2 just wanted to know if they ever found a reason to
3 come to your house to ask you questions?

4 A. They never did. I never -- I never
5 can recall an instance for them coming out.

6 Q. I think -- would you agree with me
7 that based on your knowledge the police were
8 looking for Peanut?

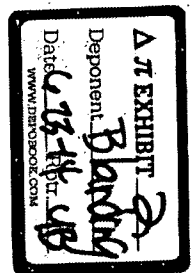
9 A. Based on my knowledge, I would --

10 Q. Okay. Did you ever address that
11 issue? Say the police got the wrong house and
12 they messed up, all that aside, I'm saying those
13 allegations aside, have you addressed the fact
14 with Peanut's mother Rosa or your mother and
15 father or anyone else and said, "Look, even if the
16 police officer may have been wrong or made a
17 mistake, I still want to" -- you're still upset
18 with the fact that Peanut may or may not be doing
19 things that the police are looking for?

20 A. Can you --

21 Q. Sure. They're looking for Peanut.
22 They went to your house. They looked for the
23 wrong place according to you. Did you ever
24 address that issue with any family member after
25 the event?

On Tuesday October 20th at approximately 2:20 p.m. while at work I got a call from my daughter, Brittani. She said that I needed to come home right now because the police were at our house with a search warrant and were searching the house in a terrified voice. I asked her to put one of the officers on the phone. She gave him the phone and he said that I needed to come home because they were going to search the house and I said not my house without an adult present and he said yes they were and I said again don't search my house if my wife or myself wasn't home. Then he said that my daughter, who is 17, is old enough. I said that I just can't leave my job without talking to someone and he said that my daughter was old enough and they were going to search the house and hung the phone up in my face. I then called my mother (Majorie Blanding) to tell her to ask my father (Roosevelt Blanding) to go over to my house because my daughter was there by herself and that she is not an adult. She did and said bye and hung up. I then called my uncle's (Johnny Gibbs) house. He was not home but his wife gave me his cell number to call. I called him and told him to go to my house to see what was going on until I can get home. I then called my supervisor (Brunson Harrell), and told him what was going on and he said that he will see if anyone was able to relieve me. He got someone, and then told me to get home as fast as I can. I left the store (Bishopville) on my way home. I tried to call my wife but got no answer. By this time, I was speeding home and my daughter called me again and asked for the combination to the safe and I gave it to her. I then told her to put the officer back on the phone, she did and I told him that I was on my way home and I didn't want them to leave until I got there. He said that if they were not done they would still be there but if they were done they were going to leave and a copy of the search warrant will be at the house. I said that I wanted at least one police officer to be there when I get there which would be about 45 minutes. He said again that if they were done they were leaving and got off the phone. When I got home, as soon as I got into the house an officer stopped and asked me who was I and I said that I'm the owner of the house. Then another officer said come outside and let me talk to you about why we are here. He said that someone came out my back door of my house onto the deck and sold an informant drugs (rock cocaine). I said immediately, not out my house, that's crazy because no one be at the house in the day because we are at work. The officer asked does anyone have a key, and I said no, not to my home. I said they have wrong house, and he said yes they did, and I said no. Then a female officer chimed in, that it was around the back of the house. I then said no because no one should even be in my yard when we are not



home. I then said, which was it, someone came out of the house onto the deck and sold it or the back yard because you just told two different stories. They then started to leave and I then asked them who was going to fix my doors and my house and they said not us in a disrespectful manner. I asked again as they were getting into their cars, who was going to pay for my doors and my house and what were their names. They said the names are on the warrant and left. I then was so upset that I had to breathe in and out for a few minutes. I called my wife, she answered this time. I said the police just knocked our door in and searched our house. She said who house and I said our house and she said, what, and I said yes our house and she said for what and I said drugs and she said, they must be crazy and at the wrong house, and I said the same thing. I then told her that they messed up every room in the house and went through the cars and she said she was on her way home. I showed her the house; she was very angry they did this and said she was going to call the news. She called news 19 but no one called her back. She called news 10 (WIS) and someone came out (Jody Barr). He then asked what happened, we told him, and he then wanted to see the search warrant. We showed him the house and he asked why did the police do the search and I told him what they told me. He then video recorded the house and interviewed us and put it on the news.

End of Statement

Reynald A Blanding

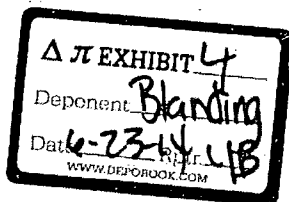
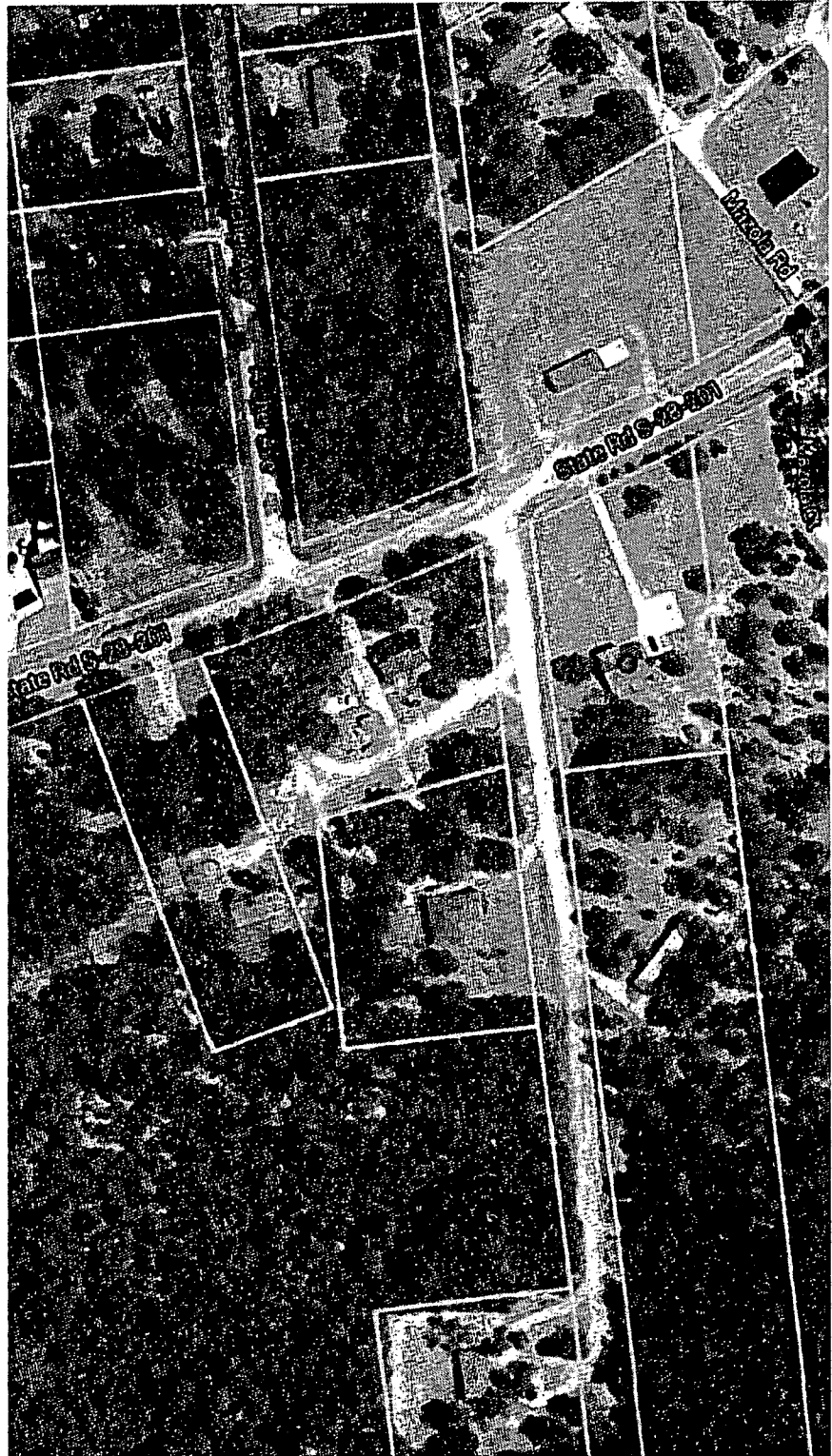
Richland County Parcel & Address Search

Non-Mobile Device Detected
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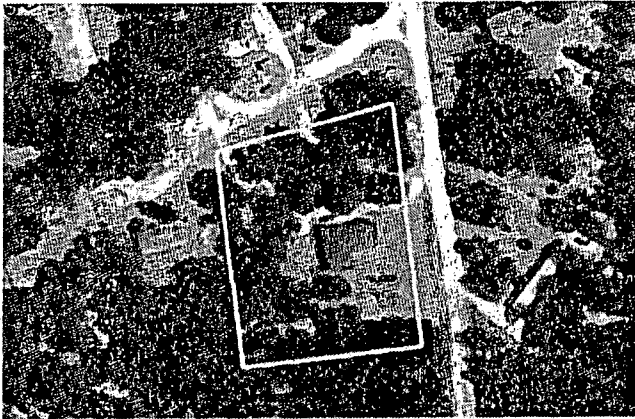
402 Gibbs Road, Elgin, SC

402 GIBBS RD 29045



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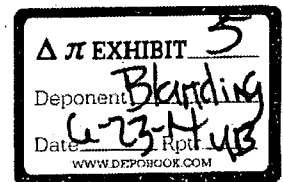
Parcel Number: R26105-03-15
Situs Address: 5 MARJORIE CT
Primary Zoning: RU
Secondary Zoning:
Tax District: 2DP
Assessed Value: 107,900
Building Value: 98,900
Land Value: 9,000
Acreage: 1
Owner Name: BLANDING DARRELL J
Owner Address: 5 MARJORIE CT
Owner Address:
Owner City: ELGIN
Owner State: SC
Owner ZIP: 29045
Bedrooms: 3
Bathrooms: 2
Year Built: 2002
Heated Sq Feet: 1,896 ft²
Last Sale Date: February 28, 2002
Last Sale Price: \$5
Legal Description: TRACT A
Legal Description: 254.6X183X224.8X185
Legal Description: #SU
Legal Description: #PR



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USDA Forest Service Report a map error

Note: Some locations, typically rural, will not pre-load in the StreetView pane due to limitations of the StreetView service. However you can reinitialize StreetView by dragging the pedestrian icon into the map and dropping the icon in an area with StreetView availability.

Adjust maps if necessary
then click to finalize print.



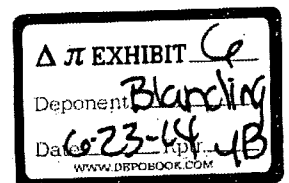
Parcel Number: R26105-03-06
Situs Address: 400 GIBBS RD
Primary Zoning: RU
Secondary Zoning:
Tax District: 2DP
Assessed Value: 259,900
Building Value: 67,800
Land Value: 191,900
Acreage: 21.320
Owner Name: BLANDING ROOSEVELT & MAJORIE
Owner Address: 400 GIBBS RD
Owner Address:
Owner City: ELGIN
Owner State: SC
Owner ZIP: 29045
Bedrooms: 3
Bathrooms: 2
Year Built: 1993
Heated Sq Feet: 1,220 ft²
Last Sale Date: November 30, 1959
Last Sale Price: \$0
Legal Description: LOTS 12 13 14 & 15
Legal Description:
Legal Description: #SU
Legal Description: #PR



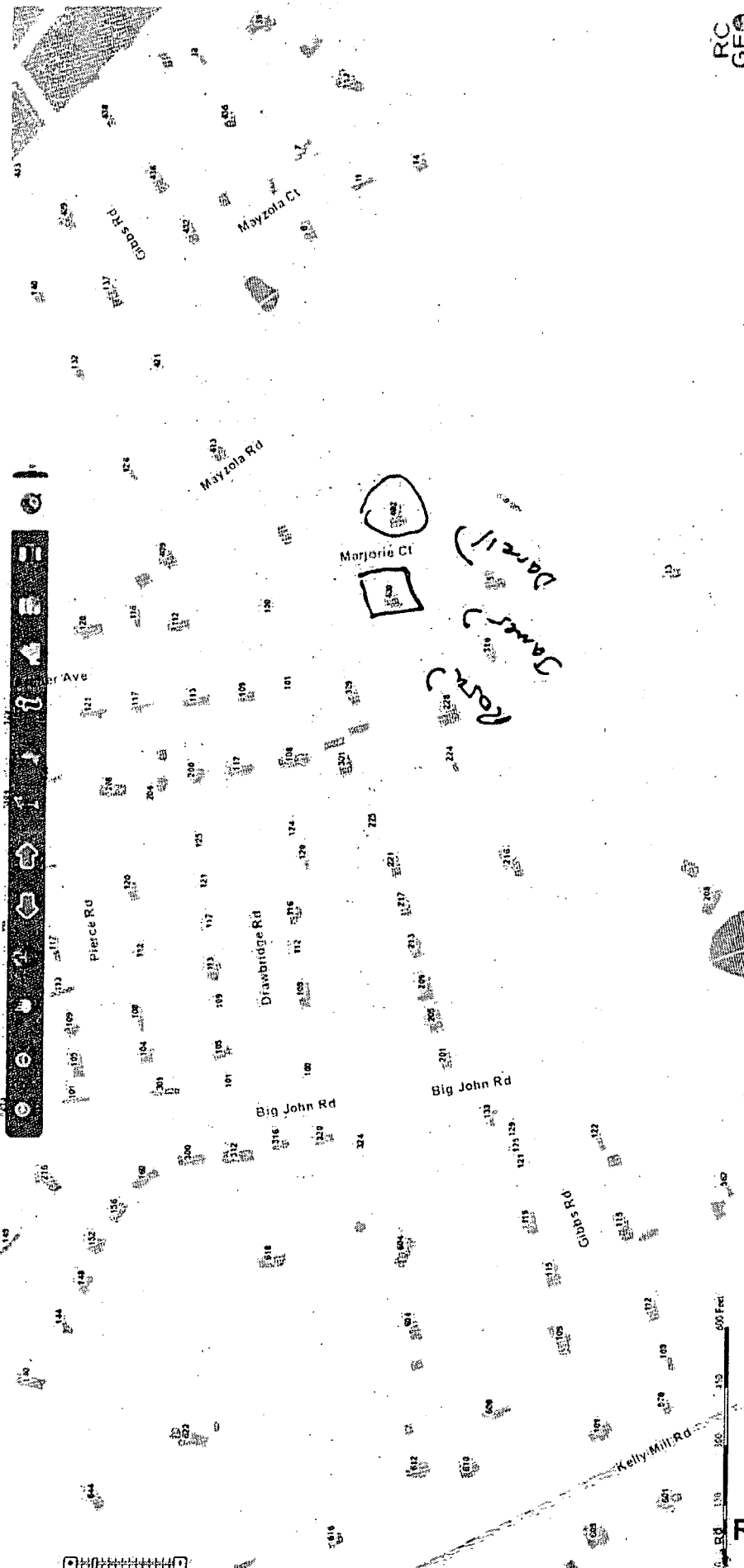
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 USDA F. Report a map error

Note: Some locations, typically rural, will not pre-load in the StreetView pane due to limitations of the StreetView service. However you can reinitialize StreetView by dragging the pedestrian icon into the map and dropping the icon in an area with StreetView availability.

Adjust maps if necessary
 then click to finalize print.



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Δ π EXHIBIT 7
Deponent: Blanding
Date: 6-23-44
WWW.DEPOBOOK.COM

ROA 261

EXHIBIT 3

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 COLUMBIA DIVISION

4 REGINALD ANDRE BLANDING,
5 WANDA BLANDING, AND BRITTANI
6 BLANDING, BY AND THROUGH HER
7 GUARDIAN AD LITEMS, REGINALD
8 ANDRE BLANDING AND WANDA BLANDING,

9 Plaintiffs,

10 vs. Civil Action No.: 3:14-cv-00299-JFA-PGJ

11 RICHLAND COUNTY SHERIFF'S
12 DEPARTMENT, LEON LOTT, LIEUTENANT
13 COWAN, RICKEY E. JOHNSON, JR.,
14 FRIDA W. WYATT, ADRIAN P. THOMPSON,
15 ADAM C. CORNWELL, SARA N. GIRON,
16 GEORGE C. BECKER, MICHAEL C.
17 NAWROCKYJ, AND UNKNOWN CONFIDENTIAL
18 INFORMANT,

19 Defendants.

20 -----
21 DEPOSITION OF WANDA BLANDING
22 -----

23 DATE TAKEN: Monday, June 23, 2014

24 TIME BEGAN: 3:33 p.m.

25 TIME ENDED: 4:56 p.m.

LOCATION: Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204

REPORTED BY: Yvonne R. Thurston-Bohannon
Registered Merit Reporter, Certified
Realtime Reporter, Georgia Certified
Court Reporter

1 APPEARANCES:

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4 AND BRITTANI BLANDING, BY AND THROUGH HER
GUARDIAN AD LITEMS, REGINALD ANDRE
BLANDING AND WANDA BLANDING:

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Camden, South Carolina 29201
7 (803) 432-7599
(803) 432-7466 - FAX
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10 ATTORNEYS FOR THE DEFENDANT
11 RICHLAND COUNTY SHERIFF'S DEPARTMENT, LEON
12 LOTT, LIEUTENANT COWAN, RICKEY E. JOHNSON,
13 JR., FRIDA W. WYATT, ADRIAN P. THOMPSON,
ADAM C. CORNWELL, SARA N. GIRON, GEORGE C.
BECKER, MICHAEL C. NAWROCKYJ, AND UNKNOWN
CONFIDENTIAL INFORMANT:

14 DAVIDSON & LINDEMANN, PA
15 BY: ROBERT D. GARFIELD
Post Office Box 8568 (29205)
16 1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204
17 (803) 806-8222
(803) 806-8855 - FAX
rgarfield@dml-law.com

18
19 ALSO PRESENT:

20 Reginald Blanding
21 Scott Hayes, Esquire
22
23
24
25

1 I N D E X

2

3

Page

4

STIPULATIONS

4

5

EXAMINATION

6

BY MR. GARFIELD

4

BY MR. BUTCHER

75

7

CERTIFICATE OF REPORTER

76

8

9

E X H I B I T S

10

13 Typewritten Statement of Wanda Blanding

68

11

12

REPORTER'S NOTE: Exhibits 1 through 12 were
marked in the deposition of Reginald Blanding
taken on June 23, 2014.

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1 A. Sure will.

2 Q. Very good.

3 The little bit about you that I know
4 from looking at the video and this is that you're
5 a corrections officer at the South Carolina
6 Department of Corrections. Are you an employee
7 with the South Carolina Department of Corrections?

8 A. I'm an employee with the South
9 Carolina Department of Corrections.

10 Q. Okay. When did you start working with
11 SCDC?

12 A. September the 10th, 1990.

13 Q. And you've been with them continuously
14 for 24 years?

15 A. 20 --

16 Q. This year?

17 A. This year will be 24 years.

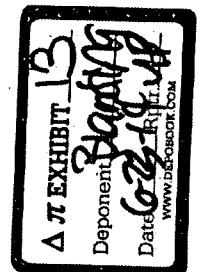
18 Q. Congratulations.

19 A. Thank you.

20 Q. And knowing a little bit about the
21 organizational structure, where -- where are you
22 assigned or where do you primarily work within the
23 Department of Corrections?

24 A. Right now I am with the division of
25 classification and inmate records. So I'm in the

On Oct. 20, 2011 at approximately 3:15 p.m. I received a call from my husband (Andre') on my job. He stated the police had searched the house. I stated what, there were at the trailer. He stated no, our house. I asked him how they could be at our house. Andre stated they had a search warrant. I told him, no one was there to agree to the search. He then stated well they did it and the house is a mess. He stated the front door is completely off the hinges and the storm door is messed up. He stated again the house is all messed up. I told him, do not touch anything and get your camera and video everything, I'm on my home. I immediately went to my Supervisor (Ms. Stephanie Willis) and informed her that the police had destroyed my home and I needed to leave. At that moment, I told my supervisor, they were at the wrong house and how could they have done this to us. On my way home, I called Andre back and asked what had been done to the house. He stated the whole house is torn up, clothes were thrown on our bed and they have been in every room, even in the attic. When I reached home, as I proceeded in from the front, I noticed the storm door would not close completely and a piece was broken, and the front door was completely off the hinges. Andre, Brittani, Taylor, Lorena and Donnie were there. Brittani and Taylor stated they were frisked searched by a female officer and Brittani was made to shake her bra. Donnie took pictures. Breon was taken next door to her grandparents once she got off the bus. I walked to the bedroom, my mouth dropped in disgust as I saw my bed cover was pulled back and mattress pulled to the side and clothes were thrown from every drawer onto my bed. Everything from the top shelf of the closet was thrown to the floor and bed. I went to Breelyn's and Breon's room and seen where they had pulled out their game accessories from the dresser drawer. In the hallway, the stairs to the attic was pulled down. The guest bathroom had everything dumped out from the travel bag and items thrown out from the bathroom counter. In Britt's room, everything from her closet, top and bottom shelves were thrown on her bed. The safe from her closet had been moved to the family room. In the kitchen area, there were two cereal boxes on the floor left opened. The clock in the dining area, items had been pulled out. Our mail had been tossed out of order on the kitchen table. I felt helpless and sicken. My chest began to hurt, tension in my eyes and my head hurt. I told my husband this was unjust treatment and people needed to know, you can't treat innocent people like crap, I'm going to call the news. I initially called WLTX and told them what had happened. No one ever called back and my sister-in-law (Lorena Gripper) said then call WIS. My sister-in-law called



WIS. WIS called back and asked questions about what happened and then the reporter asked for direction to our home. When the reporter arrived, he saw for himself the destruction done to our home. He proceeded to ask questions and wanted to look at the search warrant. He informed us he wanted to do our story. We agreed and he proceeded to record every room of the house and the attic.

End of Statement

Uwala Blanding

EXHIBIT 4

MP4 Video of a News Report Submitted to Chambers

EXHIBIT 5

MP4 Video of a News Report Submitted to Chambers

EXHIBIT 7

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Family who claims deputies raided wrong home, to hire an attorney

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Posted: Oct 25, 2011 5:48 PM EDT
Updated: Oct 25, 2011 11:24 PM EDT

By Jody Barr - email



COLUMBIA, SC (WIS) - A Richland County family claims deputies got the wrong home, when a drug unit knocked in their front door and ransacked every room in their home last Thursday.

The sheriff says that's not the case. Now, the family is looking for an attorney.

Deputies spent more than an hour, rummaging through every room of Reginald and Wanda Blanding's Gibbs Road home.

Reginald's brother shot video, as deputies searched the home, cars and a neighbor, walking through the yard.

An unidentified deputy at the Gibbs Road home said, that he did not know who sold the drugs, but someone sold drugs to him, that's why they came back with a search warrant.

Criminal Attorney, Harrison Saunders took a look at the search warrant.

"Now, whether all of this information in the affidavit is true, of course, that's another story, but as far as the warrant goes, it appears to be valid from what I can see here," said Saunders.

Saunders told Reginald that someone sold drugs to an undercover informant out the back of their house. Reginald says minutes later, a second deputy gave him a different story.

"The female officer chimed in saying that someone came from around the back of your house, so my thing is...that's already two different stories, which one? They came out the inside of the house, or they were at the back of the house?" asked Reginald.

The search warrant says the informant bought drugs from a "black male" at the Blanding's home and the only "black male" living there is Reginald.



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This health tip provided by **COUSANSBURY EYE CENTER**

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This health tip provided by **Colonial Family Practice**

Colonial Family Practice
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Pharmaceutical company announces 700+ new jobs in Lexington Co. [WITH VIDEO](#)

Updated: Oct 28, 2011 2:31 PM EDT
Nephron Pharmaceuticals Corporation today announced that the company will locate its new operations in Lexington County. The \$313 million investment is expected to generate 707 new jobs.

Surveillance video of fired cop, alleged teen prostitute released [WITH VIDEO](#)

Updated: Oct 28, 2011 2:35 PM EDT
The Richland County Sheriff's Department has released surveillance video of a former Columbia police officer and an alleged teen prostitute after what investigators say was a tryst at a Columbia area motel.

Driver escapes after car flies off freeway ramp, catches fire

Updated: Oct 28, 2011 10:20 AM EDT
A driver is lucky to be alive after falling asleep at the wheel overnight Friday, and sending his car careening off a freeway onramp.

ROA 274

10/28/2011

"If you all have a family member that might be doing that," said the unidentified deputy. "I would let them know to stop doing that at your house, because if we do buy drugs from your house we're coming back."

Sheriff's Captain, Chris Cowan defended the search by saying a drug dog went in the house and could tell that drugs were once in there.

Cowan also says agents only searched the master bedroom.

The Blandings are upset because they think deputies could have done a better job investigating.

"I do believe—yes, law enforcement could have done more to, I guess, save the homeowners the trouble," said Saunders. "The humiliation, the embarrassment that they suffered as a result of this, however, I cannot say definitively that law enforcement was wrong in how they handled the situation."

"It was just poorly done," said Reginald. "I mean, they would know that these are some hard working people and they would have had the right place and we wouldn't have to go through this right now."

The Blandings say their plan now is to hire an attorney to figure out if they can let a jury decide if deputies followed the rules in knocking their door in.

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collision with deer, explosion

Crews find body of missing hunter

CPD: Officer fired after being caught with teen prostitute

Two shot in robbery at stoplight

Child shot in attempted home invasion dies

Updated: Oct 28, 2011 9:35 AM EDT

A 5-year-old Charleston girl shot in the head during an apparent home invasion earlier this week has died.

Lexington Medical Center wins Pink Glove contest!

Halloween curfew to be enforced against registered sex offenders WITH VIDEO

Updated: Oct 27, 2011 7:07 PM EDT

With Halloween coming up, the state is looking to law enforcement officials to enforce a curfew for registered sex offenders.

SC caseworkers plan to cut child abuse, neglect

Updated: Oct 27, 2011 6:17 PM EDT

Each year, state social workers are unable to substantiate thousands of reports of child abuse or neglect, yet hundreds of those cases later result in harm to children. South Carolina officials said Thursday they aim to improve that record with a review of caseworker practices.

Sheriff: 1 arrested, 4 sought in theft of 2200 gallons of fuel

Investigators have arrested one man, and are asking for the community's assistance in locating four more people they say were involved in stealing 2200 gallons of fuel from an Orangeburg gas station.

Car slams into Columbia building WITH VIDEO

Updated: Oct 27, 2011 4:54 PM EDT

An elderly woman walked away uninjured Thursday morning after her car came to rest inside a building near Two Notch Rd. and Interstate 20.

Sheriff: Drugs, guns and two juveniles found in "deplorable" home

Updated: Oct 27, 2011 1:42 PM EDT

Orangeburg County deputies arrested four people Thursday morning after a drug bust at a house which the sheriff said contained marijuana and guns.

Comments

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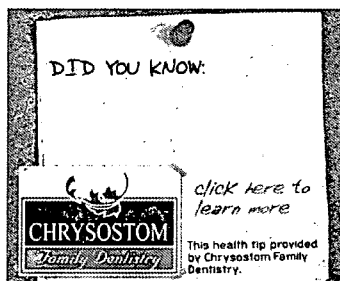
Sort By Newest First

tom 2 days ago	cha - ching!	-1   Share Flag
tom 2 days ago	liz, no it was not an undercover agent there sticking to the story it was an undercover informant .big difference,an agent is a representative of law enforcement and informant is a civilian street person!	0   Share Flag
tom 2 days ago	i hope a judge forces the informant to testify and see what kind of intelligence reports there getting from who and how reliable the source is.	0   Share Flag
tom 2 days ago	who interviewed the drug dog ? captain chris cowan is a regular dr doolittle he can talk to the animals.	0   Share Flag
Craig 2 days ago	I have known this famly for over twenty years. They are not drug users or drug distributors. All the family asked for was an apology from the sheriff and to have their door repaired. The same thing could happen to anyone of the people that have posted here. I think that the statement about the drug dog is a fabrication on the part of the authorities...because LE realizes that it made a mistake. I imagine that they still only want an aplogy and at the very least, to be made whole for having to replace the front door. LE usually gets it right. Not so in this case. Make the family whole, and move on.	0   Share Flag
Julie 2 days ago	In the midst of this, I hope you find your identity, because you are living one that don't belong to you. Don't follow, be a leader. But once you and all the others have reviewed all the evidence that YOU have found in this case and the verdict is in then you can blame yourself for the lack of knowledge you have on life, responsibility, and the real world. As long as you have salt, slugs will leave a white spot behind.	0   Share Flag
Julie 2 days ago	Nobarna2012, and from your alias name I think we all know WHAT you are. However some attorney actually defend and do their jobs. Some neighborhoods have no control over their neighborhoods, if we did, their would be less crime. Qualifications for a position as a police officer does not make you a police officer, the LAW does. And as we have seen, their are several HIRED as you said by qualifications that have really shown us how qualified they are to serve. And as the law is listed in the United States, you are innocent until proven guilty. If you are accused of a crime, you have the right to defend yourself against the charges. You have the right to enlist an experienced criminal defense attorney to help you maintain your innocence.	-1   Share Flag
liz 2 days ago	when this story first published last week I said I feel bad for the home owners if this was true. Now of course more info is being released... e.g., an undercover deputy bought drugs from the house and a drug dog hit on a scent of drugs from inside the house... yep... just like my gut told me all along... these people were just blowing smoke up our ****. They are not as innocent as they appeared last week are they? They know more than they are letting on.	+6   Share Flag
D 3 days ago	So just because the home owner claims to be a hard working individual, that precludes him from selling drugs. Oops, my bust, I'm sorry. The police never arrest anybody other than people who don't have jobs or a nice house.	+2   Share Flag
spankythedog 3 days ago	Uh, Brian, just from looking through a few comments on this story...I am not seeing many misspelled words. I am, however, seeing horrible grammar. I would assume from the wording of your question that you are not from our lovely state. I am from here, born and raised, and wouldn't trade it for anything.	+6   Share Flag

Not everybody is "stupid is as stupid does" or whatever other phrase you'd like to use. Getting back to the point of this story, this family saw a chance to make some quick and easy money by suing, and took it. Simple. Whether or not they actually have a chance in **** of winning...remains to be seen.

Brian 3 days ago	Does anyone native to this state know how to spell?	-8  Share Flag
workingmom 3 days ago	Wow. Amazing how many people only see race and pass judgment. I sure would hate to be lumped together with all of the white trash of the world just because I happen to have been born the same race.	+11  Share Flag
anon 3 days ago	3 teenagers live there right? guilty!	-4  Share Flag
Nobama2012 3 days ago	GIBBS RD. = DRUG HEAVEN GALORE	+7  Share Flag
Nobama2012 3 days ago	Julie, you know your family will try to get all of our tax dollars they can. That's what those greasy lawyers do. Cops don't need videos. They are hired for qualifications. Gibbs road has been nothing but a massive drug location for years. I hope they all go to jail. You people need to stop blaming others and take responsibility for your actions. Slugs leave slime.	-2  Share Flag
Julie 3 days ago	This is awful. This is my family. A very outstanding mother and father. Hardworking individuals with morals, and love for their children. This needs to be investigated and I am proud of Dre for doing so. The truth will come out if RCSD is what they are suppose to be. There should be a video of the dogs findings, since they said the dog found drugs, and there should be a video of the so-called person selling the drugs on the property. since 2 sides have been displayed of where the transaction took place. Unless the RCSD went off without the completed information. Whose to say that drugs could not have be planted, are there videos of the search conducted by RCSD? From what we are seeing more and more, there are dishonest cops and law breaking cops in Columbia. Just make sure that this get resolved.	+4  Share Flag
SamT 3 days ago	Like rummaging through people's underwear drawers? Become a sheriff's deputy.	+1  Share Flag
LargeFarva 3 days ago	Occupy Gibbs Road.	-3  Share Flag
Emily 3 days ago	"Saunders told Reginald that someone sold drugs to an undercover informant OUT THE back of their house." Really WS? This is a quote of what YOU wrote... not a quote of what someone said.... REALLY?	0  Share Flag
LargeFarva 3 days ago	Sue the hell out of them. The cops have too much power as it is.	-7  Share Flag
faye 3 days ago	The police dept should fix this family's door and offer to clean up the mess they made. These look like good people that own this home. I know people do make mistakes when given the wrong information during drug raids. Thank goodness for the good police officers we have but there are some that just like to bully to. When we feel in danger we pick up the phone and request for an officer to come out. They are putting their lives on the line and we should thank them each and every day. I am a white girl in case anyone is wondering. It is a wonderful day in South Carolina.	+16  Share Flag
Tracy 3 days ago	As usual race seems to be the issue for the idiots that want to comment and as usual some fool wants to make money while sitting on his ****. Cha Ching a get rich quick scheme. Its the job of the police department to keep drugs off the streets so let them do it!!!! They are over worked and UNDER paid for putting their lives on the line!	+10  Share Flag
gta551 3 days ago	maybe the family can house a 17 yr old female, then CPD would be there partying and spending tax dollars on prostitution !!! SO PROUD !!!	+2  Share Flag
Jon 3 days ago	I think Sheriff Lot runs a good dept. However that does not mean a mistake can not be made. There needs to a law in place that requires any law enforcement agency responsible for their mistakes and require public apology and repair or replacement property damages. This would put the pressure on LE to be 100% accurate in gathering facts and searching property. A person's reputation is ruined when a mistake is made and it is broadcast over the media. If LE is going to brag about arrests they make on the front page of the news they also need to apologize and make any restitution known on the front page. You always hear about how sensitive a drug sniffing dog nose is and how good at doing their job they are. If that is the case why didn't they search with the dog first before ransacking the house? They said the dog acted or responded as if drugs had been the home at one time.	+14  Share Flag

David 3 days ago	RCSD...is a bunch of **** @ amanda dnt need to call them ill handle it myself	-9  Share Flag
amanda 3 days ago	wow! you guys are so quick to make negative comments towards the RCSD.. how about next time you have an emergency. call someone else!!	+14  Share Flag
Rabbit 3 days ago	i know this family and they are good people and im white	+7  Share Flag
David987 3 days ago	@FP I think this is a reasonable question. Do you honestly think this would be on the news if this was the home of a white family? Nevermind all the issues involved with this story but, would we be having this conversation. NO! Your only defense is to cover me with a sheet.	+10  Share Flag
Eddie 3 days ago	One call. That's all. Sure they will find some bottom feeder to take the case.	+6  Share Flag
FlyingPossum 3 days ago	@david, was your sheet and pillowcase pressed and ready for inspection when posting this absurd comment.	-9  Share Flag
David987 3 days ago	If this was a white home would this even make the news? It is a valid warrant!	+7  Share Flag
FlyingPossum 3 days ago	It appears the officers need to repeat Lumpkin's legal class again...	+7  Share Flag
eric 3 days ago	good for u... this is unacceptable... and all of you out there who think that the police are always right and justified in their actions, need only one time to be violated as this couple has been..if wrongdoing is proven by the police, fine... throw the book at them... but this as in many other situations botched by law enforcement , reeks of incompetence and biased actions of RCSD, and other law enforcement around the country.Using undercover informants is a terrible idea, most of them are simply trying to get out from under charges, and have been known to use unreliable tactics simply to get lesser charges....funny how RCSD cant verify any information as to who did what, but will blindly accept informant information...	+5  Share Flag
Deborah 4 days ago	Nobama2012, lawsuits such as this are a city/state issue and have nothing to do with Obama. I agree that a lawsuit for this is ridiculous, but, nobama and others, quit blaming Obama for everything.	+5  Share Flag
HostYourGuest 4 days ago	Right. We need tort reform so they can wrongfully raid more people's houses and not worry about getting sued past a certain dollar amount. What a great idea!	+6  Share Flag
mudpuppysc 4 days ago	Let me guess, Curtis....Richland County raided your home by mistake? They should have raided it two hours earlier???? Cause that's when you were selling?	-9  Share Flag
Curtis 4 days ago	Not the first time Richland County has raided the wrong house.	+13  Share Flag





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EXHIBIT 8

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

Reginald Andre Blanding, Wanda	)	
Blanding, and Brittani Blanding,	)	Civil Action No.:
by and through her Guardian ad	)	3:14-cv-00299-JFA-PGJ
Litems, Reginald Andre Blanding	)	
and Wanda Blanding,	)	
Plaintiffs,	)	
Vs.	)	
	)	
Richland County Sheriff's	)	
Department, Leon Lott,	)	Deposition of
Leon Lott, Lieutenant Cowan,	)	Major Chris Cowan
Ricky E. Johnson, Jr., Frieda W.	)	
Wyatt, Adrian P. Thompson, Adam	)	June 17, 2014
C. Cornwell, Sara N. Giron,	)	
George C. Becker, Michael C.	)	
Nawrockyj, and Unknown	)	
Confidential Informant,	)	
Defendants.	)	

Deposition on oral examination of CHRIS COWAN,
reported by Cecelia P. Englert, Court Reporter and Notary
Public in and for the State of South Carolina; pursuant
to Rule 30 of the South Carolina Rules of Civil
Procedure; said deposition was taken at Davidson &
Lindemann, P.A., 1611 Devonshire Drive, Second Floor,
Columbia, South Carolina, on June 17, 2014, and
commencing at the hour of 4:00 p.m.

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Also Attending:

Scott Hayes, Esquire

Court Reporter's note:

-- indicates interruption; incomplete phrases; trailing
off; unfinished sentences

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Deposition of Major Chris Cowan

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EXHIBITS

EXHIBIT NO. 1 - Email dated October 21, 2011 from Curtis Wilson to Chris Cowan.	8

MAJOR CHRIS COWAN

7

1 Q. What do your duties include?

2 A. Presently? Or at the time of the
3 incident?

4 Q. Well, let's do presently. What are they?

5 A. Presently, I'm in charge of the -- or
6 being moved into being in charge of the
7 administration, which is the budget, county council,
8 the special response teams. And at the time of the
9 incident, I was in charge of the Public Information
10 Office.

11 Q. When you say "county council," does that
12 mean you're a liaison or something to them?

13 A. Correct.

14 Q. At the time, around October 21st, 2011,
15 what was your duty/position?

16 A. I was in charge of the Office of Public
17 Information.

18 Q. And how long had you been in that
19 position?

20 A. Approximately nine years.

21 Q. So you started that around 2003, more or
22 less?

23 A. I don't know the exact dates. I -- I've
24 done -- had several responsibilities with the
25 sheriff's department; some of them overlapped.

1 Q. Was your duty position public affairs? I
2 mean, were you the public affairs officer for --

3 A. My exact title was "commander of public
4 information." I had several people working for me
5 that did public information.

6 Q. Before you got that duty position, what
7 did you do?

8 A. Prior to that I was in community -- a
9 community action team supervisor. Prior to that I
10 was in narcotics, worked on the canine team. Prior
11 to that I was on Marine patrol. I've just had
12 several responsibilities over the 22 years I've been
13 at the department.

14 [PREVIOUSLY MARKED FOR IDENTIFICATION AS
15 EXHIBIT NO. 1 - Email dated October 21,
16 2011 from Curtis Wilson to Chris Cowan.]

17 Q. Sometime around Friday, October 21st --
18 I'm sorry. I'm going to hand you Exhibit 1 and see
19 if you recognize that document.

20 A. I do.

21 Q. Did you receive that email?

22 A. I received that email from Sergeant
23 Wilson, yes.

24 Q. Are those handwritten notes on that piece
25 of paper, is that all your handwriting?

1 A. It is.

2 Q. When did you first hear about the incident
3 on October 20th, 2011 involving the Blanding family
4 and the sheriff's department?

5 A. Sometime that day I received a call from
6 Sergeant Wilson advising me of the incident that had
7 occurred, that we had a search warrant that had been
8 conducted and he had been contacted by Jody Barr of
9 WIS, which is normal protocol.

10 Q. Did you ask him what exactly happened in
11 the search? Or --

12 A. I asked him what information he had
13 received, and I asked him to provide it to me in
14 writing of what information he had received.

15 Q. So, he gave it to you in writing. Did he
16 add anything else verbally, besides what is written
17 there?

18 A. I don't believe so.

19 Q. Can I see this real quick? (Attorney
20 viewing exhibit.) Okay. Up in the top right you
21 have the name "Frieda"?

22 A. Correct.

23 Q. What is that in reference to?

24 A. That's who I spoke to after I got these
25 notes from Sergeant Wilson. I -- anytime I'm going

1 to be dealing with the media, I had just -- my
2 standing procedure is I talk directly with an
3 investigator, whoever's handling the incident, so I
4 -- and I make a note. And I have a file that I keep
5 per month on -- on the notes that I make, which has
6 been a standing procedure I've had since -- since I
7 started my -- you know, my job. That's how I was
8 trained. So I made the notes of who I spoke to, and
9 then I made notes.

10 So that's referencing my notes of what I got,
11 because -- just because he gave it to me doesn't
12 mean I'm necessarily going to take that. I just --
13 I -- I get the information my -- myself from -- from
14 the -- directly from the source.

15 Q. When you say "he," who are you referring
16 to?

17 A. Sergeant Wilson.

18 Q. What was Sergeant Wilson's duty position
19 at that time?

20 A. Public information officer and community
21 liaison.

22 Q. Frieda, what was her duty position?

23 A. I think she was a supervisor of the drug
24 suppression team at the time.

25 Q. What's underneath that, with the star next

1 Q. Is there anything in that report that you
2 believe is inaccurate that was stated by Mr.
3 Blanding or Mr. Barr?

4 A. I think there's several things that were
5 inaccurate, yes.

6 Q. What are they?

7 A. I think Mr. Blanding made a statement in
8 -- in one of the segments that when he approached
9 the house, the drug suppression team officer was
10 standing there with the battering ram. He wasn't
11 there for, I think, for an hour, hour and a half
12 after the -- the officer arrived, which doesn't add
13 up.

14 He basically said that we trashed their cereal
15 boxes and went in their attic and tore their rooms
16 apart, which I don't -- I wasn't there, but I don't
17 believe is accurate. They also made statements that
18 we didn't buy drugs from the house, which are not
19 accurate. Think there's a lot of -- a lot of holes
20 in what the Blandings are saying, as well as what
21 Jody Barr reported. And -- and I -- I think that's
22 -- that's very evident.

23 Q. Did you see the videotape of the condition
24 of their house?

25 A. I did.

CERTIFICATE OF REPORTER

I, CECELIA P. ENGLERT, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF MAJOR CHRIS COWAN, ON THE 17TH DAY OF JUNE, 2014, THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 26 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF THE SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO ROBERT D. BUTCHER, ESQUIRE, CAMDEN LAW FIRM, 509 WALNUT DRIVE, CAMDEN, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE. IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 25TH DAY OF JUNE, 2014.

CECELIA P. ENGLERT, COURT REPORTER
MY COMMISSION EXPIRES 6/3/2018

EXHIBIT 9

Cowan, Chris

From: Wilson, Curtis

Sent: Friday, October 21, 2011 2:46 PM

To: Cowan, Chris

Subject: Notes from Lt Wyatt

- received numerous complaints that drugs were being sold in the area
- rcsd did a controlled buy from 402 Gibbs
- buy was made from the back door of the IL
- search warrant served two days later at IL
- no one home - entry through front door
- k-9 did alert to an area in the home (no drugs found)
- address confirmed 402 Gibbs
- less than 20 grams was purchased from the residence

Deputy Curtis Wilson
Richland County Sheriff's Department
Public Information Officer & Community Liaison
5623 Two Notch Road
P.O. Box 143
Columbia, SC 29223
O: (803) 576-1429
F: (803) 576-3190
C: (803) 309-1624
P: (803) 988-6018
cuwilson@rcsd.net

Frieda
10/21/11

TRG

** searched me room*

** Numerous complaints
that drugs were being sold*

** Also called them home*

** Bought from a
family member*

10/21/2011

ROA 290

EXHIBIT 10

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

Reginald Andre Blanding, Wanda	)	
Blanding, and Brittani Blanding,	)	Civil Action No.:
by and through her Guardian ad	)	3:14-cv-00299-JFA-PGJ
Litems, Reginald Andre Blanding	)	
and Wanda Blanding,	)	
Plaintiffs,	)	
Vs.	)	
	)	
Richland County Sheriff's	)	
Department, Leon Lott,	)	Deposition of
Leon Lott, Lieutenant Cowan,	)	Ricky Johnson
Ricky E. Johnson, Jr., Frieda W.	)	
Wyatt, Adrian P. Thompson, Adam	)	June 19, 2014
C. Cornwell, Sara N. Giron,	)	
George C. Becker, Michael C.	)	
Nawrockyj, and Unknown	)	
Confidential Informant,	)	
Defendants.	)	
	)	

Deposition on oral examination of RICKY JOHNSON,
reported by Cecelia P. Englert, Court Reporter and Notary
Public in and for the State of South Carolina; said
deposition taken pursuant to Rule 30 of the South
Carolina Rules of Civil Procedure, at Davidson &
Lindemann, P.A., 1611 Devonshire Drive, Second Floor,
Columbia, South Carolina, on the 19th day of June, 2014,
commencing at the hour of 12:02 p.m.

APPEARANCES:

Representing the Plaintiffs:

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Also Attending:

Scott Hayes, Esquire
Frieda Wyatt

Court Reporter's note:

-- indicates interruption; incomplete phrases; trailing
off; unfinished sentences

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1 drugs were being sold at Gibbs Road at the Blandings
2 home?

3 A. Yes.

4 Q. We talked earlier about, you know, not
5 disclosing, and you understand not to disclose his
6 name or any identifying information, correct?

7 A. Sure.

8 Q. How did you first meet this informant?

9 A. We met -- I don't know the specific date.
10 We met this individual at a home that we were
11 executing a search warrant at. He was there -- he
12 or she was there with other individuals. One of the
13 individuals in the home was his or her significant
14 other. They were charged -- the significant other
15 was charged. The informant wanted to assist us with
16 consideration on her or his charges.

17 Q. For the record, if you say "he," it can
18 mean he or she.

19 A. That's correct.

20 Q. We're going to open that up. So had you
21 ever arrested this person?

22 A. I had not.

23 Q. What type of record did this person have?

24 A. If I were -- he had prior narcotic
25 arrests, I -- if I can recall. Without looking at

1 it, I'm not sure.

2 Q. Were they possession level?

3 A. I'm not sure.

4 Q. How recently had those arrests been?

5 A. I don't know.

6 Q. Do you know if it was in the previous five
7 years?

8 A. Again, without looking at it, I don't
9 recall.

10 Q. Do you know if this person had, had any
11 type of fraudulent check charge, any charge related
12 to fraud?

13 A. I don't recall.

14 Q. Before the search at 402 Gibbs Road on or
15 about October 20, 2011, how many times had you used
16 this informant to purchase drugs?

17 A. Numerous. I can't give an exact number.

18 Q. Was this informant familiar with the
19 neighborhood at Gibbs Road?

20 A. Not to my knowledge.

21 Q. Did he have any -- did he know Peanut?

22 A. Not to my knowledge.

23 Q. Did he know Reginald Andre Blanding?

24 A. Not to my knowledge.

25 Q. Did he know Wanda Blanding?

1 A. Not to my knowledge.

2 Q. Did he know any of their children?

3 A. Again, not to my knowledge.

4 Q. Had he ever been to the Blanding residence
5 before that buy?

6 A. Not to my knowledge.

7 Q. Had he ever been to Peanut's residence
8 before that buy?

9 A. I don't know.

10 Q. Before he went and did the buy at the
11 Blanding's residence, had he done more than one buy
12 before for you?

13 A. Yes.

14 Q. Had he done more than five?

15 A. Yes.

16 Q. More than ten?

17 A. Yes.

18 Q. Can you guesstimate how many? It's not
19 going to be a got-you thing.

20 A. Thirty.

21 Q. When you are on the road, how many days a
22 week did you work?

23 A. Are you asking when I was a patrolman?

24 Q. When you were a patrolman.

25 A. I did two days on some weeks and five days

1 Q. When you were there in October of 2011.

2 A. Five.

3 MR. GARFIELD: Could we take a very short
4 break for an administrative matter? No?

5 MR. BUTCHER: Yeah.

6 MR. GARFIELD: Just to see if y'all want
7 food. It's on us.

8 (Off the record.)

9 EXAMINATION CONTINUED

10 BY MR. BUTCHER:

11 Q. Tell me about -- I guess sometime in the
12 fall of 2010, did your drug suppression unit receive
13 complaints about drugs being sold in that
14 neighborhood?

15 A. Yes.

16 Q. Did you receive any of those complaints?
17 Or were you just told "Hey, we've got complaints"?

18 A. I didn't receive them directly.

19 COURT REPORTER: Did you say you did
20 receive?

21 THE WITNESS: I did not receive them
22 directly.

23 Q. So tell me how this process went. Was
24 there an investigation started into drug sales in
25 that neighborhood?

1 A. Yes.

2 Q. Tell me what happened.

3 A. We received the information, the area,
4 Robin Hood Acres. We received two specific
5 trailers, we received via email, the email
6 complaint. We went to those locations to -- to
7 conduct what we call a knock and talk, which is
8 basically making contact with individuals there, and
9 we basically lay it out. We give them the complaint
10 we received and -- and ask them if there was any
11 validity to it.

12 Q. Okay.

13 A. That's what we did.

14 Q. That in itself can help suppress crime,
15 correct, sometimes?

16 A. It could.

17 Q. Did it work in that instance?

18 A. No.

19 Q. So, what was the next step?

20 A. We conducted surveillance in the area. We
21 allowed the confidential informant to purchase
22 narcotics from the area.

23 Q. Surveillance, is that conducted in
24 undercover vehicles, or unmarked vehicles, I mean?

25 A. Yes.

1 people, any other civilians during this search?

2 A. No.

3 Q. Did you ever speak to his wife, Wanda?

4 A. No.

5 Q. Were any drugs found in the house?

6 A. No.

7 Q. After this operation wrapped up, did you
8 return or attempt to make anymore buys at that
9 house?

10 A. I did not.

11 Q. Did you keep that house under
12 surveillance?

13 A. I did not.

14 Q. Do you know if anyone on your team did?

15 A. I recall other individuals purchasing
16 drugs in that area. I don't know if it's
17 specifically at that house.

18 Q. Several months later you-all raided
19 Peanut's house; is that correct?

20 MR. GARFIELD: Object to the form.

21 A. What do you mean by y'all?

22 Q. The Richland County Sheriff's Department.
23 Did y'all hit that house?

24 A. I believe so.

25 Q. Were you involved in that operation?

1 A. Do you know where his house is, when
2 you're saying "his house."

3 Q. It's the trailer behind.

4 A. Yes. There was a -- an execution of
5 warrant there.

6 Q. Was he arrested during the execution of
7 that warrant?

8 A. He was.

9 Q. Did the sheriff's department take the
10 press along with them for that operation?

11 A. I don't remember.

12 Q. Do you know if there were other operations
13 that day that you took the press along with you?

14 A. You know, I don't remember. I don't
15 remember specific things about that day. It wasn't
16 my operation.

17 Q. Whose operation was that?

18 A. I don't know. I don't remember.

19 Q. I have these photos from L-1 through L-
20 18. They're Bates stamped numbered 8960-L-1 through
21 8960-L-18. I'm not going to make them an exhibit,
22 it's my only copy. You recognize them?

23 (The witness reviews the photographs.)

24 A. I do recognize them. I do.

25 Q. Where did they come -- who took those

1 pictures?

2 A. I did.

3 Q. Where did you take those pictures?

4 A. Some of the photos were taken at the brown
5 trailer and some of the photos were taken a Peanut's
6 trailer.

7 Q. What's the date stamp on those pictures?
8 Were they all taken the same day?

9 A. They were. It's the 17th of October.

10 Q. Was this during the knock and talk?

11 A. This is correct.

12 Q. I'm just going to summarize. Would it be
13 fair to say that the pictures are pictures of drug
14 paraphernalia and identifications of people that
15 were around that area, around those two houses?

16 A. Yes.

17 Q. And these are the --

18 A. Two trailers.

19 Q. -- the two trailers. And these are the
20 two trailers that were complained of in the email
21 that you-all received; is that correct?

22 MR. GARFIELD: Object to the form.

23 A. Ask me one more time.

24 Q. Were these two trailers where you had
25 taken pictures of this stuff, did it come from -- I

1 A. This is a receipt for money, utilized to
2 purchase drugs.

3 Q. How much was your confidential informant
4 given to purchase drugs from Peanut?

5 A. I don't recall.

6 Q. Was that not the receipt for what he got
7 paid for buying drugs?

8 A. No.

9 Q. That was the receipt for the money he used
10 to buy the drugs.

11 A. That's correct.

12 Q. Over the time period that you used this
13 confidential informant, how much money total did he
14 get paid?

15 A. I have no idea.

16 Q. Was he paid by the hour?

17 A. No.

18 Q. Was he paid by the day?

19 A. No.

20 Q. How was he paid, the job?

21 A. Yes.

22 Q. Did the rate vary?

23 A. Yes.

24 Q. What would change the rate? Level of
25 danger or what?

1 A. Level of information, level of danger,
2 items located during the execution of the warrant.

3 Q. So the more accurate he was, the more he
4 got paid?

5 MR. GARFIELD: Object to the form. Go
6 ahead.

7 A. What do you mean by "accurate"?

8 Q. I don't know.

9 A. I'm not understanding -- sure what you're
10 saying.

11 Q. Are you saying he had to name specific
12 illegal items and if you found them he got paid for
13 it? Or if you got a lot of drugs, then he got a lot
14 of -- he got more money?

15 A. What I'm saying is, had we did a search
16 warrant, we found five guns, he's going to get paid
17 more money versus if we did a search warrant and we
18 found 20 grams of marijuana.

19 Q. So he got paid on his usefulness; would
20 that be fair to say?

21 MR. GARFIELD: Object to the form.

22 A. He got paid for information he had
23 provided and what we discovered based on that
24 information he provided us.

25 [PREVIOUSLY MARKED FOR IDENTIFICATION AS

1 Ricky Johnson.]

2 Q. Here's Exhibit 2. That's an incident
3 report. Is that a -- is this the same, just in a
4 different format, as the other incident report?

5 A. Yes.

6 Q. Okay. I'm just wondering.

7 MR. GARFIELD: You just refer to which
8 exhibit we're talking about?

9 THE WITNESS: Exhibit 2.

10 MR. BUTCHER: Yeah.

11 MR. GARFIELD: You said "this."

12 Q. Is 2 the same as 4, just in different
13 formats?

14 MR. GARFIELD: Are you talking about the
15 content?

16 MR. BUTCHER: Yes.

17 A. Yes.

18 Q. Who went with you during the knock and
19 talk with the two trailers?

20 A. It would have been my whole team.

21 Q. All five of you, more or less, to the best
22 of your knowledge?

23 A. To the best of your knowledge, it would
24 have been the whole team.

25 Q. Tell me about the day you first met the

1 CI.

2 MR. GARFIELD: Object to the form.

3 MR. BUTCHER: Okay.

4 Q. Did you-all go off in a separate room and
5 talk? Or go outside? Or talk in a vehicle?

6 MR. GARFIELD: Same objection. Go ahead.

7 A. I don't remember how or where we talked.

8 Q. Well, how did he or she come to decide
9 that they wanted to be a CI? Did they tell you?

10 A. I believe so.

11 Q. What did they say?

12 A. I believe the significant other -- other
13 had charges and he wanted to know if he could help
14 on those charges.

15 Q. And did you say "yes"?

16 A. Yes.

17 Q. How long -- do you know what approximately
18 -- I don't need to know the dates, so one can look
19 up arrest dates -- but around what month this occur,
20 month and year?

21 A. No idea.

22 Q. Was it 12 months or more before the 402
23 Gibbs Road incident?

24 A. It could have been. I'd have to look at
25 his file and see when he was signed up. I'm not

1 looking at the file, I'm not sure.

2 Q. Did that CI sign an agreement to be a CI?

3 A. He did.

4 Q. Were there certain rules?

5 A. That's right.

6 Q. What were the rules for being a CI?

7 A. Integrity. He couldn't get in trouble.

8 He needed to know that he wasn't a police officer;

9 he couldn't enforce any kind of laws. He had to

10 report to me or my supervisor.

11 Q. How often?

12 A. I spoke with him most every day

13 Q. Did he have to take drug tests?

14 A. No.

15 Q. How did you communicate? By phone? Or in

16 person? Or both?

17 A. Both.

18 Q. You don't know -- you have no clue how

19 much he got paid at all.

20 A. Over the longevity of it?

21 Q. Yeah. Or do you have any specific

22 incidents where you can say "He got paid this much

23 for this bust"? Any recollection?

24 A. No.

25 Q. Were you in charge of paying him?

1 A. Yes.

2 Q. Was there a going rate on the drug
3 suppression team? "Hey, we got, you know, this much
4 crack, this much whatever"?

5 A. Every defendant -- every informant was --
6 was different. And again, it depended on what we
7 found.

8 Q. Okay.

9 A. It was -- we typically would discuss that
10 with a supervisor as far as what we would want to
11 pay the informant. It wasn't anything set in stone,
12 "this is what we're going to pay you." We didn't
13 tell -- we didn't tell them a ballpark number and
14 say "this is what we're going to pay you if you get
15 this."

16 Q. This was the only informant that you
17 worked.

18 A. Yes.

19 Q. You just can't remember any amounts that
20 you paid him at all?

21 A. It's been three years ago.

22 Q. Did he get -- but did he work for you for
23 over a year?

24 A. Yes.

25 Q. Did he make more than a thousand dollars?

1 A. It's possible.

2 Q. Did he make more than \$5,000?

3 A. No.

4 Q. How often did he get paid?

5 A. Whenever he made buys or assisted us with
6 information.

7 Q. Were there occasions where he'd make buys
8 but you-all never executed on a search warrant and
9 he still got paid?

10 A. There may have been.

11 Q. How long was it before his significant
12 other's charges were worked off?

13 A. I don't remember the specifics, how many
14 it was. Another officer had those -- made those
15 charges on the significant other.

16 Q. Were they on the drug suppression team?

17 A. Yes.

18 Q. Did this CI get arrested at all during the
19 time you were in charge of the CI?

20 A. No.

21 Q. This CI had a job? Well -- yeah, did this
22 CI have a job?

23 A. Yes.

24 Q. Would he or she do CI activities when not
25 working? Or would you have them take the day off?

1 A. I wouldn't encourage him to take the day
2 off. I would just contact him and ask him if he was
3 available to meet and we would discuss stuff.

4 Q. Did the CI -- was the CI present during
5 the raid?

6 A. No.

7 Q. Was anyone cuffed or arrested during the
8 raid?

9 A. Not that I can remember.

10 MR. BUTCHER: You want to just take a
11 break for a minute and I'll come back?
12 I'm close to being wrapped up.

13 MR. GARFIELD: Okay.

14 (Off the record.)

15 MR. BUTCHER: I have nothing further.

16 MR. GARFIELD: Nor do I. Oh, I do. Let's
17 go ahead in just an abundance of
18 precaution. We have this. We can
19 corporate it by reference, since it's your
20 only copy. We can give her that and I can
21 make you another color copy.

22 MR. BUTCHER: Okay. That's fine.

23 MR. GARFIELD: However you want to do it,
24 Robert.

25 MR. BUTCHER: That's fine.

CERTIFICATE OF REPORTER

I, CECELIA P. ENGLERT, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF RICKY JOHNSON, ON THE 19TH DAY OF JUNE, 2014, THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 50 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF THE SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO ROBERT D. BUTCHER, ESQUIRE, CAMDEN LAW FIRM, 509 WALNUT DRIVE, CAMDEN, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE. IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 30TH DAY OF JUNE, 2014.

CECELIA P. ENGLERT, COURT REPORTER
MY COMMISSION EXPIRES 6/3/2018

EXHIBIT 12

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

PROCEDURE TITLE

USE OF INFORMANTS

PROCEDURE NO. 902

I. POLICY

It is the policy of this department to utilize informants whenever such use is of benefit to law enforcement operations. Strict confidentiality of the identity of all informants shall be continuously maintained. Whenever department personnel utilize informants, the extent and nature of these activities shall be monitored by supervision.

II. PROCEDURE

- A. Definition of Informants:** Informants are those persons who by virtue of their surroundings and/or associations have some degree of access to information and are predisposed or motivated to provide information to the police for a variety of reasons.
- B. Supervision of Informants:**
1. Should investigative necessity require the utilization of such an individual, personnel shall evaluate all possible considerations including; but not limited to, the ability to control the informants' activities so as to not act contrary to instructions and compromise an investigation to the department in any manner. Additionally, the motivation, character, and reliability of all such persons and their potential involvement in criminal activity shall be evaluated against the nature and seriousness of the offense under investigation.
 2. Informants are deemed to be agents of the department as a whole. Officers are obligated to protect the physical safety of any such person. No promise of reward or other consideration shall be made to such individuals except as may be authorized by the concerned division supervisor pursuant to department policy.
- C. Informant Activities:**
1. Informants shall be instructed not to participate in the criminal activities of persons under investigation unless a feigned participation has been deemed necessary for purposes of prosecution, nor shall they utilize any unlawful or unethical techniques to obtain information.

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE GUIDELINES**

CONTINUATION PAGE FOR PROCEDURE NO. 902

2. Whenever any member of this department observes or learns an informant has committed any criminal act, whether in furtherance of an ongoing investigation or not, proper law enforcement action shall be taken at that time and by reporting all relevant facts of the criminal activity to his Supervisor for referral to appropriate officials, if necessary.
- D. Accountability: There shall be an accounting for all the activities and expenses incurred through the utilization of any informant. Division Supervisors shall maintain a "confidential" file of such information in an approved manner and in sufficient detail to satisfy the department's need.
- E. Informant Providers: Reliable information may be received outside the scope of developing informants such as through Crime Stoppers. This may be achieved through anonymous informants who are issued a control number and receive monetary awards for information leading to arrest and conviction.
- F. Narcotics Informants: Narcotics officers using informants in the investigation and prosecution of narcotics cases must ensure that the appropriate documentation is filled out regarding the use and reliability of the informant. The document will be numbered by the Lieutenant in charge of the Narcotics Division and then filed by the Major of Investigations.

EXHIBIT 13

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

Reginald Andre Blanding, Wanda	)	
Blanding, and Brittani Blanding,	)	Civil Action No.:
by and through her Guardian ad	)	3:14-cv-00299-JFA-PGJ
Litems, Reginald Andre Blanding	)	
and Wanda Blanding,	)	
Plaintiffs,	)	
Vs.	)	
	)	
Richland County Sheriff's	)	
Department, Leon Lott,	)	Deposition of
Leon Lott, Lieutenant Cowan,	)	Frieda Wyatt
Ricky E. Johnson, Jr., Frieda W.	)	
Wyatt, Adrian P. Thompson, Adam	)	June 19, 2014
C. Cornwell, Sara N. Giron,	)	
George C. Becker, Michael C.	)	
Nawrockyj, and Unknown	)	
Confidential Informant,	)	
Defendants.	)	
-----	)	

Deposition on oral examination of FRIEDA WYATT,
reported by Cecelia P. Englert, Court Reporter and Notary
Public in and for the State of South Carolina; said
deposition taken pursuant to Rule 30 of the South
Carolina Rules of Civil Procedure, at Davidson &
Lindemann, P.A., 1611 Devonshire Drive, Second Floor,
Columbia, South Carolina, on the 19th day of June, 2014,
commencing at the hour of 9:28 a.m.

APPEARANCES

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Also Attending:

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Ricky Johnson

Court Reporter's note:

-- indicates interruption; incomplete phrases; trailing
off; unfinished sentences

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1 another bite at the witness preparation
2 apple.

3 THE COURT: Well, let me go back to Mr.
4 Garfield. I'm not sure I understood
5 your argument. You say because there
6 are so many defendants in a case and so
7 many defendants have produced lots of
8 documents --

9 MR. GARFIELD: Yes, sir.

10 THE COURT: -- you just didn't have fair
11 warning of what documents your client was
12 going to be asked about?

13 MR. GARFIELD: That's exactly right.
14 Because these documents are generated --
15 like for instance, this policy and
16 procedure that we produced was produced in
17 the state case portion of this. It's one
18 of, in this case, over 400 documents. If
19 this rule protects against me trying to go
20 over all 400 pages with every single
21 witness, it would take hours and days as a
22 depo prep, just in case Mr. Butcher wants
23 to depose or ask questions about it. The
24 last case we had was over a thousand
25 pages.

1 THE COURT: So you say, even though the
2 rule on its face seems to apply here, the
3 rule becomes impractical when you've got
4 multi-defendant cases with thousands of
5 documents; make that deposition
6 preparation very expensive and very
7 difficult.

8 MR. GARFIELD: That's exactly right,
9 because I still think the rule says
10 "deposing counsel shall provide a copy of
11 documents either before," but then it says
12 that the "documents that go into have not
13 been so provided or identified." For them
14 to go through, even in this complex case
15 Your Honor's presiding in, some of these
16 cases generate so much voluminous
17 documents, this rule cuts to the chase and
18 streamlines these depositions, that to say
19 even though I'm going to pull out Page
20 7,200, I think it guards against that. It
21 provides us the ability to go into a depo
22 prep and then streamline this, just
23 because he wants to ask a question about
24 it.

25 I think the curative part of this,

1 A. No.

2 Q. Did you ask for details about the buy from
3 either Deputy Johnson or anyone else?

4 MR. GARFIELD: Object to the form. Go
5 ahead..

6 A. No.

7 Q. Do you know if the buy was made day or
8 night? I think I've asked you that.

9 A. You did. I said I don't know.

10 Q. How much money did this informant make
11 from the Richland County Sheriff's Department, being
12 an informant over the time period you were there?

13 A. I was not his handler; I didn't pay him.

14 Q. Mr. Johnson applied for the search warrant
15 for that case, is that correct, at 402 Gibbs Road?

16 A. Yes.

17 Q. Do you know how quickly after the search
18 warrant was signed that you-all decided to execute
19 it?

20 A. Within ten minutes.

21 Q. Who planned the operation?

22 A. Investigator Johnson.

23 Q. Who participated in the operation?

24 A. Investigator Johnson, Investigator Giron,
25 Investigator Cornwell, myself.

1 Q. One sec. Hit-on (phonetically) is spelled
2 G-I-R-O-N?

3 A. Right.

4 Q. Go on.

5 A. And our canine officer; I can't remember
6 which one it was.

7 Q. Was Becker involved?

8 A. No.

9 Q. How about Michael C. Naroc -

10 A. Nawrockyj. That's who it is.

11 Q. And that's spelled N-A-W-R-O-C-K-Y-J; is
12 that correct?

13 A. The spelling?

14 Q. Yeah.

15 A. I have no idea.

16 Q. It's got an alphabet, right?

17 A. Sounds good.

18 Q. Take me step-by-step from, you know, the
19 starting at the execution of the search warrant.

20 A. Starting at the execution of the search
21 warrant.

22 Q. Yes, ma'am.

23 A. We arrived at 402. The door was rammed.
24 We entered the home; there was nobody in the home.

25 Q. Who rammed it?

1 Q. That's an email to you?

2 A. Yes.

3 Q. Who's it from?

4 A. Val Hutchinson.

5 Q. Say that --

6 A. Val Hutchinson.

7 Q. Is that a he or she?

8 A. I believe it's a female. I don't know.

9 Q. I don't either. And, you received that
10 related to a complaint about narcotics activities in
11 that neighborhood where the Blandings live?

12 A. Yes.

13 Q. When it talks about "the brown trailer,"
14 is that identifying Peanut's trailer?

15 A. No.

16 Q. Whose trailer is that?

17 A. I don't know his name off the top of my
18 head.

19 Q. Did you all investigate that?

20 A. We did.

21 Q. Did you make any arrests related to that
22 complaint?

23 A. At the brown trailer?

24 Q. Yes.

25 A. No. We did make contact there, though.

1 Q. Was there another -- and there's another
2 trailer described on Marjorie Drive?

3 A. Uh-huh.

4 Q. Is it Drive or Road?

5 A. Marjorie Court, I think.

6 Q. Court. Did you investigate that?

7 A. We did.

8 Q. Did you make any arrests?

9 A. No arrests. But at both these locations
10 during our investigation, we got individuals with
11 crack pipes and --

12 COURT REPORTER: Can you repeat that?

13 A. At both of these locations during our --
14 the course of our investigation, everybody at the
15 brown trailer, which was the first one we went to on
16 Gibbs Road, everybody there had crack pipes. And at
17 the trailer on Marjorie, there was a female behind
18 the house with a crack pipe.

19 Q. Now, was either one of those houses, were
20 they the Blandings house?

21 MR. GARFIELD: Object to the form. You're
22 referring to them as houses? I'm sorry.

23 MR. BUTCHER: Trailers.

24 MR. GARFIELD: I'm not trying to put words
25 in your mouths, but just trying to --

CERTIFICATE OF REPORTER

I, CECELIA P. ENGLERT, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF FRIEDA WYATT, ON THE 19TH DAY OF JUNE, 2014, THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 79 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF THE SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO ROBERT D. BUTCHER, ESQUIRE, CAMDEN LAW FIRM, 509 WALNUT DRIVE, CAMDEN, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE. IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 30TH DAY OF JUNE, 2014.

CECELIA P. ENGLERT, COURT REPORTER
MY COMMISSION EXPIRES 6/3/2018

EXHIBIT 14

3:14-cv-00299-JMC Blanding et al v. Richland County Sheriffs Department et al
 J Michelle Childs, presiding
Date filed: 02/04/2014
Date terminated: 07/13/2015
Date of last filing: 08/25/2015

History

Doc. No.	Dates	Description
<u>1</u>	Filed: 02/04/2014 Entered: 02/05/2014	● Notice of Removal
<u>3</u>	Filed: 02/04/2014 Entered: 02/05/2014	● Local Rule 26.01 Answers to Interrogatories
<u>4</u>	Filed: 02/04/2014 Entered: 02/05/2014	● Answer to Complaint
<u>5</u>	Filed & Entered: 02/05/2014	● Scheduling Order
<u>7</u>	Filed & Entered: 03/11/2014	● Local Rule 26.03 Answers to Interrogatories
<u>8</u>	Filed & Entered: 03/12/2014	● Rule 26(f) Report
<u>10</u>	Filed & Entered: 03/19/2014	● Local Rule 26.01 Answers to Interrogatories
<u>11</u>	Filed & Entered: 03/19/2014	● Local Rule 26.03 Answers to Interrogatories
<u>16</u>	Filed & Entered: 09/17/2014 Terminated: 09/17/2014	● Motion for Extension of Time
<u>17</u>	Filed & Entered: 09/17/2014	● Order on Motion for Extension of Time
<u>19</u>	Filed & Entered: 09/22/2014 Terminated: 07/06/2015	● Motion for Summary Judgment
<u>21</u>	Filed & Entered: 10/08/2014 Terminated: 10/09/2014	● Motion for Extension of Time
<u>22</u>	Filed & Entered: 10/09/2014	● Order on Motion for Extension of Time
<u>24</u>	Filed & Entered: 10/14/2014	● Response in Opposition to Motion
<u>25</u>	Filed & Entered: 10/14/2014	● Additional Attachments to Main Document
<u>27</u>	Filed & Entered: 10/24/2014	● Reply to Response to Motion
<u>28</u>	Filed & Entered: 11/18/2014	● Case Reassigned
<u>29</u>	Filed & Entered: 06/15/2015 Terminated: 07/06/2015	● Report and Recommendation
<u>30</u>	Filed: 07/06/2015 Entered: 07/07/2015	● Order Ruling on Report and Recommendation
<u>31</u>	Filed & Entered: 07/13/2015	● Summary Judgment
<u>32</u>	Filed & Entered: 07/13/2015	● Document E-Mailed
<u>33</u>	Filed & Entered: 07/13/2015	● Motion to Alter Judgment

ROA 327

	<i>Terminated:</i>	08/17/2015	
35	<i>Filed:</i>	08/17/2015	Order
	<i>Entered:</i>	08/18/2015	
36	<i>Filed:</i>	08/17/2015	Order Ruling on Report and Recommendation
	<i>Entered:</i>	08/18/2015	
37	<i>Filed & Entered:</i>	08/25/2015	Summary Judgment

PACER Service Center			
Transaction Receipt			
01/12/2016 11:50:37			
PACER Login:	th8033:3492986:0	Client Code:	Blanding, Reginald
Description:	History/Documents	Search Criteria:	3:14-cv-00299-JMC
Billable Pages:	1	Cost:	0.10

EXHIBIT 15

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Reginald Andre Blanding, Wanda Blanding, and
Brittani Blanding, by and through her Guardian ad
Litem, Reginald Andre Blanding and Wanda
Blanding,

Plaintiff,

v.

Richland County Sheriff's Department, Leon Lott,
Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda
W. Wyatt, Adrian P. Thompson, Adam C.
Cornwell, Sara N. Giron, George C. Becker,
Micheal C. Nawrockyj, and Unknown
Confidential Informant,

Defendants:

Civil Action No.: 3:14-cv-00299-JFA-PGJ

**RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs respond in opposition, in part, to the motion for summary judgment filed by Defendants Richland County Sheriff's Department, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant. Plaintiffs assert that pursuant to Rule 56, Fed.R.Civ.P., when the Court applies the facts in a light most favorable to the Plaintiffs, the Court will find that Defendants Richland County Sheriff's Department, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and Unknown Confidential Informant violated Plaintiff's Constitutional rights and were grossly negligent in their raid of Plaintiffs' home and the statements made after the raid were defamatory per se.

Plaintiff submits the attached memorandum of law, statement of facts, depositions, and exhibits in support of this response.

Respectfully Submitted,

s//Robert J. Butcher

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Camden, South Carolina
October 14, 2014

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Reginald Andre Blanding, Wanda Blanding,
and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre
Blanding and Wanda Blanding,

Plaintiff,

v.

Richland County Sheriff's Department, Leon
Lott, Lieutenant Cowan, Rickey E. Johnson,
Jr., Frieda W. Wyatt, Adrian P. Thompson,
Adam C. Cornwell, Sara N. Giron, George C.
Becker, Micheal C. Nawrockyj, and Unknown
Confidential Informant,

Defendants.

Civil Action No.: 3:14-cv-00299-JFA-PGJ

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Plaintiff submits the following memorandum of law in support of his response in opposition to Defendants Richland County Sheriff's Department [RCSD], Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Micheal C. Nawrockyj's motion for summary judgment.

I. Plaintiffs Dismiss Certain Causes of Action.

Plaintiffs Dismiss Count Two, Negligent Supervision against Richland County Sheriff's Department and their employees; Count Three, Negligent Training against Richland County Sheriff's Department and their employees; Count Four, Trespassing against Richland County Sheriff's Department and their employees; Count Five, Assault against Richland County Sheriff's Department and their employees; Count Six, Battery against Richland County Sheriff's

Department and their employees; Count Seven, False Imprisonment against Richland County Sheriff's Department and their employees; and Count Nine, the 42 U.S.C. § claims against Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Micheal C. Nawrockyj.

II. Timeline.

Background of the Blanding Family.

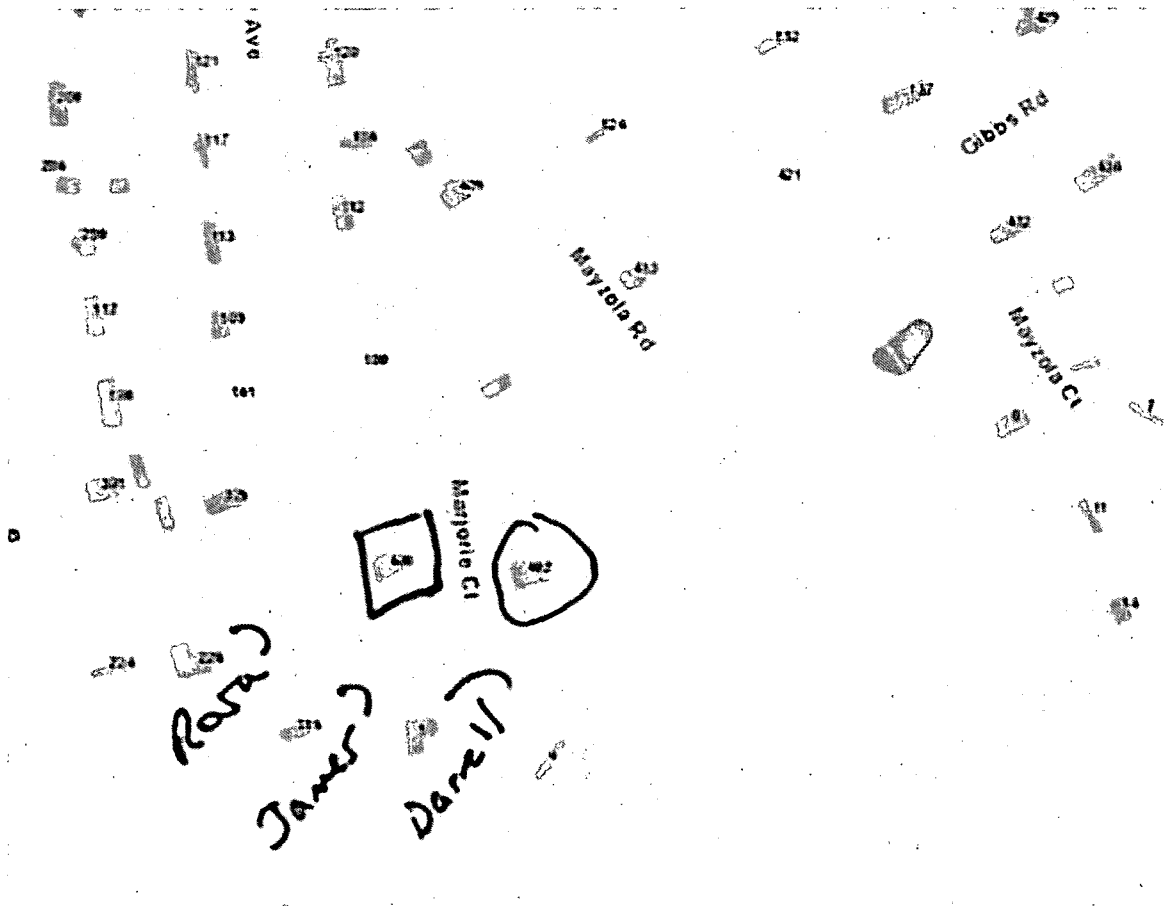
Plaintiffs Reginald Andre Blanding and Wanda Blanding reside at 402 Gibbs Road, Columbia, South Carolina with their three children, Brittani Blanding, Breelyn Blanding, and Breon Blanding. Exhibit 1, Deposition of Brittani Blanding [Brittani Depo], 11:17 – 12:11; Exhibit 2, Deposition of Reginald Blanding [Reginald Depo], 178 – 181. Reginald and Wanda Blanding have lived in their 1249 ft² home since 1991. Reginald Depo, 20:6 – 21:10. The Blandings home is neat and orderly and well taken care of by the family. Exhibit 5 at 0:41.

Despite Defendants' assertions that the Blandings live in such a horrible, high drug neighborhood, the Blandings have never had the need to call the police and they have never been to the Blanding residence for other reasons. Reginald Depo, 124:11 – 125:5.

Reginald Blanding has worked for Pepsi since 1993. Reginald Depo, 107:2 – 3. He worked for the South Carolina Department of Corrections for six years before that. Reginald Depo, 105:13 – 18. Wand Blanding has been an employee of the South Carolina Department of Corrections since 1990. Wanda Blanding Deposition [Wanda Depo], 8:6 – 12. Brittani Blanding is a college student at Winthrop University. Brittani Depo, 9:8 – 14. She has never been arrested or even stopped for a speeding ticket. Brittani Depo, 18:6 – 17.

None of the Blandings have been arrested or convicted of a crime. Reginald Depo, 46:13 – 17; 117:15 – 18. None of the Blandings use drugs or associate with people who abuse drugs.

Reginald Depo, 46:18 – 20; 111:2 – 9.



The Blandings live in the home marked above with a circle. Reginald Depo, 65:2 – 12, 66:16 – 18. Reginald Blanding's mother and father lived in the house marked with a square and the house is located at 316 Gibbs Road. Reginald Depo, 65:13 – 23, 66:16 – 18. Reginald Blanding's sister, Rosa Samuel, lived next door to their parents. Reginald Depo, 65:24 – 66:2, 66:16 – 18. Rosa Blanding also owned a trailer behind and south of the Blandings' property. Reginald Depo, 52:4 – 21, 66:16 – 18.

There was no direct pathway or road from the Blandings' home to the trailer where Gregory Samuels' stayed, identified as the "Blue" trailer in Defendants' motion for summary

judgment. Dkt. No. 19-1, *2 fn.1; Brittani Depo, 115:15 – 18. When Reginald Blanding saw people cut through his yard, he would confront them and tell them not to walk through his yard. Reginald Depo, 77:8 – 78:10.

Roosevelt Blanding was Reginald Blanding's father (he has since passed) and Brittani Blanding's grandfather. Brittani Depo, 115:19 – 116:6. Roosevelt Blanding was retired and spent the majority of the time at his home and fixing things and working on his tractor. Brittani Depo, 115:19 – 116:6. Roosevelt Blanding kept an eye on his son's property. Brittani Depo, 124:13 – 19.

Reginald Blanding testified that with his father and other relatives living next door, they would call him at work if somebody pulled up in his driveway when he was away from the home. Reginald Depo, 25:8 – 26:5. Reginald Blanding's relatives did their best to keep close eyes on the house during the day and during the night. Reginald Depo, 26:6 – 23; 88:24 – 89:10; 89:24 – 90:5.

Reginald Blanding testified that the entire family makes sure that the house is locked when they leave. Reginald Depo, 78:11 – 20.

Complaint as to Drug Activity

On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson about illegal narcotics activity sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Exhibit 13, Frieda Wyatt Deposition [Wyatt Depo], 67, 68.

Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into

the councilperson's complaint. Exhibit 10, Ricky Johnson Deposition [Johnson Depo], 15-16; Wyatt, 49, 50

Knock and Talk

On Monday, October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. See, Id., 16, 37. This process involves uniformed officers making contact with individuals at both trailer locations, address concerns presented in the Hutchinson complaint, and exploring whether there was any validity to the claims. See, Id., p. 16. While no arrests were made at this time, the officers interacted with individuals at the trailers, some of whom were in possession of crack pipes. See, Wyatt Depo, pp. 67-68.

These trailers look like drug trailers and later, after the debacle at the Blanding residence, RCSD raided these homes. Johnson, 35:18 – 36:8; see also

<http://archive.wltx.com/news/story.aspx?storyid=172303>, last visited October 14, 2014.

Plaintiffs ask the Court to contrast the appearance of Plaintiffs' home in Exhibit 5 at 0:25.

The Richland County Sheriff's Department had the knowledge of the patterns of drug activity and the resources to know where the drug using traffic was heading in the Blandings' neighborhood.

Richland County Sheriff's Department maintained a visible police presence in the Blandings' neighborhood and would park marked patrol cars across the road and to the right of the Blandings home. Brittani Depo, 108:2 – 18; 110:1 – 18; 111:4 – 10; 111:24 – 112:16. The Blandings' neighborhood was known as a high-drug area. Brittani Depo, 110:15 – 18.

Confidential Informant's Reliability

Before this matter was removed from the Richland County Court of Common Pleas to

District Court, the Court of Common Pleas issued an order allowing Plaintiff to question the Defendant officers about the background of the Confidential Informant [CI] in this matter. Exhibit 11. The responses by Deputy Ricky Johnson, the CI's handler, were at best, self-serving and at the worst, a direct attempt to deny relevant information to Plaintiff. For instance, Johnson did not know the CI's criminal history, how many times he had been arrested, or whether he had prior fraud convictions. Deposition of Ricky Johnson [Johnson Depo], 10:9 – 11:13. The CI was not familiar with the area or the local population. Johnson Depo, 11:18 – 12:9. The CI worked for Johnson to work off charges for his girlfriend and was also paid cash for his work. Johnson Depo, 40:12 – 41:24, 44:25 – 49:6. The CI was not drug tested. Johnson Depo, 46:13 – 14.

Incident at the Blanding Residence

On Thursday, October 20, 2011 Brittany Blanding and her cousin left Ridge View High School, stopped by Bojangles on Clemson Road, and drove her father's Ford Expedition home to 402 Gibbs Road, Columbia, South Carolina. Brittani Depo, 28:6 – 29:2; 134. When she drove into the driveway of her home Brittany Blanding saw a few police cars in the yard and a van in the yard. Brittani Depo, 29:3 – 20, 134. Several police officers ran out of the front door. Brittani Depo, 29:8 – 10, 30:23 – 31:5; 134.

Brittani Blanding's cousin thought that the house had been robbed and the police were responding to a robbery. Brittani Depo, 29:21 – 25; 31:8 – 22. A Caucasian male police officer went over to Brittani Blanding's vehicle and asked if she lived at the residence. Brittani Depo, 32:9 – 12. Brittani Blanding responded, "Yes, I do," and then, speaking of her cousin, said, "...she does not she came with me from school, this is my cousin." Brittani Depo, 32:13 – 16; 134. The officer then asked Brittany Blanding and her cousin to step out of the car and told her

to turn the engine off, which she did. Brittani Depo, 134.

The officer asked Brittany Blanding how old she was and she told him that she was seventeen. Brittani Depo, 134. The officer asked Brittani Blanding where her parents worked, if her dad had any nicknames, and who was "Peanut." Brittani Depo, 33:10 – 23; 134. The officer told Brittani to call her parents. Brittani Blanding first called her mother and the call went directly to voicemail. Brittani Depo, 39:17 – 23. Brittani Blanding then called her father. Brittani Depo, 39:20 – 23; Reginald Depo, 175. The officer told Brittani Blanding to tell her father, Reginald Blanding, to come home as soon as possible because the police were at the house and they had search warrants. Brittani Depo, 39:5 – 13; 134; Reginald Depo, 175.

Reginald Blanding began asking his daughter questions and she handed the phone to the officer after Reginald Blanding instructed her to do so. Brittani Depo, 40:12 – 21; 134; Reginald Depo, 175. Reginald Blanding was speaking loudly and was very upset during the phone conversation with the officer. Brittani Depo, 41:4 – 6. The officer told Reginald Blanding that he needed to come home because they were going to search his house. Reginald Depo, 175. Reginald Blanding told the officer that he was not to search his house until an adult was present and the officer said they would. Reginald Depo, 175. Reginald Blanding repeated that they were not to search his home unless he or his wife were home. Reginald Depo, 175. The officer then said that Brittani Blanding, who is 17, is old enough. Reginald Depo, 175. Reginald Blanding then told the officer that he just could not leave his job without talking to someone and the officer stated that Brittani Blanding was old enough, they were going to conduct the search, and then he hung up the phone. Reginald Depo, 175.

After the officer finished speaking with Reginald Blanding, he had an attitude and stated, "I'm going to do what I came here to do," and then handed the phone to Brittani Blanding.

Brittani Depo, 42:12 – 24. As the officer walked to the porch he stated, “[Reginald Blanding] said we’re not searching his house, but if we find something, we can take his daughter in because she is an adult in this situation.” Brittani Depo, 42:1 – 10. Reginald Blanding did not make this statement to the officer during the telephone call. Reginald Depo, 175. Reginald called other family members and was relieved from work so that he could go home. Reginald Depo, 175.

Reginald Blanding called his mother, Marjorie Blanding, to tell her to ask his father, Roosevelt Blanding, to go over to the house because his daughter was there by herself. Reginald Depo, 175.

A Caucasian lady walked over to Brittani Blanding and her cousin and escorted the two children into the house. Brittani Depo, 44:22 – 25. As Brittani Blanding walked into the house she was appalled to see the “door busted through and wood lying across the couch.” Brittani Depo, 47:22 – 25; 135. They walked as far as the living room and were in the house for a minute or two before they were removed to allow a drug dog to search the home. Brittani Depo, 48:1 – 49:23; 58:5 - 9.

While standing on the porch “[t]he female officer pat searched [Brittani Blanding], took all the contents out of [her] pocket and shook out [her] bra while the [black] male officer searched [her] purse.” Brittani Depo, 51:23 – 52:5; 58:24 – 59:3; 135. While sitting on the porch, Brittany Blanding watched another officer search the Ford Expedition Plaintiff drove. Brittani Depo, 60:11 – 15; 61:8 – 14; 135.

At this time, Roosevelt Blanding, Reginald Blanding’s father and Brittani Blanding’s grandfather, walked onto the property. Brittani Depo, 61:19 – 62:4; 135. An officer asked Roosevelt Blanding, “Do you live here, sir,” and Roosevelt Blanding stated, “No, [I] live next door but received a call from my [son].” Brittani Depo, 61:24 – 62:22; 135. The officer then

said, "We have everything under control here. It would be best to go home." Brittani Depo, 62:8 – 22; 135. Roosevelt Blanding began to walk home and said, "I believe you have the wrong house." Brittani Depo, 62:8 – 22; 135. The officer then said, "We have the right house." Brittani Depo, 62:8 – 22; 135. The officer acted ugly towards Roosevelt Blanding. Brittani Depo, 62:23 – 63:3.

After sitting on the porch for six or seven minutes, the officers let her back in the house. Brittani Depo, 61:12 – 14; 68:3 – 12; 135. Upon viewing the home, the "living room, dining room, kitchen was disoriented and messy. Brittani Depo, 68:3 – 7; 135 – 136. Brittani Blanding and her cousin sat at the dining room table with the female officer. Brittani Depo, 68:23 – 69:10; 136. A male officer asked Brittani Blanding for the keys to the Durango which was parked in the driveway and she gave them to him. Brittani Depo, 68:8 – 13; 136. The officers were going through the mail and comparing an identification of Reginald Blanding to the mail. Brittani Depo, 69:11 – 21; 136.

The African-American officer brought the safe that was in Brittani Blanding's room and set down beside the couch. Brittani Depo, 70:18 – 71:12; 136. He asked Brittani Blanding if she knew the combination of the safe and if she did then it would be best to tell him or they would bust it open. Brittani Depo, 71:18 – 72:9; 136. Brittani Blanding told him that her father knew the combination but she did not. Brittani Depo, 71:18 – 23; 136. Brittani Blanding was given permission to call her father to get the combination. Brittani Depo, 72:1 – 4, 136; Reginald Depo, 175.

Reginald Blanding asked to speak with the officer again so Brittani Blanding gave the phone to an officer and they spoke for a while. Brittani Depo, 73:14 – 18, 136. Reginald Blanding asked to speak with the officer again. Reginald Depo, 175. Reginald Blanding told him

that he was on his way home and that he did not want them to leave until he arrived home.

Reginald Depo, 175. The officer told Reginald Blanding that if they not were done they would still be there but if they were done they were going to leave and a copy of the search warrant would be at the house. Reginald Depo, 175. Reginald Blanding said that he wanted at least one police officer to be there when he got there which would be 45 minutes. Reginald Depo, 175. The police officer then said they would leave if they finished. Reginald Depo, 175.

The officer could not figure out how to open the safe and abandoned the attempt. Brittani Depo, 75:6 – 13; 136. The African American officer came into the kitchen and made a comment about the stairs being down and how he did not think they would be sturdy enough for him. Brittani Depo, 75:22 – 76:7; 136.

At all times, Brittani Blanding was trying to be cooperative. Brittani Depo, 76:8 – 12. Brittani's grandmother came over and other relatives and neighbors. An officer came into the house and stated that he was aggravated with all of the neighbors that were coming over and the he was going to put people in cuffs. Brittani Depo, 78:20 – 79:1; 136 – 137.

The white male officer then asked Brittani Blanding questions such as: did the Blandings know Peanut, how do they know him, when was the last time Brittani had seen him, and did she know where he lives. Brittani Depo, 81:15 – 20; 137.

The police officers let Brittani's Aunt May into the home. She is Reginald Blanding's sister and the mother of Gregory Samuels. Brittani Depo, 84:22 – 85:11; 137. Aunt May asked Brittani Blanding if she was all right and she gave her a kiss on the forehead. Brittani Depo, 87:13 – 16; 137. Aunt May asked the police officers who was responsible for fixing the door. Brittani Depo, 89:20 – 90:3; 137. Once the police officers learned from Aunt May that they had the wrong house, they began wrapping up the search. Brittani Depo, 92:17 – 93:12.

As the police officers were finishing the search, Reginald Blanding arrived home and was furious. Brittani Depo, 90:8 – 10; 21 – 91:2. The police officers were rude and unapologetic. Brittani Depo, 90:21 – 93:4. An officer stated that someone came out of the back door to his house on the deck and sold an informant drugs. Reginald Depo, 175. Another officer stated that someone had sold drugs in the back yard. Reginald Depo, 175. When Reginald Blanding asked the officers who was going to pay for the damage to his home, they stated in a disrespectful manner, “not us.” Reginald Depo, 176. When he asked for their names, the officers told him that their names were on the warrant and then they left. Reginald Depo, 176.

The officers searched Brittani Blanding’s room. Brittani Depo, 116:15 – 17. The storm door would not close completely, and the front door was completely off of its hinges. Wanda Depo, 78. The bed cover was pulled back and the mattress was pulled to the side. Wanda Depo, 78. Clothes were thrown from every drawer onto the bed. Wanda Depo, 78. Everything from the top shelf of the closet was thrown on the floor and bed. Wanda Depo, 78. The stairs to the attic were pulled down. Wanda Depo, 78. The guest bathroom had everything dumped out from the travel bag and items thrown out from the bathroom counter. Wanda Depo, 78. All of Brittani Blanding’s clothes were out of the drawers and her shoes were all over the place and the safe was taken out of her closet. Brittani Depo, 116:19 – 24. All of her clothes had been taken from the closet and thrown on the bed. Wanda Depo, 78. Cereal boxes were left open on the kitchen floor. Wanda Depo, 78. Brittani Blanding had to stay at a friend’s house for several nights because the door was knocked off of the hinges. Brittani Depo, 123:18 – 124:5. It took about a week before everything was cleaned up in the house. Brittani Depo, 124:6 – 8.

Gregory Samuels a/k/a Peanut.

Gregory Samuels is also known as “Peanut.” Brittani Depo, 34:3 – 9; Reginald Depo,

43:2 – 23. Gregory Samuels is a first cousin of Brittani Blanding and the nephew of Reginald and Wanda Blanding. Brittani Depo, 34:10 – 16; Reginald Depo, 43:2 – 23.

Gregory Samuels was not in jail at the time of the raid on the Blanding's home. Brittani Depo, 37:2 – 9.

Gregory Samuels was not included in family events at the Blanding home. Brittani Depo, 37:13 – 38:1. Gregory Samuels was not welcome at the Blanding home and did not come over. Brittani Depo, 82:24 – 83:6; 94:24 – 95:16. Brittani Blanding had never been over to Gregory Samuels' home. Brittani Depo, 83:19 – 21; 102:13 – 15.

The Blandings believed that he had been in and out of jail and that he was involved with drugs. Brittani Depo, 83:3 – 18; Reginald Depo, 45:23 – 46:8.

Gregory Samuels sometimes lived in a trailer behind the Blandings' property. Brittani Depo, 97:10 – 99:6; 102:9 – 12. The trailer was about 80 to 100 yards from the Blandings' home. Reginald Depo, 85:12 – 16.

The Richland County Sheriff's defamation of the Blanding Family.

At the time of this incident, Chris Cowan was Commander of Public Information and he was in charge of the Public Information Office at RCSD. Exhibit 8, Chris Cowan Deposition [Cowan Depo], 7:8 – 10, 14 – 17. Cowan held this position for nine years. Cowan Depo, 7:18 – 20. Cowan.

After RCSD was contacted by the media about the search of the Blanding home, Chris Cowan received information about the search of the home. Cowan Depo, 8:17 – 9:1; Exhibit 9. Cowan spoke with Frieda Wyatt after he received the email about the raid on the Blandings'

home so that he could get firsthand information from the source. Cowan Depo, 9:20 – 10:14.

Frieda Wyatt was supervisor of the drug suppression team. Cowan Depo, 10:22 – 24.

The statements by Cowan were “devastating” and some people assumed that the Blandings were involved with drugs. Brittani Depo, 120:14 – 122:6.

When speaking with media, Cowan stated, “[the] drugs that we purchased from that home, we purchased from a family member of that home. We purchased the drugs out of the home.” Exhibit 4 at 2:09. Cowan also told the media that, “a drug dog went in and could tell that drugs were once in there.” Exhibit 7, p. 3. Lastly, Cowan told the media that “...agents only searched the master bedroom,” which is a complete falsehood. Exhibit 7, p. 3.

Finally, despite RCSD’s assurances that they bought drugs from the Blanding residence, they did not continue to surveil the residence or attempt to buy drugs from the family members in the home. Johnson, 35:7 – 17. Later, RCSD finally hit the correct house and arrested Peanut and Ronnie Blanding. Johnson, 35:18 – 36:8.

Cowan had time to prepare for his interview before making the defamatory statements. Cowan, 12:12 – 23. Even in his deposition, after having the time to review the videos of the news segments, Cowan continued to assert that RCSD did not tear the rooms apart, search the cereal boxes, and purchase drugs from the house. Cowan, 21:14 – 22. Johnson testified that he searched the master bedroom with Frieda Wyatt. Johnson, 31:14 - 16

III. Argument.

Although summary judgment is proper in a case where there is no genuine issue of material fact, this is not a case in which the Court should grant summary judgment. R. 56, Fed.R.Civ.P.; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986). The

Defendant must show that there is (1) no genuine dispute, (2) as to any material fact, and (3) the moving party is entitled to judgment. *Beard v. Banks*, 548 U.S. 521, 529, 126 S.Ct. 2572, 2578, 165 L.Ed.2d 697 (2006); *Celotex* at 322. The court may not weigh evidence. Instead, the court "...must disregard all evidence favorable to the moving party that the jury is not required to believe." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 151 (2000).

On a motion for summary judgment, "the court must draw all reasonable inferences in favor of the nonmoving party..." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000).

When the disputed facts are resolved in favor of Plaintiffs and all inferences are drawn in favor of the Plaintiff, there is sufficient evidence to defeat summary judgment on Plaintiff's state law claims against Defendant.

A. Objection to Inadmissible Hearsay Evidence.

Almost all of the evidence put forth in this motion by the Defendants that relate to statements by the Confidential Informant is inadmissible. Rule 56(c)(2), Fed.R.Civ.P.; Rule 801, Fed.R.Evid. There is no admissible testimony submitted in support of Defendants' motion for summary judgment and no Defendant witnessed a drug transaction in this matter. Defendants repeatedly assert a drug transaction occurred at the Blanding residence based upon the hearsay testimony of what deputies were told by a confidential informant. Plaintiffs object to this and all assertions that a drug transaction occurred on Plaintiffs' property should be disregarded by the Court in considering this motion, especially when the Court reviews the defamation claims.

B. We're the Police.

This matter began with a demand from the Richland County Sheriff for an apology and the repair of the Blandings' front door. Reginald Depo, 176. After being rebuffed by the Deputies as they were leaving the Blandings' home, the Blandings looked for someone who "is on your side." Wanda Depo, 52. Their second call was to WIS.

Instead of asking for time to review the complaint the Richland County Sheriff's Department decided to lie about the substance of the allegations and the scope of the search and implicate the Blanding family as drug peddlers.

Defendants have gone all out in their response to the media and in their motion for summary judgment to avoid any responsibility or consideration that the Defendants failed in their jobs and that the Blandings are simply a good, clean, hardworking family.

C. Red Herrings Abound.

The Defendants have invented several theories that are rather novel for police officers but not so much for criminal defendants.

It Ain't Me.

The most ingenious theory is the theory that either Gregory Samuel, a/k/a Peanut, or Ronnie Blanding burgled Roosevelt and Marjory Blanding's home, stole the hidden key to Reginald and Wanda Blanding's home, and burgled Reginald and Wanda Blanding's home in order to sell drugs when they could sell drugs in the comfort of their own trailers and off of their own back decks. Dkt. No. 19-1, *14. Plaintiffs have demonstrated above that they live in a neighborhood with nosey relatives/neighbors who keep a lookout on the Blanding residence. The Blandings have further demonstrated that Ronnie Blanding and Gregory Samuel did not reside with Roosevelt and Marjory Blanding and that the key was hidden. Reginald Depo, 39:23

– 40:20. Ronnie Blanding and Gregory Samuel did not live with Roosevelt and Marjory Blanding in October 2011. Reginald Depo, 71:2 – 18; 94:21 – 97:10.

My Brother's Keeper.

The next creative theory is that the Blandings are not credible because they asserted in their amended complaint, “[n]one of the Blandings...or associate with people who abuse drugs.” Dkt. No. 1-1, *6. First, the Defendants surmise that being related to a drug dealer, seeing these relatives at family gatherings, and even hiring one to fix flashing on the roof makes the Blandings associates of people who abuse drugs. Dkt. No. 19-1, *14. Having a bad egg in your family does not take away from ones character or make one an associate of that person. More popular painting of people's character with off-coloured relatives have included the brothers of Barack Obama (Onyango Obama), George Bush (Neil Bush), Bill Clinton (Roger Clinton), and everyone's favorite, Billy Carter, brother of Jimmy Carter.

Location, Location, Location.

Another red herring is Plaintiffs' unforgivable sin of living in a high drug area. Dkt. No. 19-1, *14. This must mean that the Blandings associate with drug users and drug dealers instead of sticking their noses to the grindstone and successfully raising children who go on to college. This is a scary notion.

Peanut was the Billy Mays of Crack Dealers.

Another theory is that Gregory Samuel would sit on Plaintiff's back deck and peddle drugs all day because Gregory Samuel's trailer was 80-90 yards away, almost the length of a football field. There is no evidence to show why anyone would set up a crack dealership out in

the elements and sit on their neighbors deck to distribute drugs. Additionally, there is no evidence this occurred and pure speculation on the part of Defendants.

D. Substitution of the agency under the South Carolina Tort Claims Act.

If an employee is individually named, the South Carolina Tort Claims Act requires the governmental employer to be substituted as the party defendant. S.C. Code Ann. 15-78-100(b). There is some question as to naming RCSD in pleadings as there are reported cases, such as *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (2008), where the sheriff is named in his official capacity. Other counties are particular about suing just the _____ Sheriff's Office.

I. Slander per se.

The state law cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *See, Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998); *See also, West v. Morehead*, 396 S.C. 1, 720 S.E.2d 495 (S.C.App. 2011).

Slander per se exists where the defamatory statement involves an allegation of crime. Chris Cowan, the spokesperson for Sheriff Leon Lott prepared for a television interview, spoke with members of RCSD who conducted the raid, and stated, "[the] drugs that we purchased from that home, we purchased from a family member of that home. Exhibit 4 at 2:09. Cowan also told the media that, "a drug dog went in and could tell that drugs were once in there." Exhibit 7, p. 3. There is no doubt that as a matter of law, Plaintiffs have shown that Cowan was accusing the Blandings of distributing drugs from their home. No reasonable person watching the interview would think to themselves, "Maybe he is speaking of Ronnie Blanding or Peanut."

Summary judgment on this cause of action should be denied and remanded for further proceedings in state court.

Defendants assertion that Cowan's statements give rise to qualified privileges, such as the fair report privilege is baseless as Cowan's statements were not part of a report, but were made to justify RCSD's raid of the Blandings's home.

It is true that the Blandings embarrassed RCSD by going to the news in an attempt to clear their name. This did not give RCSD the right to embarrass the Blandings by making untruthful statements to the public.

II. Negligence.

Richland County Sheriff's Department Procedure No. 902 states, "Informants are deemed to be agents of the department as a whole." Exhibit 12; Wyatt Depo, 18:16 – 18; Johnson Depo, 40:12 – 41:24, 44:25 – 49:6.

Defendants had a duty to the Blandings not to enter and sack the Blandings home without some semblance of knowledge that a criminal act occurred. While some Defendants have shown that there was a good faith basis for the raid on Plaintiffs' home simply because they were just participants in the raid, Defendants have failed to prove as a matter of law, with admissible evidence, that Deputy Johnson and his CI acted with due care in determining from which residence the CI purchased drugs, if he purchased drugs at all. Aside from pure speculation, there is absolutely no evidence that anyone sold drugs off of the Blanding's deck.

Plaintiffs assert that Defendants placed a CI in an unfamiliar neighborhood, and failed to verify where the buy occurred other than Deputy Johnson calling a uniform patrol car to drive by

a house to get a house number. No reconnaissance was conducted, or pictures of the home were taken and reviewed by the CI or deputy before making the raid on the home.

Defendants knew that without properly verifying the location of the buy with the CI and with the uniformed officer who drove by the residence to get a street address, there was an increased likelihood that RCSD would raid the wrong home.

Defendants duty to verify and verify again that they have the correct residence. It is paramount because life and limb are at stake, for both officers and law abiding private residents, when law enforcement enters the home. The safety in one's own home is one of the most important rights in our country. Defendants breached this duty and have since created numerous falsehoods to justify their gross negligence. Plaintiffs have suffered property damage and have lost the sanctuary that is their home.

Plaintiffs also assert that when the evidence is viewed in a light most favorable to Plaintiffs, no one came out of the Blanding home to serve crack on October 18, 2011 to the agent of RCSD, the CI and it is a fabrication, as no one was home that day. Additionally, the testimony of Johnson regarding what the Confidential Informant told him should be disregarded as inadmissible.

III. Conclusion.

Plaintiffs ask that Defendants' motion for summary judgment be denied for Count One, as to gross negligence, and Count Eight, as to Defamation. Plaintiffs concede Counts Two through Seven, and Nine, as to all Defendants. Plaintiffs asks the court to remand this case to state court for further proceedings.

Respectfully Submitted,

s//Robert J. Butcher

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Camden, South Carolina

October 14, 2014

EXHIBIT 16

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

Reginald Andre Blanding; Wanda Blanding;	)	C/A No. 3:14-299-JMC-PJG
Brittani Blanding, <i>by and through her</i>	)	
<i>Guardian ad Litem</i> Reginald Andre Blanding	)	
and Wanda Blanding,	)	
	)	
Plaintiffs,	)	
	)	REPORT AND RECOMMENDATION
v.	)	
	)	
Richland County Sheriff's Department; Leon	)	
Lott; Rickey E. Johnson, Jr.; Frida W. Wyatt;	)	
Adrian P. Thompson; Adam C. Cornwell; Sara	)	
N. Giron; George C. Becker; Unknown	)	
Confidential Informant; Lieutenant Cowan;	)	
Micheal C. Nawrockyj,	)	
	)	
Defendants.	)	

Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding filed this action alleging a violation of their constitutional rights by the defendants under 42 U.S.C. § 1983. The Blandings also allege state law tort claims against the defendants. The defendants removed this action from the Richland County Court of Common Pleas. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the defendants' motion for summary judgment. (ECF No. 19.) The Blandings filed a response in opposition (ECF Nos. 24 & 25) and the defendants filed a reply (ECF No. 27.)

The Blandings' claims all arise from an incident on October 20, 2011, when the defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched the Blandings' residence pursuant to a search warrant. Having carefully considered the parties' submissions and the applicable law, the court concludes that the defendants' motion should be

granted, in part, as to all federal and state claims conceded by the Blandings. The court further concludes that the remaining two state law claims should be remanded.

DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party “shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by “citing to particular parts of materials in the record” or by “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth

specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322.

B. Blandings' Claims

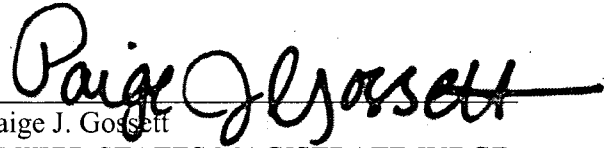
In their response in opposition to the defendants' motion for summary judgment, the Blandings concede that the defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (Blandings' Resp. Opp'n Summ. J. at 1-2, 19, ECF No., 24-1 at 1-2, 19.) The Blandings further concede that all defendants are entitled to summary judgment as to the following state law claims: Negligent Supervision (Count Two); Negligent Training (Count Three); Trespassing (Count Four); Assault (Count Five); Battery (Count Six); and False Imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are the Blandings' claims of gross negligence (Count One) and defamation (Count Eight). The Blandings ask the court to remand this case to state court for further proceedings. (Id. at 19.)

In light of the Blandings' concession to the defendants' motion for summary judgment as to all federal claims, the court should exercise its discretion to remand the remaining state law claims of gross negligence and defamation. See 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal).

RECOMMENDATION

Accordingly, the court recommends that the defendants' motion for summary judgment (ECF No. 19) be granted, in part, as to all of Blandings' federal claims, and as to Blandings' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false

imprisonment. It is further recommended that the court decline to exercise supplemental jurisdiction over the remaining state law claims, Blandings' claims of gross negligence and defamation, and that the court remand those claims to the Richland County Court of Common Pleas.


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

June 15, 2015
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

EXHIBIT 17

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Reginald Andre Blanding; Wanda)
Blanding; Brittani Blanding, *by and through*)
her Guardian ad Litem Reginald Andre)
Blanding and Wanda Blanding,)

Plaintiffs,

v.

Richland County Sheriff's Department;)
Leon Lott; Rickey E. Johnson, Jr.; Frida)
W. Wyatt; Adrian P. Thompson; Adam C.)
Cornwell; Sara N. Giron; George C. Becker;)
Unknown Confidential Informant;)
Lieutenant Cowan; Micheal C. Nawrockyj,)

Defendants.

Civil Action No. 3:14-cv-00299-JMC

AMENDED ORDER AND OPINION

Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding (collectively "Plaintiffs") filed the underlying action alleging a violation of their constitutional rights under 42 U.S.C. § 1983 by Defendants George C. Becker, Adam C. Cornwell, Lieutenant Cowan, Sara N. Giron, Rickey E. Johnson, Jr., Leon Lott, Micheal Nawrockyj, Richland County Sheriff's Department, Adrian P. Thompson, and Frida W. Wyatt (collectively "Defendants"). (ECF No. 1-1.) Plaintiffs also allege state law tort claims against Defendants. This matter is before the court pursuant to Defendants' Motion for Summary Judgment (ECF No. 19).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2)(g) (D.S.C.), the matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On July 15, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that the court (1) grant Defendants' Motion for Summary Judgment, in part, as to

all of the federal claims, and as to the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment; (2) decline to exercise supplemental jurisdiction over the remaining state law claims; and (3) remand the remaining state law claims of gross negligence and defamation to the Richland County Court of Common Pleas. (ECF No. 29.) Plaintiff did not file objections to the Magistrate Judge's recommendation. For the reasons set forth herein, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings.

I. JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's Amended Complaint asserts claims under 42 U.S.C. § 1983.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The following relevant facts are viewed in a light most favorable to Plaintiffs.

Plaintiffs' claims all arise from an incident on October 20, 2011, when Defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched Plaintiffs' residence pursuant to a search warrant. On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. (ECF No. 19-1 at 1.) Senior Deputy Ricky Johnson was assigned and

spearheaded the investigation into Hutchinson's complaint. (*Id.* at 2.) Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (*Id.* at 3.) This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes. (*Id.*)

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. (*Id.*) Johnson employed his confidential informant ("CI") in this investigation. At this point, the CI had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. (*Id.*) The CI was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. (*Id.*) The CI returned twenty to thirty minutes later. (*Id.*) The CI's debriefing yielded the following: The CI had a conversation with a male on a bicycle concerning the purchase of narcotics. The CI then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." (*Id.* at 4; *see also* ECF No. 19-14 at 11-12; ECF No. 19-16 at 3.) The CI also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." (*Id.*) The CI then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base. (*Id.*)

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. (*Id.* at 5.) Johnson additionally ascertained that Blanding was the last name of the owner

of the house. (*Id.*) Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house. (*Id.*)

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Carolina W. Streater who issued the search warrant at about 12:20 p.m. (*Id.*) The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. (*Id.*) Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. (*Id.* at 6.) Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. (*Id.*) Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. (*Id.*)

Meanwhile, Plaintiff Brittani Blanding (“Brittani”) and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. (*Id.*) Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. (*Id.*) Wyatt conducted a frisk search of the females with negative results. (*Id.*)

This action was originally brought in the Richland County Court of Common Pleas by Plaintiffs against the named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1-1 at 16 ¶ 85–17 ¶ 93.) Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. (*Id.* at 8 ¶ 30–15 ¶ 80.) Defendants assert they were acting within the course and scope of their official duties, and as a result, all named RCSD Defendants are entitled to employee immunity under S.C. Code Ann. § 15-78-70(a) and (b) (1976) and Plaintiffs’ claims must be dismissed as a matter of law. (ECF No. 19-1 at 7 n.2.) Defendants assert that Plaintiffs’ Amended Complaint challenges the

adequacy of the information relied upon by the DST, the sufficiency of the search warrant, and the nature and scope of the frisk search with respect to Brittani, as well as alleged statements made by Defendant Cowan directly or on behalf of the Defendant Sheriff concerning this residence being involved with drug transactions. (ECF No. 19-1 at 7.) Defendants further assert that they acted appropriately and reasonably at all relevant times and categorically deny that they violated Plaintiffs' constitutional rights. Consequently, Defendants' RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Fed. R. Civ. P. 56 on the following grounds: (1) Plaintiffs Reginald and Wanda Blanding have failed to state causes of action against Defendants for illegal seizure and false imprisonment under 42 U.S.C. § 1983, (2) Defendant investigators were justified in detaining and searching Brittani, (3) pursuant to *Harlow v. Fitzgerald*, Defendant investigators are entitled to qualified immunity from all liability, (4) Defendants RCSD and Sheriff Lott are not amenable to suit, (5) Plaintiffs have not stated a negligence claim and these causes of action should be dismissed, (6) Brittani failed to state a claim against Defendants for battery, and (7) Plaintiffs have failed to state a claim for defamation against Defendants. (ECF No. 19-1 at 7-8.) Plaintiffs filed a Response in Opposition to Defendants' Motion for Summary Judgment (ECF Nos. 24, 25) and Defendants filed a Reply (ECF No. 27).

III. LEGAL STANDARDS AND ANALYSIS

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo*

determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636 (b)(1).

Objections to the Report and Recommendation must specifically identify portions of the Report and Recommendation and the basis for those objections. Fed. R. Civ. P. 72(b). “[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Failure to timely file specific written objections to a report and recommendation will result in a waiver of the right to appeal from an order from the court based upon the report and recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). If the plaintiff fails to properly object because the objections lack the requisite specificity, then *de novo* review by the court is not required.

Fed. R. Civ. P. 56(a) mandates the entry of summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts

that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” (*Id.* at 248.) The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. (*Id.* at 324.) Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. (*Id.*) Under this standard, the existence of a mere scintilla of evidence in support of the non-movant’s position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 251. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc’ns Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989).

Summary judgment is particularly appropriate in cases involving the qualified immunity defense because qualified immunity exists to protect government officials not only from liability, but also from trial. *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The Fourth Circuit has also strongly announced a preference to resolve civil rights cases involving qualified immunity through dismissal short of trial. *Pittman v. Nelms*, 87 F.3d 116 (4th Cir. 1996). The court will thoroughly address each of Plaintiff’s objections in turn.

In Plaintiffs’ Response in Opposition to Defendants’ Motion for Summary Judgment (ECF No. 24, 25), Plaintiffs concede that Defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (ECF No. 24-1 at 1-2, 19.) Plaintiffs further concede that all Defendants are entitled to summary judgment as to the following state

law claims: negligent supervision (Count Two); negligent training (Count Three); trespassing (Count Four); assault (Count Five); battery (Count Six); and false imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are Plaintiffs' claims of gross negligence (Count One) and defamation (Count Eight). Plaintiffs ask the court to remand this case to state court for further proceedings. (*Id.* at 19.)

In Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (ECF No. 24), Brittani confirms that Plaintiffs' neighborhood "was known as a high-drug area." (ECF No. 24-2 at 111:15-18.) Brittani further confirms that "Richland County Sheriff's Department maintained a visible police presence in [Plaintiffs'] neighborhood and would park marked patrol cars across the road and to the right of [Plaintiffs'] home." (*Id.* at 109:2-18; 111:1-18; 112:4-10; 112:24-113:16.) Additionally, "Once the police officers learned from Aunt May (Reginald Blanding's sister) that they had the wrong house, they began wrapping up the search." (*Id.* at 93:17-94:12.) As Defendants were finishing the search, Reginald Blanding arrived home. (*Id.* at 91:8-10, 21-92:2.) According to Brittani, Defendants were rude and unapologetic, and it took about a week before the house was cleaned up. (*Id.*)

Brittani confirmed that Gregory Samuels is also known as "Peanut." (*Id.* at 35:3-9.) Gregory Samuels is a first cousin of Brittani and the nephew of Reginald and Wanda Blanding. (*Id.* at 10-16.) Gregory Samuels was not in jail at the time of the raid on the home. (*Id.* at 38:2-9.) Plaintiffs believed that [Gregory Samuels] had been in and out of jail and that he was involved with drugs. (*Id.* at 84:3-18.) Gregory Samuels sometimes lives in a trailer behind Plaintiffs' property, about 80 to 100 yards from Plaintiffs' home. (*Id.* at 98:10-100:6; 103:9-12; ECF No. 24-3 at 86:12-16.)

In the Report and Recommendation, the Magistrate Judge observed that in light of

Plaintiffs' concession to Defendants' Motion for Summary Judgment as to all federal claims and the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment, the court should exercise discretion and remand the remaining state law claims of gross negligence and defamation for further proceedings. (ECF No. 29 at 3 (citing 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal)).) Plaintiffs did not file objections to the Magistrate Judge's recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). After carefully reviewing the record and the applicable law, the court agrees with the Magistrate Judge's findings. Accordingly, Defendants' Motion for Summary Judgment should be granted as outlined by the Magistrate Judge.

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings. The court adopts the Magistrate Judge's Report and Recommendation (ECF No. 29) and incorporates it herein by reference.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

August 17, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding,
Wanda Blanding, and
Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department,
Leon Lott,
Lieutenant Cowan,
Rickey E. Johnson, Jr.,
Frieda W. Wyatt,
Adrian P. Thompson,
Adam C. Cornwell,
Sara N. Giron,
George C. Becker,
Michael C. Nawrockyj, and
Unknown Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT,
THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ

2016 MAY 24 AM 10:40
JEANETTE H. McBRIDE
C.C.P. & G.S.

NOTED FOR COURT
FILED

RELEVANT FACTUAL BACKGROUND

Plaintiffs' claims all arise from an incident on October 20, 2011, when Defendants, who at all relevant times were employees with the Defendant Richland County Sheriff's Department ("RCSD"), searched Plaintiffs' residence pursuant to a search warrant. The facts as viewed in the light most favorable to Plaintiffs¹ are as follows:

¹ The ensuing recitation of facts are derived from the "Relevant Factual and Procedural Background" as outlined in the District Court Amended Order and Opinion, See, Exh. A [*Blanding v. RCSD, et al.*, 2015 WL 4929251 (D.S.C.)(unpublished)].

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Complaint as to Drug Activity

On Friday, October 14, 2011, the RCSD Drug Suppression Team ("DST") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into Hutchinson's complaint.

DST Narcotics Investigation / "Knock and Talk"

Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes.

DST Narcotics Investigation / Controlled Purchase

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. Johnson employed his confidential informant ("informant") in this investigation. At this point, the informant had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results.

The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later.

The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named,

Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut."

The informant then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base.

Search Warrant Preparation and Issuance

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Caroline W. Streater who issued the search warrant at about 12:20 p.m. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants.

Search Warrant Execution

Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron.

Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road.

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Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. Wyatt conducted a frisk search of the females with negative results.

PROCEDURAL BACKGROUND

On December 23, 2013, this action was originally brought in this Court by Plaintiffs against the named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. On February 4, 2014, the Defendants removed the matter to U.S. District Court.

On September 22, 2014, the Defendants filed its motion for summary judgment. On August 17, 2015, and following litigation in federal court for eighteen months, District Court Judge J. Michelle Childs issued an Amended Order and Opinion with respect to the present facts. In Judge Childs' Order, she granted Defendants' motion for summary judgment in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The Court declined to exercise supplemental jurisdiction over the remaining state law claims. The court remanded to the Richland County Court of Common Pleas for further proceedings.

Following remand of Plaintiffs' claims of gross negligence and defamation, the Defendants RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj now move for summary judgment pursuant to Rule 56, SCRCP, based upon the following grounds:

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DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), (citations omitted), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

I. ISSUE PRECLUSION AND/OR COLLATERAL ESTOPPEL

"Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (Ct. App. 1986); *See also, Nelson v. QHG of South Carolina, Inc.*, 2004 WL 3127848 (S.C. 2005).

"Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim." *Laughton v. O'Brailis*, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004). As characterized earlier by the South Carolina Supreme Court: "The primary purposes of the doctrine, commonly known today as claim preclusion, are to bring an end to litigation and prevent a defendant from

being forced to defend the same action repeatedly." See, *Garris v. Governing Board of South Carolina Reinsurance Facility*, (Cite as: 333 S.C. 432, 511 S.E.2d 48 (1999).

Plaintiff initially filed this §1983 action in this Court on December 23, 2013 alleging violations of his federal constitutional rights as well as certain state tort claims.

By Order of the Honorable J. Michelle Childs dated August 17, 2015, this matter was dismissed on summary judgment. See, Exh. A. Thus, as will be discussed below, there has been an earlier final judgment which was valid and decided on the merits.

Based on the forgoing reasons and the law of South Carolina, the Defendant moves this Court to find Plaintiff's instant claims barred by the doctrines of collateral estoppel and/or issue preclusion, and for this court to dismiss those claims.

The Plaintiff did not appeal from Judge Childs' Order and the time for doing so has now expired. As a result, Her Honor's Order is now the *law of this case* and is binding on this Court after remand. See, *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("[a]n unappealed ruling is the law of the case and requires affirmance"). Alternatively, Judge Childs' findings of fact and rulings are entitled to preclusive effect based upon the doctrine of collateral estoppel. "Collateral estoppel or issue preclusion prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." *Shelton v. Oscar Meyer Foods Corp.*, 325 S.C. 248, 481 S.E.2d 706, 707 (1997). As the South Carolina Supreme Court has explained, "[p]rinciples of finality, certainty, and the proper administration of justice suggest that a decision once rendered should stand unless some compelling countervailing consideration necessitates relitigation." 481 S.E.2d at 708.

The relevant facts of Tuesday, October 18, 2011 conclusively decided by way of Judge Childs' August 17, 2015 Order is as follows:

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Narcotics Investigation: The DST initiated a narcotics controlled purchase investigation in Plaintiffs' neighborhood. Johnson employed his confidential informant in this investigation. At this point, the informant had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later.

Informant Purchase of Narcotics: The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." The substance was field tested and returned positive results for cocaine base.

Establishing Location of Purchase: The informant then specifically pointed out the location where the purchase was made to Johnson and Cornwell. Based upon County Geographic Information System mapping used for tax purposes, the location of the purchase was revealed to be 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

Suspect Distributing Crack Cocaine: The actual name of "Peanut" is Gregory Samuels. Samuels is a first cousin of Plaintiff Brittani and the nephew of Plaintiffs Reginald and Wanda Blanding. Plaintiffs testified at their depositions that Samuels had been in and out of jail and that he was involved with drugs. Samuels sometimes lived in a trailer behind Plaintiffs' property, about 80 to 100 yards from Plaintiffs' home. In fact, Samuels was not in jail during the relevant times of the investigation.

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It is well established that the Court, in considering a motion for summary judgment, must typically view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. However, in the present motion, the relevant facts have already been determined by the District Court and Plaintiff is not entitled by either the law of the case or collateral estoppel or both from relitigating the specific findings of fact.

II. ABSOLUTE SOVERIGN IMMUNITY

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. See, *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204,

206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. See, S.C. Code Ann. §15-78-40. Additionally, the Act continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit.

S.C. Code Ann. §15-78-60(3)

S.C. Code Ann. §15-78-60(3) of the Tort Claims Act provides as follows: "The governmental entity is not liable for a loss resulting from ... execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process."

On October 20, 2011, Johnson appeared before the Honorable Caroline W. Streater who issued the search warrant of Plaintiffs' residence. See, *Supra*. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. See, *Supra*. Within minutes of its issuance at 12:20 p.m., the search warrant was executed at Plaintiffs' residence at 402 Gibbs Road. See, *Supra*. Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. See, *Supra*.

Assuming *arguendo* that Plaintiffs were to somehow establish a theory of liability with respect to the execution of the search warrant on the part of one or more Defendant deputies, it is uncontroverted in this matter that the search was effectuated pursuant to a facially valid search warrant. Therefore since Section 15-78-60(3) plainly dictates that the governmental entity cannot be held liable for the execution of a lawful search warrant -- regardless of a loss allegedly resulting therefrom -- the Defendants should still be afforded absolute sovereign immunity in this instance.

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S.C. Code Ann. §15-78-60(20)

S.C. Code Ann. §15-78-60(20) of the Tort Claims Act sets forth that, "The governmental entity is not liable for a loss resulting from ... an act or omission of a person other than an employee including but not limited to the criminal actions of third persons."

The key alleged facts in this matter transpired as a result of the criminal actions of a third person, Gregory Samuels. The District Court's factual findings recognized that Samuels ("a black male named Peanut") distributed crack cocaine to these Defendants' informant from the Plaintiffs' residence at 402 Gibbs Road in Richland County. Thus, in light of Section 15-78-60(20), the Defendant Lott cannot be held liable for Plaintiffs' alleged loss stemming from the criminal actions of this third person.

III. GROSS NEGLIGENCE CLAIM

In the present case, it is undisputed that at the relevant times, the Defendant investigators conducted a narcotics investigation followed by obtaining and then executing a search warrant at Plaintiffs' residence. It is with respect to these factual circumstances in which Plaintiffs assert negligence theories against these Defendant investigators.

In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation.

Moreover, it is well settled under South Carolina law that intentional torts "cannot be committed in a negligent manner." *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 530

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S.E.2d 132, 137 (2000). Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), the Supreme Court explained that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liability for injury to person or property, when such injury is not the result of premeditation and formed intention." 134 S.E. at 235. Thus, intent and negligence are mutually exclusive, and there is no claim of negligence that flows from intentionally tortious conduct.²

These Defendants allege that the entire investigatory process as well as the undertaking of, and obtaining an search warrant and subsequent execution are functions which were by its very nature conducted with premeditation and formed intention. Hence, these acts would fall within one of the established tort classifications of which an intent to commit the act complained of (whether or not harm is intended) is an element, such as theft or willful, wanton, or reckless conduct that causes injury to another. As a consequence, intent to commit a wrongful act (*i.e.* intent to harm) is not a material element of ordinary actionable negligence.

Therefore, since allegations of intent to commit a wrongful act is irrelevant in a negligence action, these Defendants cannot be held liable for its intentional acts at the relevant times and there is no claim for negligence flowing therefrom.

IV. DEFAMATION CLAIM

The cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." See, *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998); See also, *West v. Morehead*, 396 S.C. 1, 720 S.E.2d 495 (S.C.App. 2011).

² For example, negligence and battery are mutually exclusive, and there is no such cause of action as negligent assault and battery. See, *Restatement (Second) of Torts*, § 282 cmt. d (1965).

To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm. See, *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Under the law of defamation, however, certain communications give rise to qualified privileges, including the privilege to publish fair and substantially accurate reports of judicial and other governmental proceedings without incurring liability. See, generally, *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982) (discussing fair report privilege); *Jones v. Garner*, 250 S.C. 479, 158 S.E.2d 909 (1968) (same); see also 2 Rodney A. Smolla, *Law of Defamation* § 8:3 (2d ed.2010).

Taking the facts in a light most favorable to Plaintiff, the record in this matter reveals the following:

Within an hour after she returned home following the execution of the search warrant, Wanda Blanding took it upon herself to contact the news media. See, Wanda depo., p. 50-52. Specifically, she contacted two local television news stations. See, *Id.*, pp. 52-53. Mrs. Blanding thereafter coordinated and invited television news media in her house. See, *Id.*, pp. 56-57, 59. She permitted the news media to publicize personal information on television, including hers and her husband's names, their places of employment, and information related to her minor children. See, *Id.*, pp. 57-58. Mrs. Blanding allowed an investigative journalist with a news camera to enter her house and film the interior. See, *Id.*, pp. 57, 59, 61. WIS-TV produced and aired the news segment depicting the condition of each room following the execution. See, *Id.*, p. 61. Mrs. Blanding voluntarily and wilfully pursued this course and opened entire house for public consumption. See, *Id.*, pp. 59-61.

After Mrs. Blanding was successful in garnering this media attention, Major Chris Cowan, the Public Information Officer for the Sheriff was questioned by a local television reporter as to the relevant events. See, pp. 13-15. Cowan's knowledge of the investigation solely stemmed from representations from the Defendant investigators. See, *Id.* Specifically, Cowan indicated that, "the drugs were purchased from that home -- we purchased from a family member out of the house." See, Exh. D; see also, Wanda depo., p. 48; Cowan depo., pp. 11-12.

First and respect to Cowan's statement, there is no evidence of falsity. Quite the contrary and in light of the findings of fact previously determined in Judge Childs' Order, the Defendant investigators had adequate and sufficient probable cause to believe that Gregory Samuels (aka "Peanut"), who was Reginald Blanding's blood nephew, had walked out the rear of the house and sold crack cocaine to the informant.³ See, *Supra*. Therefore, there was a good faith basis for which to believe that a family member was selling drugs out of the home. Therefore, these Defendants submit that this would have a preclusive effect as to Plaintiffs presenting evidence of falsity.

Secondly, there was no press conference, nor was there a press release, statement, or external correspondence disseminated by these Defendants about the relevant events. See, Cowan depo., p. 12. All information related to the controlled purchase investigation and the execution of the search warrant was exclusively leaked to the press by Wanda Blanding, who personally sought out public disclosure and encouraged publication of these events. See, *Supra*. Significantly, Cowan's statement was prompted *after* Wanda contacted the media and then responded to the inquiry by the reporter. See, *Id.*, pp. 13-15.

³ Taking the facts in a light most favorable to Plaintiffs, the confidential informant plainly observed "Peanut" exiting from the back door of the house located at 402 Gibbs Rd. The informant and "Peanut" then had a conversation. The informant then made the purchase from "Peanut" on the back porch. See, Johnson depo., p. 24; see also, Cornwell depo., p. 12.

Most critically, at no time had these Defendants represent to a third party that either an adult or child Plaintiff were involved with drugs. See, Wanda depo., p. 48. At no time had these Defendants disseminated Plaintiffs' names or personal or sensitive information to a third party. See, *Supra*. While, these Defendants should, at a minimum, be afforded a qualified privilege concerning any and all representations, at no time had any of these Defendants made a defamatory statement with respect to Plaintiffs.

As a consequence, these Defendants assert that this claim should be dismissed with prejudice.

V. EMPLOYEE IMMUNITY UNDER THE TORT CLAIMS ACT

As an additional basis for summary judgment, the Defendants Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj are entitled to absolute employee immunity under the South Carolina Tort Claims Act for the remaining state law tort claims for gross negligence and defamation. The leading case on the scope of employee immunity under the Tort Claims Act is *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2004). In that case, the individual defendants, who were employees of the South Carolina Commission for the Blind, were acting at all times as employees or members of the Commission. The plaintiffs in *Flateau* sued the individual employees for a variety of intentional torts including the tort of outrage, invasion of privacy, and civil conspiracy.

In its analysis of the immunity defense, the South Carolina Court of Appeals cited Section 15-78-200, which provides: "... this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." See, S.C. Code Ann. § 15-78-200. (Emphasis added). Accordingly, the Court explained that "[t]he Act is intended to cover those actions committed by an employee within the scope of the employee's official duty." 584

S.E.2d at 416. The Court concluded that those tort claims, including the intentional torts, must be brought against "the governmental entity rather than the individual governmental employee." 584 S.E.2d at 417. See also, S.C. Code Ann. § 15-78-70(c).

The Plaintiffs have presented no evidence that these deputies or investigators were not acting within the scope of their official duties as law enforcement officers for the RCSD during the investigation, procuring, or execution of the relevant search warrant. Moreover, Plaintiffs have not shown that any of the exceptions set forth in Section 15-78-70(b) are applicable. This case is similar in this regard to *McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013), where the Court found that the law enforcement officers are entitled to employee immunity under Section 15-78-70(a) for the state-law tort claims of malicious prosecution, false imprisonment, and assault and battery asserted by the arrestee. The same result should occur in the case at bar. As a result, these Defendants submit that they are entitled to absolute immunity under the Tort Claims Act on these state law tort claims.

VI. DEFENDANT RCSD NOT AMENABLE TO SUIT

It is clear under the laws of the State of South Carolina, including the State Constitution, that the Sheriff of Richland County is the proper legal entity subject and amenable to suit. *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992). Under the laws of the State of South Carolina, there is no entity known as the Richland County Sheriff's Department.

For this reason and strictly from a procedural perspective, the proper entity to be sued would be the Richland County Sheriff.

CONCLUSION

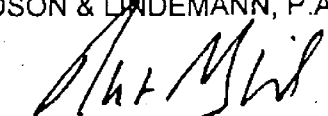
For these reasons, there is clearly an absence of evidence to support Plaintiffs' case and Plaintiffs' causes of action against these Defendants must therefore be dismissed as a matter of law.

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Respectfully submitted,

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Cornwell, Giron, Becker, & Nawrockyj*

Columbia, South Carolina

January 13, 2016

ROB
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding,
Wanda Blanding, and
Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department,
Leon Lott,
Lieutenant Cowan,
Rickey E. Johnson, Jr.,
Frieda W. Wyatt,
Adrian P. Thompson,
Adam C. Cornwell,
Sara N. Giron,
George C. Becker,
Michael C. Nawrockyj, and
Unknown Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

NOTICE OF MOTION AND MOTION TO
ALTER OR AMEND ORDER AND/OR
MOTION FOR RECONSIDERATION
ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT,
THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ

TO: THE HONORABLE G. THOMAS COOPER, JR.

ROBERT J. BUTCHER, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants Richland County Sheriff's Department (hereinafter, "RCSD"), Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, and Michael C. Nawrockyj will move before the Honorable G. Thomas Cooper, Jr. at such time and place as may be set by the Court, for an Order pursuant to Rule 59(e), SCRCP, altering, amending, and/or reconsidering the Order filed March 4,

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2016 Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment. Written notice of entry of such Order was received by the undersigned counsel on March 10, 2016.

These Defendants respectfully request the Court reconsider its ruling with respect to the defamation claim. The Court's findings of fact accurately reference Cowan's comment to the media that, "the drugs were purchased from that home -- we purchased from a family member out of the house." In light of Plaintiff's burden to prove falsity as well as the Defendants' position that this was not an untruthful statement, this Court's Order omits any reference to the background as well as any analysis of this issue.

The following factual background (and bolded herein) is not in dispute in the instant case:

1. The confidential informant ("CI") plainly observed a black male exiting from the back door of the house located at 402 Gibbs Road. The CI and this black male had a conversation at which time the CI made a narcotics purchase from this individual. This interaction and drug transaction took place on the back porch of Plaintiffs' 402 Gibbs Road residence. The drugs tested positive for cocaine base.

The following facts have not been contradicted in this matter:

In Johnson's deposition, he testified as follows: "The individual on the bicycle led him to 402 (Gibbs Road). He observed an individual come out the back door. The individual on the bicycle. The CI then walks to the back porch where he was then made conversation with an individual on the back porch." See, Pl.'s Exh. 10, p. 24. Johnson continued: "And he was served a white, rock-like substance, which (field) tested to be crack cocaine." See, *Id.* Similarly Cornwell testified in his deposition as follows: "The CI said that he traveled into the area that we directed him to. Believe he encountered an individual on a bicycle, that took him towards the blue trailer, located behind 402 Gibbs." See, Cornwell depo., p. 12. Cornwell specifically recalled that the "CI said that when he got back into that area, he

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observed a black male coming out of the back door of the residence at 402 Gibbs. He said that individual came out of the house and onto the back porch." See, *Id.*

2. The individual dealing drugs from the back porch of Plaintiff's residence was described as an African-American male subject and identified as "Peanut."

Again, Johnson provided the following sworn testimony at his deposition:

Q. After that, did you and the other deputy and this CI, did you all drive by the residence where he said he purchased?

A. We did.

Q. He specifically pointed out the location where he said he purchased the drugs.

A. That's correct.

Q. Did he identify or give you a name of who he purchased the drugs from?

A. He did.

Q. Who did he say?

A. He said he purchased them from a black male named "Peanut."

See, Pl.'s Exh. 10, p. 23.

3. The actual name of "Peanut" is Gregory Samuels. Samuels is Plaintiff Reginald Blanding's blood nephew. (Samuels is the son of Reginald's sister). Thus, he is the nephew of Plaintiffs Reginald and Wanda Blanding Samuels and, by extension, a first cousin of Plaintiff Brittani.

In Reginald Blanding's deposition, he testified thusly:

Q: Can you identify who that individual is in exhibit number 3?

A: That's Gregory Samuels.

Q. And is that "Peanut?"

A. That's his nickname.

Q. Well, do you know Gregory Samuels?

A. Of course. That's my sister's child.

Q. That's your blood nephew, correct?

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A. That's correct.

Q. All right. And he goes by "Peanut," doesn't he?

A. That's what -- that's what we call him.

Q. That's what you call him?

A. That's what everybody call him.

See, Pl.'s Exh. 2, p. 43.

Taking the facts in a light most favorable to Plaintiff, there is simply no evidence of falsity. Quite the contrary and in light of the findings of fact previously determined in Judge Childs' Order as well as the above unrefuted deposition testimony, the Defendant investigators had adequate and sufficient probable cause to believe that Gregory Samuels (a/k/a "Peanut"), who was Reginald Blanding's blood nephew, had walked out the rear of the house and sold crack cocaine to the informant. **Therefore, there was a good faith basis for the Defendants' belief that a family member of Plaintiffs was selling drugs out of the residence.** Additionally, at no time had these Defendants represented to a third party that either an adult or child Plaintiff were personally involved with drugs. Nor had these Defendants disseminated Plaintiffs' names or personal or sensitive information to a third party. Therefore, these Defendants submit that this would have a preclusive effect as to Plaintiffs presenting evidence of falsity.

In the interest of completeness and in anticipation of Plaintiff's counterargument, Plaintiff has addressed a separate alleged comment on behalf of Cowan and specifically included same in his proposed order. Accordingly, Plaintiff contends that: "*Cowan also told the media that, 'a drug dog went in and could tell that drugs were once in there.'*" Lastly, Cowan told the media that "*...agents only searched the master bedroom,*" which is a complete falsehood." See, Pl.'s Exh. 7, p. 2.

As the Court will note from Plaintiffs' Exhibit 7, the above contention is a mischaracterization of the record. To be clear, Plaintiffs' counsel has erroneously incorporated quotation marks with respect to an alleged paraphrased comment attributed to Cowan. Notwithstanding the truth or falsity of such a statement, the record is completely devoid of any evidence or testimony that Cowan made any such a statement.¹

In *Moody v. McLellan*, 295 S.C. 157, 163 (1998), the Court of Appeals considered the merits of a defamation claim with respect to an employer/employee relationship. As part of its analysis, the Court recognized the following:

Moody contends McLellan made four defamatory remarks about him while he worked for Geer. He concedes he did not personally hear McLellan make the statements, but he testified in his deposition that others told him what McLellan said. The circuit judge ruled that Moody's testimony about what McLellan said was not made upon personal knowledge and refused to consider it in deciding the motion for summary judgment. Moody presented no other evidence that McLellan had made the alleged statements. McLellan, on the other hand, introduced his own affidavit denying, of his own personal knowledge, that he had made any of the alleged statements ... Before us, Moody's claim for defamation rests on this single statement ... In this case, Moody failed to come forward with competent evidence that McLellan actually made the alleged statements. Thus, there was no issue of fact to be resolved.

In the present matter, there is no evidence in any form that Cowan made such remarks, which is solely contained in the body in the online news item. As in *Moody*, there is no direct evidence of the existence or content of any alleged slanderous statement. Moreover and most critically, Cowan's purported commentary is fraught with hearsay. Indeed, the only evidence Plaintiffs point to is a written news story attributing a statement to Cowan [initial hearsay] in which Cowan in turn supposedly told the reporter [subsequent hearsay]. This is clearly not competent evidence sufficient to withstand summary judgment.

¹ In fact, Cowan testified at his deposition stating that much of the reporter's descriptions of the event and characterizations of his comments were inaccurate. See, e.g., Pl.'s Exh. 8.

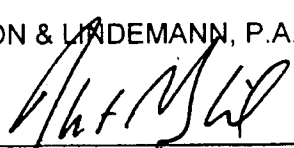
As a consequence, these Defendants assert that the cause of action for defamation should be dismissed with prejudice.

These Defendants' motion is based upon the pleadings filed in this case; the unappealed Amended Order and Opinion of the Honorable J. Michelle Childs dated August 17, 2015, the aforementioned deposition excerpts and exhibits referenced herein, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

Respectfully submitted,

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*Counsel for Defendants RCSD, Lott,
Cowan, Johnson, Wyatt, Thompson,
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Columbia, South Carolina

March 18, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding,
and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding
and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, Lieutenant Cowan, Rickey E. Johnson, Jr.,
Frida W. Wyatt, Adrian P. Thompson, Adam C.
Cornwell, Sara N. Giron, George C. Becker,
Micheal C. Nawrockyj, and Unknown
Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2012-CP-40-02456

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION FOR RECONSIDERATION
ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT,
THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ AND
INCORPORATED MEMORANDUM
OF LAW**

Plaintiffs file this response in opposition to Defendants' motion for reconsideration on behalf of Defendants RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj and asserts the following:

I. Defendants continue to rely on inadmissible hearsay in an attempt to prove that someone was dealing drugs from Plaintiff's home

None of the hearsay deposition testimony evidence cited by Defendants in parts 1 and 2 of the motion is admissible pursuant to Rule 802, SCRE. There has been no admissible evidence that a black male sold drugs from Plaintiffs' home. Even if Defendants presented admissible evidence that a black male sold drugs from Plaintiffs' home, Defendants would still not win summary judgment because Plaintiffs have presented evidence of defamation.

Plaintiffs object to this testimony and all assertions that a drug transaction occurred on Plaintiffs' property should be disregarded by the Court in considering this motion, especially when the Court reviews the defamation claims.

II. Conclusion.

Plaintiffs ask the Court to deny Defendants' motion to reconsider.

Respectfully Submitted,

THE CAMDEN LAW FIRM, PA



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Manning, South Carolina
April 4, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding,
Wanda Blanding, and
Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Leon Lott, in his official capacity,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

NOTICE OF MOTION AND
MOTION IN LIMINE ON BEHALF
OF DEFENDANT SHERIFF

2016 NOV 28 AM 9:10
C.C.P. & C.S.
COURT CLERK

TO: ROBERT J. BUTCHER, ESQ. AND DEBORAH J. BUTCHER, COUNSEL FOR PLAINTIFFS

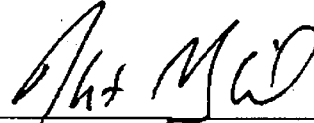
YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Leon Lott, in his official capacity as Sheriff of Richland County, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at the call of the case or at such time and place as may be set by the Court, for an order *in limine* based on the grounds set forth in the supporting memorandum filed herewith.

The Defendant's motion is based upon the pleadings filed in this case; the supporting memorandum and exhibit filed herewith; the rules of court; and any other matters as may be required by the Court.

[Signature block on following page]

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Columbia, South Carolina

November 28, 2016

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding,
and Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding
and Wanda Blanding,

Plaintiffs,

v.

Leon Lott, in his official capacity,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

**MEMORANDUM IN SUPPORT
OF MOTION IN LIMINE ON BEHALF
OF DEFENDANT SHERIFF**

FACTUAL BACKGROUND

Plaintiffs' claims all arise from an incident on October 20, 2011, when Richland County Sheriff's Department ("RCSD") investigators, who at all relevant times were employees with the Defendant, searched Plaintiffs' residence pursuant to a search warrant. The facts as viewed in the light most favorable to Plaintiffs¹ are as follows:

Complaint as to Drug Activity

On Friday, October 14, 2011, the RCSD Drug Suppression Team ("DST") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into Hutchinson's complaint.

¹ The ensuing recitation of facts are primarily derived from the "Relevant Factual and Procedural Background" as outlined in the District Court Amended Order and Opinion, See, Exh. A [*Blanding v. RCSD, et al.*, 2015 WL 4929251 (D.S.C.)(unpublished)].

DST Narcotics Investigation / "Knock and Talk"

Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. This process involved uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes.

DST Narcotics Investigation / Controlled Purchase

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. Johnson employed his confidential informant ("informant") in this investigation. At that point, the informant had been involved in approximately thirty (30) narcotics investigations and was considered to be extremely trustworthy given his past results.

The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later.

The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut."

The informant then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base.

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Search Warrant Preparation and Issuance

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Caroline W. Streater who issued the search warrant at about 12:20 p.m. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants.

Search Warrant Execution

Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron.

Once the investigators discovered the home was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. Wyatt conducted a frisk search of the females with negative results. The search of the premises also yielded negative results.

Within an hour after Plaintiff Wanda Blanding returned home following the execution of the search warrant, she contacted two local television news stations. Ms. Blanding coordinated and invited the television news media into her house and permitted them to publicize personal information on television, including hers and her husband's names, their

places of employment, and information related to her minor children. Ms. Blanding allowed an investigative journalist with a news camera to enter her house and film the interior. WIS-TV produced and aired the news segment depicting the condition of each room following the execution of the search warrant.

As part of this news segment, Major Chris Cowan, the Public Information Officer for the Sheriff was questioned by a local television reporter as to the relevant events. Cowan's knowledge of the investigation stemmed solely from representations from Defendant investigators. Specifically, Cowan indicated that, "The drugs that we purchased out of that home -- we purchased from a family member of that home -- we purchased the drugs out of the home."

PROCEDURAL HISTORY

On April 2, 2012, this action was originally brought in this Court by Plaintiffs against the Defendants RCSD, Sheriff Lott, and Lt. Chris Cowan for causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation.²

On December 23, 2013 and with leave of this Court, Plaintiffs filed an Amended Complaint against Defendants RCSD, Leon Lott, Lieutenant Cowan, Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Micheal C. Nawrockyj, and the Unknown Confidential Informant, for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983 as well as the

² During the course of discovery, Plaintiffs moved to compel Defendants to furnish information relating to the identity of the confidential informant, other cases in which the informant contributed information, other arrests resulting from information from the informant, and convictions which resulted from this information. Defendants objected on the grounds that disclosing this information would constitute a security concern for the CI and was violative of the privacy rights of the informant. In an Order issued on October 1, 2013, the Honorable Alison R. Lee denied Plaintiffs' request and, consequently, the identity of the informant and related information has been protected throughout this litigation.

aforementioned state court causes of action. On February 4, 2014, Defendants removed the matter to U.S. District Court.

On September 22, 2014, Defendants filed their motion for summary judgment in District Court. On August 17, 2015, and following litigation in federal court for eighteen months, District Court Judge J. Michelle Childs issued an Amended Order and Opinion ("District Court Order") with respect to the present facts.³ See, Exh. A. In the District Court Order, Judge Childs granted Defendants' Motion for Summary Judgment in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The District Court declined to exercise supplemental jurisdiction over the remaining state law claims. The Court also remanded this case to the Richland County Court of Common Pleas for further proceedings.

Following the remand of Plaintiffs' claims of gross negligence and defamation, the then-named Defendants moved for summary judgment pursuant to Rule 56, SCRCP. On March 4, 2016, the Honorable G. Thomas Cooper issued an order granting in part and denying in part Defendants' motion for summary judgment. The Court dismissed Plaintiffs' Gross Negligence claim with prejudice while denying the motion as to the defamation cause of action. Finally, Defendants Cowan, Johnson, Jr., Wyatt, Thompson, Cornwell, Giron, Becker, Nawrockyj were dismissed with prejudice and the Richland County Sheriff in his official capacity, was substituted in their stead. See, Exh. B.

On March 18, 2016, the Defendant filed a motion for reconsideration pursuant to Rule 59(e), SCRCP, respectfully addressing several items in which Judge Cooper

³ Judge Childs filed her Opinion and Order on the Defendants' Motion for Summary Judgment on July 6, 2015. Defendants subsequently filed a Motion to Alter or Amend Judgment on July 13, 2015 requesting the District Court to make partial modifications or clarifications within its ruling as to the undisputed factual background.

overlooked when denying summary judgment as to the defamation claim. See, Exh. C. On April 22, 2016, the Court issued an Order denying this motion.

GROUND FOR MOTION AND DISCUSSION

The Defendant's bases for the instant motion are as follows:

1. Precluding Plaintiffs from challenging, contesting, or disputing in any manner whatsoever the following fourteen (14) issues of fact, with subparts:

- (a) Whether the information provided to investigators regarding drug activity in Plaintiffs' neighborhood was credible and reliable;
- (b) Whether investigators were sufficiently qualified, trained, and experienced for spearheading and/or conducting a narcotics investigation;
- (c) Whether the narcotics investigation conducted in Plaintiffs' neighborhood was conducted appropriately, professionally, and in a fair and competent manner;
- (d) Whether the knock and talk investigation of October 17, 2011 was carried out properly and in accordance with law enforcement standards;
- (e) Whether there was a sufficient basis for initiating a controlled purchase investigation in Plaintiffs' neighborhood, including the manner in which the controlled purchase was planned and accomplished;
- (f) Whether the confidential informant ("informant") was credible and reliable based upon previous interactions with law enforcement, this would include but not necessarily limited to, the informant's background, criminal history, previous experience in the neighborhood, his level of credibility and reliability, and the manner in which he received compensation for assisting with the narcotics investigation;
- (g) Whether the informant's reporting to investigators at the time of his debriefing was truthful and accurate;
- (h) With respect to the informant, whether the following events transpired in this instance:
 - (i) that he had a conversation with a male on a bicycle concerning the purchase of narcotics;
 - (ii) that he then made a purchase on the back porch or deck of the residence at 402 Gibbs Road;
 - (iii) that he made a purchase from a black male named, "Peanut;"

- (iv) that he produced a white rock-like substance, confirming that he purchased from "Peanut;" and
- (v) that he specifically pointed out to Investigators Johnson and Cornwell location where purchase was made.
- (i) Whether the investigators properly ascertained and established that 402 Gibbs Road was the incident location;
- (j) Whether the information contained within the affidavit to the October 20, 2011 search warrant was truthful and correct, including but not limited to the affiant's attestations; the descriptions of premises and property to be searched; and the reason for the affiant's belief that the property sought would be on the subject premises;
- (k) Whether the October 20, 2011 search warrant was facially valid, issued pursuant to lawful authority, and contained adequate probable cause;
- (l) Whether the techniques or methods investigators utilized to execute the search warrant at Plaintiffs' residence, the search of occupants and the interior portions were appropriate and reasonable;
- (m) Whether the actions or inactions of investigators during the course of the search were reasonable and whether the search exceeded the scope of the search warrant; and
- (n) Whether the investigators conducted themselves professionally and competently during the course of the search in addition to their personal encounters with Plaintiffs.

Collateral Estoppel

The grounds for precluding this evidence centers on the existence of an earlier final judgment which was valid and decided on the merits.

South Carolina law provides that "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. South Carolina Department of Transportation*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). See also, *Shelton v. Oscar Meyer Foods Corp.*, 325 S.C. 248, 481 S.E.2d 706, 707 (1997); *Jinks v. Richland County*, 355 S.C. 341, 349, 585 S.E.2d 281, 285 (2003). "Under the doctrine of issue preclusion, if an issue of fact or law

was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim." *Laughton v. O'Braitis*, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004) (emphasis added). As characterized earlier by the South Carolina Supreme Court: "The primary purposes of the doctrine, commonly known today as claim preclusion, are to bring an end to litigation and prevent a defendant from being forced to defend the same action repeatedly." See, *Garris v. Governing Board of South Carolina Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48 (1999).

Collateral Estoppel requires a showing "that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Carolina Renewal, Inc.* 385 S.C. 550 at 554, 684 S.E.2d at 782. Each of those elements has been demonstrated in the case at bar.

In Her Honor's Order, Judge Childs made specific findings of fact that as to the: (1) narcotics investigation; (2) the credibility and reliability of the confidential informant; (3) the controlled purchase transaction at Plaintiffs' residence; (4) the establishment of the purchase location on Plaintiffs' property, and (5) the familial connections and physical proximity of the suspect distributing the crack cocaine. See, Exh. A, pp. 2-4.

The factual issues relevant to allegations contained in the Plaintiff's Complaint were actually litigated and determined by Judge Childs. Moreover, the facts as determined by Judge Childs were necessary, essential even, to support the granting of summary judgment in favor of the then Defendants. Defendant asserts that the fact that those factual issues were necessarily determined by the district court judge in this *same action* is even more

warranting of this court's application of collateral estoppel in the trial of this case. This Order was not appealed by Plaintiffs and thus constituted a final judgment.⁴

The District Court's findings are entitled to preclusive effect based upon the doctrine of collateral estoppel. As the South Carolina Supreme Court has explained, "[p]rinciples of finality, certainty, and the proper administration of justice suggest that a decision once rendered should stand unless some compelling countervailing consideration necessitates relitigation." See, *Shelton, Supra*, 481 S.E.2d at 708.

In sum, Plaintiffs are not entitled by either the law of the case, or collateral estoppel, or both from relitigating these issues.

Judicial Estoppel

The doctrine of judicial estoppel prohibits the Blandings from asserting any different position in the present litigation. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Wright v. Craft*, 372 S.C. 1, 37, 640 S.E.2d 486, 506 (Ct. App. 2006). The Supreme Court has expressly adopted the doctrine of judicial estoppel, as it relates to *matters of fact*. See, *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). "Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain

⁴ In Judge Cooper's March 4, 2016 Order and Judgment, he fully adopted the District Court's findings of fact in ruling upon summary judgment. In his Order, the Court granted Defendants' motion for summary judgment with respect to S.C. Code Ann. § 15-78-60(3) and gross negligence. ***That as to the search warrant, Judge Cooper ruled: "It is uncontroverted in this matter that the search was effectuated pursuant to a facially valid search warrant. Therefore, under the South Carolina Tort Claims Act, [the Sheriff and investigators] are entitled to absolute sovereign immunity in its execution of the facially valid search warrant." See, Exh. B., p. 6. That as to the narcotics investigation followed by obtaining and executing a search warrant at Plaintiffs' residence, the Court ordered, "that the entire investigatory process as well as the obtaining and execution of the search warrant ... are irrelevant in a negligence action, these [the Sheriff and investigators] are not liable for their intentional acts at the relevant times and there is no claim for negligence stemming from the acts." See, Exh. B., p. 7.***

advantage in the process. *Id.* at 251-52, 489 S.E.2d at 477. "[T]he truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case . . ." *Id.*

In Plaintiffs' Amended Complaint, they challenged the constitutionality of investigators pursuing and executing a search warrant at Plaintiffs' residence as well as their acts and omissions during their narcotics investigation and subsequently execution of the search warrant at Plaintiffs' residence. In the federal phase, Plaintiffs conceded that ***all Defendants*** -- consisting of Sheriff Lott and all investigators who participated in the relevant events -- were "entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983," as well as conceding summary judgment as to negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. See, Exh. A, pp. 7-8.

Therefore, the Defendant submits that, in conceding summary judgment -- thereby conceding the dispositive grounds which provided the bases for summary judgment -- Plaintiffs relinquished or abandoned any and all claims as it may have pertained to: (a) the events of October 20, 2011 involving investigators pursuing and obtaining search warrant from the magistrate, including but not limited to the sufficiency and/or legality of the search warrant, the accuracy and validity of information contained within the search warrant affidavit, in addition to any allegations that Plaintiffs' property was not the location in which drugs were sold; (b) attacking the background, credibility, reliability, and participation of the informant; and (c) events of October 20, 2011 pursuant to the execution of the search warrant at Plaintiffs' residence, including but not limited to the number and description of investigators; decision to execute at residence; the manner of execution; the decision to search certain persons, or forego searching persons; the decision to search certain rooms and areas within the interior or forego searching any such rooms and areas; the results of any such

searches; the condition of the interior after the search was conducted, including alleged damages; the emotional impact as result of the search and seizure; the Sheriff's response, as well as gestures showing contrition and/or an offer for reimbursement as to damages, or the lack thereof.

Plaintiffs, therefore, should be precluded by the doctrine of judicial estoppel from arguing that the narcotics investigation, the search warrant process, and the execution of the warrant at Plaintiffs' residence were substandard, unlawful, or both. Any attempt to raise such matters in these state court proceedings would assert an inconsistent position as they previously raised in federal court. They are, therefore, precluded from now taking a different position in the trial of this case.

2. Precluding Plaintiffs from introducing into evidence, commenting on, or raising in any manner whatsoever, the method of conducting the narcotics investigation, including whether it was deemed proper, appropriate, competent, or thorough.

Foremost, any testimony in this respect is irrelevant as to the present defamation claim. Assuming *arguendo* that it is relevant, such testimony requires special knowledge, skill, experience or training and would only be appropriate by way of expert witness testimony. No expert witness has been identified by Plaintiffs to opine in this regard. Given that the only matter before this jury is one of slander, the probative value of testimony concerning the quality of the underlying criminal investigation is substantially outweighed by the danger of unfair prejudice to Defendants and would constitute a confusion of the issues and misleading the jury.

Therefore, it should be excluded pursuant to Rules 401, 402, 403, 701, 702, 703, SCRE, as well as principles of collateral estoppel, issue preclusion, and/or judicial estoppel.

3. Precluding Plaintiffs from introducing into evidence, commenting on, or raising in any manner whatsoever, any aspect of the execution of the search warrant at their

residence on October 21, 2016, including any actions or inactions of Defendant employees and alleged damages incurred by Plaintiffs as a result.

These events are clearly not material and not relevant as to the triable issue of slander/defamation. Moreover, the introduction of any such evidence or testimony would be unduly prejudicial, only serve to arouse the passions and prejudices of the jury, profoundly confuse the issues, and mislead the jury.

As a result, it should be excluded pursuant to Rules 401, 402, 403, SCRE, as well as principles of collateral estoppel, issue preclusion, and/or judicial estoppel.

4. Precluding Plaintiffs from introducing into evidence, commenting on, or raising in any manner whatsoever the WIS-TV news reports and raw footage videos depicting the events immediately following the execution of the search warrant on multiple grounds. By way of explanation, these videos undoubtedly present a narrative solely from Plaintiffs' viewpoint and that which comprises potentially unfounded allegations by Plaintiffs Reginald and Wanda Blanding as well as editorial commentary by Plaintiffs and Jody Barr, the investigative reporter. The video questions: the propriety and legality of the search warrant is questioned and criticized; whether the Plaintiffs' property was the location in which drugs were sold; and whether the mode and manner of search warrant execution was unlawful, unfair, and excessive, resulting in physical damage in the aftermath. Further, it includes a room-by-room tour of Plaintiffs' residence with "voice over" editorials; opinions as to the Defendant investigators' alleged hostile interactions with Plaintiffs; the Sheriff's position in defense of his investigators and purported dismissive attitude toward Plaintiffs; and the alleged emotional distress resulting therefrom.

Based on the foregoing, the news videos contain information not material and not relevant. Such videos would be extremely inflammatory; would only serve to arouse the

passions and prejudices of the jury; and would profoundly confuse the issues and be misleading to the jury.

5. Precluding Plaintiffs from introducing into evidence, commenting on, or raising in any manner whatsoever the WIS-TV news reports and raw footage videos depicting the events immediately following the execution of the search warrant on the grounds that these news videos contain inadmissible hearsay and/or hearsay within hearsay, to wit:

- (a) Commentary by a local attorney opining as to the appropriateness of procuring the search warrant and the manner in which the warrant was executed. This attorney has neither been identified nor qualified as an expert witness in this manner; and
- (b) Mr. Barr apprising the viewer of unsupported and paraphrased comments attributable to Cowan: *"Sheriff's Captain Chris Cowan defended the search. Cowan says a drug dog went into the house and could tell that drugs were once in there -- but never found **anything**. Cowan also says (that) agents searched only one room in the house -- the master bedroom,"* and
- (c) That it is violative of evidentiary rules regarding foundation as the news video features a cell phone video depicting one of the investigators addressing the issue of the warrant's execution. This was ostensibly taken by one of Plaintiffs' family members in a clandestine manner and has not been properly authenticated.
- (d) Contained within these news stories are Plaintiffs having orally repeated or paraphrased what the investigators allegedly stated to them at the time of the execution.

Consequently, these news/editorial videos should clearly be excluded pursuant to Rules 401, 402, 403, and 801 SCRE, the inflammatory nature of such evidence, as well as principles of collateral estoppel, issue preclusion, and/or judicial estoppel.

Notably, the Defendant stipulates that the only portion of these news videos that is relevant in the trial of this case is the limited news clip depicting Cowan's spoken words on camera: ***"The drugs that we purchased out of that home -- we purchased from a family member of that home -- we purchased the drugs out of the home."***

6. Precluding Plaintiffs from introducing into evidence, commenting on, or raising in any manner whatsoever drug test results conducted in this matter.

Upon information and belief, Plaintiffs seek to introduce evidence regarding hair sample drug test results of Plaintiff Reginald Blanding (via Nov. 7, 2011 collection) and Plaintiff Wanda Blanding (via Nov. 9, 2011 collection). That Plaintiffs ever used or ingested cocaine or another drug is not relevant to the issues in this trial. The sole issues in the trial is whether drugs were sold on Plaintiffs' residential property on October 18, 2011 and whether Cowan's commentary that drugs were sold by a family member out of the home constituted defamation. For purposes of argument and assuming Plaintiffs tested positive, it would have no bearing or impact as whether drugs were ever sold on a particular day and Defendants would be properly precluded from raising this matter. Conversely, the fact that the parent Plaintiffs (but not the then-minor Plaintiff or others accessible to the residence) had been free of drug use during a specific interim is immaterial and not relevant.

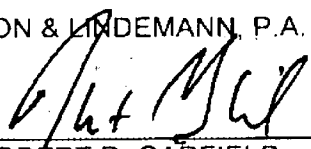
In sum, the introduction of any such evidence or testimony would not be relevant, be unduly prejudicial, confuse the issues, and mislead the jury. Thus, it should be excluded pursuant to Rules 401, 402, 403, SCRE, as well as principles of collateral estoppel, issue preclusion, and/or judicial estoppel.

7. Precluding Plaintiffs and their counsel from commenting on, or raising in any manner whatsoever the presupposition or premise that Plaintiffs would be treated differently if they lived in a different neighborhood, or alternatively, residents in a different socio-economic neighborhood would have had more favorable treatment by law enforcement.

Foremost, any such commentary along these lines is, at a minimum, baseless, speculative, and completely irrelevant in this defamation claim. Further, arguments of this sort would be unduly prejudicial and would only serve to arouse the passions and prejudices of the jury.

Respectfully submitted,

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November 28, 2016

ADL
#15

Memorandum in Support of Motion
in Limine on Behalf of Defendant

EXHIBIT A

*Reginald Blanding, Wanda Blanding, and Brittani Blanding, by
and through her Guardian ad Litem, Reginald Blanding
and Wanda Blanding v. Richland County Sheriff, Leon Lott*

Civil Action No.: 12-CP-40-2456

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

Reginald Andre Blanding; Wanda
Blanding; Brittani Blanding, *by and through*
her Guardian ad Litem Reginald Andre
Blanding and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department;
Leon Lott; Rickey E. Johnson, Jr.; Frida
W. Wyatt; Adrian P. Thompson; Adam C.
Cornwell; Sara N. Giron; George C. Becker;
Unknown Confidential Informant;
Lieutenant Cowan; Micheal C. Nawrockyj,

Defendants.

Civil Action No. 3:14-cv-00299-JMC

AMENDED ORDER AND OPINION

Plaintiffs Reginald Andre Blanding, Wanda Blanding, and Brittani Blanding (collectively "Plaintiffs") filed the underlying action alleging a violation of their constitutional rights under 42 U.S.C. § 1983 by Defendants George C. Becker, Adam C. Cornwell, Lieutenant Cowan, Sara N. Giron, Rickey E. Johnson, Jr., Leon Lott, Micheal Nawrockyj, Richland County Sheriff's Department, Adrian P. Thompson, and Frida W. Wyatt (collectively "Defendants"). (ECF No. 1-1.) Plaintiffs also allege state law tort claims against Defendants. This matter is before the court pursuant to Defendants' Motion for Summary Judgment (ECF No. 19).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2)(g) (D.S.C.), the matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On July 15, 2015, the Magistrate Judge issued a Report and Recommendation in which she recommended that the court (1) grant Defendants' Motion for Summary Judgment, in part, as to

all of the federal claims, and as to the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment; (2) decline to exercise supplemental jurisdiction over the remaining state law claims; and (3) remand the remaining state law claims of gross negligence and defamation to the Richland County Court of Common Pleas. (ECF No. 29.) Plaintiff did not file objections to the Magistrate Judge's recommendation. For the reasons set forth herein, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings.

I. JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's Amended Complaint asserts claims under 42 U.S.C. § 1983.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The following relevant facts are viewed in a light most favorable to Plaintiffs.

Plaintiffs' claims all arise from an incident on October 20, 2011, when Defendants, who are alleged to be employees or agents of the Richland County Sheriff's Department, searched Plaintiffs' residence pursuant to a search warrant. On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. (ECF No. 19-1 at 1.) Senior Deputy Ricky Johnson was assigned and

spearheaded the investigation into Hutchinson's complaint. (*Id.* at 2.) Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (*Id.* at 3.) This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes. (*Id.*)

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. (*Id.*) Johnson employed his confidential informant ("CI") in this investigation. At this point, the CI had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. (*Id.*) The CI was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. (*Id.*) The CI returned twenty to thirty minutes later. (*Id.*) The CI's debriefing yielded the following: The CI had a conversation with a male on a bicycle concerning the purchase of narcotics. The CI then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." (*Id.* at 4; *see also* ECF No. 19-14 at 11-12; ECF No. 19-16 at 3.) The CI also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." (*Id.*) The CI then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base. (*Id.*)

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. (*Id.* at 5.) Johnson additionally ascertained that Blanding was the last name of the owner

of the house. (*Id.*) Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house. (*Id.*)

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Carolina W. Streater who issued the search warrant at about 12:20 p.m. (*Id.*) The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. (*Id.*) Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. (*Id.* at 6.) Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. (*Id.*) Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. (*Id.*)

Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. (*Id.*) Officers approached Brittani and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. (*Id.*) Wyatt conducted a frisk search of the females with negative results. (*Id.*)

This action was originally brought in the Richland County Court of Common Pleas by Plaintiffs against the named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1-1 at 16 ¶ 85-17 ¶ 93.) Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. (*Id.* at 8 ¶ 30-15 ¶ 80.) Defendants assert they were acting within the course and scope of their official duties, and as a result, all named RCSD Defendants are entitled to employee immunity under S.C. Code Ann. § 15-78-70(a) and (b) (1976) and Plaintiffs' claims must be dismissed as a matter of law. (ECF No. 19-1 at 7 n.2.) Defendants assert that Plaintiffs' Amended Complaint challenges the

adequacy of the information relied upon by the DST, the sufficiency of the search warrant, and the nature and scope of the frisk search with respect to Brittani, as well as alleged statements made by Defendant Cowan directly or on behalf of the Defendant Sheriff concerning this residence being involved with drug transactions. (ECF No. 19-1 at 7.) Defendants further assert that they acted appropriately and reasonably at all relevant times and categorically deny that they violated Plaintiffs' constitutional rights. Consequently, Defendants' RCSD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Fed. R. Civ. P. 56 on the following grounds: (1) Plaintiffs Reginald and Wanda Blanding have failed to state causes of action against Defendants for illegal seizure and false imprisonment under 42 U.S.C. § 1983, (2) Defendant investigators were justified in detaining and searching Brittani, (3) pursuant to *Harlow v. Fitzgerald*, Defendant investigators are entitled to qualified immunity from all liability, (4) Defendants RCSD and Sheriff Lott are not amenable to suit, (5) Plaintiffs have not stated a negligence claim and these causes of action should be dismissed, (6) Brittani failed to state a claim against Defendants for battery, and (7) Plaintiffs have failed to state a claim for defamation against Defendants. (ECF No. 19-1 at 7-8.) Plaintiffs filed a Response in Opposition to Defendants' Motion for Summary Judgment (ECF Nos. 24, 25) and Defendants filed a Reply (ECF No. 27).

III. LEGAL STANDARDS AND ANALYSIS

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See *Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo*

determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636 (b)(1).

Objections to the Report and Recommendation must specifically identify portions of the Report and Recommendation and the basis for those objections. Fed. R. Civ. P. 72(b). “[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Failure to timely file specific written objections to a report and recommendation will result in a waiver of the right to appeal from an order from the court based upon the report and recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). If the plaintiff fails to properly object because the objections lack the requisite specificity, then *de novo* review by the court is not required.

Fed. R. Civ. P. 56(a) mandates the entry of summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts

that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” (*Id.* at 248.) The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. (*Id.* at 324.) Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. (*Id.*) Under this standard, the existence of a mere scintilla of evidence in support of the non-movant’s position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 251. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc’ns Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989).

Summary judgment is particularly appropriate in cases involving the qualified immunity defense because qualified immunity exists to protect government officials not only from liability, but also from trial. *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The Fourth Circuit has also strongly announced a preference to resolve civil rights cases involving qualified immunity through dismissal short of trial. *Pittman v. Nelms*, 87 F.3d 116 (4th Cir. 1996). The court will thoroughly address each of Plaintiff’s objections in turn.

In Plaintiffs’ Response in Opposition to Defendants’ Motion for Summary Judgment (ECF No. 24, 25), Plaintiffs concede that Defendants are entitled to summary judgment as to all federal claims brought pursuant to 42 U.S.C. § 1983. (ECF No. 24-1 at 1-2, 19.) Plaintiffs further concede that all Defendants are entitled to summary judgment as to the following state

law claims: negligent supervision (Count Two); negligent training (Count Three); trespassing (Count Four); assault (Count Five); battery (Count Six); and false imprisonment (Count Seven). Thus, the only claims remaining to be adjudicated in this action are Plaintiffs' claims of gross negligence (Count One) and defamation (Count Eight). Plaintiffs ask the court to remand this case to state court for further proceedings. (*Id.* at 19.)

In Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (ECF No. 24), Brittani confirms that Plaintiffs' neighborhood "was known as a high-drug area." (ECF No. 24-2 at 111:15-18.) Brittani further confirms that "Richland County Sheriff's Department maintained a visible police presence in [Plaintiffs'] neighborhood and would park marked patrol cars across the road and to the right of [Plaintiffs'] home." (*Id.* at 109:2-18; 111:1-18; 112:4-10; 112:24-113:16.) Additionally, "Once the police officers learned from Aunt May (Reginald Blanding's sister) that they had the wrong house, they began wrapping up the search." (*Id.* at 93:17-94:12.) As Defendants were finishing the search, Reginald Blanding arrived home. (*Id.* at 91:8-10, 21-92:2.) According to Brittani, Defendants were rude and unapologetic, and it took about a week before the house was cleaned up. (*Id.*)

Brittani confirmed that Gregory Samuels is also known as "Peanut." (*Id.* at 35:3-9.) Gregory Samuels is a first cousin of Brittani and the nephew of Reginald and Wanda Blanding. (*Id.* at 10-16.) Gregory Samuels was not in jail at the time of the raid on the home. (*Id.* at 38:2-9.) Plaintiffs believed that [Gregory Samuels] had been in and out of jail and that he was involved with drugs. (*Id.* at 84:3-18.) Gregory Samuels sometimes lives in a trailer behind Plaintiffs' property, about 80 to 100 yards from Plaintiffs' home. (*Id.* at 98:10-100:6; 103:9-12; ECF No. 24-3 at 86:12-16.)

In the Report and Recommendation, the Magistrate Judge observed that in light of

Plaintiffs' concession to Defendants' Motion for Summary Judgment as to all federal claims and the state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment, the court should exercise discretion and remand the remaining state law claims of gross negligence and defamation for further proceedings. (ECF No. 29 at 3 (citing 28 U.S.C. § 1367(c) (authorizing a district court to decline to exercise jurisdiction over a supplemental claim if the court has dismissed all claims over which it had original jurisdiction); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349-50 (1988) (discussing the factors in deciding whether to exercise supplemental jurisdiction after removal)).) Plaintiffs did not file objections to the Magistrate Judge's recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). After carefully reviewing the record and the applicable law, the court agrees with the Magistrate Judge's findings. Accordingly, Defendants' Motion for Summary Judgment should be granted as outlined by the Magistrate Judge.

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 19), in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. The court **REMANDS** Plaintiffs' claims of gross negligence and defamation to the Richland County Court of Common Pleas for further proceedings. The court adopts the Magistrate Judge's Report and Recommendation (ECF No. 29) and incorporates it herein by reference.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

August 17, 2015
Columbia, South Carolina

Memorandum in Support of Motion
in Limine on Behalf of Defendant

EXHIBIT B

*Reginald Blanding, Wanda Blanding, and Brittani Blanding, by
and through her Guardian ad Litem, Reginald Blanding
and Wanda Blanding v. Richland County Sheriff, Leon Lott*

Civil Action No.: 12-CP-40-2456

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4002456

Reginald Andre Blanding

Richland County Sheriffs Department

Wanda Blanding

Leon Lott

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Circuit Court Judge _____

Judge Code 2126

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Deborah J Butcher
Ronald Wade Moak

Robert J. Butcher

Robert David Garfield

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2012-CP-40-02456

Reginald Andre Blanding, Wanda Blanding,
And Brittani Blanding, by and through her
Guardian ad Litem, Reginald Andre Blanding
and Wanda Blanding,

Plaintiffs,

v.

Richland County Sherriff's Department, Leon
Lott, Lieutenant Cowan, Rickey E. Johnson,
Jr., Frieda W. Wyatt, Adrian P. Thompson,
Adam C. Cornwell, Sara N. Giron, George C.
Becker, Michael C. Nawrockyj, and Unknown
Confidential Informant,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

RICHLAND COUNTY
FILED
2016 MAR -4 AM 11:00
JEANETTE W. HARRIS
C.C.P. & G.S.

This case came before the Court on January 13, 2016, on the Motion for Summary Judgment filed by Defendants. Counsel for both parties were present at the hearing. Plaintiff opposed the motion.

STANDARD

Summary judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of

GP

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evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial. *Garvin v. Bi-Lo, Inc.*, 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

PROCEDURAL HISTORY

On December 23, 2013, this action was originally brought in this Court by Plaintiffs against named Defendants for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiffs additionally alleged state court causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation. On February 4, 2014, Defendants removed the matter to U.S. District Court.

On September 22, 2014, Defendants filed its motion for summary judgment. On August 17, 2015, and following litigation in federal court for eighteen months, District Court Judge J. Michelle Childs issued an Amended Order and Opinion ("District Court Order") with respect to the present facts. In the District Court Order, Judge Childs granted Defendants' Motion for Summary Judgment in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The District Court declined to exercise supplemental jurisdiction over the remaining state law claims. The Court also remanded this case to the Richland County Court of Common Pleas for further proceedings.

Following remand of Plaintiffs' claims of gross negligence and defamation, Defendants RSCD, Lott, Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Nawrockyj moved for summary judgment pursuant to Rule 56, SCRCP.

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FINDINGS OF FACT

Plaintiffs' claims arise from an incident on October 20, 2011, when Defendants who at all relevant times were employees with Defendant Richland County Sheriff's Department ("RCSD"), searched Plaintiffs' residence pursuant to a search warrant.

On Friday, October 14, 2011, the RCSD Drug Suppression Team ("DST") received a written complaint from then-County Councilperson Val Hutchinson ("Hutchinson Complaint") about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into Hutchinson's complaint.

Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes.

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. Johnson employed his confidential informant ("informant") in this investigation. At this point, the informant had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results.

The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later. The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on

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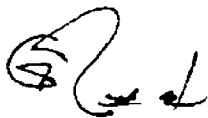
ROA 425

the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." The informant then specifically pointed out to Johnson and Cornwell the location where the purchase was made. The substance was field tested and returned positive results for cocaine base.

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Caroline W. Streater who issued the search warrant at about 12:20 p.m. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants.

Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. Participating in the execution were Defendants Johnson, Wyatt, Thompson, and Giron. Once Defendants discovered the trailer was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. Meanwhile, Plaintiff Brittani Blanding and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. Officers approached Brittani Blanding and questioned her, as well as told her to contact her parents to have them return home as soon as practicable. Wyatt conducted a frisk search of the females with negative results.



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Additionally, in the light most favorable to Plaintiffs, the Court recognizes the following background relating to Plaintiffs' defamation claim. Within an hour after Ms. Wanda Blanding returned home following the execution of the search warrant, she contacted two local television news stations. Ms. Blanding coordinated and invited the television news media into her house and permitted them to publicize personal information on television, including hers and her husband's names, their places of employment, and information related to her minor children. Ms. Blanding allowed an investigative journalist with a news camera to enter her house and film the interior. WIS-TV produced and aired the new segment depicting the condition of each room following the execution of the search warrant. As part of this segment, Major Chris Cowan, the Public Information Officer for the Sheriff was questioned by a local television reporter as to the relevant events. Cowan's knowledge of the investigation stemmed solely from representations from Defendant investigators. Specifically, Cowan indicated that, "the drugs were purchased from that home – we purchased from a family member out of the house."

ANALYSIS

I. Absolute Sovereign Immunity

The South Carolina Tort Claims Act provides that a governmental entity is not liable for a loss resulting from the "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." S.C. Code Ann. §15-78-60(3).

On October 20, 2011, Defendant Johnson appeared before the Richland County magistrate judge who issued the search warrant of Plaintiffs' residence. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants. Participating in the execution of the search warrant were Defendants Johnson, Wyatt, Thompson, and Giron.

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S.C. Code Ann. § 15-78-60(3) provides that a governmental entity cannot be held liable for the execution of a lawful search warrant, regardless of a loss allegedly resulting therefrom. It is uncontroverted in this matter that the search was effectuated pursuant to a facially valid search warrant. Therefore, under the South Carolina Tort Claims Act, Defendants are entitled to absolute sovereign immunity in its execution of the facially valid search warrant.

II. Gross Negligence Claim

It is further undisputed that at the relevant times, Defendant investigators conducted a narcotics investigation followed by obtaining and executing a search warrant at Plaintiffs' residence. Plaintiffs assert that Defendant investigators were grossly negligent in performing their investigation.

In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." *Id.* at 486, 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for negligent arrest or a negligent performance of a criminal investigation.

Moreover, it is well settled under South Carolina law that intentional torts "cannot be committed in a negligent manner." *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (2000). Likewise, in *Wannamaker v. Traywick*, 136 S.C. 21, 134 S.E. 234 (1926), the Supreme Court explained that the term "negligence" is "ordinarily used in common-law terminology to express the foundation for civil liberty for injury to person or property, when

such injury is not the result of premeditation and formed intention." *Id.* at 22, 134 S.E. at 135. Thus, intent and negligence are mutually exclusive, and there is no claim of negligence that flows from intentionally tortious conduct.

This Court finds that the entire investigatory process as well as the obtaining and execution of the search warrant are functions which, by their very nature, are conducted with premeditation and formed intention. Thus, these acts fall within one of the established tort classifications that includes intent to commit the act complained of as an element. As a consequence, intent to commit a wrongful act, such as intent to harm, is not a material element of ordinary actionable negligence.

Therefore, because allegations of intent to commit a wrongful act are irrelevant in a negligence action, these Defendants are not liable for their intentional acts at the relevant times and there is no claim for negligence stemming from the acts.

III. Employee Immunity Under The South Carolina Tort Claims Act

The South Carolina Tort Claims Act is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. S.C. Code Ann. §15-78-200. In interpreting this statute, the South Carolina Court of Appeals concluded that tort claims against a governmental employee must be brought against "the governmental entity rather than the individual governmental employee." *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413, 417 (Ct. App. 2004).

Plaintiffs have presented no evidence that these deputies or investigators were not acting within the scope of their official duties as law enforcement officers for the RCSD during the investigation, procuring, or execution of the search warrant. Moreover, Plaintiffs have not shown that any of the exceptions set forth in Section 15-78-70(c) are applicable. Consequently,

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Defendants Cowan, Johnson, Wyatt, Thompson, Cornwell, Giron, Becker, and Mawrockyj are entitled to absolute employee immunity under the South Carolina Tort Claims Act and Richland County Sherriff should be substituted in their stead.¹

IV. Defamation Claim

The cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.3d 497, 501 (1998). To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). However, under the law of defamation, certain communications give rise to qualified privileges, including the privilege to publish fair and substantially accurate reports of judicial and other governmental proceedings without incurring liability. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.3d 30 (1982).

Based on the arguments of counsel and the parties' pleadings, memoranda of law, and related documents, this Court determines there are disputed issues of fact regarding Plaintiff's defamation claims. Consequently, summary judgment is denied as to Plaintiffs' defamation claim.

¹ It is clear under the laws of the State of South Carolina, including the State Constitution, that the Richland County Sheriff is the proper legal entity subject and amenable to suit. *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992). In South Carolina, there is no legal entity known as the Richland County Sheriff's Department.

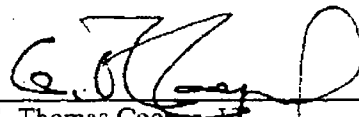
Therefore, it is Ordered that:

- A. Defendants' Motion for Summary Judgment as to Plaintiffs' Gross Negligence Claim is hereby GRANTED and the claim is dismissed with prejudice.
- B. Defendants' Motion for Summary Judgment as to Plaintiffs' Defamation Claim is hereby DENIED.
- C. Defendants Lieutenant Cowan, Rickey E. Johnson, Jr., Frieda W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N. Giron, George C. Becker, Michael C. Nawrockyj are dismissed with prejudice and the Richland County Sheriff is substituted in their stead.

IT IS SO ORDERED.

Cowan, R, South Carolina

March 3, 2016


G. Thomas Cooper, Jr.
Presiding Judge

Memorandum in Support of Motion
in Limine on Behalf of Defendant

EXHIBIT C

*Reginald Blanding, Wanda Blanding, and Brittani Blanding, by
and through her Guardian ad Litem, Reginald Blanding
and Wanda Blanding v. Richland County Sheriff, Leon Lott*

Civil Action No.: 12-CP-40-2456

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding,
Wanda Blanding, and
Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department,
Leon Lott,
Lieutenant Cowan,
Rickey E. Johnson, Jr.,
Frieda W. Wyatt,
Adrian P. Thompson,
Adam C. Cornwell,
Sara N. Giron,
George C. Becker,
Michael C. Nawrockyj, and
Unknown Confidential Informant,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

NOTICE OF MOTION AND MOTION TO
ALTER OR AMEND ORDER AND/OR
MOTION FOR RECONSIDERATION
ON BEHALF OF DEFENDANTS RCSD,
LOTT, COWAN, JOHNSON, WYATT,
THOMPSON, CORNWELL, GIRON,
BECKER, & NAWROCKYJ

TO: THE HONORABLE G. THOMAS COOPER, JR.

ROBERT J. BUTCHER, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants
Richland County Sheriff's Department (hereinafter, "RCSD"), Leon Lott, Lieutenant Cowan,
Rickey E. Johnson, Jr., Frida W. Wyatt, Adrian P. Thompson, Adam C. Cornwell, Sara N.
Giron, George C. Becker, and Michael C. Nawrockyj will move before the Honorable G.
Thomas Cooper, Jr. at such time and place as may be set by the Court, for an Order pursuant
to Rule 59(e), SCRCP, altering, amending, and/or reconsidering the Order filed March 4,

2016 Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment. Written notice of entry of such Order was received by the undersigned counsel on March 10, 2016.

These Defendants respectfully request the Court reconsider its ruling with respect to the defamation claim. The Court's findings of fact accurately reference Cowan's comment to the media that, "the drugs were purchased from that home -- we purchased from a family member out of the house." In light of Plaintiff's burden to prove falsity as well as the Defendants' position that this was not an untruthful statement, this Court's Order omits any reference to the background as well as any analysis of this issue.

The following factual background (and bolded herein) is not in dispute in the instant case:

1. **The confidential informant ("CI") plainly observed a black male exiting from the back door of the house located at 402 Gibbs Road. The CI and this black male had a conversation at which time the CI made a narcotics purchase from this individual. This interaction and drug transaction took place on the back porch of Plaintiffs' 402 Gibbs Road residence. The drugs tested positive for cocaine base.**

The following facts have not been contradicted in this matter:

In Johnson's deposition, he testified as follows: "The individual on the bicycle led him to 402 (Gibbs Road). He observed an individual come out the back door. The individual on the bicycle. The CI then walks to the back porch where he was then made conversation with an individual on the back porch." See, Pl.'s Exh. 10, p. 24. Johnson continued: "And he was served a white, rock-like substance, which (field) tested to be crack cocaine." See, *Id.* Similarly Cornwell testified in his deposition as follows: "The CI said that he traveled into the area that we directed him to. Believe he encountered an individual on a bicycle, that took him towards the blue trailer, located behind 402 Gibbs." See, Cornwell depo., p. 12. Cornwell specifically recalled that the "CI said that when he got back into that area, he

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observed a black male coming out of the back door of the residence at 402 Gibbs. He said that individual came out of the house and onto the back porch." See, *Id.*

2. The individual dealing drugs from the back porch of Plaintiff's residence was described as an African-American male subject and identified as "Peanut."

Again, Johnson provided the following sworn testimony at his deposition:

Q. After that, did you and the other deputy and this CI, did you all drive by the residence where he said he purchased?

A. We did.

Q. He specifically pointed out the location where he said he purchased the drugs.

A. That's correct.

Q. Did he identify or give you a name of who he purchased the drugs from?

A. He did.

Q. Who did he say?

A. He said he purchased them from a black male named "Peanut."

See, Pl.'s Exh. 10, p. 23.

3. The actual name of "Peanut" is Gregory Samuels. Samuels is Plaintiff Reginald Blanding's blood nephew. (Samuels is the son of Reginald's sister). Thus, he is the nephew of Plaintiffs Reginald and Wanda Blanding Samuels and, by extension, a first cousin of Plaintiff Brittani.

In Reginald Blanding's deposition, he testified thusly:

Q: Can you identify who that individual is in exhibit number 3?

A: That's Gregory Samuels.

Q. And is that "Peanut?"

A. That's his nickname.

Q. Well, do you know Gregory Samuels?

A. Of course. That's my sister's child.

Q. That's your blood nephew, correct?

A. That's correct.

Q. All right. And he goes by "Peanut," doesn't he?

A. That's what -- that's what we call him.

Q. That's what you call him?

A. That's what everybody call him.

See, Pl.'s Exh. 2, p. 43.

Taking the facts in a light most favorable to Plaintiff, there is simply no evidence of falsity. Quite the contrary and in light of the findings of fact previously determined in Judge Childs' Order as well as the above unrefuted deposition testimony, the Defendant investigators had adequate and sufficient probable cause to believe that Gregory Samuels (a/k/a "Peanut"), who was Reginald Blanding's blood nephew, had walked out the rear of the house and sold crack cocaine to the informant. Therefore, there was a good faith basis for the Defendants' belief that a family member of Plaintiffs was selling drugs out of the residence. Additionally, at no time had these Defendants represented to a third party that either an adult or child Plaintiff were personally involved with drugs. Nor had these Defendants disseminated Plaintiffs' names or personal or sensitive information to a third party. Therefore, these Defendants submit that this would have a preclusive effect as to Plaintiffs presenting evidence of falsity.

In the interest of completeness and in anticipation of Plaintiff's counterargument, Plaintiff has addressed a separate alleged comment on behalf of Cowan and specifically included same in his proposed order. Accordingly, Plaintiff contends that: *"Cowan also told the media that, 'a drug dog went in and could tell that drugs were once in there.' Lastly, Cowan told the media that '...agents only searched the master bedroom,' which is a complete falsehood."* See, Pl.'s Exh. 7, p. 2.

As the Court will note from Plaintiffs' Exhibit 7, the above contention is a mischaracterization of the record. To be clear, Plaintiffs' counsel has erroneously incorporated quotation marks with respect to an alleged paraphrased comment attributed to Cowan. Notwithstanding the truth or falsity of such a statement, the record is completely devoid of any evidence or testimony that Cowan made any such a statement.¹

In *Moody v. McLellan*, 295 S.C. 157, 163 (1998), the Court of Appeals considered the merits of a defamation claim with respect to an employer/employee relationship. As part of its analysis, the Court recognized the following:

Moody contends McLellan made four defamatory remarks about him while he worked for Geer. He concedes he did not personally hear McLellan make the statements, but he testified in his deposition that others told him what McLellan said. The circuit judge ruled that Moody's testimony about what McLellan said was not made upon personal knowledge and refused to consider it in deciding the motion for summary judgment. Moody presented no other evidence that McLellan had made the alleged statements. McLellan, on the other hand, introduced his own affidavit denying, of his own personal knowledge, that he had made any of the alleged statements ... Before us, Moody's claim for defamation rests on this single statement ... In this case, Moody failed to come forward with competent evidence that McLellan actually made the alleged statements. Thus, there was no issue of fact to be resolved.

In the present matter, there is no evidence in any form that Cowan made such remarks, which is solely contained in the body in the online news item. As in *Moody*, there is no direct evidence of the existence or content of any alleged slanderous statement. Moreover and most critically, Cowan's purported commentary is fraught with hearsay. Indeed, the only evidence Plaintiffs point to is a written news story attributing a statement to Cowan [initial hearsay] in which Cowan in turn supposedly told the reporter [subsequent hearsay]. This is clearly not competent evidence sufficient to withstand summary judgment.

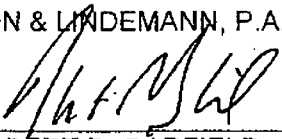
¹ In fact, Cowan testified at his deposition stating that much of the reporter's descriptions of the event and characterizations of his comments were inaccurate. See, e.g., Pl.'s Exh. 8.

As a consequence, these Defendants assert that the cause of action for defamation should be dismissed with prejudice.

These Defendants' motion is based upon the pleadings filed in this case; the unappealed Amended Order and Opinion of the Honorable J. Michelle Childs dated August 17, 2015, the aforementioned deposition excerpts and exhibits referenced herein, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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*Counsel for Defendants RCSD, Lott,
Cowan, Johnson, Wyatt, Thompson,
Cornwell, Giron, Becker, & Nawrockyj*

Columbia, South Carolina

March 18, 2016

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding, Wanda Blanding, and
Brittani Blanding, by and through her Guardian
ad Litem, Reginald Andre Blanding and Wanda
Blanding,

Plaintiffs,

v.

Richland County Sheriff's Department, Leon
Lott, and Lieutenant Cowan,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2012-CP-40-2456

**RESPONSE TO DEFENDANTS
MOTION IN LIMNE**

Plaintiffs respond to Defendant's Motion in Limne and assert the following:

Preclusion. "Those who rely on a judgment for its issue-preclusive force (or for any other consequence consistent with an earlier adjudication's legal efficacy) are duty-bound to produce -- as proof of its terms, effect and validity -- the entire judgment roll to the text of the note for the case which culminated in the decision invoked as a bar to relitigation." *Salazar v. City of Oklahoma City*, 1999 OK 20, 976.P.2d 1056, 1061 (Okla. 1999) (Moving party has burden of producing judgment roll to allow trial court to determine what claims were adjudicated and what issues were actually decided). Here, if the Defendants had submitted the entire judgment roll, the Court could see that the District Court garnered the majority of the facts helpful to Defendant from the various Defendants' hearsay testimony and not from the CI. It is Defendant's burden of proof. For instance, the District Court cites its facts in its order (Exhibit 1) to the Defendant's MOL (Exhibit 2) which in turn cites primarily to Johnson's deposition (Exhibit 3). It is all hearsay. This is an end-run around his evidentiary problems.

Different Burdens of Proof. "It is abundantly clear that [Plaintiff's] state-law tort for

[Defendant's] negligence that culminated in his wrongful detention must be allowed to survive the preclusion-anchored defense pressed by [Defendant]. That claim does not invoke indifference required of a constitutional violation. It rests on want of ordinary care actionable under Oklahoma's common law of false imprisonment. Lastly, Salazar's state-law claim met with federal-court dismissal without reaching the merits." *Salazar v. City of Oklahoma City*, 1999 OK 20, 976.P.2d 1056, 1063 (Okla. 1999). Here, the deliberate indifference standard is higher than the state court standard, so factual determinations are not valid.

A Much Simpler Example than the Case at Bar. John battered Bill. John called 911. John told the Deputy that Bill hit him. Bill wins the criminal case and sues John and the Deputy under 42 U.S.C. § 1983. Removed to District Court. The District Court relies on the Deputy's allowable hearsay evidence that John said Bill hit him to effect arrest and the case is dismissed on summary judgment based on these facts and remanded. In State Court, John asks the Court to preclude Bill from alleging John hit him because of the District Court's finding based on hearsay. This is unjust, based on different burdens of proof, and it was based on a different analysis.

Defendant's Motive. Defendant's motive to defame Plaintiffs was based on their fear that they had conducted a bad search. The Court is full of litigants and criminal defendants who have made bad decisions because they thought they had already done something bad. Plaintiffs' should be allowed to present this motive.

Conclusion. The District Court findings of hearsay evidence to determine an officer's knowledge in determining probable cause for a constitutional claim does not become a fact for a cause of action with a lower burden of proof.

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November 28, 2016

EXHIBIT 1

spearheaded the investigation into Hutchinson's complaint. (*Id.* at 2.) Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (*Id.* at 3.) This process involves uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes. (*Id.*)

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. (*Id.*) Johnson employed his confidential informant ("CI") in this investigation. At this point, the CI had been involved in approximately thirty investigations and was considered to be extremely trustworthy given his past results. (*Id.*) The CI was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. (*Id.*) The CI returned twenty to thirty minutes later. (*Id.*) The CI's debriefing yielded the following: The CI had a conversation with a male on a bicycle concerning the purchase of narcotics. The CI then made a purchase on the back porch of the residence at 402 Gibbs Road from a black male named, Peanut. (*Id.* at 4; *see also* ECF No. 19-14 at 11-12; ECF No. 19-16 at 3.) The CI also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." (*Id.*) The CI then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base. (*Id.*)

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping used for tax purposes, which returned a location of 402 Gibbs Road. (*Id.* at 5.) Johnson additionally ascertained that Blanding was the last name of the owner

EXHIBIT 2

9. If successful, the CI was to return to Johnson and Cornwell with the purchased item. See, Cornwell depo., p. 9. The CI understood the directives and was dropped off down the street from the area of concern. See, Johnson depo., p. 19; see also, Cornwell depo., p. 12.

The CI returned twenty (20) to thirty (30) minutes later. See, Cornwell depo., p. 9. The debriefing of the CI took place in the officers' vehicle and yielded the following: The CI proceeded on foot into the area in which he was directed by officers. See, Johnson depo., pp. 16, 19, 24; see also, Cornwell depo., p. 12. (The CI encountered a male on a bicycle.) (See, Johnson depo., p. 24.) (see also, Cornwell depo., p. 12.) (The CI and the bicyclist discussed the reason that the CI was in the neighborhood and what he was looking to buy.) (See, *Id.*) (The bicyclist then escorted CI toward the blue trailer located on Marjorie Court behind 402 Gibbs Road.) (See, *Id.*)

(As the CI had arrived at that area, he clearly observed a black male exiting from the back door of the house located at 402 Gibbs Rd.) (See, Johnson depo., p. 24.) (see also, Cornwell depo., p. 12. The CI and this black male then had a conversation. See, Johnson depo., p. 24. The CI then made the purchase from this individual on the back porch. See, *Id.*, p. 24; see also, Cornwell depo., p. 12. The individual dealing from that back porch was "a black male named, Peanut." See, Johnson depo., p. 23; see also, Cornwell depo., p. 12.) (Along with the debriefing, the CI produced to the officers a white, rock-like substance which he confirmed that he purchased from "Peanut." See, Johnson depo., pp. 23-24.) (see also, Exh. E.)

At that time, Johnson, Cornwell, and the CI drove by the residence where he said he purchased the drugs. See, Johnson depo., p. 23. The CI specifically pointed out the location where he indicated purchase was made. See, *Id.* The substance was field tested positive for cocaine base. See, *Id.*, p. 24.

EXHIBIT 3

RICKY JOHNSON

23

1 MR. GARFIELD: Object to the form. Go
2 ahead.

3 A. Less than 20 minutes.

4 Q. After that, did you and the other deputy
5 and this CI, did you-all drive by the residence
6 where he said he purchased?

7 A. We did.

8 Q. He specifically pointed out the location
9 where he said he purchased the drugs.

10 A. That's correct.

11 Q. Did he identify or give you a name of who
12 he purchased the drugs from?

13 A. He did.

14 Q. Who did he say?

15 A. He said he purchased them from a black
16 male named Peanut.

17 Q. Was Peanut someone known to you and your
18 drug suppression team?

19 A. Not to me.

20 Q. Was it known to other members of your drug
21 suppression team?

22 A. It could have been.

23 Q. What did he tell you about his encounter
24 with Peanut?

25 A. He was contacted by an individual on an

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RICKY JOHNSON

24

1 bicycle, who was inquiring why he was there in the
2 area, he had conversations as far as what he was
3 looking for. The individual on the bicycle led him
4 to 402. He observed an individual come out the back
5 door. The individual on the bicycle. The CI then
6 walks to the back porch where he was then made
7 conversation with an individual on the back porch
8 and he was served a white, rock-like substance,
9 which tested to be crack cocaine.

10 Q. It field-tested positive for crack
11 cocaine.

12 A. Yes, sir, it did.

13 Q. Has it been tested since?

14 A. Not to my knowledge.

15 Q. It's still sitting in evidence somewhere?

16 A. It could have been tested. I -- I don't
17 know.

18 Q. This information was relayed to you in the
19 vehicle?

20 A. Which information?

21 Q. About the buy.

22 A. Yes.

23 Q. Did you ask him or did he tell you about
24 any other people in that house or around that house?

25 A. No.

ROA 448



Salazar v. City of Oklahoma City

Supreme Court of Oklahoma

March 16, 1999, Filed

No. 88,987

Reporter

1999 OK 20 *, 976 P.2d 1056 **, 1999 Okla. LEXIS 16 ***, 70 O.B.A.J. 862

BENNY RAY SALAZAR, Appellant/Plaintiff, v. THE CITY OF OKLAHOMA CITY, Appellee/Defendant, Oklahoma City Police Department, Defendant.

Prior History: [***1] ON CERTIORARI TO THE COURT OF CIVIL APPEALS, DIV. 1.

Disposition: THE COURT OF CIVIL APPEALS' OPINION IS VACATED, THE TRIAL COURT'S JUDGMENT IS REVERSED AND THE CAUSE REMANDED FOR FURTHER PROCEEDINGS TO BE CONSISTENT WITH TODAY'S PRONOUNCEMENT.

Core Terms

immunity, arrest, issues, state-law, federal-court, issue preclusion, preclusion, judgment roll, detention, summary judgment, law enforcement, circumstances, political subdivision, immunity defense, tendered, detained, parties, terms, wrongful detention, summary relief, confinement, litigate, services, pressed, roll, evidentiary material, summary process, tort liability, issue-preclusion, arrestee's

Case Summary

Procedural Posture

Appellant sought review of a Civil Appeals Court, Division I (Oklahoma), decision that affirmed a trial court's grant of summary judgment in favor of appellee city in appellant's state law tort claim surrounding his alleged false imprisonment.

Overview

Appellant challenged an appeals court decision that affirmed a trial court's grant of summary judgment in favor of appellee city in appellant's state law tort action that involved an alleged false arrest and detention. The state supreme court reversed the appeals court decision

and remanded. Appellee was unable to assert an issue preclusion defense because it failed to establish that the state law issues were actually litigated and determined in the prior federal court action between the parties that surrounded the same events as the instant proceeding. Substantial state law issues were left untendered in the previous federal court controversy. Further, appellant's false imprisonment claims were not actionable in the previous 42 U.S.C.S. § 1983 litigation and, therefore, was dismissed by the federal court without reaching the merits. Appellant's wrongful detention claim was a state law negligence claim and, therefore, was entitled to jury submission for a determination regarding whether the applicable standard of care was violated. Appellee was not entitled to summary judgment on its statutory immunity defenses as the claimed violations exceeded the reaches of immunity.

Outcome

The state supreme court reversed an appeals court decision that held the trial court's grant of summary judgment in favor of appellee city in the instant state false imprisonment action was proper. Appellee was not entitled to an issue preclusion defense based on an earlier federal court decision involving the same facts as the state law claims raised by appellant were not properly addressed in the earlier federal action.

LexisNexis® Headnotes

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN1 Under the doctrine of issue preclusion, once a

court has decided an issue of fact or of law necessary to its judgment, the same parties or their privies may not relitigate that issue in a suit brought upon a different claim. Issue preclusion may apply when the party to be precluded has had a full and fair opportunity to litigate the issue that was adversely resolved. The party relying on the defense of issue preclusion bears the burden of establishing that the issue to be precluded was actually litigated and determined in the prior action between the parties or their privies, and that its resolution was essential to a decision in that action.

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Full Faith & Credit > General Overview

Evidence > Judicial Notice > General Overview

Evidence > Judicial Notice > Adjudicative Facts > General Overview

Evidence > Judicial Notice > Adjudicative Facts > Judicial Records

Governments > Courts > Court Records

HN2 While an appellate court can take judicial notice of its own records in litigation interconnected with a case before it, it cannot take judicial notice of records in other courts. Those who rely on a judgment for its issue-preclusive force or for any other consequence consistent with an earlier adjudication's legal efficacy are duty-bound to produce, as proof of its terms, effect and validity; the entire judgment roll for the case which culminated in the decision invoked as a bar to relitigation. A state appellate court accords a federal-court judgment the very same effect as that which it must give to a sister-state judgment under the full-faith-and-credit command of the United States Constitution.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > General Overview

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Negligence

HN3 An appellate court does not initially decide issues that were left unresolved by the first-instance court

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

Governments > State & Territorial Governments > Claims By & Against

HN4 Federal civil rights disputes brought under 42 U.S.C.S. § 1983 do not afford protection against negligence in causing excessive restraint pending an arrestee's identification. For the latter harm the state common law affords the only remedy.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

Torts > Intentional Torts > False Imprisonment > General Overview

Torts > Intentional Torts > False Imprisonment > Civil Rights Actions

HN5 Only federal constitutional violations are actionable under 42 U.S.C.S. § 1983.

Civil Procedure > Judgments > Summary Judgment > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN6 Summary process, a special pretrial procedural track to be conducted with the aid of acceptable probative substitutes, is a search for undisputed material facts that, sans forensic combat, may be applied in the judicial decision-making process. Only those evidentiary materials which eliminate from trial some or all fact issues may afford legitimate support for nisi prius resort to summary process. Summary relief issues stand before an appellate court for de novo examination. All facts and inferences must be viewed in the light most favorable to the non-movant. Just as the appellate courts enjoin the nisi prius courts to do, so, too, appellate tribunals bear an affirmative duty to test all evidentiary material tendered in summary process for its legal sufficiency to support the relief sought by the movant. Only if the court should conclude that there is no substantial controversy over any material facts and the law favors the movant's claim or defense is the moving party entitled to summary judgment in its favor.

Torts > Negligence > General Overview

Torts > ... > Duty > Standards of Care > General Overview

Torts > ... > Standards of Care > Reasonable

Care > Reasonable Person

HN7 Negligence comprehends lack of that care which is required in a situational setting, a failure to do what a person of ordinary prudence would have done or would not have done under the circumstances. The degree of care that an ordinarily prudent person should exercise in a given scenario presents an issue for the jury. Only where the law definitely prescribes the standard of care to be followed may the court ever be warranted in taking the case from the jury. When a negligence claim rests on a breached obligation that is measured by a variable rather than legally fixed standard because it shifts with the circumstances of each case, the parameters of duty owed defendant are undefined by law and the presence or absence of care that is plaintiff's due tenders an issue for jury resolution.

Torts > Intentional Torts > False Imprisonment > General Overview

HN8 There are no fixed legal standards for the length of time law enforcement may take when it responds to an arrestee's request that he is the wrong person. Factors to be taken into account are the degree of inconvenience, effort, and expense necessary to make such aid effective, and the extent to which the actor has already made a reasonable but unsuccessful effort, as well as the availability of other sources of help. The actor is not required to do more than is reasonable under the circumstances. Where there is doubt as to the identity of arrestee as the person for whom the warrant issued and against whom the prosecution is launched, a police officer should make immediate reasonable efforts to confirm or deny the applicability of the warrant to the detained individual.

Torts > Intentional Torts > False Imprisonment > General Overview

HN9 See Okla. Stat. art. 51, § 155(6).

Governments > Local Governments > Claims By & Against

Governments > Local Governments > Police Power

Governments > State & Territorial Governments > Claims By & Against

Torts > Public Entity Liability > Immunities > General Overview

Torts > Public Entity Liability > Liability > General Overview

Torts > ... > Liability > State Tort Claims Acts > General Overview

Torts > ... > Liability > State Tort Claims Acts > Exclusions From Liability

HN10 Governmental immunity of the state and its political subdivisions is waived only to the extent and in the manner provided in the Government Tort Claims Act (Act). Okla. Stat. art. 51, § 152.1(B). Subject only to the Act's specific limitations and exceptions, the Act extends governmental accountability to all torts for which a private person or entity would be liable. Okla. Stat. art. 51, § 153. Okla. Stat. art. 51, § 155(6) affords immunity to a governmental subdivision for claims that result from the failure to provide, or the method of providing, police, law enforcement, or fire protection. The exemption in § 155(6) is invocable when the tort arises while a municipality is rendering services that fall into some category of police protection, law enforcement protection or fire protection. In short, a governmental subdivision is not liable for deficiency of protective services extended by its police, law enforcement or fire fighting components.

Governments > State & Territorial Governments > Claims By & Against

Torts > Negligence > Defenses > General Overview

Torts > Public Entity Liability > General Overview

Torts > Public Entity Liability > Immunities > General Overview

HN11 Statutory immunity for providing protective services such as police or fire is not co-extensive with a blanket immunity from common-law negligence for carrying out law enforcement duties. The Government Tort Claims Act's purview of immunity does not encompass the latter category. A scenario in which a law enforcement function is negligently carried out, as in actions incident to arrest or imprisonment, must be distinguished from negligently providing protective service. The former activity is unshielded by Okla. Stat. art. 51, § 155(6) immunity.

Syllabus

Plaintiff brought a federal-court § 1983 action for wrongful arrest and detention. The United States District Court for the Western District of Oklahoma gave summary relief to the defendants, ruling that *there was probable cause for the issuance of the arrest warrant* and there was no violation of plaintiff's federal constitutional rights either to freedom from unlawful arrest or to that from plaintiff's weekend detention. Oklahoma City was given summary judgment on

plaintiff's federal-law claim; plaintiff's pendent state-law claim in tort, arising from the same facts, was dismissed. Plaintiff then filed a state tort action. Based on the preclusive effect of the earlier federal-court judgment as well as on the City's invoked immunity from suit under the Governmental Tort Claims Act, 51 O.S. 1991 §§ 151 et seq., the **District Court**, Oklahoma County, Carolyn R. Ricks, trial judge, gave summary judgment to the City. The **Court of Civil Appeals** [***2] affirmed. On certiorari granted upon the plaintiff's petition,

Counsel: Laura A. Shaeffer, Shaeffer & Shaeffer, Norman, Oklahoma for Appellant.

Richard Mann, Assistant Municipal Counselor, Oklahoma City, Oklahoma for Appellee.

Judges: SUMMERS, C.J., HARGRAVE, V.C.J., LAVENDER, OPALA, WILSON, KAUGER, and WATT, JJ., concur; HODGES and SIMMS, JJ., dissent.

Opinion by: OPALA

Opinion

[**1058] OPALA, J.

[*1] The dispositive *issue* on certiorari is whether the trial *court* erred in giving summary judgment to Oklahoma City [City]. We answer in the affirmative and reverse. The trial judge's ruling on City's *issue-preclusion* defense cannot be sustained. It rests on an inadequate record of the earlier federal-court action. The cause is accordingly *remanded* (a) for *comprehensive reappraisal* in light of the federal *court's* entire judgment roll and (b) for re-examination of the tendered immunity *issues* upon an analysis we offer today.

I

THE ANATOMY OF LITIGATION

[*2] On 11 December 1992 school officials reported to the Oklahoma City Police Department [OCPD] that an eleven-year-old girl was being molested. The victim identified the man as "Benny Salazar," who rented [***3] a room at her mother's residence. The suspect was described as a Mexican male, approximately 43 years of age, with brown hair, brown eyes and full, thick facial hair. He was also described as self-employed, weighing about 200 pounds and having a height of 6 feet and 2

inches.

[*3] The investigating officer, Detective Pat Mauldin [Mauldin], searched Department records and found in them two individuals named "Benny Salazar." One was "Benny Ray Salazar," who had a previous conviction for a sex crime. Mauldin assumed the two names were borne by the same individual. He did not check any other source to verify his conclusion. The victim's mother confirmed [**1059] that the suspect used the name "Benny" or "Ray" during the months he lived with them.

[*4] A warrant was *issued* on the strength of this information for the arrest of "Benny Ray Salazar." The Plaintiff, Benny Ray Salazar [Salazar], was arrested at his place of employment on 25 June 1993. His apprehension took place in front of other employees and patrons of the business. He was handcuffed and taken to jail, where he spent Friday, Saturday and Sunday. Although he protested his innocence, the authorities did not seem to believe [***4] him. Based on the vehemence of his assertions, Sergeant Marta Gilson [Gilson] of the Oklahoma County Detention Center checked county sheriff's records and found that there were two "Benny Salazars," one of whom, a "Benny Joe Salazar", had earlier been detained in the County Detention Center. By checking further, Gilson discovered the person named "Benny Joe Salazar" had fingerprints different from those of the arrestee-plaintiff and was listed at the same residence address as the victim and her mother.

[*5] Gilson then informed Mauldin of her findings, but the latter told her that he knew of the existence of two "Benny Salazars" and was sure he had caused a warrant to be *issued* for the right man. Three days after Salazar's arrest, it was learned with certainty on Monday that the police had mistakenly arrested the wrong man. The accused child molester was one Benny Joe Salazar. The plaintiff, Salazar, was then released.

[*6] Salazar filed a federal-court civil rights action against City and the investigating officer. The United States *District Court* for the Western *District* of Oklahoma (Judge Russell) gave *summary judgment* to both defendants, ruling that (a) the uncontroverted [***5] probative support in the record established probable cause for the issuance of the arrest warrant, and (b) there was no violation of Salazar's federal constitutional rights either in effecting the arrest or in his ensuing weekend detention. The *court* added that, at the most, the investigating officer's behavior could amount to

negligence. Judge Russell explicitly declined to exercise pendent jurisdiction over Salazar's state-law claims. These were dismissed otherwise than on the merits.

[*7] Following the federal-court decision Salazar brought a state-law tort action against City and the OCPD based on the same facts. OCPD was dismissed as a party defendant. Its dismissal is not challenged here. City received summary relief upon its combined defenses of issue preclusion and statutory immunity. The Court of Civil Appeals [COCA] affirmed the judgment, holding that (a) "collateral estoppel" should apply to Salazar's state-law claims because he had the opportunity, but failed, to controvert material facts in his response to City's motion for summary judgment; (b) the federal court's decision (based on briefs only and sans consideration of Salazar's untimely-submitted [***6] expert testimony) raised no significant procedural impediments to affording Salazar a fair opportunity to litigate his case; (c) City is immune from liability when a lawful court order issues and is executed for the arrest of a person and (d) City's immunity extends to the plaintiff's negligence-based allegations of overlong detention. Salazar now seeks this court's certiorari review of the COCA opinion.¹

II

CITY'S ISSUE-PRECLUSION DEFENSES ARE UNSUPPORTED BY THIS RECORD

[*8] City argues that Judge Russell's ruling resolved *all* the fact and law issues tendered in the state-law tort action and claims that *Salazar is precluded from relitigating all of them*. According to City's argument, which is founded solely on issue preclusion,² [***1060] the federal court (a) has determined that the warrant for Salazar's arrest was supported by probable cause and (b) has resolved in favor of [***7] City all issues that deal with alleged intentional acts. *City concedes that Salazar's only remaining claim lies in negligence.*

[*9] Salazar denies that the invoked preclusion bar extends to any of the issues pressed in his state-law

¹ Although both parties were invited to submit simultaneous briefs on certiorari, only the plaintiff responded.

² While City's preclusion argument (in its answer below) was based on "res judicata" (claim preclusion), its summary judgment brief interposes *merely* "collateral estoppel" (issue preclusion). We will consider City's answer to have been amended by the more narrowly focused defenses pressed later by the motion for summary judgment.

litigation. He urges that Judge Russell's ruling, which gave summary judgment to City on all of the issues in his § 1983³ [***8] civil rights claim, was based on a stricter constitutional standard than that which applies to his state-law cause of action in tort. Because the earlier state-law claim was *dismissed by the federal court without prejudice*,⁴ Salazar argues, he is not barred from now resubmitting that claim to a state court.

A.

City's Defense Of Issue Preclusion

[*10] HN1 Under the doctrine of issue preclusion,⁵ once a court has decided an issue of fact or of law necessary to its judgment, the same parties or their privies may not relitigate that issue in a suit brought upon a different claim.⁶ [***10] Issue preclusion may

³ 42 U.S.C. § 1983

⁴ According to the text of Judge Russell's ruling, the state-law claims were dismissed pursuant to 28 U.S.C. § 1367(c)(3). Its terms provide:

"(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) [pendent state-law claim] if -- ***

(3) the district court has dismissed all claims over which it has original jurisdiction"

"Pendent jurisdiction," originally a case-law doctrine, was carried into federal statutory law as "supplemental" federal-court cognizance in 28 U.S.C. § 1367, part of the Judicial Improvements Act of 1990 (Pub.L. 101-650). *Tate v. Browning-Ferris, Inc.*, 1992 OK 72, 833 P.2d 1218, 1220 n.2.

⁵ The use of the more descriptive term "issue preclusion" was first advanced in the works of Professor Allan D. Vestal: (a) RES JUDICATA/PRECLUSION, PERSONAL INJURY ANNUAL (1969); (b) Res Judicata/Preclusion: Expansion, 47 S. CAL. L. REV. 357 (1974); (c) *State Court Judgment as Preclusive in Section 1983 Litigation in a Federal Court*, 27 OKLA. L. REV. 185 (1974) [hereinafter Vestal, *State Court Judgment*]. The term was later adopted by RESTATEMENT (SECOND) OF JUDGMENTS § 27, Comment b (1982); *Underside v. Lathrop*, 1982 OK 57, P6, n. 8, 645 P.2d 514, 517, n. 8; *Veiser v. Armstrong*, 1984 OK 61, P8, n. 7, 688 P.2d 796, 800 n. 7.

⁶ *Allen v. McCurry*, 449 U.S. 90, 94, 101 S. Ct. 411, 414, 66 L. Ed. 2d 308 (1980); *National Diversified Business Services, Inc. v. Corporate Financial Opportunities, Inc.*, 1997 OK 36, P9, 946 P.2d 662, 666; *Chambers v. City of Ada*, 1995 OK 24,

apply when the party to be precluded has had a "full and fair opportunity" to litigate the issue that [***9] was adversely resolved.⁷ [***11] *The party relying on the defense of issue preclusion bears the burden of establishing that the issue to be precluded was actually litigated and determined in the prior action between the parties or their privies, and that its resolution was essential to a decision in that [**1061] action.*⁸

B.

City's Argument For Preclusion As A Bar To The

P.9, n. 5, 894 P.2d 1068, 1072, n. 5; Wilson v. Kane, 1993 OK 65, P.8, n. 23, 852 P.2d 717, 722, n. 23; Veiser, supra note 5, at P.8, n. 9, at 800 n.9. See also, Robinson v. Volkswagenwerk AG, 56 F.3d 1268, 1272 n.2 (10th Cir.1995); RESTATEMENT (SECOND) OF JUDGMENTS § 27 (1982) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim").

⁷ *National Diversified, supra* note 6, at P.11, at 667; *Fent v. Okla. Nat. Gas, 1994 OK 108, P.15, 898 P.2d 126, 133; Underside, supra* note 5 at 516, n. 6; *Veiser, supra* note 5, P.16, n. 21, at 800 n.21; *Vestal, State Court Judgment, supra* note 5, at 187.

The circumstances to which consideration should be given in determining whether a party has had a full and fair opportunity to litigate an issue in a prior action are set forth in the *RESTATEMENT (SECOND) OF JUDGMENTS § 28*, which states:

"Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

...

(5) There is a clear and convincing need for a new determination of the issue . . . (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action."

⁸ *Carris v. John R. Thomas & Associates, P.C., 1995 OK 33, 896 P.2d 522, 528; Anderson v. Falcon Drilling Co., 1985 OK 13, 695 P.2d 521, 526.*

Entire State-Law Claim Must Be Rejected For Its Failure To Present Below And To Incorporate Into The Record For Appeal A Complete Judgment Roll From The Earlier Federal-Court Action

[*11] *HN2* While an appellate court can take judicial notice of its own records in litigation interconnected with a case before it,⁹ [***12] it cannot take judicial notice of records in other courts.¹⁰ Those who rely on a judgment for its issue-preclusive force (or for any other consequence consistent with an earlier adjudication's legal efficacy) are duty-bound to produce -- as proof of its terms, effect and validity -- the *entire* judgment roll¹¹ for the case which culminated in the decision invoked as a bar to relitigation.¹²

⁹ *Matter of C.A.D., 1992 OK 89, 839 P.2d 165, 169 n. 10; Reeves v. Agee, 1989 OK 25, 769 P.2d 745, 756 n. 40; Chandler v. Denton, 1987 OK 38, 741 P.2d 855, 861-62; Timmons v. Royal Globe Ins. Co., 1985 OK 76, 713 P.2d 589, 592 n. 10.*

¹⁰ *Ouellette v. State Farm Mut. Auto. Ins. Co., 1994 OK 79, 918 P.2d 1363, 1367 n.25; Reeves, supra* note 9 at 752 n.17; *Sooner Federal Savings & Loan Ass'n v. Mobley, 1981 OK 124, 645 P.2d 1000, 1004 (courts generally do not take judicial notice of proceedings pending in another cause in a different court)(citing *Austin v. State Board of Education, 1972 OK 55, 497 P.2d 218, 220*); see also *Fibikowski v. Fibikowski, 185 Okla. 520, 94 P.2d 921, 926 (1939)* (a trial court cannot take judicial notice of the record in cases brought in another court); *Marlow v. American Suzuki Motor Corp., 222 Ill. App. 3d 722, 584 N.E.2d 345, 348, 165 Ill. Dec. 166 (Ill.App. 1991)*(generally, an appellate court will not take judicial notice of a record in another court unless it is incorporated in the proceedings before it).*

¹¹ The terms of *12 O.S.1991 § 32.1* provide in pertinent part:

"The record [synonymous with 'record proper' and 'judgment roll'] shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court"

¹² When an issue (or claim) is sought to be barred by an earlier judgment in another case, the party relying on the adjudication *dehors* the case then before the trial court must secure admission (for the record on appeal) of the entire judgment roll (or record proper) in the other case. *Ouellette, supra* note 10 at 1367 n.25. *This rule applies whether a favorable decision on the point is sought by summary relief or by trial.* For an explanation of how counsel should proceed to secure the incorporation of another action's judgment roll, see *Eckel v. Adair, 1984 OK 86, 698 P.2d 921, 924.*

[*12] [*13] We accord a federal-court judgment the very same effect as that which we must give to a sister-state judgment under the full-faith-and-credit command of the U.S. Constitution. ¹³ [*14] Any controversy over the meaning and preclusive force to be accorded Judge Russell's ruling must be resolved by *resort solely to the face of the judgment roll in the federal-court action*. ¹⁴ The federal court's judgment roll was essential to City's success in *securing* summary relief in Salazar's state-court action. ¹⁵ *Because City relies on that judgment for its preclusion defense, it was its burden to produce below the entire judgment roll from the federal-court action*. ¹⁶ Without that roll no [*1062] court can determine with the requisite degree of certainty (1) what claims were pressed for adjudication and (2) which of the tendered issues were actually decided. As explained below, the federal-court roll's absence clearly is fatal to City's issue-preclusion defense.

C.

[**15] The Federal-Court Judgment

[*13] From the text of Judge Russell's ruling, we divine that Salazar's federal action was considered as divided into two parts -- that which is related to his arrest and immediate detention and that which pertains to his

ensuing three-day confinement. The former addressed the presence of federal constitutional infirmities in the arrest process and in the restraint that followed; the latter the reasonable length of post-arrest confinement that was viewed as measurable by City's exercise of that degree of care that was Salazar's due.

[*14] We will not pass on how much, if any, of the present state claim may be subject to preclusion. Moreover, it is not clear, on this record, which issues sought to be resolved in this state action City intended to bar by issue preclusion and which were relied upon as eliminated by City's immunity defense. At nisi prius City failed to identify with any modicum of precision the exact issues it sought to preclude by interposition of Judge Russell's rulings. We cannot pass on the preclusive force of those rulings without having the judgment roll. *The journal entry alone will not suffice*. When the roll [*16] is produced, arrest-related issues should be viewed separately from those that are detention-related. For the reasons to be explained in Part III *infra*, the latter (detention-related) issues that are rested on negligence in taking unreasonable time to identify Salazar clearly present a disputed fact for the jury.

[*15] Among City's multiple preclusion arguments that cannot be addressed absent a full federal-court judgment roll are: (1) whether any intentional acts of City's employees are precluded, (2) whether Salazar had full and fair opportunity to litigate the critical issues of probable cause and (3) what standards were appropriate for separately gauging the Salazar-pressed federal- or state-law infirmities. There is an even greater barrier to today's pronouncement upon the breadth of the preclusive force. HN3 We do not initially decide issues that were left unresolved by the first-instance court. ¹⁷ Were we to assume that the judgment roll was supportive of some preclusive elements, we could not now extend the bar of that defense (a) to Salazar's state-law argument that he was negligently detained for

¹³ When a federal-court judgment is attacked collaterally in a state court, it is entitled to the same faith and credit as that given to it under the applicable federal law. *Veiser, supra* note 5 at 799 n.5.

¹⁴ *U.S. Const. Art. IV, § 1*. The legal effect of a finally adjudicated case is measured by the four corners of its judgment roll. *Ouellette, supra* note 10 at 1367 n.25; *Dyke v. Saint Francis Hospital, Inc.*, 1993 OK 114, 861 P.2d 295, 303 n.27; *Willard v. Kelley*, 1990 OK 127, 803 P.2d 1124, 1134 n.32; *Chandler, supra* note 9 at 861; *Reeves, supra* note 9 at 752; *Timmons, supra* note 9 at 592; *Mayhue v. Mayhue*, 1985 OK 68, 706 P.2d 890, 895.

¹⁵ *Salazar does not need the federal-court judgment roll to press his claims*. He only bears the responsibility for incorporating into the record for appeal those materials which he needs for *corrective relief in his favor*. *Davidson v. Gregory*, 1989 OK 87, 780 P.2d 679, 682.

¹⁶ *Ouellette, supra* note 10 at 1367 n.25. For the breadth of summary relief City sought, its *probative support was microscopic*. Tendered with its motion were only these probative materials: (1) Judge Russell's memorandum opinion and order; (2) warrant for Salazar's arrest; and (3) Salazar's amended petition in the state-law action.

¹⁷ When the record is devoid of showing that the nisi prius court did inquire into critical issues, the case must be remanded with directions that the trial court make the necessary examination. *Toxic Waste Impact Group, Inc. v. Leavitt*, 1995 OK 148, 890 P.2d 906, 913; *Dyke, supra* note 14 at 300 n.13; *Teel v. Teel*, 1988 OK 151, 766 P.2d 994, 999 n.19; *American Ins. Ass'n v. Indus. Com'n*, 1987 OK 107, 745 P.2d 737, 740 n.15; *Sandpiper North Apartments v. American Nat. Bank*, 1984 OK 13, 680 P.2d 983, 993; *Matter of Estate of Bartlett*, 1984 OK 9, 680 P.2d 369, 377; *Davis v. Gwaltney*, 1955 OK 362, 291 P.2d 820, 824.

longer than necessary to ascertain his identity (as one other [***17] than the person for whom the arrest warrant issued), or (b) to the intentional acts, if any, by City officials. On this record, both of these concerns appear to present state-law questions of fact which went untendered in the previous federal-court controversy.¹⁸

D.

The Federal Court's Use Of Baker v. McCollan
19 [***18]

[*16] Even assuming, as City argues, that issue preclusion avails on the probable-cause issue, summary judgment would not lie. HN4 Federal civil rights disputes brought under § 1983 do not afford protection against negligence in causing excessive restraint pending an arrestee's identification. *For the latter harm the state common law affords the only remedy.*²⁰

[*17] [**1063] According to Judge Russell's rulings, Salazar's redress for harm from his overlong detention is governed by *Baker v. McCollan*.²¹ [***20] The plaintiff in *Baker* had been arrested pursuant to a facially valid warrant, then placed in custody and detained for three days. Although it was eventually determined that the plaintiff was innocent of [***19] the charge for which the warrant issued, there was no suggestion that the arrest itself was constitutionally deficient. The plaintiff's § 1983 action against the sheriff for depriving him of liberty without due process was based on the latter's failure *timely to institute identification procedures that would have discovered the error.*²² The Court answered that "respondent's innocence of the charge contained in the warrant, while relevant to a tort claim of false imprisonment in most if not all jurisdictions, is largely irrelevant to his claim of deprivation of liberty without due process of law."²³ Suggested to the Court was the notion that allegations of "simple negligence," actionable

under state tort law, also would state a claim under § 1983.²⁴ Drawing a bright-line distinction between "violations of rights protected by the [U.S.] Constitution" and "violations of duties of care arising out of [state] tort law,"²⁵ the Court held that HN5 only federal constitutional violations are actionable under § 1983.²⁶ Baker's claim for false imprisonment, the Court concluded, simply did not rise to a constitutional dimension actionable in a § 1983 suit.²⁷

[*18] According to Judge Russell's rulings, to succeed on one's federal constitutional claim for continued detention in the face of protestations of innocence, the evidentiary material must support an inference that the law enforcement personnel responsible for Salazar's three-day detention acted with *deliberate indifference* to his predicament, or with *some reckless* [***21] *intent*.²⁸ Because the evidentiary material did not allow that inference, Salazar's § 1983 claim could not stand. *It is abundantly clear that Salazar's state-law tort for City's negligence that culminated in his wrongful detention must be allowed to survive the preclusion anchored defense pressed by City.* That claim does not invoke indifference required of a constitutional violation. *It rests on want of ordinary care actionable under Oklahoma's common law of false imprisonment.* Lastly, Salazar's state-law claim met with federal-court dismissal *without reaching the merits.*

III

SUMMARY ADJUDICATION UPON CITY'S DEFENSES OF ISSUE PRECLUSION AND STATUTE-BASED IMMUNITY

²⁴ *Id.* 443 U.S. at 139, 99 S. Ct. at 2692.

²⁵ *Id.* 443 U.S. at 146, 99 S. Ct. at 2695.

²⁶ *Id.*

²⁷ See also *Daniels v. Williams*, 474 U.S. 327, 328, 106 S. Ct. 662, 663, 88 L. Ed. 2d 662 (1986) ("the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty or property") (emphasis in original); *Davidson v. Cannon*, 474 U.S. 344, 347-48, 106 S. Ct. 668, 670-71, 88 L. Ed. 2d 677 (1986) ("lack of care simply does not approach the sort of abusive government conduct that the Due Process Clause was designed to prevent").

²⁸ For this notion, Judge Russell cites *Romero v. Fay*, 45 F.3d 1472, 1478 (10th Cir. 1995).

¹⁸ *Nail v. City of Henryetta*, 1996 OK 12, 911 P.2d 914, 918.

¹⁹ 443 U.S. 137, 142, 99 S. Ct. 2689, 2693, 61 L. Ed. 2d 433 (1979).

²⁰ *Id.* 443 U.S. at 146, 99 S. Ct. at 2695-96.

²¹ *Supra* note 19.

²² *Id.* 443 U.S. at 140-42, 99 S. Ct. at 2692-94.

²³ *Id.* 443 U.S. at 145, 99 S. Ct. at 2695.

A.

The Standard of Review For Summary Adjudication Process

[*19] **HN6** Summary process -- a special pretrial procedural track to be conducted with the aid of acceptable probative substitutes²⁹ [***23] -- is a search for [***22] undisputed material facts that, *sans* forensic combat, may be applied in the judicial decision-making process.³⁰ Only those evidentiary materials which eliminate [***1064] from trial some or all fact *issues* may afford legitimate support for nisi prius resort to summary process.³¹ Summary relief *issues* stand before us for *de novo* examination.³² All facts and inferences must be viewed in the light most favorable to the non-movant.³³ Just as we enjoin the nisi prius *courts* to do, so too appellate tribunals bear an affirmative duty to test all evidentiary material tendered in summary process for its legal sufficiency to support the relief sought by the movant. [***24]³⁴ Only if the *court* should conclude that

²⁹ "Acceptable probative substitutes' are those which may be used as 'evidentiary materials' in the summary process of adjudication." *Gray v. Holman*, 1995 OK 118, 909 P.2d 776, 781 n. 16 (quoting from *Seitsinger v. Dockum Pontiac Inc.*, 1995 OK 29, 894 P.2d 1077, 1080-81); *Davis v. Leitner*, 1989 OK 146, 782 P.2d 924, 926-927.

³⁰ The focus in summary process is not on the facts which might be proven at trial (i.e., the legal sufficiency of evidence that could be adduced), but rather on whether the tendered material in the record reveals only undisputed material facts supporting but a single inference that favors the movant's quest for relief. *Hulsey v. Mid-America Preferred Ins. Co.*, 1989 OK 107, 777 P.2d 932, 936 n. 15.

³¹ In reviewing any order of summary adjudication the *court* may consider, in addition to the pleadings, such items as depositions, affidavits, admissions, answers to interrogatories, as well as other evidentiary material offered by the parties, which are in an acceptable form. *Hargrave v. Canadian Valley Elec. Coop., Inc.*, 1990 OK 43, 792 P.2d 50, 55.

³² *Brown v. Nicholson*, 1997 OK 32, 935 P.2d 319, 321 n.1. An order that grants summary relief, in whole or in part, disposes solely of law questions. It is hence reviewable by a *de novo* standard. An appellate *court* claims for itself plenary, independent and non-deferential authority to re-examine a trial *court's* legal rulings. *Kluver v. Weatherford Hospital Auth.*, 1993 OK 85, 859 P.2d 1081, 1084.

³³ *Carmichael v. Beller*, 1996 OK 48, 914 P.2d 1051, 1053.

there is *no* substantial controversy over any material facts and the law favors the movant's claim or defense is the moving party entitled to summary judgment in its favor.³⁵

B

Salazar's Cause of Action for Wrongful Detention Is a State-Law Negligence Claim that (a) is Founded on a Variable Standard of Care, Which Shifts with the Circumstances of the Case, and hence (b) Tenders a Controversy to Be Submitted For Resolution by a Jury

[*20] **HN7** Negligence comprehends lack of that care which is required in a situational setting -- a failure to do what a person of ordinary prudence would have done or would not have done under the circumstances.³⁶ The degree of care that an ordinarily [***25] prudent person should exercise in a given scenario presents an *issue* for the jury.³⁷ Only where the law definitely prescribes the standard of care to be followed may the *court* ever be warranted in taking the case from the jury.³⁸ When a negligence claim rests on a breached obligation that is measured by a variable (rather than legally fixed) standard because it shifts with the circumstances of each case, the parameters of duty owed the defendant are undefined by law³⁹ and the presence (or absence)

³⁴ *Spirgis v. Circle K Stores, Inc.*, 1987 OK CIV APP45, 743 P.2d 682, 684-85 (approved for publication by the Supreme Court).

³⁵ *Hargrave*, *supra* note 31 at 55. The function of summary process is not to set the stage for trial by affidavit, but to afford a method of summarily terminating a case (or eliminating from trial some of its *issues*) when only questions of law remain. *Russell v. Board of County Comm'rs, Carter County*, 1997 OK 80, 952 P.2d 492, 503; *Bowers v. Wimberly*, 1997 OK 24, 933 P.2d 312, 316; *Stuckey v. Young Explor. Co.*, 1978 OK 128, 586 P.2d 726, 730.

³⁶ *Kelly v. Cann*, 192 Okla. 446, 136 P.2d 896, 899 (1942).

³⁷ *Wetsel v. Independent School District I-1*, 1983 OK 85, 670 P.2d 986, 990-91.

³⁸ *Ponca City Ice Co. v. Robertson*, 67 Okla. 86, 169 P. 1111, 1113 (1917); *Littlejohn v. Midland Valley Ry. Co.*, 47 Okla. 204, 148 P. 120, 121 (1915).

³⁹ *Ponca City Ice Co.*, *supra* note 38 at 1113; *Littlejohn*, *supra* note 38 at 121; *City of Cushing v. Stanley*, 68 Okla. 155, 172 P. 628 (1918); *Sand Springs Ry. Co. v. Cole*, 1955 OK 9, 279

of care that is the plaintiff's due tenders an issue for jury resolution.

[*26] HN8**

[*21] *There are no fixed legal standards for the length of time law enforcement may take when it responds to an arrestee's request that he (or she) is the wrong person. The counsel offered by the RESTATEMENT (SECOND) OF TORTS § 45, comment c, is instructive:*

"It is not within the scope of this Restatement to state when the duty to aid another **[**1065]** in release from confinement may arise. Factors to be taken into account are the degree of inconvenience, effort, and expense necessary to make such aid effective, and the extent to which the actor has already made a reasonable but unsuccessful effort, as well as the availability of other sources of help. The actor is not required to do more than is reasonable under the circumstances." (Emphasis supplied.)

[*22] Oklahoma's jurisprudence tracks the RESTATEMENT'S standard of a "reasonable time" to identify the arrestee's true identity. In *City of Tulsa v. Clifford*⁴⁰ law enforcement officers arrested a motorist pursuant to a warrant that was issued for his identical twin brother. The court held that where there is doubt as to the identity of arrestee as the person for whom the warrant issued and against whom **[***27]** the prosecution was launched, the officer "should make immediate reasonable efforts to confirm or deny the applicability of the warrant to the detained individual."⁴¹ Because the law's standard of care imposed upon the detaining authority for ascertaining an arrestee's true identity is not fixed, but shifts with the circumstances of the case,⁴² *what is a reasonable length of time to identify one in confinement as an individual other than the person charged and named in the warrant presents a question of fact for the jury.*

[*23] Whether in this case the three-day detention was longer than a reasonable period of time needed by City officials in charge to identify Salazar as one *other than*

P.2d 938, 942-43; Lee v. Darden, 1966 OK 220, 421 P.2d 845, 848; Federer v. Davis, 1967 OK 208, 434 P.2d 197, 198-199.

⁴⁰ 1990 OK CR 11, 787 P.2d 1285, 1287-88.

⁴¹ *Id.* at 1287 (emphasis supplied).

⁴² *Id.* at 1287-88; *Wetsel, supra* note 37.

the person for whom the warrant issued clearly presents a question for the jury. Summary adjudication on this issue was hence in error.

IV.

SUMMARY JUDGMENT [*28] IS NOT CITY'S DUE ON ITS STATUTORY IMMUNITY DEFENSES**

[*24] Relying on various provisions of the Governmental Tort Claims Act [GTCA],⁴³ City argues that it is immunized from tort liability for all negligent actions, if any, by its law enforcement personnel in charge of Salazar's case.⁴⁴

A.

Salazar's Wrongful Detention Claim

[*25] The issue dispositive of City's immunity defenses interposed against the claim of wrongful detention is whether the terms of 51 O.S. 1991 § 155(6)⁴⁵ operate to shield a municipality from tort liability for negligence arising from the exercise of *police or law enforcement protection services*. We hold that **[***29]** because City stood *vis-a-vis* Salazar not as "protector," but *qua* "law enforcer," its actions are not within the § 155(6) immunity.

I. The Governmental Tort Claims Act

[*26] The common-law doctrine of sovereign immunity was abrogated by *Vanderpool v. State*.⁴⁶ **[***31]** Later,

⁴³ 51 O.S. 1991 §§ 151 et seq. Because the tort Salazar seeks to redress is governed by the 1991 version of the GTCA, we must assume that all citations in City's as well as in Salazar's briefs are to the version in force when the tort occurred.

⁴⁴ For the immunity defenses interposed by City, see text *infra* at Part IV(A) and (B).

⁴⁵ HN9 The pertinent terms of 51 O.S. 1991 § 155(6) are:

"The state or a political subdivision shall not be liable if a loss or claim results from:

6. *** The failure to provide, or the method of providing, police, law enforcement or fire protection;"

The quoted text was neither changed nor affected by the 1994 and 1995 amendments.

⁴⁶ 1983 OK 82, 672 P.2d 1153, 1156-57. *Vanderpool* teaches

the legislature enacted a form of sovereign immunity into [***1066] the body of statutory law.⁴⁷ **HN10** Governmental immunity of the state and its political subdivisions is waived "only to the extent and in the manner provided in" the Act.⁴⁸ Subject only to the Act's specific limitations and exceptions, the GTCA extends governmental accountability to all torts for which a private [***30] person or entity would be liable.⁴⁹ The legislature kept in force certain forms of immunity from liability by providing in § 155⁵⁰ thirty carefully circumscribed exemptions. [***32] *Section 155(6)* of the GTCA affords immunity to a governmental subdivision for claims that result from "the failure to provide, or the method of providing, *police, law enforcement or fire protection*."⁵¹ "Protection" serves as the key word for

that in the absence of a statute conferring partial or total immunity, the state, its political subdivisions and their employees acting within the scope of their employment would stand liable in tort in the same manner as a private individual or corporation.

⁴⁷ See Okl.Sess.L. 1984, Ch. 226, eff. October 1, 1985.

⁴⁸ *51 O.S. 1991 § 152.1(B)*.

⁴⁹ The terms of *51 O.S. 1991 § 153* provide:

"A. The state or a political subdivision *shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment* subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision *shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment*.

B. The liability of the state or political subdivision under this act shall be exclusive and in place of all other liability of the state, a political subdivision or employee at common law or otherwise."

(Emphasis supplied). See also *Hughey v. Grand River Dam Authority*, 1995 OK 56, 897 P.2d 1138, 1141-42.

⁵⁰ The exemptions set forth in *51 O.S. 1991 § 155* address circumstances where the state expressly retains its sovereign immunity. The terms of § 155 provide that the state or a political subdivision shall not be liable if a loss or claim results from any one of thirty specified activities of the sovereign or its agents.

⁵¹ For the pertinent terms of *51 O.S. 1991 § 155(6)*, see *supra* note 45.

the textual analysis of the critical sentence quoted here from subsection 6. The exemption in that subsection is invocable when the tort arises while a municipality is rendering services that fall into some category of *police protection, law enforcement protection or fire protection*. In short, a governmental subdivision is not *liable for deficiency of protective services extended by its police, law enforcement or fire fighting components*.⁵²

2. The Distinction Between Protective Police Services And Those That Carry Out Law Enforcement Functions

[*27] **HN11** Statutory immunity for providing protective services (*police or fire*) is not co-extensive with a blanket immunity from common-law negligence for carrying out law enforcement duties.⁵³ The GTCA's purview of immunity does not encompass the latter category. A scenario in which a *law enforcement function* is negligently carried out -- as in actions incident to arrest or [***33] imprisonment -- must be distinguished from *negligently providing protective service*. The former activity is unshielded by the § 155(6) immunity.

3. Today's Pronouncement Is Compatible With Extant Jurisprudence

[*28] Oklahoma City is liable for police conduct that exceeds the limits of law-authorized action.⁵⁴ [***35] In

⁵² What the text of *51 O.S. 1991 § 155(6)* doubtless intends is to free governmental subdivisions from liability (a) where in the course of hostage taking there is injury or death to a hostage and the suit alleges that, had law enforcement stormed the kidnapper's hideout in some other manner, the victim would not have died or been injured or (b) in fire cases, where the city is called upon to defend against allegations that an incorrect method used to extinguish a fire was the cause of injury or property damage.

⁵³ *Schmidt v. Grady County, Oklahoma*, 1997 OK 92, 943 P.2d 595, 597 "mandates that § 155(6) not be construed so broadly as to act as a complete bar to liability under any circumstances." *Prichard v. City of Oklahoma City*, 1999 OK 5, P.13, 975 P.2d 914, (decided January 26, 1999).

⁵⁴ City's broad claim to absolute § 155(6) immunity seems to rely on arguments similar to those it pressed in *Lewis v. City of Oklahoma City*, Sup. Ct. No. 90,339 (decided May 5, 1998 by **Court** of Civil Appeals' unpublished opinion). Lewis, a private investigator licensed to carry a firearm, was detained by City officers while attempting to take his children from his ex-wife. Two **issues** were presented: (1) whether Lewis was falsely

Schmidt v. Grady County, [****1067**] *Oklahoma*⁵⁵ a woman who had been taken into custody by a deputy sheriff who undertook to protect her from harm was injured when she either jumped or fell from a vehicle. The **court** held that when she sustained the harm the deputy was "providing [to the plaintiff] police protection." *Schmidt deals not with an arrestee but with a person in need of protection* [*****34**] *from harming herself or others*. It does not involve negligence in driving but failure to put a passenger under some type of restraint. Rather than carrying out a law enforcement function, the officer in *Schmidt* was *protecting a woman from the consequences of her disturbed mental state*.

[***29**] *Schmidt* relies on the teachings of *Shockey v. City of Oklahoma City*.⁵⁶ The fire fighters in *Shockey* were unable to secure water for a burning house *because of a faulty fire hydrant*. The plaintiffs, whose home and furnishings were destroyed by fire, sued the city for negligently failing to maintain a fire hydrant or to warn them of its malfunction. The **court** explained that "a municipality's immunity from tort liability applies while it is *engaged in fire protection and prevention*."⁵⁷ The **court** noted that fire hydrants were installed for the "purpose of fire protection."

[***30**] Recent jurisprudence, *Prichard v. City of Oklahoma City*,⁵⁸ holds that the *Schmidt* teachings do not give the City blanket immunity from negligence when it is carrying out law enforcement activities. A police officer [*****36**] in *Prichard* arrested the plaintiff and transported him to an emergency room for treatment of injuries that occurred before he was taken into custody. The plaintiff was diagnosed to have a broken jaw and referred to another hospital for immediate medical attention. The officer transported him to the city jail where he remained for three days without any other

treatment for injury. The plaintiff sued the city, alleging that its officer was negligent for failing to provide him with medical care. Unlike the plaintiff in *Schmidt*, Prichard was neither taken into custody for his own protection, nor was he harmed in police custody. Instead, he was injured *before* being taken into police custody, which injuries were evident to the officer. The actions of the police officer were deemed "unrelated to the method of providing police protection to the public."⁵⁹

[***31**] [*****37**] In *Medina v. State*⁶⁰ Ramirez, the decedent, was confined with one Grant in a cell at a correctional facility. The prison physician prescribed Enkaide for Grant's congenital heart condition, to be taken every six hours. Once each week the prison pharmacy furnished Grant a supply of twenty-eight Enkaide tablets. The prison pharmacy dispensed all prescription medication in the same manner at *weekly* "pill lines." A one-week supply of Enkaide, twenty-eight pills, is a potentially lethal quantity of that medication. Ramirez died from ingesting a lethal dose of the medicine, either accidentally or by design. This **court** determined that (1) the dispensing of medicine to an inmate in a state penal institution by a state employee is a function *performed in the operation of an institution* and hence exempt from tort liability, and (2) the state is not required to waive its sovereign immunity and provide an inmate with a GTCA remedy *for the ordinary negligence of officers or employees at a penal institution*. In *Redding v. State*⁶¹ a prison inmate was seriously injured when he was struck in the head by a softball during a prison softball game. This **court** held the state immune [*****38**] from tort liability under the [****1068**] GTCA. The **court** looked to *Medina* as determinative of liability.

4. The Essence of Salazar's Negligence Claim For Overlong Detention

[***32**] Neither the arresting nor the detaining officer was *in this case* affording *protection* to Salazar. Rather, City employees in charge were acting in the exercise of law enforcement duties. *In short, City rendered general law enforcement services in the context of which Salazar was not a protected subject, but instead an arrested and*

arrested and, if so, (2) whether the acts of City officers were *outside the scope of their employment*, which would render the City immune from liability under the GTCA. Lewis can be distinguished from the case at bar. The officer there was not using unreasonable force and did not extend the restraint beyond the parameters of emergency needs. *Lewis does not stand for the notion that the city is immune whenever police action is involved*.

⁵⁵ *Id.*

⁵⁶ 1981 OK 94, 632 P.2d 406.

⁵⁷ *Id.* at 408 (emphasis supplied).

⁵⁸ *Supra* note 53, 1999 OK 5 at P13, 975 P.2d 914.

⁵⁹ *Supra* note 53, 1999 OK 5 at P17, 975 P.2d at 917.

⁶⁰ 1993 OK 121, 871 P.2d 1379.

⁶¹ 1994 OK 102, 882 P.2d 61.

detained person: He did not sue for *City's failure to protect him* from himself or from others nor did he press a claim for inadequacy of City's protection against fire. We hence conclude and hold that City is *not* shielded by the § 155(6) immunity from tort liability for the alleged negligence in Salazar's wrongful detention.

B.

City's Other Immunity Defenses

[*33] City invoked several other [*39] GTCA provisions in support of its immunity defense. According to City's answer, Salazar's claims are limited (or barred) by §§ 155(2-6), (9), (13), (16-18), (20), (24) and (29) of the GTCA. City argues that the GTCA exempts it from legal responsibility for (a) any unintentional misrepresentations incident to the arrest and detention of Salazar (§ 155(17)), (b) for negligence in the service of process (§ 155(3)) and (c) any negligence incident to the operation of the jail facilities (§ 155(24)).⁶² Any intentional actions of its officers, City asserts, would be outside the scope of employment and hence not covered by the GTCA. Moreover, City urges, because it does not own or operate the facility where Salazar was held, he should have pressed his claim for wrongful detention against the county sheriff's department.

[*34] As we measure Salazar's [*40] claim by the probative support in the record, its center core is "wrongful detention" -- i.e., confinement for a period longer than that which, absent negligence, would have disclosed his mistaken identity. Because that core claim is fact-intensive and not within the purview of City's invoked immunity, we need not comment on any other elements that are revealed by the evidentiary materials before us. Moreover, many of the invoked immunity elements that relate to Salazar's false arrest claim are *interconnected with City's issue-preclusion* defense. Since we cannot today pass on that defense, neither can we address any of its interconnected facets.

[*35] Moreover, the probative materials in the record give no foundational support for many of these immunity defenses. Because it seems *highly doubtful* that any of the interposed statutory exemptions from liability were individually passed on by the trial judge, we decline to make first-instance determinations.⁶³ We leave it to the

court of first instance to undertake, on *remand*, an inquiry and determination of the separately interposed immunity defenses that will stand supported by probative material.

[***41] V

SUMMARY

[*36] The federal-*court* judgment roll is needed for support of City's issuepreclusion defense. The burden rests on City to include in the record a complete judgment roll in the adjudication on which it relies. The record tendered here *is not supportive of City's broadly asserted preclusion-bar defense*.

[*37] Assuming City is correct in its view that *issue preclusion* avails on the probable-cause *issue*, the summary relief granted below [*1069] is still fraught with infirmity. *Issue preclusion* is not available to bar a trial on the alleged *issue* of negligence, if any, in unduly delaying Salazar's identification as one other than the person for whom the warrant *issued*. By citing *Baker*⁶⁴ and dismissing Salazar's state-law claims, Judge Russell facially appears to have excluded from federal-*court* cognizance the elements of Salazar's claim for negligence in wrongful (or overlong) detention.

[*38] Even if *all* of City's arguments for *issue preclusion* [*42] were found valid, summary judgment was nonetheless in error: (1) the state-law claim for overlong confinement is *fact-intensive* and presents a *jury issue*; and (2) City's immunity-based defense rests on excessively drawn parameters of § 155(6) immunity. Extant jurisprudence does not support City's plea for statutory immunity in this case for *activities connected with extending law-enforcement protection*.

[*39] Because City's arguments, here and below, fail to support the summary adjudication's correctness, all *issues* will stand on *remand* subject to comprehensive reappraisal in light of the federal-*court* judgment roll. The remaining *issues* sought to be resolved by immunity defenses also need to be re-examined upon the analysis we provide today. This cause is hence

⁶² In support of its § 155(24) immunity defense, City cites *Medina*, *supra* note 60, *Redding*, *supra* note 61 and *Purvey v. State*, 1995 OK 103, 905 P.2d 770.

⁶³ It would be improper for this *court* to act upon this *issue* as a tribunal of first instance. *Toxic*, *supra* note 17 at 913; *Dyke*, *supra* note 14 at 300 n.13; *Teel*, *supra* note 17 at 999 n.19; *American Ins. Assn.*, *supra* note 17 at 741; *Matter of Estate of Bartlett*, *supra* note 17 at 377; *Davis*, *supra* note 17 at 824.

⁶⁴ *Supra* note 19.

remanded for a nisi prius reconsideration of all untried **issues** pressed. When on a judgment's reversal a cause is **remanded**, it returns to the trial **court** as if it had never been decided before, save only for the "settled law" of the case. By today's **remand** the parties are relegated to their prejudgment status.⁶⁵

[*40] [***43] On certiorari granted on Salazar's petition, the **Court** of Civil Appeals' opinion is vacated, the trial **court's** judgment is reversed and the cause **remanded** for further proceedings to be consistent with today's pronouncement.

SUMMERS, C.J., HARGRAVE, V.C.J., LAVENDER, OPALA, WILSON, KAUGER, and WATT, JJ., concur;

HODGES and SIMMS, JJ., dissent.

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⁶⁵ On **remand** following a reversal the parties are relegated to their prejudgment posture. *Nelson v. Pollay*, 1996 OK 142, 916 P.2d 1369, 1376-1377; *Fent*, *supra* note 7 at 134; *Thomas v. National Auto. & Cas. Ins. Co.*, 1994 OK 52, 875 P.2d 424, 428; *Dyke*, *supra* note 14 at 304 n. 36; *Parker v. Elam*, 1992 OK 32, 829 P.2d 677, 682; *Seymour v. Swart*, 1985 OK 9, 695 P.2d 509, 512-513.



Caution

As of: November 29, 2016 9:32 AM EST

Kilroy v. State of California

Court of Appeal of California, Third Appellate District

June 2, 2004, Filed

C044877

Reporter

119 Cal. App. 4th 140 *; 14 Cal. Rptr. 3d 109 **; 2004 Cal. App. LEXIS 839 ***; 2004 Cal. Daily Op. Service 4777; 2004 Daily Journal DAR 6536

KENT KILROY et al., Plaintiffs and Appellants, v.
STATE OF CALIFORNIA et al., Defendants and
Respondents.

Notice: [***1] CERTIFIED FOR PARTIAL
PUBLICATION *

Prior History: APPEAL from a judgment of the Superior **Court** of Nevada County, No. 68176, Leighton Hatch, Judge. (Retired Judge of the Sacramento Superior **Court** assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

Disposition: Judgment affirmed.

Core Terms

judicial notice, truck, Towing, **factual finding**, trial **court**, **fact finding**, hearsay, orders, appellate opinion, judgments, suppress, matters, conclusions of law, summary judgment, recited, collateral estoppel, assertions, immunity, records

Case Summary

Procedural Posture

Plaintiffs, the owners of a towing company, initiated an action against defendants, the **State** of California and a highway patrol officer, alleging violation of their civil rights and related torts. The Superior **Court** of Nevada County (California) denied the owners' request for **judicial notice** of a **federal court's** suppression order and granted defendants' motion for summary judgment.

* Pursuant to California Rules of **Court**, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts II, III, IV, V and VI of the Discussion.

The owners appealed.

Overview

The owners alleged that the officer wrongly omitted material **facts** from an affidavit used to obtain a warrant to search their business. The search turned up firearms that one of the owners was not permitted to possess and led to his prosecution in **federal court**. That prosecution was later dismissed after the **federal court** granted a motion to suppress. The owners then initiated a civil action against defendants. In opposition to defendants' motion for summary judgment, the owners requested **judicial notice** of the **federal** judge's suppression order. The trial **court** denied the request and granted summary judgment to defendants. On appeal, the **court** affirmed the trial **court's** decision. Pursuant to *Cal. Evid. Code § 451*, a **court** could take **judicial notice** of any **court** record in the United **States**. However, the factual findings in a prior **judicial** opinion were not a proper subject of **judicial notice**. Additionally, collateral estoppel was not appropriate because the issue decided in the **federal** proceeding, whether evidence had to be suppressed, was not identical to the issue to be decided in the civil case, whether the officer was entitled to qualified immunity.

Outcome

The **court** affirmed the judgment.

LexisNexis® Headnotes

Civil Procedure > Appeals > Summary Judgment
Review > General Overview

Civil Procedure > Appeals > Summary Judgment
Review > Standards of Review

Civil Procedure > ... > Summary Judgment > Opposing
Materials > General Overview

HN1 On review of an order granting summary judgment, an appellate court construes the evidence in the light most favorable to the opposing party. However, the appellate court considers only evidence relevant to the matter in dispute.

Criminal Law & Procedure > ... > Sentencing
Alternatives > Probation > General Overview

Evidence > ... > Hearsay > Rule Components > Truth of
Matter Asserted

Evidence > Judicial Notice > General Overview

Evidence > Judicial Notice > Adjudicative Facts > General
Overview

Governments > Courts > Court Records

HN2 Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter. The court may in its discretion take judicial notice of any court record in the United States. Cal. Evid. Code § 451. This includes any orders, findings of facts and conclusions of law, and judgments within court records. However, while courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files. Courts may not take judicial notice of allegations in affidavits, declarations and probation reports in court records because such matters are reasonably subject to dispute and therefore require formal proof.

Evidence > ... > Hearsay > Exceptions > General Overview

Evidence > ... > Exceptions > Public Records > General
Overview

Evidence > Judicial Notice > General Overview

Evidence > Judicial Notice > Adjudicative Facts > Public
Records

Evidence > Judicial Notice > Legislative Facts > Domestic
Laws

HN3 Courts may not take judicial notice of hearsay allegations. An appellate court's description of facts is merely the hearsay assertions of the justices who delivered the opinion. Hearsay statements within the opinion are inadmissible unless they fall within an exception to the hearsay rule. Under Cal. Evid. Code § 1280, appellate opinions do come within the exception to the hearsay rule for official records. However, an

official record is evidence of a writing made as a record of an act, condition, or event offered to prove the act, condition or event. Thus, while an official record of an appellate opinion can be admitted to prove the truth of the facts asserted, the most it may prove is that the appellate opinion was delivered and that the court made orders, factual findings, judgments and conclusions of law. Stated another way, what is being noticed is the existence of the act, not that what is asserted in the act is true. The truth of any factual matters that might be deduced from official records is not the proper subject of judicial notice.

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Civil Procedure > Judgments > Preclusion of
Judgments > Res Judicata

Evidence > Judicial Notice > General Overview

HN4 Factual findings in a prior judicial opinion are not a proper subject of judicial notice. However, whether a factual finding is true is a different question than whether the truth of that factual finding may or may not be subsequently litigated a second time. The doctrines of res judicata and collateral estoppel will, when they apply, serve to bar relitigation of a factual dispute even in those instances where the factual dispute was erroneously decided in favor of a party who did not testify truthfully. In other words, even though a factual finding in a prior judicial decision may not establish the truth of that fact for purposes of judicial notice, the finding itself may be a proper subject of judicial notice if it has a res judicata or collateral estoppel effect in a subsequent action.

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

Civil Procedure > Appeals > Reviewability of Lower Court
Decisions > Preservation for Review

HN5 Generally, a party may not raise issues for the first time on appeal.

Civil Procedure > Judgments > Preclusion of
Judgments > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of
Judgments > Estoppel > Collateral Estoppel

HN6 A party will be collaterally estopped from relitigating an issue only if (1) the issue decided in a prior adjudication is identical with that presented in the action in question; and (2) there was a final judgment on the merits; and (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication. In addition to being a party or in privity with a party to the prior action, the circumstances must have been such that the party to be estopped should reasonably have expected to be bound by the prior adjudication.

Headnotes/Syllabus

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

Owners of a towing business filed suit against the state and a California Highway Patrol officer, alleging violation of their civil rights and related torts on the basis that the officer wrongly omitted material facts from an affidavit used to obtain a warrant to search their business. The search turned up firearms that one of the owners was not permitted to possess and led to his prosecution in federal court; however, a federal court judge granted the owners' motion to suppress evidence and dismissed the charges. The trial court denied the owners' request for judicial notice of the federal court's suppression order and granted the state's motion for summary judgment. (Superior Court of Nevada County, No. 68176, Leighton Hatch, Judge.†)

The Court of Appeal affirmed. The court held that factual findings in a prior judicial opinion are not a proper subject of judicial notice, although a factual finding in a prior judicial opinion may be a proper subject of judicial notice if it has a res judicata or collateral estoppel effect in a subsequent action. The owners did not raise collateral estoppel as a basis for taking judicial notice of the federal court judge's order. In any event, collateral estoppel was not

appropriate. The issues in the federal and state court proceedings were not identical. Furthermore, neither the officer nor the state was a party to the federal court proceeding. The trial court properly could have taken judicial notice that the federal court judge issued an order suppressing the evidence obtained in the search of the towing business. [*141] However, the fact of such ruling had no bearing on the state court matter and was not what the owners sought. The owners attempted to present the factual findings of the federal court judge as evidence of those facts. This was not a proper use of judicial notice, and the trial court correctly denied the owners' request. (Opinion by Hull, J., with Raye, Acting P. J., and Morrison, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

CA(1) (1)

Summary Judgment § 25 > Appellate Review > Evidence.

On review of an order granting summary judgment, the appellate court construes the evidence in the light most favorable to the opposing party. However, it considers only evidence relevant to the matter in dispute.

CA(2) (2)

Evidence § 5 > Judicial Notice > Matters Subject to Notice > Facts

Factual findings in a prior judicial opinion are not a proper subject of judicial notice.

CA(3) (3)

Evidence § 5 > Judicial Notice > Matters Subject to Notice > Facts > Res Judicata or Collateral Estoppel Effect in Subsequent Action

Even though a factual finding in a prior judicial decision may not establish the truth of that fact for purposes of judicial notice, the finding itself may be a proper subject of judicial notice if it has a res judicata or collateral estoppel effect in a subsequent action.

CA(4) (4)

Appellate Review § 32 > Presenting and Preserving Questions in Trial Court > Issues Raised for First Time on

† Retired Judge of the Sacramento Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appeal > .

Generally, a party may not raise issues for the first time on appeal.

CA(5) (5)

Evidence § 5 > Judicial Notice > Matters Subject to Notice > Facts > Federal Court's Order Suppressing Evidence.

The trial court in an action brought against the state correctly denied plaintiffs' request for judicial notice of a federal court judge's suppression order where plaintiffs attempted to present the factual findings of the federal judge who granted plaintiffs' motion to suppress evidence as evidence of those facts in the state court proceeding, and where the issues in the two cases were not identical and neither defendant was a party in the federal court proceeding.

[1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 24; 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 355 et seq.]

Counsel: Law Offices of R. Ellis Harper and R. Ellis Harper for Plaintiffs and Appellants.

Bill Lockyer, Attorney General, James M. Schiavenza, Assistant Attorney General, Darryl L. Doke, Thomas D. McCrackin and Scott H. Wyckoff, Deputy Attorneys General, for Defendants and Respondents.

Judges: Hull, J., with Raye, Acting P. J., and Morrison, J., concurring.

Opinion by: HULL

Opinion

[**110] HULL, J.—Plaintiffs Kent and Kim Kilroy, doing business as Kilroy's Towing, initiated this action against defendants State of California and Dave Paulus, a California Highway Patrol (CHP) officer, alleging violation of their civil rights and related torts. Plaintiffs allege that Paulus wrongly omitted material facts from an affidavit used to obtain a warrant [***2] to search their business. The search turned up firearms that Kent Kilroy was not permitted to possess and led to his prosecution in federal court. That prosecution was later dismissed after the court granted defendant's motion to suppress.

[**111] In this matter, the trial court denied plaintiffs'

request for judicial notice of the federal court's suppression order and granted defendants' motion for summary judgment. The court concluded that defendants are entitled to immunity on the civil rights claims and that there is no evidence to support plaintiffs' other causes of action. Plaintiffs contend that the court erred in denying their request for judicial notice. They further contend that issues of fact remain as to whether there was probable cause for the search and whether defendants' are entitled to immunity. We affirm the judgment.

Facts and Procedural History

HN1 CA(1) (1) On review of an order granting summary judgment, we construe the evidence in the light most favorable to the opposing party. (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107 [252 Cal. Rptr. 122, 762 P.2d 46].) However, we consider only evidence relevant to the matter in dispute.

On March 1, 1999, Paulus, an 18-year [***3] veteran of the CHP, became the "tow coordination officer" for the Grass Valley area, where plaintiffs conducted their business. As the tow coordination officer, Paulus was responsible for overseeing towing companies authorized to be part of the CHP's "tow rotation program," under which tow operators are dispatched on a rotating basis to assist the CHP with disabled or damaged vehicles. Paulus was also responsible for determining if operators are in compliance with CHP requirements for vehicles, drivers and insurance. Kilroy's Towing was included in the CHP's tow rotation program at the time.

[*143] On January 20, 2000, Ronald Hines complained to Paulus that his 1987 Chevrolet pickup truck, which was impounded on or about October 25, 1999, had been sold by Kilroy's Towing without Hines's prior approval or knowledge. Hines further indicated that Kent Kilroy had previously asked him for \$ 2,150 to release the vehicle.

On January 25, 2000, Paulus spoke to Kent Kilroy about the sale of Hines's truck. Kilroy said the truck had been sold on January 17 or 18 and that he had attempted to contact Hines, but was unable to do so until after the sale. Kilroy gave Paulus a copy of a vehicle transfer [***4] form for the sale. It indicated that the truck had been sold to Carl Droivold for \$ 300. Kilroy said he had no receipt for the sale. Paulus asked if Kilroy knew the purchaser, and Kilroy said he "did not really know Mr. Droivold."

Paulus next reviewed a CHP form 180 prepared by

Officer Chris Garrison at the time the truck was taken to Kilroy's Towing. The form listed the value of the truck at \$ 4,000, and Paulus determined it to be consistent with the Kelley Blue Book value. However, there was another version of the form that listed the value of the truck at up to \$ 2,500.

On February 24, 2000, Paulus went to Carl Droivold's residence and spoke to Droivold's wife. He saw the truck, which appeared to be in good condition. Mrs. Droivold said her husband paid "way more than \$ 300" for it. Later that day, Paulus returned to the Droivold residence and spoke to Carl Droivold, who indicated he paid \$ 1,500 for the truck. Carl Droivold also said he had known Kent Kilroy for many years, they were good friends and he had worked for Kilroy on occasion. However, two hours later, Paulus again spoke to Carl Droivold, who recanted his earlier statement about the purchase price and said he paid [***5] only \$ 300. Droivold also said he did not pay cash but instead bartered for labor.

On February 25, 2000, Carl Droivold and Kent Kilroy filed citizen's complaints against Paulus. Around the same time, Paulus informed his supervisor, Lieutenant [**112] Paul Vinson, about the results of his investigation. Vinson instructed Paulus to prepare an affidavit to obtain a warrant to search for documents regarding the truck sale. Paulus was also told to seek assistance in preparing the affidavit from Officer Garrison, who had more experience in such matters. Because of the citizen complaints, Paulus was removed from further investigation of the matter. There have been no other citizen complaints filed against Paulus.

Paulus and Garrison prepared a search warrant affidavit. The affidavit generally recited the information obtained by Paulus during his investigation. However, it also indicated that Paulus estimated the value of the truck at [*144] \$ 4,000 to \$ 5,000 based on his observation of it at the Droivold residence. The affidavit failed to mention that Carl Droivold had recanted his earlier statement about what he paid for the truck or that Kilroy and Droivold had filed citizen complaints against Paulus. [***6] Paulus also did not include the fact that Hines owed \$ 573 in registration fees on the truck, the price Hines paid for the truck, or the truck's mileage, matters which he had not investigated. He also did not include Droivold's claim that the truck was in poor condition and that Droivold had put \$ 5,000 in parts and labor into it.

Paulus presented the affidavit to a magistrate on

February 27, and a search warrant was issued. CHP officers other than Paulus executed the warrant at Kilroy's Towing. Paulus acted as the evidence officer for the materials retrieved from Kilroy's Towing.

Kent Kilroy was arrested for possession of firearms discovered in the search. Kilroy had an earlier felony conviction, rendering such possession unlawful. He was prosecuted in federal court, where Judge Lawrence Karlton granted Kilroy's motion to suppress, and the charges were dismissed.

On September 3, 2002, the Kilroys initiated this action against the State of California and Paulus. The complaint alleged six causes of action: (1) violation of civil rights (42 U.S.C. § 1983; Civ. Code, § 52.1), (2) intentional interference with business relations, (3) [***7] negligent interference with business relations, (4) negligent hiring and retention, (5) intentional infliction of emotional distress, and (6) negligent infliction of emotional distress. The defendants demurred and the court sustained the demurrers to the interference with business relations and infliction of emotional distress claims. The court also sustained the state's demurrer to the title 42 United States Code section 1983 claim.

Defendants thereafter moved for summary judgment or, in the alternative, summary adjudication of issues. In opposition to the motion, plaintiffs requested judicial notice of [**113] Judge Karlton's order granting Kent Kilroy's motion to suppress. Defendants opposed the request and objected to various assertions in plaintiffs' separate statement of material facts.

The trial court denied judicial notice and sustained many of defendants' evidence objections. On the motion for summary judgment, the court concluded that Paulus is entitled to qualified immunity on the title 42 United States Code section 1983 claim and both defendants are entitled to immunity in connection with the Civil Code section 52.1 claim. [***8] Finally, the court concluded that there is no factual basis for the negligent hiring and retention claim, because there is no evidence of prior complaints against Paulus. The court granted summary judgment to defendants, and judgment was entered.

[*145] Discussion

I.

Judicial Notice

Plaintiffs contend that the trial **court** erred in refusing to take **judicial notice** of Judge Karlton's order granting Kent Kilroy's motion to suppress. Plaintiffs argue that a **court** may take **judicial notice** of the records of any other **court** and of the truth of **facts** asserted in orders, findings of **fact** and judgments. Finally, plaintiffs argue that the **court** is required to take **judicial notice** of such matters if the proponent gives the adverse party sufficient **notice** of the request and furnishes the **court** with sufficient information to enable it to take **judicial notice**. (See *Evid. Code*, § 453.) We are not persuaded.

HN2 "Judicial notice is the recognition and acceptance by the **court**, for use by the trier of **fact** or by the **court**, of the existence of a matter of law or **fact** (that is relevant to an issue in the action without requiring formal proof of the matter." [Citation.]) (**9) The **court** may in its discretion take **judicial notice** of any **court** record in the United States. (*Evid. Code*, § 451.) This includes any orders, findings of **facts** and conclusions of law, and judgments within **court** records. [Citations.] However, while **courts** are free to take **judicial notice** of the existence of each document in a **court** file, including the truth of results reached, they may not take **judicial notice** of the truth of hearsay statements in decisions and **court** files. [Citation.] **Courts** may not take **judicial notice** of allegations in affidavits, declarations and probation reports in **court** records because such matters are reasonably subject to dispute and therefore require formal proof." (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 [110 Cal. Rptr. 2d 877].)

(We agree with plaintiffs that it would have been proper for the trial **court** to take **judicial notice** of Judge Karlton's order, at least to prove the truth of the **fact** that such order was issued. However, plaintiffs sought much more from that order. Plaintiffs attempted to use it as evidence of the **facts found** and recited by Judge Karlton in the order. (**10) which **facts** led him to conclude that the search violated the Fourth Amendment.)

In asserting that the trial **court** was required to take **judicial notice** not only of the **fact** of Judge Karlton's order but of the factual findings therein, plaintiffs rely heavily on the following statement by Justice Jefferson in the second edition of his treatise on evidence: "[A] **court** cannot take **judicial** [*146] **notice** of hearsay allegations as being true, just because they are part of a **court** record or file. A **court** may take **judicial notice** of the existence of each document in a **court** file, but can only take **judicial notice** of the truth of **facts** asserted in

documents such as orders, findings of **fact** and conclusions of law, and judgments." (2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) **Judicial Notice**, § 47.2, p. 1757.)

In support of the foregoing rule, Justice Jefferson cited, among others, *Weiner v. Mitchell, Silberberg & Knupp* (1980) 114 Cal. App. 3d 39 [170 Cal. Rptr. 533], where the **Court** of Appeal held that it was proper for the trial **court** to take **judicial notice** of **facts stated** in a **federal** appellate opinion affirming a criminal conviction. (*Id.* at pp. 45-46.) (**11) The **Court** of Appeal sought to justify its decision by explaining that "[t]he **facts stated** in an appellate opinion appear to us to possess generally an assurance of accuracy and reliability" (*Id.* at p. 46.) However, Justice Jefferson disagreed with the *Weiner* approach, explaining: "The *Weiner court's* view of **judicial notice** indicates an erroneous concept of **judicial notice** and is clearly fallacious and indefensible. **Judicial notice** substitutes for formal proof only because the matters **judicially noticed** are not reasonably subject to dispute. It is not sufficient for **judicial notice** that **facts** sought to be made the subject of (**114) **judicial notice** possess 'generally' an assurance of accuracy. An appellate opinion is not a judgment of the appellate **court**, such as is the remittitur. An appellate opinion's recitation of **facts** is nothing more than the hearsay assertions of the judges who issued the opinion. An appellate opinion—insofar as it recites pertinent **facts**—is not to be classified in the same vein as orders, findings of **fact** and conclusions of law, and judgments." (2 Jefferson, Cal. Evidence Benchbook, *supra*, **Judicial Notice**, § 47.2, pp. 1758-1759, italics (**12) omitted.)

In *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort, supra*, 91 Cal.App.4th 875, the **court** explained further that *Weiner* "appears to run counter to the well-established principle that **HN3 courts** may not take **judicial notice** of hearsay allegations. An appellate **court's** description of **facts** is merely the hearsay assertions of the justices who delivered the opinion. Hearsay statements within the opinion are inadmissible unless they fall within an exception to the hearsay rule. Under section 1280 of the Evidence Code, appellate opinions do come within the exception to the hearsay rule for official records. (*Evid. Code*, § 1280.) However, an official record is '[e]vidence of a writing made as a record of an act, condition, or event ... offered ... to prove the act, condition or event' (*Ibid.*) Thus, while an official record of an appellate opinion can be admitted to prove the truth of the **facts** asserted, the most it may prove is that the appellate opinion was

delivered [*147] and that the court made orders, factual findings, judgments and conclusions of law. Stated another way, what [***13] is being noticed is the existence of the act, not that what is asserted in the act is true. [Citation.] The truth of any factual matters that might be deduced from official records is not the proper subject of judicial notice." (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort, supra, at p. 885.*)

In the third edition of his treatise, Justice Jefferson has not included the statement relied on by plaintiffs. Rather on the question of judicial notice of facts recited in orders and judgments, the treatise states: "Can the court take judicial notice of the truth of the facts asserted in documents such as orders, findings of fact, conclusions of law, and judgments? By making an order establishing the law of the case, it seems that the facts are no longer in dispute and can therefore be considered true as set forth in an order, findings of fact, or conclusions of law. (2 Jefferson, Cal. Evidence Benchbook (3d ed 2004) Judicial Notice, § 47.12, p. 1094.) Thus, only where the order or judgment establishes a fact for purposes of law of the case or, as we shall explain, res judicata or collateral estoppel, would the fact so determined be a proper subject [***14] of judicial notice."

In *Gilmore v. Superior Court* (1991) 230 Cal. App. 3d 416 [281 Cal. Rptr. 343], this court held that it was error to take judicial notice of factual statements from a prior appellate opinion involving the same defendant and the same facts. *Gilmore* was a wrongful death case, and in the prior action, we reversed the defendant's manslaughter conviction, concluding that the undisputed evidence established justifiable homicide as a matter of law. The trial court took judicial notice not only of the existence of the opinion and the result reached but of the "statement of the facts surrounding the homicide to establish the truth thereof." We indicated it would normally be error for a court to take judicial notice of statements of facts in an opinion. (*Id. at p. 418.*) However, we concluded that such error did not affect the outcome of the case. (*Id. at p. 419.*)

[**115] In *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548 [8 Cal. Rptr. 2d 552], the Court of Appeal affirmed a trial court's refusal to take judicial notice of a judge's factual findings in a prior case. The *Sosinsky court* expressly refused to follow the language from [***15] the Jefferson treatise on which plaintiffs rely. The court explained: "While we have no quarrel with the fact that a judge, after hearing a factual dispute between litigants

A and B, may choose to believe A, and make a finding of fact in A's favor, and while we have no quarrel that at some subsequent time it may be proper to take judicial notice that the judge did in fact make that particular finding in favor of A, the taking of judicial notice that the judge made a particular factual finding is a far cry from the taking of judicial notice that the 'facts' found by the judge must necessarily [*148] be the true facts, i.e., must necessarily be 'the truth.' To state this a bit more simply, the taking of judicial notice that the judge believed A (i.e., that the judge ruled in favor of A on a particular factual dispute) is different from the taking of judicial notice that A's testimony must necessarily have been true simply because the judge believed A and not B. Indeed, if A's testimony consisted of 'facts ... that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy' (*Evid. Code, § 452, [***16] subd. (h)*), there would have been no need for a trial on the dispute between A and B in the first place. The Jefferson text points out, quite correctly, that the assertion of a 'fact' in a document that appears in a court file does not necessarily mean that 'fact' is a true 'fact.' Why this general rule changes for statements of 'fact' that are made by a judge in that judge's findings of fact, the text does not address." (*Sosinsky v. Grant, supra, 6 Cal.App.4th at p. 1565, italics omitted.*)

The *Sosinsky court* also took issue with cases asserting that judicial notice of factual findings in prior judicial orders, opinions or decisions is proper where the factual matter had been the subject of a contested adversary hearing. The court stated: "It appears to us, however, that neither a finding of fact made after a contested adversary hearing nor a finding of fact made after any other type of hearing can be indisputably deemed to have been a correct finding. As we have noted, '[u]nder the doctrine of judicial notice, certain matters are assumed to be indisputably true, and the introduction of evidence to prove them will not be required.' [Citation.] Taking [***17] judicial notice of the truth of a judge's factual finding would appear to us to be tantamount to taking judicial notice that the judge's factual finding must necessarily have been correct and that the judge is therefore infallible. We resist the temptation to do so." (*Sosinsky v. Grant, supra, 6 Cal.App.4th at p. 1568.*)

CA(2) (2) We agree with the foregoing cases that HN4 factual findings in a prior judicial opinion are not a proper subject of judicial notice. However, that does not end our inquiry. "Whether a factual finding is true is a different question than whether the truth of that factual finding may or may not be subsequently

litigated a second time. The doctrines of res judicata and collateral estoppel will, when they apply, serve to bar relitigation of a factual dispute even in those instances where the factual dispute was erroneously decided in favor of a party who did not testify truthfully.” (*Sosinsky v. Grant*, *supra*, 6 Cal.App.4th at p. 1569.)

CA(3) (3) In other words, even though a **factual finding** in a prior **judicial** decision may not establish the truth of that **fact** for purposes of **judicial notice**, the **finding** itself may be a proper subject of **judicial notice** if it has a **[**116]** res judicata or **[***18]** collateral estoppel effect in a subsequent action.

[*149] Plaintiffs suggest, albeit obliquely, that the **court** was required to take **judicial notice** of Judge Karlton's order because it has collateral estoppel effect in this action. Plaintiffs point out that both Paulus and Kent Kilroy testified in the **federal court** proceeding, arguments were raised on both sides, and probable cause was **found** lacking. According to plaintiffs, “[t]he findings by Judge Karlton went directly to the issues of concealment and misstatements by the affiant, misdirection to a magistrate, and a reckless or deliberate disregard of truth by affiant Paulus.”

HN5 CA(4) (4) In the **court** below, plaintiffs did not raise collateral estoppel as a basis for taking **judicial notice** of Judge Karlton's order. At the hearing on defendants' motion, counsel for plaintiffs indicated their argument was not that the **court** should adopt everything Judge Karlton said, but rather should consider the **facts** recited therein as a basis for denying summary judgment. Generally, a party may not raise issues for the first time on appeal. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 394, p. 444; see *Johanson Transportation Service v. Rich Pik'd Rite, Inc.* (1985) 164 Cal. App. 3d 583, 588 [210 Cal. Rptr. 433].) **[***19]**

At any rate, collateral estoppel is not appropriate here. **HN6** “[A] party will be collaterally estopped from relitigating an issue only if (1) the issue decided in a prior **adjudication** is identical with that presented in the action in question; and (2) there was a final judgment on the merits; and (3) the party against whom the plea is asserted was a party or in privity with a party to the prior **adjudication**.” (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 874 [151 Cal. Rptr. 285, 587 P.2d 1098], italics omitted.) In addition to being a party or in privity with a party to the prior action, “the circumstances must have been such that the party to be estopped should reasonably have expected to be bound by the prior **adjudication**.” (*Id.* at p. 875.)

The issue decided in the **federal** proceeding (whether evidence must be suppressed because of deliberate and material omissions) is not identical to the issue to be decided here (whether Paulus is entitled to qualified immunity because his conduct was objectively reasonable). (See *Lombardi v. City of El Cajon* (9th Cir. 1997) 117 F.3d 1117, 1121.) Furthermore, neither Paulus nor the **state** was a **[***20]** party to the **federal court** proceeding. That case was brought on behalf of the United **States** against Kent Kilroy.

[*150] In this matter, the trial **court** properly could have taken **judicial notice** that on January 16, 2001, Judge Karlton issued an order suppressing the evidence obtained in the search of Kilroy's Towing. However, the **fact** of such ruling has no bearing on this matter and is not what plaintiffs sought. **CA(5)** (5) Plaintiffs attempted to present the factual findings of Judge Karlton as evidence of those **facts**. This was not a proper use of **judicial notice**, and the trial **court** correctly denied plaintiffs' request.

II–VI*

Disposition

The judgment is affirmed.

Raye, Acting P. J., and Morrison, J., concurred.

End of Document

* See footnote, *ante*, page 140.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Andre Blanding,
Wanda Blanding, and
Brittani Blanding, by and through
her Guardian ad Litem, Reginald
Andre Blanding and Wanda Blanding,

Plaintiffs,

v.

Leon Lott, in his official capacity,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 12-CP-40-2456

RENEWED MOTION FOR
SUMMARY JUDGMENT ON
BEHALF OF DEFENDANT

2016 DEC -1 PM 3:27

TO: ROBERT J. BUTCHER, ESQ. AND DEBORAH J. BUTCHER, COUNSEL FOR
PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Leon Lott in his official capacity hereby moves before the Honorable Jocelyn Newman for an Order pursuant to Rule 56, SCRPC, granting summary judgment to the Defendant and dismissing with prejudice the cause of action of defamation set forth in the Plaintiffs' Amended Complaint.

The Defendant's motion is based upon the following grounds:

1. On November 28, 2016, this matter was called for trial pursuant to a date certain for the sole cause of action of defamation. On such date, the Defendant filed a motion in limine seeking, *inter alia*, that this Court limit or preclude certain evidence and testimony on the grounds of collateral estoppel, judicial estoppel, and/or issue preclusion. A memorandum in support with supporting attachments was filed contemporaneously thereto.

2. Following jury selection on November 28, 2016, the Honorable Jocelyn Newman, the presiding trial judge, heard arguments from counsel pertaining to the grounds asserted in the Defendant's motion in limine.

3. On November 29, 2016, the Court reconvened at which time Judge Newman made specific rulings as to the motion in limine as well as rulings of law. Specifically, the Court determined that the Plaintiffs were estopped from presenting certain evidence and testimony unrelated to the defamation claim. The Court further ruled that a qualified privilege attached to Chris Cowan's remarks.¹

4. Consequently, the only triable issue for which a jury could decide is that of actual malice on the part of Cowan.

5. Based upon the Court's pretrial rulings, the Court's exploration of this issue with counsel for Plaintiffs and Defendant, as well as verbal proffers on the record from counsel, Plaintiffs will be unable to present a scintilla of evidence to the jury that Cowan acted with actual malice at the relevant times in the Plaintiffs' Amended Complaint.

6. The Defendant respectfully represents that this renewed motion is made only after the posture of the case has been significantly modified or limited. See, Rule 56(b), SCRPC ("[a] party against whom a claim ... is asserted ... may, **at any time**, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.") (bolded for emphasis); see also, *Dorrell v. SCDOT*, 361 S.C. 312, 325, 605 S.E.2d 12 (2003) ("The trial judge had the discretionary authority to hear APAC's renewed motion for summary judgment. That a different trial judge previously denied the motion did not preclude APAC from renewing its motion once new evidence came to light."); *Croswell Enter., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct.App.1992) ("If the first

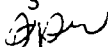
¹ In the Defendant's Amended Answer, the Defendant raised the affirmative defenses for truth and qualified privilege. Following the Court's pretrial rulings, the Defendant elected to withdraw truth as an affirmative defense in this matter.

motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial."); *PPG Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331 (Ct.App.1998) ("Sanford argues that the trial court erred in reconsidering its initial denial of summary judgment because there is no such motion under the South Carolina practice. We find no merit to this contention. ... A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.")

7. This motion is further made so as to avoid the waste of litigants' time as well as the Court's resources in continuing this litigation and proceeding with the trial; is in the interests of judicial economy; is further in the interests of justice; and would cause no prejudice to Plaintiffs.

The Defendants' renewed motion is based upon the pleadings filed in this case; the previous motion for summary judgment with four (4) supporting exhibits filed December 8, 2015; the Memorandum in Support of Motion in Limine filed on November 28, 2016 and exhibits thereto; the record of this Court from November 28 and 29, 2016, including verbal proffers from counsel; the rules of court; and such other matters as may be presented to the Court at the Court's direction.

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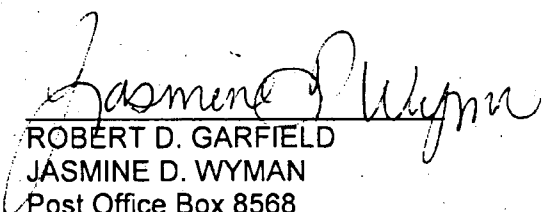
3


ROA 473

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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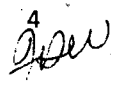
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jwyman@dml-law.com

Counsel for Defendant

Columbia, South Carolina

December 1, 2016



ROA 474

1 State of South Carolina Court of Common Pleas
 2 County of Richland Fifth Judicial Circuit
 3

4 Reginald Andre Blanding, Wanda) Transcript of Record
 Blanding, and Brittani Blanding,)
 5 by and through her Guardian ad) 2012-CP-40-2456
 Liteims, Reginald Andre Blanding)
 6 and Wanda Blanding,)
)
 7 Plaintiffs,)
 vs.)
 8)
 Richland County Sheriff's)
 9 Department, Leon Lott, and)
 Lieutenant Cowan,)
 10)
 Defendants.)

11
 12
 13 November 28th - 29th, 2016
 Columbia, South Carolina
 14

15 B E F O R E:

16 The Honorable Jocelyn Newman, Judge
 17

18 A P P E A R A N C E S:

19 Robert J. Butcher, Esquire
 Deborah J. Butcher, Esquire
 20 Attorneys for the Plaintiffs

21 Robert D. Garfield, Esquire
 Jasmine D. Wyman, Esquire
 22 Attorneys for the Defendants
 23

24 Stacy S. Johnson, RPR
 Circuit Court Reporter
 25

I N D E XPAGE

Pretrial Motions

3

Certificate of Reporter

130

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NO EXHIBITS WERE INTRODUCED

1 (Whereupon, the following proceedings were held on
2 November 28, 2016, beginning at 12:00 PM.)

3 **BAILIFF:** Court come to order. All rise, please. You
4 may be seated.

5 **THE COURT:** Are we ready?

6 **MR. GARFIELD:** I'm sorry. Yes, ma'am. Thank you.

7 **THE COURT:** We're ready to begin the trial of Reginald
8 Andre Blanding versus Leon Lott. Mr. Truitt is bringing
9 the jury panel. Have y'all had the opportunity to look at
10 the other's proposed voir dire?

11 **MR. GARFIELD:** I didn't get voir dire from them. I
12 have a witness list.

13 **MR. BUTCHER:** Your Honor, it's -- it's in the car and
14 so I had e-mailed it to you. And I copied, Robbie. I'm
15 sorry.

16 **MR. GARFIELD:** I'm on Judge Lee's rules. My phone was
17 off, so I can cut it back on and look at it.

18 **THE COURT:** That's fine.

19 **MR. GARFIELD:** Thank you.

20 **MR. BUTCHER:** And I apologize.

21 **MR. GARFIELD:** If you give me just one moment, I'll --

22 **THE COURT:** I'll tell you, Mr. Butcher, I'm not
23 inclined to ask any of these specific questions that you've
24 proposed.

25 **MR. BUTCHER:** Okay.

1 **THE COURT:** I guess getting at Number 3, I'll ask
2 if anyone -- just generally if anyone has any reason to
3 believe that they cannot give both parties a fair and
4 impartial trial just as a general question, but I think
5 that 1 and 2 and the way 3 is phrased are quite specific,
6 and I understand your reasoning for asking them, but --

7 **MR. BUTCHER:** Okay.

8 **THE COURT:** I may rephrase them, but I'll give you an
9 opportunity at the conclusion to raise any objection to the
10 questions that I have asked.

11 **MR. BUTCHER:** Okay. And on Page 1 of Robbie's voir
12 dire, Janet Butcher, I have nothing to do with that woman.
13 Absolutely nothing.

14 **MR. GARFIELD:** That was actually a typo, Judge. I'm
15 glad he mentioned that. It's a typo. It's supposed to be
16 Deborah.

17 **MR. BUTCHER:** If you don't mind changing that.

18 **THE COURT:** Got it.

19 **MR. GARFIELD:** If you will give me just a moment, Your
20 Honor.

21 Judge, we're -- we're inclined to agree with the
22 Court's inclination because these are either subsumed in
23 some of our voir dire or just the wording is a little
24 clunky. Who might lie while testifying, I think we pretty
25 much cover that as far as the believability of law

1 enforcement or government officers, which we pretty much
2 take that language from the Federal questions for juries.

3 **THE COURT:** Now that I see the similarities, there
4 are some that I may ask. I'll sort of blend the two. And
5 as I told Mr. Butcher, I'll give you the opportunity to
6 raise any objection to the way that I phrase it at the
7 conclusion.

8 **MR. GARFIELD:** Yes, ma'am. And, you know, I think --
9 I've done this so long I think sometimes it may be helpful
10 since we are just sort of talking about particularly mine,
11 and I would direct Your Honor's attention to Mr. Butcher's
12 Number 4. I have recently fine tuned this question where
13 it says you or any member of your immediate family have
14 ever had an unusually bad experience because I think
15 everybody in the world has had an unpleasant experience
16 with a police officer. That doesn't -- that's not very
17 helpful and I don't -- I'm not really picky on that word
18 usually, but just to get across something over and above
19 the normal and if they've never have a problem, obviously,
20 Your Honor, some of these are suggestive to ask outside the
21 presence, but I'll leave it in Your Honor's -- that's just
22 my only point on any of those.

23 **MR. BUTCHER:** Your Honor, I think Robbie's are
24 neutral enough to get what I want, so we can go with
25 Mr. Garfield's.

1 **THE COURT:** Okay. Good enough.

2 (Whereupon, the jury panel enters the courtroom at
3 12:11 PM.)

4 **THE COURT:** Okay. Good afternoon, ladies and
5 gentlemen. We are here today prepared to try the case
6 of Reginald Blanding versus Leon Lott. I know you went
7 through jury qualification this morning where a judge
8 asked you a number of questions to determine whether you
9 were fit to serve as jurors in Richland County this week,
10 but I have to ask you another series of questions to
11 determine whether you are fit to serve as jurors in this
12 case.

13 So before I get started, I'm gonna have you stand up,
14 raise your right hand and the clerk is gonna place you
15 under oath once again.

16 (Whereupon, the jury was duly sworn by the Clerk of
17 Court.)

18 **THE COURT:** Folks, I guess I should have introduced
19 myself. My name is Jocelyn Newman. Uh-oh. We've got one
20 more coming in.

21 All right. So we had just gotten started. I assume
22 that you are supposed to be in this courtroom. Tell me
23 your name and jury number, please.

24 **POTENTIAL JUROR:** Adrienne Jackson, and it's 135. I
25 had to use the restroom.

1 **THE CLERK:** 135, she is on our list.

2 **THE COURT:** Okay. And we have just -- all your fellow
3 potential jurors have been placed under oath, but I'm gonna
4 have you stand up since you came in late and be placed
5 under oath as well.

6 **POTENTIAL JUROR:** Yes, ma'am.

7 **THE CLERK:** Raise your right hand, please.

8 (Whereupon, Juror Number 135 was duly sworn by the
9 Clerk of Court.)

10 **THE CLERK:** Thank you. Please have a seat.

11 **THE COURT:** All right, ma'am. And as I was telling
12 your fellow potential jurors, we are here today to begin a
13 trial. This is a civil case and I was about to introduce
14 myself. My name is Jocelyn Newman. I'm a circuit court
15 judge here in Richland County. I am an at-large judge, one
16 of the newly elected judges, but I spend most of my time
17 here in Richland County. So this is a civil case that we
18 are about to try. And, again, as I told your fellow
19 jurors, although you've answered some questions this
20 morning about your qualifications to serve as a juror in
21 Richland County, I am now gonna ask you a series of other
22 questions to determine your fitness to serve as jurors on
23 this particular case.

24 So this is a civil case and the -- I'll tell you first
25 that this case involves some statements allegedly made by

1 some representative of the Richland County Sheriff's
2 Department about some alleged criminal activity that
3 occurred in October -- is it 2011?

4 **MR. GARFIELD:** (Nods head.)

5 **THE COURT:** -- in October of 2011 here in Richland
6 County on Gibbs -- Mr. Garfield, help me out.

7 **MR. GARFIELD:** Gibbs Road.

8 **MR. BUTCHER:** 402.

9 **THE COURT:** -- 402 Gibbs Road here in Richland County.
10 So the first question I have is whether any member of the
11 jury panel has any knowledge whatsoever about an interview
12 or some statements made about some activity by the
13 sheriff's department -- statements made by the sheriff's
14 department about activity that occurred at 402 Gibbs Road
15 here in Richland County in October of 2011. If so, please
16 stand.

17 All right. Now the Plaintiffs in this case, the
18 people who have filed the action, are Reginald Andre
19 Blanding, Wanda Blanding and Brittani Blanding, and these
20 three individuals are here standing before you. So my
21 question to you is, is any member of the jury panel related
22 by blood, connected by marriage or has any close personal
23 friendship or business relationship with any of those three
24 Plaintiffs? If so, please stand. Okay. Thank you. You
25 can have a seat.

1 The Plaintiffs in this case are represented by Robert
2 Butcher and Deborah Butcher, Esquire, and --

3 **MR. BUTCHER:** This is my paralegal. Debbie is in
4 Williamsburg County.

5 **THE COURT:** Debbie is not here, but also their
6 paralegal is here, Tiffany --

7 **MR. BUTCHER:** Parnell. Or Brown. Sorry.

8 **THE COURT:** -- Tiffany Brown. So I need to know
9 whether any member of the jury panel is related by blood,
10 connected by marriage or have any close personal
11 relationship or business relationship or been represented
12 by Mr. Robert Butcher or Deborah Butcher or had any
13 business dealings with Tiffany Brown? If so, please stand.
14 All right. Thank you. You can have a seat.

15 The Defendant in this case is Leon Lott in his
16 official capacity as the sheriff of Richland County. A
17 representative of -- Mr. Lott's not here, but a
18 representative of the sheriff's department, Ms. Britton
19 All. Is All still your last name? I don't know. Are you
20 married?

21 **MS. ALL:** All, yes.

22 **THE COURT:** Okay. Britton All. Britton All is here.
23 So I need to know if any member of the jury panel is
24 related by blood, connected by marriage or has any close
25 personal relationship with Sheriff Lott or Britton All or

1 any member of the sheriff's department, any deputy or
2 employee of the sheriff's department? If so, please stand.

3 (Juror stands.).

4 **THE COURT:** Yes, ma'am. Give me your name and jury
5 number, please.

6 **POTENTIAL JUROR:** Louise Hallman, 282. Just a retired
7 brother-in-law for Columbia Police Department.

8 **THE COURT:** Okay. So not the Richland County
9 Sheriff's Department?

10 **POTENTIAL JUROR:** No. I guess I wasn't listening.

11 **THE COURT:** Okay. I'll ask it again. Is any member
12 of the jury panel related by blood, connected by marriage
13 or have any close personal relationship with the sheriff
14 of Richland County, Leon Lott, with Ms. Britton All, who's
15 an attorney who stood before you, or any deputy sheriff of
16 the Richland County Sheriff's Department or anyone who's
17 employed in any other capacity by the Richland County
18 Sheriff's Department? If so, please stand.

19 All right. The sheriff is represented in this matter
20 by Mr. Robert Garfield and Jasmine Wyman and they work
21 with the law firm of Davidson and Lindemann here in
22 Columbia. So is any of the member of the jury panel
23 related by blood, connected by marriage or have any close
24 personal or business relationship with Mr. Garfield,
25 Ms. Wyman or any member of the law firm of Davidson or

1 Lindemann or been represented by Davidson and Lindemann in
2 the past? If so, please stand.

3 (Juror stands.)

4 **THE COURT:** Yes, sir. Give me your name and jury
5 number.

6 **POTENTIAL JUROR:** I'm Charles Cannon. Juror Number
7 45. Mr. Garfield is a personal friend of mine.

8 **THE COURT:** Okay. Would the fact -- when you -- well,
9 let me ask you. When you say a close friend, do you
10 socialize together, spend time on the weekends or in the
11 evenings together doing social things?

12 **POTENTIAL JUROR:** Once or twice a month.

13 **THE COURT:** Okay. Would the fact that you have that
14 relationship with Mr. Garfield affect your ability to act
15 as a fair and impartial juror in this case?

16 **POTENTIAL JUROR:** No, Your Honor.

17 **THE COURT:** Thank you, sir. You may have a seat.
18 Yes, sir.

19 (Juror stands.)

20 **POTENTIAL JUROR:** Jim Latham and I'm Juror 160, and I,
21 too, have socialized with Mr. Garfield in the past.

22 **THE COURT:** Okay. Do you socialize with him
23 regularly?

24 **POTENTIAL JUROR:** No, ma'am.

25 **THE COURT:** And when was the last time you socialized

1 with him?

2 **POTENTIAL JUROR:** A few years ago I would say.

3 **THE COURT:** Okay. Would the fact that you have
4 socialized with Mr. Garfield in the past affect your
5 ability to be fair and impartial to both the Plaintiff and
6 the Defendant in this case?

7 **POTENTIAL JUROR:** No, ma'am.

8 **THE COURT:** Thank you, sir. You may have a seat.

9 All right. I'm going to read to you a list of
10 potential witnesses in this case and my question will be
11 the same as to each of these potential witnesses. I don't
12 believe that any of them are here, but -- so you'll have to
13 listen carefully for their names, but the question is the
14 same as to each, and that is: Are you related by blood,
15 connected by marriage or have any close personal or
16 business relationship with any of these potential witnesses
17 in this case? Ricky Johnson, Frieda Wyatt, Adrian
18 Thompson, Adam Cornwell, Sarah Garren, George Becker,
19 Michael Nawrockyj. That's close. N-A-W-R-O-C-K-Y-J.
20 Sheriff Leon Lott.

21 (Juror stands.)

22 **MR. BUTCHER:** Your Honor, a juror responded.

23 **THE COURT:** I'm sorry. Yes, sir. If you would stand
24 up and give me your name and juror number.

25 **POTENTIAL JUROR:** Thomas Jones, 147. Is Mr. Nawrockyj

1 a former member of the sheriff's department?

2 **THE COURT:** He is.

3 **POTENTIAL JUROR:** K-9-Unit?

4 **THE COURT:** Yes, sir.

5 **POTENTIAL JUROR:** He was a former patient of mine.

6 **THE COURT:** Okay. And how long ago?

7 **POTENTIAL JUROR:** Probably about 2011.

8 **THE COURT:** And are you a physician?

9 **POTENTIAL JUROR:** Yes, ma'am.

10 **THE COURT:** Would the fact that you have that
11 relationship with that gentleman affect your ability to be
12 a fair and impartial juror in this case?

13 **POTENTIAL JUROR:** No, ma'am.

14 **THE COURT:** Thank you, sir. You may have a seat.
15 Valerie Hutchison. Chris Cowan. Curtis Wilson.
16 Mr. Wilson is here. Deputy -- lieutenant?

17 **LIEUTENANT WILSON:** Lieutenant.

18 **THE COURT:** Lieutenant Wilson is here in the
19 courtroom. Thank you, sir. You may have a seat. Kaleta
20 Wright. Jessica Lilly. Dave Englehart. Roosevelt
21 Blanding. Marjory Blanding. Andre Blanding. Larena
22 Gripper. Donnell Blanding. Breon Blanding. Johnny Gibbs.
23 Rosa Samuels. Taylor Blanding. Gregory Samuels, also
24 known as Peanut. Jody Barr. Thomas Henkel. Darrell
25 Woodmancee. Albert Downing. Nena Stanley. Sharon Dukes.

1 Frieda Wyatt. And that's the extent of the witness list.

2 So if you heard a name that I read and you have any
3 close personal relationship or familial relationship with
4 any of those people at this time, please stand.

5 Okay. The next question. Has any member of the jury
6 panel or any member of your immediate family been stopped,
7 detained or arrested by a law enforcement officer for
8 anything other than a minor traffic offense? If so, please
9 stand. So we're not talking about a speeding ticket or
10 running a stop sign or any kind of traffic offense, but I
11 need to know if any member of the jury panel or your
12 immediate family has been stopped, detained or arrested by
13 a law enforcement officer for anything other than a minor
14 traffic offense.

15 (Jurors stand.)

16 **THE COURT:** Yes, sir. Give me your name and jury
17 number.

18 **POTENTIAL JUROR:** James Randolph, 221. For DUI. That
19 was probably about twenty-five years ago.

20 **THE COURT:** Okay. Was that you or a member of your
21 family?

22 **POTENTIAL JUROR:** I was.

23 **THE COURT:** Okay. All right. Would the fact that you
24 had that interaction with law enforcement -- well, let me
25 ask you was it the Richland County Sheriff's Department or

1 some other agency?

2 **POTENTIAL JUROR:** I think it was Richland County.

3 **THE COURT:** Okay. Would the fact that you had that
4 interaction with the Richland County Sheriff's Department
5 at that time affect your ability to give both the Plaintiff
6 and the Defendant a fair and impartial trial in this case?

7 **POTENTIAL JUROR:** No, ma'am.

8 **THE COURT:** Thank you, sir. You may have a seat.
9 Yes, ma'am. Give me your name and jury number again.

10 **POTENTIAL JUROR:** Adrienne Jackson, 135.

11 **THE COURT:** Yes, ma'am.

12 **POTENTIAL JUROR:** My brother has been arrested and
13 detained before.

14 **THE COURT:** Okay. How long ago was that?

15 **POTENTIAL JUROR:** Probably, I think, sometime in the
16 last year -- or last two years.

17 **THE COURT:** Okay. And was that by the Richland County
18 Sheriff's Department or some other --

19 **POTENTIAL JUROR:** (Nods head.)

20 **THE COURT:** It was Richland County?

21 **POTENTIAL JUROR:** Yes, ma'am.

22 **THE COURT:** Would the fact that your brother had that
23 interaction with the Richland County Sheriff's Department
24 affect your ability to give both the Plaintiff and the
25 Defendant a fair and impartial trial in this case?

1 **POTENTIAL JUROR:** No, ma'am.

2 **THE COURT:** Okay. Thank you, ma'am. You may have a
3 seat.

4 All right. Has any member of the jury panel or any
5 member of your immediate family ever had an unusually bad
6 experience with a police officer? And when I ask that
7 question, I know that no one likes to be stopped by a
8 police officer whether that's for a traffic offense or an
9 arrest or anything like that. You'd just rather not be
10 involved with law enforcement in general. So I don't mean
11 any run of the mill interaction with law enforcement, but
12 if there was some particularly bad situation in which you
13 or a member of your immediate family had some interaction
14 with law enforcement, please stand at this time.

15 Okay. Has any member of the jury panel or any member
16 of your immediate family ever filed a complaint against a
17 law enforcement officer or agency? If so, please stand.
18 Of course, that doesn't include just talking to your
19 friend, but actually filing a formal complaint against a
20 police officer or any law enforcement agency. If so,
21 please stand.

22 Okay. And I guess in connection with this, has any
23 member of the jury panel or any member of your immediate
24 family ever filed a lawsuit against a law enforcement
25 agency or officer? If so, please stand.

1 Does any member of the jury panel have very strong
2 feelings, either for or against, law enforcement officers
3 that would cause you to be unable to give both the
4 Plaintiff and the Defendant a fair and impartial trial in
5 this case? If so, please stand.

6 Is there any member of the jury panel who believes
7 that they would be unable to judge the believability or
8 credibility of law enforcement officers or any other
9 governmental witnesses by the same standard as any other
10 witness, any other non-law enforcement officer witness? If
11 so, please stand.

12 In other words, if you are inclined to believe law
13 enforcement more than a lay person or if you're inclined to
14 distrust law enforcement and not believe law enforcement
15 over someone else just by virtue of the fact that they're a
16 law enforcement officer, I need you to stand at this time.

17 Okay. Is there any member of the jury panel who knows
18 of any reason whatsoever why they would be unable to give
19 both the Plaintiff and the Defendant a fair and impartial
20 trial in this case? If so, please stand.

21 All right. Anything from the Plaintiff before we pick
22 a jury? Do you want to approach?

23 **MR. BUTCHER:** Actually --

24 **THE COURT:** If you will both approach, please.

25 (Proceedings held at the bench; not reported.)

1 **THE COURT:** All right. Is there any member of the
2 jury panel who is a member of or contributes to any group
3 which has as its primary concern the promotion of law
4 enforcement or victims rights, including MADD, SADD, CAV
5 which is acronym for Citizens Against Violent Crime, or any
6 organization like that? If so, please stand.

7 All right. Anything further, Counsel?

8 **MR. BUTCHER:** No, Your Honor. Thank you.

9 **THE COURT:** Mr. Garfield?

10 **MR. GARFIELD:** No, ma'am. Thank you..

11 **THE COURT:** All right, Mr. Truitt.

12 **THE CLERK:** Yes, Your Honor..

13 **MR. GARFIELD:** Could we just have one moment, Your
14 Honor?

15 **THE COURT:** Yes, sir.

16 Folks, they have certain information about you and
17 we're about to pick a jury panel so they just need time to
18 look over their list of jurors and reconcile that with the
19 information that they have.

20 Yes, sir.

21 **MR. BUTCHER:** Your Honor, in some counties the clerk
22 will call the number and then there's strike and no strike
23 and some just say list your strikes.

24 **THE COURT:** Mr. Truitt will give you instructions
25 after Mr. Garfield has had an opportunity to review the

1 strike sheet.

2 MR. BUTCHER: Okay. Thanks.

3 MR. GARFIELD: I would like to approach, Your Honor.
4 And I apologize. There's just one thing that was just
5 brought to my attention.

6 THE COURT: Yes, sir.

7 (Proceedings held at the bench; not reported.)

8 THE COURT: Give me the number again, Mr. Garfield.

9 MR. GARFIELD: 13 in the left-hand column.

10 THE COURT: All right. Mr. Ferguson, would you stand
11 please. Are you employed at WIS?

12 POTENTIAL JUROR: (Nods head.)

13 THE COURT: You are currently employed there?

14 POTENTIAL JUROR: (Nods head.)

15 THE COURT: How long have you been employed there:

16 POTENTIAL JUROR: Two and a half years.

17 THE COURT: Okay. Some of the witnesses -- potential
18 witnesses in this case are employees of WIS or former
19 employees of WIS. Given the fact that this case concerns
20 WIS and some current or former employees of WIS-TV, I need
21 to know whether that would affect your ability to give both
22 the Plaintiff and the Defendant a fair and impartial trial
23 in this case?

24 POTENTIAL JUROR: No, ma'am.

25 THE COURT: Okay. Thank you, sir. You may have a

1 seat.

2 **MR. BUTCHER:** Your Honor, I don't -- I don't think
3 either one of us are calling any employees from there. We
4 will be discussing them, correct?

5 **THE COURT:** I don't know.

6 **MR. BUTCHER:** Okay. Well, none of --

7 **THE COURT:** Well, let me ask you again, Mr. Ferguson,
8 the statements allegedly made in this case, some of those
9 statements may have been elicited by or filmed by an
10 employee of WIS and aired on that news station. So knowing
11 all of that, I need to know whether all of that would
12 affect your ability to give both the Plaintiff and the
13 Defendant a fair and impartial trial in this case?

14 **POTENTIAL JUROR:** No, ma'am.

15 **THE COURT:** Okay. Thank you. You may have a seat.

16 **MR. GARFIELD:** Thank you for the time, Your Honor.

17 **THE COURT:** Yes, sir. Is the Plaintiff ready?

18 **MR. BUTCHER:** Ready to proceed, Your Honor.

19 **THE COURT:** Is the defense ready?

20 **MR. GARFIELD:** Thank you.

21 **THE COURT:** All right, Mr. Truitt.

22 **THE CLERK:** Yes, Your Honor. Gentlemen, please
23 exercise your strikes by using the number to the left of
24 the name, numbers 1 through 20. We'll begin with the
25 Plaintiff going first, four strikes each.

1 **MR. BUTCHER:** Plaintiff strikes Number 2.
2 **THE CLERK:** Plaintiff strikes Number 2.
3 **MR. GARFIELD:** The Defendant strikes Number 1.
4 **THE CLERK:** Defendant strikes Number 1.
5 **MR. BUTCHER:** Plaintiff strikes Number 4.
6 **THE CLERK:** Plaintiff strikes Number 4.
7 **MR. GARFIELD:** Defendant strikes Number 10, please.
8 **THE CLERK:** Defendant strikes Number 10.
9 **MR. BUTCHER:** Plaintiff strikes Number 20.
10 **THE CLERK:** Plaintiff strikes Number 20.
11 **MR. GARFIELD:** Defendant strikes Number 16.
12 **THE CLERK:** Defendant strikes Number 16.
13 **MR. BUTCHER:** Plaintiff strikes Number 14.
14 **THE CLERK:** Plaintiff strikes Number 14.
15 **MR. GARFIELD:** I beg the Court's indulgence.
16 **THE COURT:** Yes, sir.
17 **MR. GARFIELD:** The Defendant strikes Number 13.
18 **THE CLERK:** Defendant strikes 13.
19 Please proceed with the alternate, one each, using the
20 numbers 21, 22 and 23.
21 **MR. BUTCHER:** Plaintiff strikes Number 21.
22 **THE CLERK:** Plaintiff strikes Number 21.
23 **MR. GARFIELD:** Defendant strikes 23, please.
24 **THE CLERK:** Defendant strikes Number 23.
25 Please let me review your strikes with you. The

1 Plaintiff has struck Number 2, 4, 20, 14 and alternate 21.

2 **MR. BUTCHER:** Yes, sir.

3 **THE CLERK:** Thank you. The Defendant has struck
4 Number 1, 10, 16, 13 and Number 23, correct?

5 **MR. GARFIELD:** Yes, sir.

6 **THE CLERK:** Thank you. Proceed, Your Honor?

7 **THE COURT:** Yes, sir. Give us a jury.

8 **THE CLERK:** Yes, Your Honor.

9 Ladies and gentlemen of the jury, when I call out your
10 name, please come forward and be seated in this jury box as
11 directed by the bailiff here. If you have any personal
12 items, books, et cetera, bring those with you as I call out
13 your name..

14 Number 115, Kristi Harris. Number 12, Diane Harrill.
15 Number 282, Louise Hallman. Number 311, Barbara Player.
16 Number 124, Jones Herring. Number 203, Tawanna Owens.
17 Number 54, Jewel Chestnut. 192, Branden Morris. Number 4,
18 Ann Anrrich. Number 66, Eric Cox. Number 147, Thomas
19 Jones. Number 117, Mary Hartsell. The alternate will be
20 Number 152, Barnett Keitt.

21 Thirteen, Your Honor.

22 **THE COURT:** All right. Thank you, sir.

23 And Mr. Truitt tried to give me a little hint just a
24 moment ago, but, gentlemen, Mr. Butcher and Mr. Garfield,
25 I'll ask are there any objections or exceptions to jury

1 selection in this case?

2 **MR. BUTCHER:** No objection, Your Honor.

3 **THE COURT:** From the Defense?

4 **MR. GARFIELD:** No, ma'am, not from the Defendant.

5 **THE COURT:** All right.

6 Ladies and gentlemen who were not selected for the
7 jury in this case, you may be needed for another case.

8 I do not know. I'm gonna have you return to the jury
9 assembly room on the first floor for further instructions.

10 (Whereupon, the remaining jury panel was dismissed at
11 12:47 PM.)

12 **THE COURT:** You fine folks who were selected, you are
13 the jury for this case. We have one gentleman as an
14 alternate juror. We are actually not going to begin the
15 trial of this case today. I have a number of matters that
16 I need to discuss with the attorneys before we can actually
17 begin the trial of this case. There are also some things
18 that have to occur tomorrow afternoon in this case. So
19 what I'm gonna have you do now is you're gonna follow one
20 of the bailiffs who will show you where your jury room is
21 and it's gonna be your jury room throughout the duration of
22 this case, but once you have seen the jury room and know
23 where to go and all that, I'm gonna dismiss you for the
24 afternoon and have you return at 1:00 tomorrow so that we
25 can start the trial of this case at that time.

1 I must tell you when I release you, and I'll tell you
2 this multiple times throughout the trial, do not discuss
3 the case amongst yourselves, do not attempt to do any
4 research about the case. Not only the case, but don't try
5 to research the parties in the case, the Plaintiffs, the
6 Defendant, their attorneys, the court personnel. Don't do
7 any research about it whatsoever. In fact, you don't even
8 know anything about the case at this point, so there's
9 nothing to discuss, but you also must not try to find out
10 what this case is about. Don't go looking up any news
11 articles or be on Facebook or YouTube or any of those
12 things. You are not to discuss the case or to do any
13 research about the case or do any research about the court
14 parties, personnel, et cetera. That includes researching
15 me. You don't do it. You can at the conclusion of the
16 case, and I'll tell you when it's appropriate to do that,
17 but I'll tell you that any time that you leave the
18 courtroom whether you're in your jury room or at home
19 you're not to Facebook about it or Tweet about it or
20 anything like that.

21 Yes, ma'am.

22 **JUROR:** Your Honor, I just have a question that one
23 of the jurors here and I are like mutual friends and have
24 hung out before in the past.

25 **THE COURT:** That's fine. And you can talk about

1 anything else under the sun except this case.

2 **JUROR:** Okay.

3 **THE COURT:** Talk about the weather or how your
4 Thanksgiving was or anything like that, but whether you
5 know each other or not it simply doesn't matter. You are
6 not to discuss this case or the court personnel, the
7 attorneys or anything like that.

8 **JUROR:** Yes, ma'am.

9 **THE COURT:** So with that being said, I am going to
10 excuse you to the jury room. You're gonna follow this
11 bailiff to show you where the jury -- I'm sorry, I didn't
12 see you back there -- follow that gentleman and he'll show
13 you where the jury room is so that you know where to report
14 back at 1:00 tomorrow. Thank you.

15 (Whereupon, the jury was excused for the day at
16 12:50 PM.)

17 **THE COURT:** All right, folks. At this point I'm ready
18 to proceed with motions in limine. I don't know what the
19 Plaintiff has, if any. I have read the Defendant's motion
20 in limine and memorandum in support of said motions, so
21 I'll begin with those arguments.

22 And I'll tell you, Mr. Garfield or Ms. Wyman, so that
23 you can address the Court's concerns appropriately what I
24 understand from our conversation in chambers -- as I said,
25 Mr. Garfield, I've read your memorandum in support of the