THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2017-001930

Norris Earl White Jr., Appellant,

v.

City of North Charleston, Respondent.

BRIEF OF APPELLANT

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SC Court of Appeals

Milton Demetrios Stratos II
SC Bar No.: 102108
Joye Law Firm, L.L.P.
5861 Rivers Avenue (29406)
P.O. Box 62888
North Charleston, SC 29419-2888
(843) 729-4269
Fax: (843) 529-9180

Attorney for Appellant

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Attorney for Appellant

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STATEMENT OF THE CASE

On December 4, 2015, Norris Earl White Jr. (hereinafter referred to as "White") filed a complaint against the City of North Charleston (hereinafter referred to as "City"). The action was removed to District Court on January 19, 2016. White thereafter amended his complaint to remove claims arising under federal subject matter jurisdiction, and the case was remanded back to state court on February 19, 2016. White's amended complaint alleges that he was arrested without probable cause, that the City of North Charleston is responsible for the acts of its officers by virtue of the doctrine of respondent superior and the South Carolina Torts Claims Act. On June 8, 2017, the lower court dismissed on summary judgment all of the following claims: (1) Assault and Battery; (2) False Arrest ("unlawful arrest"); (3) False Imprisonment; (4) Negligence / Gross Negligence; (5) Excessive Force; and, (6) Malicious Prosecution. White voluntarily withdrew his claim for Negligent Hiring, Training, and Supervision; wrongful detainment; and, unlawful search and seizure.

On June 19, White timely filed a Motion to Reconsider under Rule 59(e) arguing summary judgment was improper and requesting specific ruling on all issues presented. On August 18, 2017 the lower court denied White's Motion to Reconsider. White timely filed and served Notice of Appeal on September 18, 2017.

The subject matter of this action and all allegations and claims are set forth pursuant to the South Carolina Tort Claims Act (the "TCA"), S.C. Code 15-78-100(b). The Tort Claims Act renders state agencies and governmental entities "liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations and exemptions contained within the Act. S.C. Code Ann. § 15-78-40 (Supp. 2001). The Complaint

states that all claims against the City and its employees are properly brought under common law and the jurisdiction of the TCA.

The dispositive issue is whether there was probable cause to arrest White for charged and uncharged offenses. The lower Court's Order granting summary judgment reaches no conclusion concerning whether White failed to present evidence that his arrest was without probable cause. Because there are factual disputes regarding the existence of probable cause, summary judgment on White's claims of unlawful arrest, excessive force, negligence and unlawful imprisonment is inappropriate.

STANDARD OF REVIEW

Summary judgment should be granted only where it is perfectly clear that no genuine issue of material fact exists and inquiry into facts is not desirable to clarify application of the law. Wortman v. City of Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992), quoting, Bates v. City of Columbia, 301 S.C. 320, 391 S.E.2d 733 (1990). "In South Carolina, the issue of probable cause is a question of affect and ordinarily one for the jury." Jones v. City of Columbia, SC 301 S.C. 320, 391 S.E. 2d 733 (1990).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004). When the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330 (2009). All ambiguities, conclusions, and inferences arising from the evidence must be

construed most strongly against the movant. Staubes v. City of Folly Beach, 331 S.C. 192 (Ct. App. 1998).

FACTS

On December 28, 2013, at approximately 5:00 a.m., White was dining inside of a Waffle House Restaurant in North Charleston, S.C., and seated in a booth near the exit door. White was accompanied by his friend J. Omar and two female companions. The group of four arrived at approximately 4:00 am, and after being seated they all ordered breakfast. There is no evidence to suggest that anyone in their group was intoxicated. Waffle House employee, Laura Fitzpatrick, who was serving White and his friends, provided an affidavit, which supports this assertion, and the arresting officer, Officer Arroyo, cannot say that White was intoxicated. (R. p. 264, ¶ 7; p. 134 , (55) lines 24-25).

Also at the Waffle House that night seated only two to three booths down from White was City of North Charleston Police Officer, Officer Arroyo and Officer Arroyo's wife. Officer Arroyo was present at the Waffle House under the authority of the City of North Charleston Police Department (hereinafter referred to as "NCPD"), pursuant to the NCPD Secondary Employment / Off-Duty Employment Policy, NCPD Policy A-23. (R. pp 257-261). He was being paid by the Waffle House to be present, but he remained under the scope of his employment with the NCPD. This fact is not in dispute. Officer Arroyo was seated facing the restaurant and his wife was seated with her back to the restaurant. Officer Arroyo testified that he could not see the faces of anyone sitting at White's table; that, he was looking at the backs of their heads. (R. 135, (57) lines 8-18).

The incident occurred on a weekend, and it was the early morning hours. The crowd in the Waffle House at this particular location is considered by Waffle House employees to be a "party

crowd." (R. p. 264, ¶ 4). "It's not a family friendly type atmosphere at that time." Id. At 4:00 a.m. in the morning the Waffle House at this location is loud. The patrons are typically boisterous, they dress interestingly, they use profanity and many of them are intoxicated. NCPD Police Officer King agreed with the above in his deposition. (R. p. 164, lines 5 - 23). The Waffle House at that time is not a "library," and not a place to bring your children. (R. p. 164, lines 5 - 9). White and the members of his table were behaving in a civil manner, and no differently from any other patron in the Waffle House. (R. p. 264, ¶ 7). White and his companions were enjoying their meal, while having a rousing conversation. They were openly socializing in their booth amongst themselves. Their conversation was filled with laughter and they were smiling. (R. p. 135, (57-58) lines 19 – 10). They were not disruptive to other patrons. This much can be seen by observing the surveillance video, and watching the reactions of patrons inside the Waffle House. (R. p. 178). The only moment the patron's attention is had is when Officer Arroyo created a disruption by arresting White.

White and his friends made no threats to any patron, person or employee in the Waffle House and they did not use fighting words or threatening language directed at each other or any patron or employee. (R. p. 264, ¶¶ 6-8; p. 140, (79-80) lines 25-8; R. p. 143, (89-90) lines 24-1); p. 163, (62) lines 16-18; p. 171, (81) lines 12-13).

For reasons unknown to White, Officer Arroyo approached his table at approximately 5:00 a.m., and told White to leave. No employee or patron of the Waffle House asked White to leave before Officer Arroyo arrested him. Moreover, witness Laura Fitzpatrick provided a sworn statement that she did "not know why the police officer decided to go to their table." "I did not ask him to and I did not make eye contact, or motion for him to go to their table." (R. pp. 264-265

¶ 8). However, Officer Arroyo testified in his deposition that he decided it was time to remove White from the restaurant when an employee, which had to be Laura Fitzpatrick, made special eye contact with him, which was a signal to remove White. (R. 136, (62) lines 16-19). The surveillance video, however, contradicts Officer Arroyo's testimony, as no employee or patron is seen looking at or motioning to Officer Arroyo around the time before he approached White's table.

White then asked Officer Arroyo why he needed to leave, and Officer Arroyo responds by pulling White from the table and immediately placing him under arrest with both White's hands behind his back. White states that he did not struggle, but that he continually questioned why Officer Arroyo was arresting him. Officer Arroyo struggled to competently handcuff White, and guided White to the other end of the restaurant. The surveillance shows Mr. White turning his head to the left, and at that point Officer Arroyo wrestles White's arm and slams White face first into the tile floor. (R. p. 141, (83) lines 9-14). White believes he may have lost consciousness at this point. Officer King then arrives and assists Officer Arroyo pick White up off the ground. Both Officer King and Officer Arroyo thereafter guide the handcuffed White out of the Waffle House. With White's hands forced upward and toward the ceiling, White is bent over while stumbling as he is being forced forward, and both Officer Arroyo and Officer King use White's head to open two glass doors.

Officer Arroyo and Officer King thereafter escort White to Officer King's unit, search his person without consent, and place White in the rear of Officer King's police car, behind the driver's seat. Officer King allegedly buckled White into the seat and closed the door. Before being incarcerated in Charleston County Detention Center White was transported by EMS to Trident

Medical Center where he was treated for a suspected head injury, as well as facial and scalp contusions.

White was charged with Disorderly Conduct and Resisting Arrest, and was detained in Charleston County Detention Center. White was forced to pay bail and hire a lawyer. White filed a complaint with the NCPD and an internal investigation was conducted by the NCPD, Office of Professional Standards. Officer Arroyo testified that he was never interviewed by anyone in NCPD internal affairs. (R. p. 148, (109) lines 7-8). Moreover, based on the evidence, the NCDP officers tasked with investigating the arrest of White did not view the surveillance video before Chief Driggers ordered Detective Allen on February 11, 2014 to send White a letter informing White that the NCPD concluded that there were no violations of NCPD policies involved in his arrest. (R. p. 206). Therefore, the decision to close the investigation of White's arrest was made knowing of the existence of a surveillance video, but without having viewed it.

The charges against White were ultimately *nol prossed* on April 13, 2015 after City Prosecutor Vaughn viewed the surveillance video, some 15 months after the charges were filed. According the Prosecutor Vaughn, the charges were dropped due to "lack of prosecutorial merit." (R. p. 269). Defendant claims in its Memorandum in Support of Summary Judgment that attorney Vaughn dismissed both charges against White without having consulted "the officer or anyone at the Police Department." However, there is no fact in evidence to draw this conclusion and Defendant has objected to providing attorney Vaughn's file on the basis of privilege.

ARGUMENT

I. THE COURT BELOW ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THERE IS A GENUINE DISPUTE AS TO WHETHER THE RESPONDENT'S ARREST OF APPELLANT WAS LAWFUL AND SUPPORTED BY PROBABLE CAUSE.

Appellant maintains that the lower court erred in granting summary judgment because material facts are in dispute as to the existence or nonexistence of probable cause to effect a lawful arrest. The dispositive issue before the court is whether there was probable cause to arrest White for charged and uncharged offenses. The determination of probable cause is relevant to all of White's claims.

"South Carolina follows the minority rule that the issue of probable cause is a question of fact and ordinarily one for the jury." Jones v. Columbia, 389 S.E.2d 662, 662, 301 S.C. 62, 63, 1990 S.C. LEXIS 49, *1 (S.C. Feb. 26, 1990); See, Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984); Parrott v. Plowden Motor Co., 246 S.C. 318, 143 S.E.2d 607 (1965). "The fundamental question in determining whether an arrest is lawful is whether there was 'probable cause' to make the arrest." Id. Martin v. Lott, 2010 U.S. Dist. LEXIS 13813, *6, 2010 WL 597209 (D.S.C. Feb. 16, 2010) (quoting, Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992).

"In assessing the existence of probable cause, courts examine the totality of the circumstances known to the officer at the time of the arrest." Taylor v. Waters, 81 F.3d 429, 434 (4th Cir. 1996). To succeed on a claim of wrongful arrest, White must allege facts that make it "unjustifiable for a reasonable officer to conclude" that he violated the disorderly conduct statute to demonstrate that defendants did not have probable cause to arrest him. Smith v. Cooper, 2011 U.S. Dist. LEXIS 39687, *15, 2011 WL 1376100 (D.S.C. Apr. 12, 2011) (quoting, Brown v. Gilmore, 278 F.3d 362, at 368 (4th Cir. 2002). "Probable cause exists when the facts and circumstances known to the officer would warrant the belief of a prudent person that the arrestee had committed or was committing an offense." Id. "Probable cause must be supported by more

than a mere suspicion, but evidence sufficient to convict is not required." Hurlbert v. City of N. Charleston, 2010 U.S. Dist. LEXIS 35777, *11, 2010 WL 1492868 (D.S.C. Apr. 12, 2010).

Here, there are issues of material fact concerning whether White violated the S.C. disorderly conduct statute, S.C. Code Sec. 16-17-530, or violated any law whatsoever. The United States Supreme Court has consistently held that a charge of disorderly conduct requires that the arrestee's actions rise to the level of "fighting words." Houston v. Hill, 482 U.S. 451 (1987). The "fighting words" exception to protected speech means that the conduct must constitute more than mere spoken words. Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103 (1972). However, even Officer Arroyo testified that White never used fighting words.

In addition, the video surveillance evidence does not support the contention that White violated any law, and it does not objectively support the charge of resisting arrest. The facts of what actually happened before and during White's arrest, and the degree of force deployed by the officers, is disputed by the parties. The facts, testimony and affidavits show that the parties dispute each and every detail, and it is on the disputed facts that the court instructs the jury to rely to find whether or not there was an objective basis to form a good faith belief that White was guilty of any crime. Gathers v. Harris Teeter Supermarket, 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984).

Moreover, there is a genuine issue of material fact as to what White said prior to Officer Arroyo approaching his table, and what White said during his arrest. There is no audio evidence to provide a concrete resolution of this issue, and multiple conflicting witness accounts of what was said by both the arresting officer, White, and the witnesses seated at White's table. There is a genuine issue as to what Officer Arroyo said to White, whether Officer Arroyo told White why he was being arrested, whether Officer White asked White to leave, under what authority he told

White to leave, and why he asked White to leave. There is a genuine issue as to what witnesses Fitzpatrick and McCullough heard and observed before and during White's arrest. In sum, there is a genuine issue of material fact as to probable cause, which should be determined by a jury.

Consequently, viewing the evidence in a light most favorable to White, summary judgment was improvidently granted because a genuine issue of material fact existed as to whether there was probable cause for White's arrest, and thus whether White's arrest was lawful. In other words, the existence of probable cause is a question of fact material to the lawfulness of White's arrest, and this question is one that must be decided by a jury. Jones, 389 S.E.2d 662, 662, 301 S.C. 62, 63, (S.C. Feb. 26, 1990).

II. THE COURT BELOW ERRED IN RULING THAT NO PRIVATE RIGHT OF ACTION EXISTS FOR APPELLANT'S CLAIMS, IN HOLDING APPELLANT'S NEGLIGENCE CLAIM TO A GROSS NEGLIGENCE STANDARD, AND IN GRANTING IMMUNITY TO RESPONDENT ON THE BASIS OF DISCRETIONARY JUDGMENT AND/OR INTENTIONAL ACTS UNDER THE TORT CLAIMS ACT.

This action is governed by the South Carolina Tort Claims Act ("TCA"), common law and the South Carolina Constitution. This Court's order granting summary judgment is flawed to the extent it is based on the following principals: (i) no private right of action for false ("unlawful") arrest / false imprisonment, (ii) gross negligence standard; and (iii) discretionary immunity and/or intentional acts under the TCA.

A. THE COURT BELOW ERRED IN RULING THAT NO PRIVATE RIGHT OF ACTION EXISTS FOR APPELLANT'S CLAIMS.

The lower court's order granting summary judgment with respect to false arrest ("unlawful arrest"), negligence and false imprisonment ("unlawful imprisonment") on the basis that there is no private right of action for these causes of action is unclear, unsupported by the law, and based

on a mistake of law or misapprehension of White's claims and/or the facts involved. White's claims are based in common law, and they are not prohibited by the TCA. The only cause of action expressly prohibited by TCA is intentional infliction of emotional distress. S.C. Code § 15-78-30(f).

The TCA holds government entities, specifically local police officers, to the same standard as everyone else. "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exceptions from liability and damages contained therein." S.C. Code Ann. § 15-78-40 (Supp. 1998).

B. THE COURT BELOW ERRED IN HOLDING APPELLANT TO A GROSS NEGLIGENCE STANDARD TO PREVAIL ON HIS CLAIMS.

The trial court erred in holding White to a gross negligence standard to prevail on his claim for false arrest, and/or all other claims brought by White. None of the exceptions from liability impose a standard of gross negligence on the torts of false arrest and imprisonment. Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 521 S.E.2d 163 (S.C. App. 1999), S.C. Code § 15-78-60 (Supp. 1998). Wortman, the case decided under the Tort Claims Act, did not include gross negligence as an element of the torts. See, Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992). ("We find the gross negligence standard is not applicable to the present case."); See S.C. Code Ann. § 15-78-60 (Supp. 1998). Nonetheless, White posits that there are abundant facts that at least create an issue as to whether the Officer's acts were negligent or grossly negligent, which is defined as "the absence of care that is necessary under the circumstances. Clark v. Dept. of Public Safety, 53 S.C. 291, 578 S.E.2d 16 (S.C. App., 2002).

C. THE COURT BELOW ERRED IN GRANTING IMMUNITY TO RESPONDENT ON THE BASIS OF DISCRETIONARY JUDGMENT AND/OR INTENTIONAL ACTS UNDER THE TCA.

The City of North Charleston was not entitled to summary judgment on all causes of action under 15-78-60(5) and (17) of the Tort Claims Act. Section 15-78-60 provides:

> The governmental entity is not liable for a loss resulting from . . .
>
> (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;
>
> (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

As an initial matter, immunity under Section 15-78-60 must be raised as an affirmative defense. The burden of establishing a limitation of liability is upon the governmental entity asserting it as an affirmative defense. The City has not claimed that its officers acted outside of the scope of employment, but the opposite. White has not argued that Defendant's officers acted outside the scope of employment or with actual malice. The Respondent has specifically admitted that the Officer was acting within the scope and duty of his employment with the City. Neither party in this action has alleged intent to harm. No evidence posited by either party supports this holding.

Furthermore, immunity is counterintuitive under our facts. A police officer is not vested with the discretionary authority to make an unlawful arrest. The affirmative defense of discretionary immunity is applicable to decisions which involve local and state planning, and for this reason it is not applicable to this case. Section 15-78-60(17) provides that a government entity is not liable from a loss resulting from the exercise of discretion, actually weighing competing

considerations and making a conscious choice. Clark v. Dept. of Public Safety, 53 S.C. 291, 578 S.E.2d 16 (S.C. App., 2002). However, this exception does not include any and all acts which require a conscious decision. Pike v. Dept. of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000).

> "Decisions involving the assessment of competing priorities, weighing of budgetary considerations, or allocation of scare resources are generally considered planning activities and are subject to [discretionary] immunity... However, the fact that a governmental function involves an element of choice or judgment, or require the ability to make responsible decisions, does not automatically bring that activity within the discretionary function exception. Instead the function must entail planning or policy decisions." Id., (citing 57 Am.Jur.2d Municipal, County, School, and State Tort Liability § 78 (2001).

Police officers' actions in the field, in effecting stops, pursuing suspects, and effecting arrests, are not defined by our courts as "planning" activities. See, Clark v. Dept. of Public Safety, 53 S.C. 291, 578 S.E.2d 16 (S.C. App., 2002); See, 4 Am. Jur. (2d), Arrest, Section 31, p. 721. Broadly interpreting discretionary immunity to apply to acts which are operational in nature would result in blanket immunity, as nearly all actions taken by police officers involve some degree of decision-making. Therefore, it's application under our facts is improper.

III. THE COURT BELOW ERRED IN CONSIDERING A CONFLICTING SECOND AFFIDAVIT OF A WITNESS TO THE EXTENT THIS EVIDENCE WAS IMPROPERLY WITHHELD DURING THE COURSE OF DISCOVERY BY RESPONDENT AND PRESENTED FOR THE FIRST TIME BY RESPONDENT IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

The City submitted in support of its Motion for Summary Judgment four (4) affidavits, which are either signed by an undisclosed witness, improperly withheld during discovery,

untimely, and/or are contradictory to previously provided sworn testimony.[1] White moved the lower court to strike these improperly withheld and conflicting affidavits, and later requested specific rulings on this request pursuant to a Motion to Reconsider. The lower court refused to rule on this issue.

The courts regularly disregard contradictory or "sham" affidavits that conflict with a witness's prior sworn testimony. See, e.g., Rohrbough v. Wyeth Labs. Inc., 916 F.2d 970, 976 (4th Cir. 1990) (holding that district court was justified in disregarding an expert's affidavit on injury causation that conflicted with the expert's earlier deposition testimony in which he declined to testify on that issue). A trial court may strike an affidavit that materially and directly alters a fact witness's deposition testimony. McMaster v. Dewitt, 411 S.C. 138 (2014) (citing, Cothran v. Brown, 357 S.C. at 218, 592 S.E.2d at 633.); see also, Ins. Prods. Mktg., Inc. v. Conseco Life Ins. Co., No. 9:11–cv– 01269–PMD, 2012 WL 3308368, at * 7 n.9 (D.S.C. Aug. 13, 2012).

The South Carolina Supreme Court delineated the following considerations for "distinguishing between a sham affidavit and a correcting or clarifying affidavit":

> (1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted.

[1] Counsel for White was first made aware of the existence of the four new affidavits on May 10, 2017 when they were received by mail. The period for discovery in this matter, agreed to by the parties and memorized in a Consent Scheduling Order, expired on March 16, 2017.

Here, the affidavits of Laura Fitzpatrick (Respondent's Mot. in Support of Summary Judgment, Exhibit P), and Taylor McCullough (Respondent Mot. in Support of Summary Judgment, Exhibit) submitted by the City in support of its Motion for Summary Judgment are contradictory to previous sworn testimony provided by affiants Fitzpatrick and McCullough. (R pp. 227-229; pp. 212-213) The Fitzpatrick and McCullough contradictory affidavits in question were both executed on March 8, 2017. The period for discovery expired on March 16, 2017. Both affidavits were withheld by Defendant until May 10, 2017.

Significantly, the affidavit of Taylor McCullough was produced and obtained by Counsel for the City on its date of execution, March 8, 2017. (R. pp. 212-213). However, this affidavit was not disclosed to Counsel for White prior to her deposition on March 16, 2017, when McCullough gave sworn testimony favorable to White and contradictory to the undisclosed and untimely affidavit. (R. pp. 215-225).

Similarly, the previously undisclosed affidavit of Laura Fitzpatrick, was improperly withheld until after the period for discovery had expired, and it is also contradictory to the witness's original sworn affidavit, dated January 17, 2017. (R. pp. 264-267) (R. pp. 227-229).

Additionally, the third affidavit in question was signed by Lt. Andrew Glover on April 4, 2017. Lt. Glover was not disclosed by Defendant in discovery, and by April 15, 2017, Lt. Glover had not been identified by the City as a witness. (R. pp. 231-233).

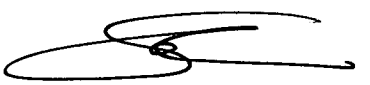
Therefore, the contradictory, undisclosed and untimely affidavits of witnesses Laura Fitzpatrick and Taylor McCullough should have been excluded and not considered by the lower on the basis that they were contradictory and/or on the basis they were improperly withheld in discovery. The affidavit of Lt. Andrew Glover should have been excluded and/or struck because

it was obtained from a previously undisclosed witness after the period for discovery expired on March 28, 2017.

CONCLUSION

The court below erred in granting summary judgment on the grounds there was no material facts in dispute, and erred in its misapplication of the law. For the reasons stated, Appellant respectfully submits that this Court reverse the judgment of the circuit court granting summary judgment and remand the case for trial.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211 (b) of the South Carolina Appellate Court Rules.

Respectfully submitted,

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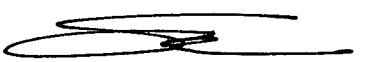
CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with the August 13, 2007 Order of the South Carolina Supreme Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that true copy of Appellant's Final Brief has been served upon Counsel for the Respondent by mailing a copy via United States Mail, properly addressed with sufficient postage affixed thereto this 9th day of July 2018, to the following:

Robin L. Jackson, Esquire
Seen Legal, LLC
PO Box 12279
Charleston, SC 29422
Attorney for Respondent

Milton Demetrios Stratos II