

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2016-000973

Dr. Gregg Battersby, Appellant,

v.

Sheriff John Skipper, in his official capacity, Respondent.

RECORD ON APPEAL

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Starr, South Carolina 29684
(864) 570-0077
Pro se, Appellant

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SC Court of Appeals

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STATE OF SOUTH CAROLINA ANDERSON SC IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON 2016 APR -8 AM 10:29 TENTH JUDICIAL CIRCUIT

Dr. Gregg Battersby, COMMON PLEAS AND
GENERAL SESSIONS

C. A. No. 2015-CP-04-01034

Plaintiff,

vs.

Sheriff John Skipper, in his official
capacity,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

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APR 19 2016

Richard S. Kintner
ANDERSON CLERK OF COURT

This matter came before the Court on Defendant's Motion for Summary Judgment which was filed on December 22, 2015. The Court held a hearing on Defendant's Motion on January 25, 2016 and heard arguments from Defendant's counsel, Charles F. Turner, Jr., Esq. Robert L. Mebane, Jr., Esq. was also present on behalf of Defendant. Plaintiff appeared *pro se*. After carefully considering the oral and written arguments presented by Defendant's counsel and Plaintiff, the Court makes the following findings of fact and conclusions of law.

PLAINTIFF'S ALLEGATIONS

In his Complaint, Plaintiff, a chiropractor providing chiropractic services out of his home, alleges that on August 2, 2013, he was arrested on one count of indecent exposure "by Defendant." Defendant is the Anderson County Sheriff, which is the law enforcement agency that swore out the warrants leading to Plaintiff's arrest. This charge, assigned Case Number 2013A0410100898, resulted from allegations that Plaintiff exposed himself to a former patient, Carrie Neal, at his place of business. The gravamen of the Plaintiff's allegations against Defendant is that when Carrie Neal originally reported the Plaintiff's conduct to law enforcement, the officer who created the incident report changed the incident report to fit the

elements of indecent exposure set forth in S.C. Code Ann. § 16-15-130. Plaintiff alleges that Ms. Neal alleged “she was in Plaintiff’s laundry room and made no mention of seeing Plaintiff’s genitalia,” but that “[m]embers of the [Anderson County Sheriff’s Office] changed her statement in the incident report claiming Neal was in Plaintiff’s office/therapy area and Plaintiff did expose his genitalia.”

The same charge as Plaintiff alleges, also stems from Case Number 2013A0410900191, that resulted from allegations that Plaintiff exposed himself to a former patient, Jan Morton, at his place of business. The gravamen of Plaintiff’s allegations against Defendant is that when Jan Morton originally reported Plaintiff’s conduct to law enforcement, the officer who created the incident report wrote that Plaintiff was wearing a robe at the time of the alleged events; whereas, in a recorded interview, Ms. Morton stated that Plaintiff was wearing a towel at the time of the incident.

Based on these factual allegations, Plaintiff asserted causes of action against Defendant for malicious prosecution, abuse of process, and false arrest and/or imprisonment, claiming that Defendant lacked probable cause to arrest Plaintiff.

FACTUAL SUMMARY

During the course of his investigation, Investigator Ashley of the Anderson County Sheriff’s Office completed Affidavits in support of arrest warrants based upon the statements given by Ms. Neal and Ms. Morton. Warrant 2013A0410900191 was based upon Ms. Morton’s statements given to the Anderson County Sheriff’s Office and Warrant 2013A0410100898 was based upon Ms. Neal’s statements. The Court finds that the Warrants were properly presented to the Honorable Samuel Lollis and The Honorable William Sharp, respectively, each of whom found sufficient probable cause to arrest the Plaintiff for the crime of indecent exposure.

Plaintiff was arrested on August 2, 2013 and retained the services of Sarah Drawdy, Esquire, to represent him. On August 30, 2013, Plaintiff participated in a preliminary hearing. At the hearing, the State presented the testimony of Investigator Stanley Ashley, and Ms. Drawdy cross-examined him. At the conclusion of the hearing, the court determined that probable cause existed to arrest Plaintiff and that the charges would go forward. The cases were then presented to the grand jury, who returned true bill indictments on November 19, 2013 on both charges (the Jan Morton charge was assigned Case Number 2013-GS-04-02177 and the Carrie Neal charge was assigned case number 2013-GS-04-02178). On February 28, 2014, the Plaintiff, through his counsel, filed a Motion to Compel the production of the audio recording of Investigator Ashley's interview with Ms. Morton and Ms. Neal. Approximately two months later, the 10th Circuit Solicitor's Office decided not to pursue the charges against Plaintiff and they were *nolle prossed*.

During the pendency of the criminal charges, the South Carolina Board of Chiropractic Examiners moved to suspend Plaintiff's license to practice chiropractic medicine.¹ A hearing was conducted on October 30, 2013, and during her examination of one of the members of the Board, the Court finds that Plaintiff's attorney conceded that the Anderson County Sheriff's Office had probable cause to bring charges against Plaintiff.

In early 2015, Plaintiff filed suit in this circuit against Allstate Insurance Company and attorney Kirk Moorhead, Esquire bearing case number 2015-CP-00667. In his Second Amended Complaint, the Court finds that Plaintiff alleged that Mr. Moorhead instructed Jan Morton and Carrie Neal to file complaints against Plaintiff with the Anderson County Sheriff's Office. Further, the Court finds that Plaintiff specifically pled in that action that "[t]he [Anderson

¹ In the Matter of Gregg Newton Battersby, DC License No. DC. 3011 (2013-24)

County Sheriff's Office] relied on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement to be truthful and had no knowledge of its falsity and that "[t]he [Anderson County Sheriff's Office] had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement."

Additionally, in *Battersby v. Dr. Joseph Carew, et al.*, Case Number 8:14-CV-761-HMH,² in which summary judgment was granted in favor of the Defendants, the Court finds that Jan Morton and Carrie Neal both provided sworn deposition testimony in which they both confirmed that Plaintiff exposed himself to them. The Court notes that Ms. Morton and Ms. Neal's deposition testimony was given roughly one year after the original arrest warrants for Plaintiff were issued in July 2013. Ms. Neal's deposition was taken on June 3, 2014 and Ms. Morton's deposition was taken on June 18, 2014.

STANDARD OF REVIEW

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct.App. 2010). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Id.*

² In that action, Plaintiff filed suit against 10 members of the South Carolina State Board of Chiropractic Examiners alleging that these individuals violated his due process rights under the Fourteenth Amendment by temporarily suspending his license to practice chiropractic medicine pending his evaluation by a physician to determine whether he was under a physical or mental disability that would make his further practice a danger to the public. Summary judgment was entered on behalf of the Defendants in that action.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008).

PLAINTIFF'S CLAIMS

A. Malicious Prosecution

The Court finds that probable cause existed for Plaintiff's arrest, and thus Plaintiff's claims for malicious prosecution and false arrest/imprisonment fail as a matter of law.

In South Carolina, "to maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Pallares v. Seinar*, 407 S.C. 359, 366, 756 S.E.2d 128, 131 (2014).

"An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause." *Id.*

Malice is defined as the deliberate[,] intentional doing of an act without just cause or excuse. Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.

Probable cause in this context does not turn upon the plaintiff's guilt or innocence, but rather upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged.

Where a plaintiff bases the claim on an opponent's institution of civil causes of action, probable cause exists if the facts and circumstances would lead a person of ordinary intelligence to believe that the plaintiff committed one or more of the acts alleged in the opponent's complaint. (internal citations omitted).

Id. at 366-367.

“South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.” *Kinton v. Mobile Home Indus., Inc.*, 274 S.C. 179, 262 S.E.2d 727 (1980).

Moreover, a witness statement serves as affirmative evidence of probable cause. See *McBride v. Sch. Dist. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). (emphasizing that several witness statements supported a finding that probable cause existed for the plaintiff’s arrest).

B. False Arrest/Imprisonment

In South Carolina,

[t]he essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.

The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.

McBride, 389 S.C. at 567.

“The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.” *Horton v. City of Columbia*, 408 S.C. 27, 35, 757 S.E.2d 537, 541 (Ct.App. 2014).

The Court finds that Defendant was correct in determining that probable cause existed based on the direct statements of the victims, Carrie Neal and Jan Morton. As set forth above, a

witness statement is sufficient to establish probable cause. *McBride, supra*. Furthermore, “a facially valid warrant provides the probable cause necessary to comport with constitutional requirements.” *Anderson v. State AG of S.C.*, 2008 U.S. Dist. LEXIS 116083 (D.S.C. August 20, 2008).

The Court finds that Defendant obtained facially valid arrest warrants which were both supported by probable cause. The Court also finds that Plaintiff has failed to demonstrate any evidence to suggest that Defendant or Defendant’s deputies, deliberately or with a reckless disregard for the truth, made material false statements in the affidavits or omitted material facts from the affidavits with the intent to make, or with reckless disregard of whether they thereby made, the affidavits misleading. The Court also finds that the true bill indictments presented by the Anderson County grand jury constituted sufficient evidence of probable cause for Plaintiff’s arrest. *Kinton, supra*.

The Court also notes that as recently as June 2014, even after the criminal action was *nolle prossed*, Ms. Morton and Ms. Neal both maintained, that Plaintiff exposed himself to them. The Court finds that their statements were credible and provided sufficient evidence to support a finding of probable cause. *McBride, supra*. After considering all of the following, the Court finds that the facts and circumstances within Defendant’s knowledge were overwhelmingly sufficient to warrant a prudent person to believe that Plaintiff had committed a criminal offense. As such, the Court finds probable cause existed to make the arrest and, therefore, Defendant’s conduct did not amount to malicious prosecution or false arrest/imprisonment.

The Court also finds that Plaintiff’s allegations that members of the Anderson County Sheriff’s Office changed Ms. Neal’s story to fit the crime of indecent exposure is totally without merit. The Court finds that Ms. Neal’s incident report clearly alleged that Plaintiff exposed his genitalia to Ms. Neal. The Court also notes that this information was then written in a

supplementary report, which Investigator Stan Ashley prepared based upon his interview with Ms. Neal.

Most importantly, the Court finds that in determining whether or not probable cause exists, the key factors leading to Defendant's good faith belief that a crime had been committed were Ms. Morton's and Ms. Neal's statements that the Plaintiff exposed himself to each of them. *McBride*, 389 S.C. at 567.

The Court also finds that whether Plaintiff was wearing a robe or a towel (Morton report), or which room Plaintiff was in when he exposed himself (Neal report), would not affect any reasonable officer's determination that the crime of indecent exposure had been committed. Indeed, such a fact is wholly immaterial to the underlying charge. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (holding that a fact is material if proof of its existence or non-existence would affect disposition of the case under applicable law).

Finally, the Court finds that on two separate occasions Plaintiff has maintained an inconsistent position with regard to the existence of probable cause as to the Anderson County Sheriff's Office's arrest. In case number 2015-CP-00667, Plaintiff pled that the Anderson County Sheriff's Office (and thus Defendant) "had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement." Additionally, in his hearing in front of the South Carolina Board of Chiropractic Examiners, Plaintiff's then counsel conceded that the Anderson County Sheriff's Office had probable cause to bring charges against Plaintiff. The Court finds that Plaintiff's argument that the Anderson County Sheriff's Office lacked probable cause to support his arrest at a minimum, supports a finding of judicial estoppel, barring Plaintiff from asserting his claims for malicious prosecution and false arrest/imprisonment. *See Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004).

C. Abuse of Process

The Court also finds that Defendant's conduct did not amount to an abuse of process.

In South Carolina, "[t]he tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *McBride*, 389 S.C. at 564.

Indeed, the essence of the tort of abuse of process centers on events occurring outside of the process, namely: The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.

Swicegood v. Lott, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (Ct. App. 2008).

In this case the Court notes that: 1) Defendant's office obtained statements from two victims (Carrie Neal and Jan Morton) indicating that Plaintiff had exposed himself to them; 2) Defendant's deputies obtained arrest warrants issued by an Anderson County Magistrate, who found that probable cause existed to arrest Plaintiff; 3) a preliminary hearing was held after Plaintiff's arrest, during which Plaintiff's counsel was allowed to cross-examine witnesses, and after which, the Court found that probable cause existed for Plaintiff's arrest; and 4) a true bill indictment was issued by a grand jury. For all these reasons and the reasons discussed above, the Court finds that Defendant had sufficient probable cause to arrest Plaintiff. The Court also finds that nothing Defendant did could be viewed as any form of extortion as Defendant was merely acting on the reports of two victims and simply performing his official duties as the chief law enforcement officer of the Anderson County Sheriff's Office. Finally, the Court finds that Plaintiff has failed to demonstrate any evidence to suggest that Plaintiff's arrest was supported by coercion, an ulterior purpose, or a willful act, other than Defendant's efforts to enforce the

law against indecent exposure. For all of these reasons, the Court finds that Plaintiff's claim for abuse of process fails as a matter of law.

DEFENDANT'S IMMUNITY

Additionally, the Court also finds that Defendant is entitled to immunity under the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et seq.*

S.C. Code Ann. § 15-78-20 provides in pertinent part:

The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.

Id.

The Act 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." *Id.* at § 15-78-30. Therefore, as a law enforcement officer, the Court finds that Defendant is protected under the Act.

The Act further provides:

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 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.

Id. at § 15-78-70.

“The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” *Flateau v. Harrelson*, 355 S.C. 197, 204 (Ct. App. 2003).

The Court finds that Defendant was acting within his official duties and is entitled to immunity. The Court finds that Defendant followed the proper procedure in pursuing a charge against Plaintiff. Furthermore, there is no doubt that the procedures that were followed in this case fall within Defendant's official duties. Assuming the events in this case fell outside of Defendant's official duties, the Court notes that conceivably every arrest made by the Anderson County Sheriff's office or any other sheriff's office within this state would fall outside of a sheriff's or its deputy's official duties. This logic defeats the whole purpose of Defendant's duties as the chief law enforcement officer for the Anderson County Sheriff's office, and the legislative intent of the Act. “In determining the legislative intent, it is proper to consider the purpose sought to be accomplished.” *Arkwright Mills v. Murph*, 219 S.C. 438, 444, 65 S.E.2d 665, 667 (1951). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). Therefore, the Court finds that Defendant is entitled to immunity.

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CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment is granted as to all of Plaintiff's claims against Defendant in this case.

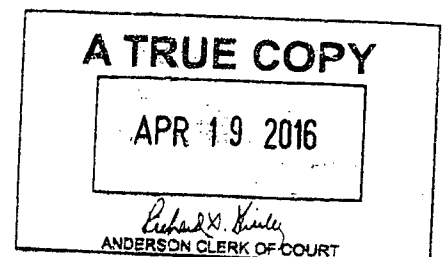
IT IS SO ORDERED.



R. Lawton McIntosh
Judge, Tenth Judicial Circuit

Dated: 4-7-16
Anderson, South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Dr. Gregg Battersby)

Plaintiff,)

v.)

Sheriff John Skipper, in his official capacity)

Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COMPLAINT
(Jury Trial Demanded)

C.A. No.: 2015-CP-04-

01034

INTRODUCTION

Plaintiff, Dr. Gregg N. Battersby, files this Complaint under the South Carolina Tort Claims Act for malicious prosecution, abuse of process, and false arrest and/or imprisonment against Defendant, Sheriff John Skipper, in support of which he present the following:

PARTIES

- 1) Plaintiff, Dr. Gregg N. Battersby, is licensed to practice chiropractic in South Carolina. Plaintiff resides and has a practice in Anderson County,
- 2) Defendant, Sheriff John Skipper, is sheriff of Anderson County, South Carolina. Defendant Skipper is answerable for neglect of duty or misconduct in office of any deputy under S.C. Code §23-13-10. Plaintiff was arrested by the Anderson County Sheriff's Office (ACSO) without probable cause on August 2, 2013. Defendant Skipper is being sued in his official capacity.

JURISDICTION

- 1) All events occurred within the purview of this Court,
- 2) All events occurred within the last two years,

MATERIAL FACTS
COUNT ONE

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NOV 22 2016

Richard X. Kintley
ANDERSON CLERK OF COURT

COMMON PLEAS AND
GENERAL SESSION

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ANDERSON SC

1. Plaintiff is a chiropractor and has his practice in a part of his home.
2. On Aug. 2, 2013, Plaintiff was arrested on one count of indecent exposure by the ACSO.
3. The ACSO alleged that Plaintiff had exposed his genitalia to a patient at his place of business.
4. The case number is 2013A0410100898.
5. The alleged patient was Carrie Neal.
6. The incident report was filed with the ACSO.
7. On July 25, 2013, Neal made an audio statement.
8. Neal alleged she was in Plaintiff's laundry room and made no mention of seeing Plaintiff's genitalia.
9. Members of the ACSO changed her statement in the incident report claiming Neal was in Plaintiff's "office/therapy area" and Plaintiff did "expose his genitalia".
10. Members of the ACSO changed Neal's statement to fit the elements of indecent exposure.
11. Neal told Detectives Ashley and Hendrix that Neal's lawyer was not going to pay Plaintiff for the services he rendered to Neal in treating her injuries sustained in an automobile accident.
12. The bill totaled \$12,100.00
13. Detective Ashley said, "good, hurt him".
14. On August 30, 2013, Detective Ashley told Plaintiff's criminal lawyer that there was no audio statement.
15. Plaintiff made multiple requests for the audio statement from the Anderson County Assistant Solicitor, Kristen Reeves.

16. Reeves made at least 4 requests to the ACSO to turn over the case file containing the audio statement and was ignored. Those dates were August 16, 2013, September 10, January 3, 2014 and February 27, 2014.

17. On or about January 28, 2014, the Solicitor's Office provided information pursuant to a discovery request from Plaintiff.

18. The audio statement was not listed.

19. Reeves told Plaintiff the ACSO told her there was no audio statement.

20. Plaintiff filed a Motion to Compel the production of the audio statement on Feb. 28, 2014.

21. A short time later the ACSO produced the non-existent audio statement.

22. Once the Reeves heard the audio statement she dismissed the criminal charge against Plaintiff on April 24, 2014.

23. Members of the ACSO changed alleged victim's statement to obtain an arrest warrant.

24. The ACSO withheld the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

25. Members of the ACSO either knew or should have known the magistrate would not issue an arrest warrant after hearing the exculpatory audio statement.

26. The ACSO lacked probable cause to obtain the arrest warrant.

27. Plaintiff was restrained against his will by the ACSO.

28. The ACSO's restraint of Plaintiff was intentional.

29. Plaintiff's restraint was unlawful as it lacked probable cause.

30. Plaintiff's chiropractic license has been indefinitely suspended since Aug., 20, 2013 as a result of the criminal charge.

31. Members of the ACSO instituted and continued the prosecution of Plaintiff by withholding the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

32. Members of the ACSO acted with an ill-regulated mind which was not sufficiently cautious before causing injury to Plaintiff.

33. Members of the ACSO's actions were the deliberate intentional doing of a wrongful act without just cause or excuse.

34. Members of the ACSO lacked such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the members of the ACSO that Plaintiff was guilty of a crime for which he had been charged.

35. Members of the ACSO knew the story of Neal would not fit the elements of indecent exposure so he changed them to fit the crime..

36. Members of the ACSO acted with ulterior purpose in withholding the exculpatory audio statement.

37. Members of the ACSO's actions were motivated by his expressed hatred towards Plaintiff.

38. Members of the ACSO's willful act of withholding the exculpatory audio statement initiated and perpetuated the prosecution and is not proper in the regular conduct of the proceeding.

39. Members of the ACSO either knew or should have known that changing the incident report and withholding the audio statement violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

40. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO

41. Plaintiff is a chiropractor and has his practice in a part of his home.

42. On Aug. 2, 2013, Plaintiff was arrested on one count of indecent exposure by the ACSO.

43. The case number is 2013A0410900191.

44. The ACSO alleged that Plaintiff had exposed himself to a patient at his place of business.

45. The alleged patient was Jan Morton.

46. Jan Morton filed her incident report on July 8, 2013.

47. The incident report was filed with Deputy Marter.

48. Morton alleged Plaintiff answered the door wearing a "men's robe" and during her treatment he "dropped his robe to the floor" and was completely nude with a "fully erect penis".

49. Morton alleged Plaintiff did not "attempt any sexual contact".

50. On July 18, 2013, Detectives Ashley and Hendrix got an audio statement from Morton.

51. In the audio statement, Morton alleged Plaintiff "came to the door. He had a towel on." and "I'm thinking this man's rubbing his stuff on me."

52. Detective Ashley even questioned Morton about her allegation that Plaintiff was wearing a towel by saying "He had a towel on?"

53. Detective Ashley said in the audio statement "we'll see about going after his license".

54. Detective Hendrix told Morton to get another patient to file an incident report "Encourage her that the two together would be strong."

55. Detective Ashley also encouraged Morton to get another patient to file by saying "Stronger than just one."

56. On August 22, 2013, the ACSO sent Plaintiff's attorney the incident report and supplemental reports.

57. The supplemental report contained no reference to the audio statement being taken of Morton on July 18, 2013.

58. This entry was left out to hide the existence of the audio statement from the magistrate, solicitor and Plaintiff.

59. On August 30, 2013, Detective Ashley told Plaintiff's criminal lawyer that there was no audio statement.

60. Plaintiff received another copy of the supplemental report in January of 2014.

61. This supplemental report contained the entry of the audio statement as well as other entries of events that occurred prior to August 22, 2013 that were missing from the earlier supplemental report.

62. Plaintiff made multiple requests for the audio statement from the Anderson County Assistant Solicitor, Kristen Reeves.

63. Reeves made at least 4 requests to the ACSO to turn over the case file containing the audio statement and was ignored. Those dates were August 16, 2013, September 10, January 3, 2014 and February 27, 2014.

64. On or about January 28, 2014, the Solicitor's Office provided information pursuant to a discovery request from Plaintiff.

65. The audio statement was not listed.

66. Reeves told Plaintiff the ACSO told her there was no audio statement.

67. Plaintiff filed a Motion to Compel the production of the audio statement on Feb. 28, 2014.

68. A short time later the ACSO produced the non-existent audio statement.

69. Once the Reeves heard the audio statement she dismissed the criminal charge against Plaintiff on April 24, 2014.

70. On June 18, 2014, Morton testified the incident report used to obtain the arrest warrant was not done by her.

71. Morton denied the set of facts set forth in the incident report.

72. Deputy Marter gave a deposition on Aug. 1, 2014.

73. Plaintiff showed Marter the transcript of Morton's audio statement.

74. Plaintiff showed Marter that Morton claimed Plaintiff was wearing a towel, not a man's robe.

75. Marter claimed there was no probable cause citing the two contradictory statements.

76. Members of the ACSO ignored discrepancies in the alleged victim's statements in obtaining the arrest warrant.

77. Members of the ACSO withheld the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

78. Members of the ACSO manipulated official documents to hide the existence of the audio statement.

79. Members of the ACSO either knew or should have known the magistrate would not issue an arrest warrant after hearing the exculpatory audio statement.

80. The ACSO lacked probable cause to obtain the arrest warrant.

81. Plaintiff was restrained against his will by the ACSO.

82. The ACSO's restraint of Plaintiff was intentional.

83. Plaintiff's restraint was unlawful as it lacked probable cause.

84. Plaintiff's chiropractic license has been indefinitely suspended since Aug., 20, 2013 as a result of the criminal charge.

85. Members of the ACSO instituted and continued the prosecution of Plaintiff by withholding the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

86. Members of the ACSO acted with an ill-regulated mind which was not sufficiently cautious before causing injury to Plaintiff.

87. Members of the ACSO's actions were the deliberate intentional doing of a wrongful act without just cause or excuse.

88. Members of the ACSO lacked such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the members of the ACSO that Plaintiff was guilty of a crime for which he had been charged.

89. The contradictory stories of Morton would call into question the veracity of her allegations.

90. Members of the ACSO acted with ulterior purpose in manipulating official documents and withholding the exculpatory audio statement.

91. Members of the ACSO's actions were motivated by his expressed hatred towards Plaintiff.

92. Members of the ACSO's willful act of manipulating official documents and withholding the exculpatory audio statement initiated and perpetuated the prosecution and is not proper in the regular conduct of the proceeding.

93. Members of the ACSO either knew or should have known that changing the incident report, manipulating official documents, and withholding the audio statement violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

94. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT ONE CAUSE OF ACTION-MALICIOUS PROSECUTION

95. Plaintiff re-alleges paragraphs 1-94.

96. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being maliciously prosecuted.

97. Members of the ACSO either knew or should have known that changing the incident reports and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

98. Members of the ACSO's actions constituted malicious prosecution as the elements have been set forth herein.

99. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO CAUSE OF ACTION-MALICIOUS PROSECUTION

100. Plaintiff re-alleges paragraphs 1-99.

101. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being maliciously prosecuted.

102. Members of the ACSO either knew or should have known that changing the incident reports, manipulating official documents, and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

103. Members of the ACSO's actions constituted malicious prosecution as the elements have been set forth herein.

104. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT ONE CAUSE OF ACTION-ABUSE OF PROCESS

105. Plaintiff re-alleges paragraphs 1-104.

106. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being abused in the legal process.

107. Members of the ACSO either knew or should have known that changing the incident reports and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

108. Members of the ACSO's actions constituted abuse of process as the elements have been set forth herein.

109. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO CAUSE OF ACTION-ABUSE OF PROCESS

110. Plaintiff re-alleges paragraphs 1-109.

111. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being abused in the legal process.

112. Members of the ACSO either knew or should have known that changing the incident reports, manipulating official documents and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

113. Members of the ACSO's actions constituted abuse of process as the elements have been set forth herein.

114. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT ONE CAUSE OF ACTION-FALSE ARREST AND/OR IMPRISONMENT

115. Plaintiff re-alleges paragraphs 1-114.

116. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being falsely imprisoned.

117. Members of the ACSO either knew or should have known that changing the incident reports and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

118. Members of the ACSO's actions constituted false arrest and/or imprisonment as the elements have been set forth herein.

119. As a proximate cause of Members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO CAUSE OF ACTION-FALSE ARREST AND/OR IMPRISONMENT

120. Plaintiff re-alleges paragraphs 1-119.

121. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being falsely imprisoned.

122. Members of the ACSO either knew or should have known that changing the incident reports, manipulating official documents and withholding the audio statements violated

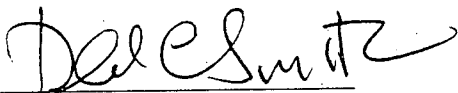
Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

123. Members of the ACSO's actions constituted false arrest and/or imprisonment as the elements have been set forth herein.

124. As a proximate cause of Members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

RELIEF

Plaintiff requests this Court grant judgment in his favor for compensatory damages against Defendant Skipper. These two counts are to be considered separate and distinct events under the South Carolina Tort Claims Act. Plaintiff also requests this Court grant costs, legal fees, and any other relief this Court deems just and proper.



Donald L. Smith

Respectfully submitted,

Donald L. Smith (#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Date: May 1, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. NO. 2015-CP-04-01034
	)	
Dr. Gregg N. Battersby	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S ANSWER TO
vs.	)	PLAINTIFF'S COMPLAINT
	)	
Sheriff John Skipper, in his official	)	(JURY TRIAL REQUESTED)
capacity,	)	
	)	
Defendant.	)	
	)	

The Defendant above named, answering the Complaint of the Plaintiff herein, would show unto this Honorable Court that:

1. Upon information and belief, the Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Complaint.

2. As to the allegations contained in Paragraph 2 of the Plaintiff's Complaint, the Defendant specifically admits that he is Sheriff of Anderson County and that the Plaintiff was arrested on August 2, 2013 by deputies of the Anderson County Sheriff's Department as a result of complaints being made against the Plaintiff that he indecently exposed himself to two women; however, the Defendant denies the remaining allegations contained in Paragraph 2 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

3. Inasmuch as the allegations contained in second Paragraphs 1 and 2 [sic] of the Plaintiff's Complaint are jurisdictional in nature, the Defendant neither admits nor denies same but demands strict proof thereof.

4. As to the allegations contained in the third Paragraph 1 of the Plaintiff's Complaint [sic], the Defendant admits these allegations upon information and belief.

5. As to the allegations contained in the third Paragraph 2 of the Plaintiff's Complaint [sic], the Defendant admits that on August 2, 2013, the Plaintiff was arrested on two counts of indecent exposure by the Anderson County Sheriff's Office pursuant to a warrant.

6. As to the allegations contained in Paragraph 3 of the Plaintiff's Complaint, the Defendant admits only so much of the allegations contained in Paragraph 3 of the Plaintiff's Complaint which allege that the Plaintiff exposed himself to patients at his place of business; however, the Defendant denies the remaining allegations contained in Paragraph 3 of the Plaintiff's Complaint which are in addition to or consistent with these admissions.

7. As to the allegations contained in Paragraph 4 of the Plaintiff's Complaint, the Defendant specifically admits that Paragraph 4 contains the case number assigned to one of the charges against the Plaintiff; however, the Defendant denies the remaining allegations contained in Paragraph 4 of the Plaintiff's Complaint, which are in addition to or inconsistent with these admissions.

8. As to the allegations contained in Paragraph 5 of the Plaintiff's Complaint, the Defendant specifically admits that one victim who reported the Plaintiff indecently exposed himself to her was Carrie Neal; however, the Defendant denies the remaining allegations contained in Paragraph 5 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

9. As to the allegations contained in Paragraph 6 of the Plaintiff's Complaint, the Defendant specifically admits that Carrie Neal make a report with the Anderson County Sheriff's Office that the Plaintiff indecently exposed himself to her; however, the Defendant denies the remaining allegations contained in Paragraph 6 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

10. As to the allegations contained in Paragraph 7 of the Plaintiff's Complaint, the Defendant specifically admits that on July 25, 2013, Carrie Neal was interviewed by deputies of the Anderson County Sheriff's Office and an audio recording was made of that interview; however, the Defendant denies the remaining allegations contained in Paragraph 7 of the Plaintiff's Complaint, which are in addition to or inconsistent with these admissions.

11. As to the allegations contained in Paragraph 8 of the Plaintiff's Complaint, the Defendant specifically admits that Neal alleged she was in rooms of the Plaintiff's home which may have included the Plaintiff's laundry room and stated that the Plaintiff indecently exposed himself to her; however, this Defendant denies the remaining allegations contained in Paragraph 8 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions. Further, the Defendant would show that said audio statement speaks for itself.

12. As to the allegations contained in Paragraph 9 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

13. The Defendant denies the allegations contained in Paragraph 10 of the Plaintiff's Complaint and demands strict proof thereof.

14. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 11 of the Plaintiff's Complaint and therefore denies same.

15. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 12 of the Plaintiff's Complaint.

16. The Defendant denies the allegations contained in Paragraph 13 of the Plaintiff's Complaint, and would further show that the audio interview of Carrie Neal speaks for itself.

17. The Defendant denies the allegations contained in Paragraph 14 of the Plaintiff's Complaint and demands strict proof thereof.

18. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 15 of the Plaintiff's Complaint, and therefore denies same.

19. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained Paragraph 16 of the Plaintiff's Complaint and therefore denies same.

20. As to the allegations contained in Paragraph 17 of the Plaintiff's Complaint, the Defendant lacks sufficient knowledge and information to form a belief and therefore denies same.

21. As to the allegations contained in Paragraph 18 of the Plaintiff's Complaint, the Defendant lacks sufficient knowledge and information and therefore denies same.

22. The Defendant denies the allegations contained in Paragraph 19 of the Plaintiff's Complaint and demands strict proof thereof.

23. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 20 the Plaintiff's Complaint and therefore denies same.

24. The Defendant specifically admits, upon information and belief, that the Plaintiff was provided a copy of the audio statement of Carrie Neal; however, the Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 21 of the Plaintiff's Complaint and therefore denies same.

25. As to the allegations contained in Paragraph 22 of the Plaintiff's Complaint, the Defendant denies the allegations as written; further, the Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained regarding the reasons for dismissal of the criminal charges against the Plaintiff as those were dismissed by the Solicitor's Office and therefore denies same.

26. The Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint and demands strict proof thereof.

27. The Defendant denies the allegations contained in Paragraph 24 of the Plaintiff's Complaint and demands strict proof thereof.

28. The Defendant denies the allegations contained in Paragraph 25 of the Plaintiff's Complaint and demands strict proof thereof.

29. The Defendant denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint and demands strict proof thereof.

30. The Defendant denies the allegations contained in Paragraph 27 of the Plaintiff's Complaint and demands strict proof thereof.

31. The Defendant denies the allegations contained in Paragraph 28 of the Plaintiff's Complaint and demands strict proof thereof.

32. The Defendant denies the allegations contained in Paragraph 29 of the Plaintiff's Complaint and demands strict proof thereof.

33. The Defendant denies the allegations contained in Paragraph 30 of the Plaintiff's Complaint and demands strict proof thereof.

34. The Defendant denies the allegations contained in Paragraph 31 of the Plaintiff's Complaint and demands strict proof thereof.

35. The Defendant denies the allegations contained in Paragraph 32 of the Plaintiff's Complaint and demands strict proof thereof.

36. The Defendant denies the allegations contained in Paragraph 33 of the Plaintiff's Complaint and demands strict proof thereof.

37. The Defendant denies the allegations contained in Paragraph 34 of the Plaintiff's Complaint and demands strict proof thereof.

38. The Defendant denies the allegations contained in Paragraph 35 of the Plaintiff's Complaint and demands strict proof thereof.

39. The Defendant denies the allegations contained in Paragraph 36 of the Plaintiff's Complaint and demands strict proof thereof.

40. The Defendant denies the allegations contained in Paragraph 37 of the Plaintiff's Complaint and demands strict proof thereof.

41. The Defendant denies the allegations contained in Paragraph 38 of the Plaintiff's Complaint and demands strict proof thereof.

42. The Defendant denies the allegations contained in Paragraph 39 of the Plaintiff's Complaint and demands strict proof thereof.

43. The Defendant denies the allegations contained in Paragraph 40 of the Plaintiff's Complaint and demands strict proof thereof.

44. Upon information and belief, the Defendant admits the allegations contained in Paragraph 41 of the Plaintiff's Complaint.

45. The Defendant admits the Plaintiff was arrested on August 2, 2013 on two charges of indecent exposure by the Anderson County Sheriff's Office; however, the Defendant denies the remaining allegations contained in Paragraph 42 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

46. As to the allegations contained in Paragraph 43 of the Plaintiff's Complaint, the Defendant specifically admits that paragraph 43 contains the case number assigned to one of the two counts of indecent exposure against the Plaintiff; however, the Defendant denies the

remaining allegations contained in Paragraph 43 which are in addition to or inconsistent with these admissions.

47. As to the allegations contained in Paragraph 44 of the Plaintiff's Complaint, the Defendant specifically admits that two victims came forward to the Anderson County Sheriff's Office wherein they alleged that the Plaintiff had exposed himself to them at his place of business; however, the Defendant denies the remaining allegations contained in Paragraph 44 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

48. As to the allegations contained in Paragraph 45 of the Plaintiff's Complaint, the Defendant specifically admits that one victim against the Plaintiff was Jan Morton; however, the Defendant denies the remaining allegations contained in Paragraph 45 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

49. The Defendant admits the allegations contained in Paragraph 46 of the Plaintiff's Complaint.

50. The Defendant admits the allegations contained in Paragraph 47 of the Plaintiff's Complaint.

51. As to the allegations contained in Paragraph 48 of the Plaintiff's Complaint, the Defendant specifically admits that Morton's report to ACSO contained these allegations. However, the Defendant denies the remaining allegations contained in Paragraph 48 which are in addition to or inconsistent with these admissions.

52. The Defendant admits the allegations contained in Paragraph 49 of the Plaintiff's Complaint.

53. As to the allegations contained in Paragraph 50 of the Plaintiff's Complaint, the Defendant specifically admits that detectives of the Anderson County Sheriff's Department

interviewed Jan Morton on August 18, 2013 and recorded that interview; however, the Defendant denies the remaining allegations contained in Paragraph 50 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

54. The Defendant specifically admits that when Morton was interviewed, she made statements within the interview consistent with those referenced in Paragraph 51 of the Plaintiff's Complaint; further, the Defendant would allege that the recorded interview speaks for itself; however, the Defendant denies the remaining allegations contained in Paragraph 51 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

55. As to the allegations contained in Paragraph 52, the defendant specifically admits that Ms. Morton was asked in an interview what the Defendant was wearing at the time he exposed himself to her, and she confirmed that he was wearing a towel; however, the Defendant denies the remaining allegations contained in Paragraph 52 of the Plaintiff's Complaint which are in addition to or inconsistent with these admissions.

56. The Defendant specifically denies the allegations contained in Paragraph 53 as it is written. Further, the Defendant alleges that the recorded interview of Jan Morton speaks for itself.

57. The Defendant denies the allegations contained in Paragraph 54 as it is written and would allege that the recorded interview of Jan Morton speaks for itself.

58. The Defendant denies the allegations contained in Paragraph 55 of the Plaintiff's Complaint as it is written and would allege that the recorded interview of Jan Morton speaks for itself.

59. The Defendant admits the allegations contained in Paragraph 56 of the Plaintiff's Complaint.

60. The Defendant admits the allegations contained in Paragraph 57 of the Plaintiff's Complaint.

61. The Defendant denies the allegations contained in Paragraph 58 of the Plaintiff's Complaint and demands strict proof thereof.

62. The Defendant denies the allegations contained in Paragraph 59 of the Plaintiff's Complaint and demands strict proof thereof.

63. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 60 of the Plaintiff's Complaint and therefore denies same.

64. The Defendant denies the allegations contained in Paragraph 61 of the Plaintiff's Complaint.

65. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 62 of the Plaintiff's Complaint and therefore denies same.

66. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 63 of the Plaintiff's Complaint and therefore denies same.

67. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 64 of the Plaintiff's Complaint and therefore denies same.

68. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 65 of the Plaintiff's Complaint and therefore denies same.

69. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 66 of the Plaintiff's Complaint and therefore denies same.

70. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 67 of the Plaintiff's Complaint and therefore denies same.

71. The Defendant denies the allegations contained in Paragraph 68 of the Plaintiff's Complaint.

72. The Defendant denies the allegations contained in Paragraph 69 of the Plaintiff's Complaint.

73. Upon information and belief, the Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 70 of the Plaintiff's Complaint.

74. The Defendant denies the allegations contained in Paragraph 71 of the Plaintiff's Complaint.

75. Upon information and belief, the Defendant admits the allegations contained in Paragraph 72 of the Plaintiff's Complaint.

76. Upon information and belief, the Defendant admits the allegations contained in Paragraph 73 of the Plaintiff's Complaint.

77. Upon information and belief, the Defendant admits the allegations contained in Paragraph 74 of the Plaintiff's Complaint.

78. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 75 of the Plaintiff's Complaint and demands strict proof thereof.

79. The Defendant denies the allegations contained in Paragraph 76 of the Plaintiff's Complaint and demands strict proof thereof.

80. The Defendant denies the allegations contained in Paragraph 77 of the Plaintiff's Complaint and demands strict proof thereof.

81. The Defendant denies the allegations contained in Paragraph 78 of the Plaintiff's Complaint and demands strict proof thereof.

82. The Defendant denies the allegations contained in Paragraph 79 of the Plaintiff's Complaint and demands strict proof thereof.

83. The Defendant denies the allegations contained in Paragraph 80 of the Plaintiff's Complaint and demands strict proof thereof.

84. The Defendant denies the allegations contained in Paragraph 81 of the Plaintiff's Complaint and demands strict proof thereof.

85. The Defendant denies the allegations contained in Paragraph 82 of the Plaintiff's Complaint and demands strict proof thereof.

86. The Defendant denies the allegations contained in Paragraph 83 of the Plaintiff's Complaint and demands strict proof thereof.

87. The Defendant lacks sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 84 of the Plaintiff's Complaint.

88. The Defendant denies the allegations contained in Paragraph 85 of the Plaintiff's Complaint and demands strict proof thereof.

89. The Defendant denies the allegations contained in Paragraph 86 of the Plaintiff's Complaint and demands strict proof thereof.

90. The Defendant denies the allegations contained in Paragraph 87 of the Plaintiff's Complaint and demands strict proof thereof.

91. The Defendant denies the allegations contained in Paragraph 88 of the Plaintiff's Complaint and demands strict proof thereof.

92. The Defendant denies the allegations contained in Paragraph 89 of the Plaintiff's Complaint and demands strict proof thereof.

93. The Defendant denies the allegations contained in Paragraph 90 of the Plaintiff's Complaint and demands strict proof thereof.

94. The Defendant denies the allegations contained in Paragraph 91 of the Plaintiff's Complaint and demands strict proof thereof.

95. The Defendant denies the allegations contained in Paragraph 92 of the Plaintiff's Complaint and demands strict proof thereof.

96. The Defendant denies the allegations contained in Paragraph 93 of the Plaintiff's Complaint and demands strict proof thereof.

97. The Defendant denies the allegations contained in Paragraph 94 of the Plaintiff's Complaint and demands strict proof thereof.

98. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

99. The Defendant denies the allegations contained in Paragraph 96 of the Plaintiff's Complaint and demands strict proof thereof.

100. The Defendant denies the allegations contained in Paragraph 97 of the Plaintiff's Complaint and demands strict proof thereof.

101. The Defendant denies the allegations contained in Paragraph 98 of the Plaintiff's Complaint and demands strict proof thereof.

102. The Defendant denies the allegations contained in Paragraph 99 of the Plaintiff's Complaint and demands strict proof thereof.

103. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

104. The Defendant denies the allegations contained in Paragraph 101 of the Plaintiff's Complaint and demands strict proof thereof.

105. The Defendant denies the allegations contained in Paragraph 102 of the Plaintiff's Complaint and demands strict proof thereof.

106. The Defendant denies the allegations contained in Paragraph 103 of the Plaintiff's Complaint and demands strict proof thereof.

107. The Defendant denies the allegations contained in Paragraph 104 of the Plaintiff's Complaint and demands strict proof thereof.

108. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

109. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

110. The Defendant denies the allegations contained in Paragraph 106 of the Plaintiff's Complaint.

111. The Defendant denies the allegations contained in Paragraph 107 of the Plaintiff's Complaint.

112. The Defendant denies the allegations contained in Paragraph 108 of the Plaintiff's Complaint.

113. The Defendant denies the allegations contained in Paragraph 109 of the Plaintiff's Complaint.

114. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

115. The Defendant denies the allegations contained in Paragraph 111 of the Plaintiff's Complaint and demands strict proof thereof.

116. The Defendant denies the allegations contained in Paragraph 112 of the Plaintiff's Complaint and demands strict proof thereof.

117. The Defendant denies the allegations contained in Paragraph 113 of the Plaintiff's Complaint and demands strict proof thereof.

118. The Defendant denies the allegations contained in Paragraph 114 of the Plaintiff's Complaint and demands strict proof thereof.

119. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

120. The Defendant denies the allegations contained in Paragraph 116 of the Plaintiff's Complaint and demands strict proof thereof.

121. The Defendant denies the allegations contained in Paragraph 117 of the Plaintiff's Complaint and demands strict proof thereof.

122. The Defendant denies the allegations contained in Paragraph 118 of the Plaintiff's Complaint and demands strict proof thereof.

123. The Defendant denies the allegations contained in Paragraph 119 of the Plaintiff's Complaint and demands strict proof thereof.

124. The Defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

125. The Defendant denies the allegations contained in Paragraph 121 of the Plaintiff's Complaint and demands strict proof thereof.

126. The Defendant denies the allegations contained in Paragraph 122 of the Plaintiff's Complaint and demands strict proof thereof.

127. The Defendant denies the allegations contained in Paragraph 123 of the Plaintiff's Complaint and demands strict proof thereof.

128. The Defendant denies the allegations contained in Paragraph 124 of the Plaintiff's Complaint.

FOR A SECOND DEFENSE

129. The Defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

130. The Defendant asserts as an affirmative defense the public duty rule.

FOR A THIRD DEFENSE

131. The Defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

132. The Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff, which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

FOR A FOURTH DEFENSE

133. The defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

134. The Defendant alleges that any personal injuries or property damages sustained by the Plaintiff, as alleged in the complaint, were due to and caused by the sole acts of negligence, recklessness and wantonness on the part of the Plaintiff and that the sole negligence, recklessness and wantonness of the Plaintiff was the proximate cause of his injuries.

FOR A FIFTH DEFENSE

135. The Defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

136. The Defendant pleads estoppel as an affirmative defense to the Plaintiff's complaint.

FOR A SIXTH DEFENSE

137. The Defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

138. The Defendant asserts that probable cause existed based on the Plaintiff's indictment and preliminary hearing, therefore, Plaintiff's Complaint should be dismissed.

FOR A SEVENTH DEFENSE

139. The Defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

140. The Defendant pleads all rights and immunities pursuant to §15-78-30 (f) and (g) of the South Carolina Code of Laws. Accordingly, Plaintiff's Complaint must be dismissed.

FOR AN EIGHTH DEFENSE

141. The Defendant reincorporates and realleges each and every paragraph set forth above in their Answer as if fully repeated herein.

142. The Defendant pleads all rights and immunities pursuant to §15-78-60 of the South Carolina Code of Laws, including, but not limited to, §§ 1, 2, 3, 4, 5, 17, and 25. Accordingly, Plaintiff's Complaint must be dismissed.

FOR A NINTH DEFENSE

143. The Defendant reincorporates and realleges each and every paragraph set forth above in their Answer as if fully repeated herein.

144. The Defendant asserts all defenses and immunities pursuant to §15-78-70 and §15-78-200 of the South Carolina Code of Laws; therefore, Plaintiff's Complaint should be dismissed.

FOR A TENTH DEFENSE

145. The Defendant reincorporates and realleges each and every paragraph set forth above in its Answer as if fully repeated herein.

146. The Defendant pleads all rights and immunities pursuant to §15-78-100, *et seq.* of the South Carolina Code of Laws.

FOR AN ELEVENTH DEFENSE

147. The Defendant reincorporate and realleges each and every paragraph set forth above in its Answer as if fully repeated herein.

148. The Defendant pleads all rights, immunities and limitations of liability pursuant to §15-78-120, including but not limited to the limitation of damage and prohibition against

punitive damages, of the South Carolina Code of Laws and, therefore, the Plaintiff's Complaint should be dismissed.

FOR A TWELFTH DEFENSE

149. The Defendant reincorporate and realleges each and every paragraph set forth above in its Answer as if fully repeated herein.

150. The Defendant alleges that the Complaint of the Plaintiff fails to state facts sufficient to constitute a cause of action against him and, therefore the complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRTEENTH DEFENSE

151. The Defendant reincorporate and realleges each and every paragraph set forth above in its Answer as if fully repeated herein.

152. The Defendant alleges that the Complaint of the Plaintiff fails to state facts sufficient to constitute a cause of action against him and, therefore the complaint should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A FOURTEENTH DEFENSE

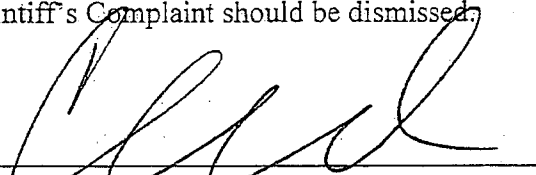
153. The Defendant reincorporate and realleges each and every paragraph set forth above in its Answer as if fully repeated herein.

154. The Defendant hereby asserts the legal doctrines of res judicata as an affirmative defense to Plaintiff's Complaint, therefore Plaintiff's Complaint should be dismissed.

FOR A FIFTEENTH DEFENSE

155. The Defendant reincorporate and realleges each and every paragraph set forth above in its Answer as if fully repeated herein.

156. The Defendants hereby allege that the Plaintiff should be collaterally estopped to contest probable cause, therefore the Plaintiff's Complaint should be dismissed.



Charles F. Turner, Jr. (#64996)

Anne R. Culbreath (#15536)

WILLSON JONES CARTER & BAXLEY, P.A.

872 S. Pleasantburg Drive

Greenville, SC 29607

(864) 672-3711

(864) 373-7055 (Fax)

Attorneys for Defendant,

Sheriff John Skipper

Greenville, SC
June 2, 2015



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ANDERSON)

TENTH JUDICIAL CIRCUIT)

C.A. NO. 2015-CP-04-01034)

Dr. Gregg N. Battersby)

Plaintiff,)

vs.)

DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT)Sheriff John Skipper, in his official
capacity)

Defendant.)

A TRUE COPY

NOV 22 2016

ANDERSON CLERK OF COURT

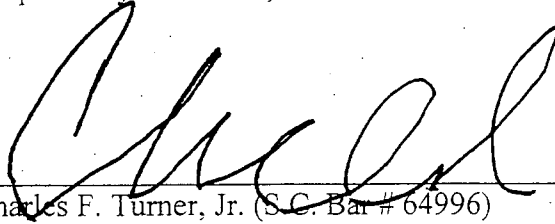
TO: THE PLAINTIFF DR. GREGG N. BATTERSBY:

YOU WILL PLEASE TAKE NOTICE that the above-named Defendant hereby moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in favor of Defendant as to all of Plaintiff's claims. In support of this Motion, Defendant will show that there are no genuine issues of material fact and Plaintiff's claims fail as a matter of law as sufficient probable cause existed for Plaintiff's arrest, and Defendant is entitled to Immunity under the S.C. Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*

SIGNATURE PAGE ATTACHED

FILED-CLERK'S OFFICE
ANDERSON SC
2015 DEC 22 AM 9:36
COMMON PLEAS AND
GENERAL SESSIONS

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Charles F. Turner, Jr., is written over a horizontal line.

Charles F. Turner, Jr. (S.C. Bar # 64996)

Robert L. Mebane, Jr. (S.C. Bar # 78043)

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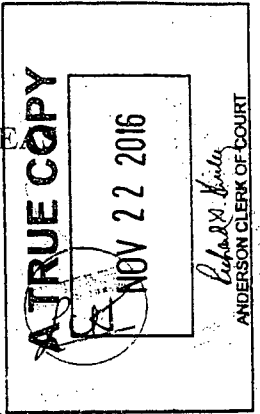
rlmebane@wjlaw.net

Attorneys for Defendant

December 4, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C.A. NO. 2015-CP-04-01034



Dr. Gregg N. Battersby

Plaintiff,

vs.

Sheriff John Skipper, in his official
capacity

Defendant.

DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

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COMMON PLEAS AND
GENERAL SESSIONS

Defendant John Skipper ("Defendant") respectfully submits the following Memorandum in Support of his Motion for Summary Judgment.

PROCEDURAL POSTURE/PLAINTIFF'S ALLEGATIONS

Plaintiff filed this action on May 1, 2015. Defendant timely filed an answer to Plaintiff's Complaint.

In his Complaint, Plaintiff, a chiropractor providing chiropractic services out of his home, alleges that on August 2, 2013, he was arrested on one count of indecent exposure "by Defendant." (Complaint, ¶¶ 2, 42) (See Complaint attached as **Exhibit A**). Defendant is the Anderson County Sheriff, which is the law enforcement agency that swore out the warrants leading to Plaintiff's arrest. This charge, assigned Case Number 2013A0410100898, resulted from allegations that Plaintiff exposed himself to a former patient, Carrie Neal, at his place of business. (Complaint, ¶¶ 3-5). The gravamen of the Plaintiff's allegations against Defendant is that when Carrie Neal originally reported the Plaintiff's conduct to law enforcement, the officer who created the Incident Report changed the incident report to fit the elements of indecent exposure. (Complaint, ¶¶ 9-10). Plaintiff alleges that Ms. Neal alleged "she was in Plaintiff's

laundry room and made no mention of seeing Plaintiff's genitalia", but that "[m]embers of the [Anderson County Sheriff's Office] changed her statement in the incident report claiming Neal was in Plaintiff's office/therapy area and Plaintiff did expose his genitalia." (See Complaint ¶¶ 8-10).

The same charge as Plaintiff alleges, also stems from Case Number 2013A0410900191, that resulted from allegations that Plaintiff exposed himself to a former patient, Jan Morton,¹ at his place of business. (Complaint, ¶¶ 43-45). The gravamen of Plaintiff's allegations against Defendant is that when Jan Morton originally reported Plaintiff's conduct to law enforcement, the officer who created the Incident Report wrote that Plaintiff was wearing a robe at the time of the alleged events; (Complaint, ¶¶ 47-48) whereas, in a recorded interview, Ms. Morton stated that Plaintiff was wearing a towel at the time of the incident. (Complaint, ¶ 51).

As such, as Plaintiff alleges, Defendant lacked probable cause to arrest him. In any event, Plaintiff acknowledges that the criminal charges stemming from both incidents were dismissed on April 24, 2014. (Complaint, ¶¶ 22, 69).

Based on these factual allegations, Plaintiff asserts causes of action against Defendant for malicious prosecution, abuse of process, and false arrest and/or imprisonment. As discussed in more detail below, there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law.

FACTS

As set forth above, the Plaintiff is a chiropractor who performs chiropractic services out of his home in Anderson County, South Carolina. On July 8, 2013, Jan Morton went to the Anderson County Sheriff's Office to report that the Plaintiff exposed himself to her. (See Morton Incident Report attached as **Exhibit B**). She met with Deputy Patrick Marter, who

¹ Jan Morton is also known as "Jan Morton Gantner."

completed an incident report summarizing the information provided by Ms. Morton. *Id.* The

Incident Report states:

On 7-8-13 Deputy Marter received a report of sexual indecent exposure. I spoke with the victim whom advised that while arriving at the office which is also Battersby's residence he had answered the door in a men's robe. He asked her in and disappeared for a few minutes. Upon returning he was still in his robe, but had her get onto the exam table as he started to do chiropractic adjustments in her neck area. He then used a mechanical massager to work upon her neck area. After completing this he then asked her to move to the other table and she lied face down and he began to use the same item to massage her lower extremities. She stated this was not normal and felt that it was inappropriate as he was moving lower towards her bottom area and he was way too close to her while doing this. She stated that she felt very uncomfortable and wanted to leave the office. As the victim got up to leave Battersby had dropped his robe to the floor and was very close to her with a fully erect penis. She felt like if she did not leave he may try and assault her. There was no explanation for his behavior nor did he attempt any sexual contact of her at that moment. She quickly left the location without further incident. She further advised that the subject has been calling her over the last three weeks attempting to get her back in the office. So far she had declined and won't return.

Id. Shortly thereafter, Investigator Stanley Ashley with the Anderson County Sheriff's Office met with Ms. Morton to discuss her allegations. During that meeting, of which an audio recording was made, Ms. Morton went over the facts:

Ms. Morton: [...] He came to the door. He had a towel on.

Mr. Ashley: He had a towel on?

Ms. Morton: He had a towel, yes, sir. It was like a brownish, reddish color.

[...]

And he did that, and then he put this thing on me that vibrates, which I've had that done while I was on vacation. First time I had ever had it done, as a matter of fact, was at the beach. When I had it done at the beach, they set it up here and vibrated. He went across my upper back a little bit, but he mostly focused on buttocks and kind of where my legs meet my butt cheeks, that area, and I won't say lower back but that area. That's when I started getting creeped out. I'm laying [sic] face down. And then after he gets done with that—because I had on a shirt and it comes up and it ties. So the back was exposed, from here up I mean. After that vibrating thing, I feel something on my back, and it doesn't feel like the normal massage—he's never done this to me before, but it didn't [feel] like what I got at the beach just about every day. So I

go to look up to see what he's doing, and that's when I noticed that he has nothing on and he's standing there with an erection and—
Mr. Ashley: So he's buck solid—
Ms. Morton: Completely. [. . .].

(See Transcript of Audio Recording of Interview with Jan Morton as transcribed in Deposition of Jan Morton Gantner taken in *Battersby v. Dr. Joseph Carew, et al.*, Case Number 8:14-CV-761-HMH, p. 57, lines 18-22; p. 61, lines 12-25; p. 62, lines 1-10 attached as **Exhibit C**).

Shortly after this interview, Carrie Neal came to report similar behavior by the Plaintiff. On July 25, 2013, Carrie Neal met with Investigator Stanley Ashley, who prepared an Incident Report which stated:

The listed victim did report to this R/O that [on May 23, 2013], the subject did expose his genitalia without consent or request of the victim. The victim was a patient of the subject's chiropractic practice. The offense did occur in the office/therapy area. The subject does also reside at this location.

(See Carrie Neal Incident Report attached as **Exhibit D**). Based on the information presented during the course of his investigation, Investigator Ashley completed Affidavits in support of Arrest Warrants. In Arrest Warrant 2013A0410900191 (the warrant at issue in the present case), Investigator Ashley stated that "on June 1, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to victim Jan G. Morton at 7800 Hwy. 81S, a public place or property within view of a street or highway." (See Morton Arrest Warrant attached as **Exhibit E**). In Arrest Warrant 2013A0410100898, Mr. Ashley stated that "on May 23, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to Carrie Neal at 7800 Hwy 81 S, a residence and chiropractic business open to the public." (See Neal Arrest Warrant attached as **Exhibit F**). The Warrants were presented to the Honorable Samuel Lollis and The Honorable William Sharp, respectively, each of whom found probable cause to arrest the Plaintiff and each of whom signed the respective warrants.

Plaintiff was arrested on August 2, 2013 and retained the services of Sarah Drawdy, Esquire, to represent him. On August 30, 2013, Plaintiff participated in a preliminary hearing. At the hearing, the State presented the testimony of Stanley Ashley, and Ms. Drawdy cross-examined him. At the conclusion of the hearing, the court determined that probable cause existed to arrest Plaintiff and that the charges would go forward. The cases were then presented to the grand jury, who returned true bill indictments on November 19, 2013 on both charges (the Jan Morton charge was assigned Case Number 2013-GS-04-02177 and the Carrie Neal charge was assigned case number 2013-GS-04-02178). On February 28, 2014, the Plaintiff, through his counsel, filed a Motion to Compel the production of the audio recording of Investigator Ashley's interview with Jan Morton. The recording was produced "a short time later." (Complaint, ¶ 68). Approximately two months later, the 10th Circuit Solicitor's Office decided not to pursue the case, and it was *nolle prossed*.

During the pendency of the criminal charges, the South Carolina Board of Chiropractic Examiners moved to suspend Plaintiff's license to practice chiropractic medicine. A hearing was conducted on October 30, 2013, and during her examination of one of the members of the Board, Plaintiff's attorney conceded that the Anderson County Sheriff's Office had probable cause to bring charges against Plaintiff:

And all they have are two statements from two individual women. And I submit to you, Dr. Banks, if you go out of this room and are alone with someone, they can then go to law enforcement and give a statement. That statement is probable cause for a warrant.

(See Transcript of Hearing before South Carolina Board of Chiropractic Examiners, p. 17, lines 15-21 attached as **Exhibit G**). Additionally, in later pleadings, Plaintiff again maintained that the Anderson County Sheriff's Office had probable cause to make the arrest.

In early 2015, Plaintiff filed suit against Allstate Insurance Company and attorney Kirk Moorhead, Esquire.² On March 31, 2015, Plaintiff filed a Second Amended Complaint in that case, which bears Case Number 2015-CP-00667. In his Second Amended Complaint, Plaintiff alleges that Mr. Moorhead instructed Jan Morton and Carrie Neal to file complaints against Plaintiff with the Anderson County Sheriff's Office. (See *Battersby v. Moorhead, et al.*, Case Number 2015-CP-00667, Second Amended Complaint, ¶¶ 13 and 15 attached as **Exhibit H**). Further, Plaintiff specifically pled in that action that "[t]he [Anderson County Sheriff's Office] relied on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement to be truthful and had no knowledge of its falsity and that "[t]he [Anderson County Sheriff's Office] had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement. *Id.* at ¶¶ 19 and 20. (emphasis added).

Additionally, in *Battersby v. Dr. Joseph Carew, et al.*, Case Number 8:14-CV-761-HMH,³ in which summary judgment was granted in favor of the Defendants, Jan Morton provided sworn deposition testimony in which she again confirmed that the Plaintiff exposed himself to her:

- A. I actually sat up or turned to sit up.
- Q. Turned toward him?
- A. Turned to the right, yes.
- Q. And then what happened?
- A. And that's when I saw that he had no longer had the towel on.
- Q. Did you see his penis?

² Upon information and belief, Mr. Moorhead represented Jan Morton in a case arising out of an automobile accident. Ms. Morton's chiropractic treatment with the Plaintiff was related to the injuries alleged in that action. Upon further information and belief, Allstate Insurance Company insured the Defendant driver in the action.

³ In that action, the Plaintiff filed suit against 10 members of the South Carolina State Board of Chiropractic Examiners alleging that these individuals violated his due process rights under the Fourteenth Amendment by temporarily suspending his license to practice chiropractic pending his evaluation by a physician to determine whether he was under a physical or mental disability that would make his further practice a danger to the public. Summary judgment was entered on behalf of the Defendants in that action.

- A. Yes.
Q. Was it erect?
A. Yes.
Q. How close was he to you?
A. Standing right by me.

(See Deposition Testimony of Jan Morton Gantner taken in *Battersby v. Dr. Joseph Carew, et al.*, Case Number 8:14-CV-761-HMH, p. 95, lines 23-25, p. 96, lines 1-11 attached as **Exhibit I**).

Thus, in regard to the Plaintiff's arrest, the Defendants had: 1) statements from two victims indicating that the Plaintiff had exposed himself to them; 2) an arrest warrant issued by an Anderson County Magistrate, who found that probable cause existed to arrest the Plaintiff; 3) a preliminary hearing after the Plaintiff's arrest, during which counsel for the Plaintiff was allowed to cross-examine witnesses, and after which, the Court found that probable cause existed for the Plaintiff's arrest; and 4) a true bill indictment issued by a grand jury. Furthermore, counsel for the Plaintiff affirmatively stated that the Anderson County Sheriff's Office had probable cause to arrest the Plaintiff based on the witness statements. Finally, the Plaintiff specifically pled in a related state court case that the Anderson County Sheriff's Office had every right to rely on the victims' statements. For these reasons, as discussed in more detail below, the Defendants had probable cause to arrest the Plaintiff. Therefore, the Defendants are entitled to judgment as a matter of law.

STANDARD OF REVIEW

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct.App. 2010). "In

determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party.” *Id.*

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008).

ARGUMENT

I. OVERVIEW OF PLAINTIFF’S CLAIMS

As mentioned previously, Plaintiff brings this action based on malicious prosecution, abuse of process, and false arrest and/or imprisonment. As discussed below, Defendant had sufficient probable cause to arrest the Plaintiff, therefore Plaintiff’s claims for malicious prosecution and false arrest fail as a matter of law. Therefore, the Defendant is entitled to judgment as a matter of law.

II. PROBABLE CAUSE EXISTED TO ARREST THE PLAINTIFF

A. Malicious Prosecution Claim

Defendant’s conduct did not amount to a malicious prosecution of Plaintiff. In South Carolina, “to maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Pallares v. Seinar*, 407 S.C. 359, 366, 756 S.E.2d 128, 131 (2014).

“An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause.” *Id.*

Malice is defined as the deliberate[,] intentional doing of an act without just cause or excuse. Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.

Probable cause in this context does not turn upon the plaintiff's guilt or innocence, but rather upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged.

Where a plaintiff bases the claim on an opponent's institution of civil causes of action, probable cause exists if the facts and circumstances would lead a person of ordinary intelligence to believe that the plaintiff committed one or more of the acts alleged in the opponent's complaint. (internal citations omitted).

Id. at 366-367.

“South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.” *Kinton v. Mobile Home Indus., Inc.*, 274 S.C. 179, 262 S.E.2d 727 (1980).

Moreover, a witness statement serves as affirmative evidence of probable cause. See *McBride v. Sch. Dist. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). (emphasizing that several witness statements supported a finding that probable cause existed for the plaintiff's arrest).

B. False Arrest And/Or Imprisonment Claim

In South Carolina,

[t]he essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.

The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.

McBride, 389 S.C. at 567.

“The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.”

Horton v. City of Columbia, 408 S.C. 27, 35, 757 S.E.2d 537, 541 (Ct.App. 2014).

Returning to the present case, the principles discussed above favor Defendant in every regard and demonstrate that probable cause existed for Plaintiff’s arrest. Defendant first determined that probable cause existed based on the direct statements of the victims, Carrie Neal and Jan Morton. As set forth above, a witness statement is sufficient to establish probable cause. *McBride, supra*. Moreover, counsel for the Plaintiff at his administrative hearing expressly conceded that the statement of the victims constituted probable cause for his arrest. (See **Exhibit G**). Furthermore, in related litigation, Plaintiff specifically pled that the related defendants “had every right to rely on” the victim’s statement and “had no knowledge of its [alleged] falsity.”⁴ (See **Exhibit H**). And, as recently as June 18, 2014, even after the criminal action was nolle prossed, Jan Morton maintained, as she has all along, that Plaintiff exposed himself to her. Thus, the facts and circumstances within Defendant’s knowledge were overwhelmingly sufficient to warrant a prudent person to believe that Plaintiff had committed a criminal offense. As such, probable cause existed to make the arrest and, therefore, Defendant’s conduct did not amount to malicious prosecution or false arrest/imprisonment.

Furthermore, Defendant obtained facially valid arrest warrants and there is no evidence to suggest that Defendant or Defendant’s deputies, deliberately or with a reckless disregard for the

⁴ To this end, Plaintiff should also be judicially estopped from now asserting that Defendant lacked probable cause to arrest him.

truth, made material false statements in the affidavits or omitted material facts from the affidavits with the intent to make, or with reckless disregard of whether they thereby made, the affidavits misleading.

The affidavit used in support of the Morton Arrest Warrant provided:

I further state that there is probable cause to believe that the defendant [Gregg Newton Battersby] did commit the crime [of indecent exposure] and that probable cause is based on the following facts:

That on June 1, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to victim Jan G. Morton at 7800 Hwy. 81S, a public place or property within view of a street or highway.

(See **Exhibit E**). This is the exact information that was provided by Jan Morton when she first contacted the Anderson County Sheriff's Office; it is the exact information that was provided in Ms. Morton's recorded statement taken after her initial report, and it is the exact information that Ms. Morton provided in her deposition taken a year after the warrant was issued. (See **Exhibit I**).

The affidavit used in support of the Neal Arrest Warrant Provided:

I further state that there is probable cause to believe that the defendant [Gregg Newton Battersby] did commit the crime [of indecent exposure] and that probable cause is based on the following facts:

That on May 23, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to Carrie Neal at 7800 Hwy 81 S, a residence and chiropractic business open to the public.

(See **Exhibit F**).

Thus, the only evidence that exists is that the officers included the material allegations of the victims, Jan Morton and Carrie Neal, in the affidavits and did provide any misleading information or omit any material facts. Moreover, Plaintiff's attorney had an opportunity to cross examine each affiant at the preliminary hearing, and the court still determined that probable cause existed. For these reasons, the Defendant had probable cause to arrest Plaintiff.

Finally, to the extent that Plaintiff argues that no probable cause existed because the initial incident report created by Officer Patrick Marter indicates that the Plaintiff was wearing a robe, whereas the actual recorded interview given by Ms. Morton indicates that the Plaintiff was wearing a towel, is wholly without merit. As discussed above, Deputy Patrick Marter first met with Jan Morton. As she did in her recorded interview, Ms. Morton reported that the Plaintiff indecently exposed himself to her while she was receiving chiropractic care from the Plaintiff at his home. The information was then written in a supplementary report, which Officer Marter prepared. In other words, these were not a written statement provided by Plaintiff—rather, it was Officer Marter's 10 line summary of his interview with Ms. Morton. After the initial report was filed, the case was turned over to an investigator, Stan Ashley, who personally interviewed Ms. Morton. During this interview, which was recorded, Ms. Morton provided a full account of her interaction with the Plaintiff.

Similarly, to the extent that Plaintiff argues that no probable cause existed because members of the Anderson County Sheriff's Office changed Ms. Neal's story to fit the crime of indecent exposure is without merit. As mentioned previously, the incident report clearly alleged that Plaintiff exposed his genitalia to Ms. Neal. Again, this information was then written in a supplementary report, which investigator Stan Ashley prepared. Again, these statements were not provided by Plaintiff-rather, it was investigator Ashley's summary of his interview with Ms. Neal.

Moreover, and most importantly, the key factors leading to Defendant's good faith belief that a crime had been committed were Ms. Morton's and Ms. Neal's statements that the Plaintiff exposed himself to them. Whether Plaintiff was wearing a robe or a towel (Morton report), or which room Plaintiff was in when he exposed himself (Neal report), would not affect any reasonable officer's determination that the crime of indecent exposure had been committed.

Indeed, such a fact is wholly immaterial to the underlying charge. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (holding that a fact is material if proof of its existence or non-existence would affect disposition of the case under applicable law). Thus, even if Ms. Morton or Ms. Neal made conflicting statements about what the Plaintiff was wearing immediately prior to him exposing himself, or what room he was in when he exposed himself (which they did not), the alleged omission of this fact would not support a claim for malicious prosecution or false arrest/imprisonment. Were it otherwise, an officer would be charged with delving into the minutiae of every criminal charge before he or she could be comfortable in drafting an affidavit in support of an arrest warrant.

III. THE DEFENDANT'S CONDUCT DID NOT AMOUNT TO AN ABUSE OF PROCESS

The Defendant's conduct did not amount to an abuse of process. In South Carolina, "[t]he tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *McBride*, 389 S.C. at 564.

Indeed, the essence of the tort of abuse of process centers on events occurring outside of the process, namely: The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.

Swicegood v. Lott, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (Ct. App. 2008).

In this case: 1) Defendant's office obtained statements from two victims (Carrie Neal and Jan Morton) indicating that Plaintiff had exposed himself to them; 2) Defendant's deputies obtained an arrest warrant issued by an Anderson County Magistrate, who found that probable cause existed to arrest Plaintiff; 3) a preliminary hearing was held after Plaintiff's arrest, during

which Plaintiff's counsel was allowed to cross-examine witnesses, and after which, the Court found that probable cause existed for Plaintiff's arrest; and 4) a true bill indictment was issued by a grand jury. For all these reasons, Defendant had sufficient probable cause to arrest Plaintiff and did not engage in any improper conduct during the proceedings. Moreover, nothing Defendant did could be viewed as any form of extortion as Defendant was merely acting on the reports of two victims and simply performing his official duties as the chief law enforcement officer of the Anderson County Sheriff's Office. Finally, there is no evidence that suggests that Plaintiff's arrest was supported by an ulterior purpose, other than to enforce the law against indecent exposure. For all of these reasons, Plaintiff's claim for abuse of process fails as a matter of law.

IV. ALTERNATIVELY, THE DEFENDANT IS ENTITLED TO IMMUNITY

Defendant denies that he violated Plaintiff's rights; however, even if this Court concludes that the facts of this case are sufficient to establish a claim for malicious prosecution, abuse of process or false arrest and/or imprisonment, dismissal is still appropriate based on Defendant's immunity under the South Carolina Tort Claims Act (the "Act").

S.C. Code Ann. § 15-78-20 provides in pertinent part:

The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.

Id.

The Act 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.” *Id.* at § 15-78-30. Therefore, as a law enforcement officer, Defendant is protected under the Act.

The Act further provides:

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 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.

Id. at § 15-78-70.

“The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” *Fleteau v. Harrelson*, 355 S.C. 197, 204 (Ct. App. 2003).

In *McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 2013 U.S. Dist. LEXIS 34086 (D.S.C. 2013) the District Court of South Carolina held that police officers were entitled to qualified immunity under the Act for tort claims arising from an allegedly unlawful arrest pursuant to a city ordinance that was later found to be unconstitutionally vague because the officers had probable cause to arrest based on violation of the ordinance.

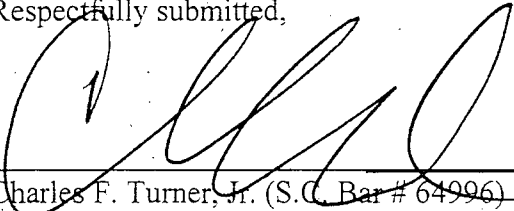
As mentioned previously: 1) Defendant's office obtained statements from two victims (Carrie Neal and Jan Morton) indicating that the Plaintiff had exposed himself to them; 2) Defendant's deputies obtained an arrest warrant issued by an Anderson County Magistrate, who found that probable cause existed to arrest Plaintiff; 3) a preliminary hearing was held after

Plaintiff's arrest, during which Plaintiff's counsel was allowed to cross-examine witnesses, and after which, the Court found that probable cause existed for Plaintiff's arrest; and 4) a true bill indictment was issued by a grand jury. For all these reasons, Defendant had sufficient probable cause to arrest Plaintiff and could not be viewed to have acted outside of the scope of his authority. If anything, Defendant simply followed the proper procedure in pursuing a charge against Plaintiff. Furthermore, there is no doubt that the procedures that were followed in this case fall within Defendant's official duties. Assuming the events in this case did fall outside of Defendant's official duties, then conceivably every arrest made by the Anderson County Sheriff's office or any other Sheriff's office would fall outside of a sheriff or its deputy's official duties. This is simply not true and defeats the whole purpose of Defendant's duties as the chief law enforcement officer for the Anderson County Sheriff's office, and the legislative intent of the Act. Therefore, Defendant is entitled to immunity and, as such, judgment as a matter of law.

CONCLUSION

For the reasons set forth above, Defendant would respectfully submit that there is no genuine issue of material fact as to Plaintiff's claims and Defendant is entitled to judgment as a matter of law. Alternatively, Defendant would respectfully submit that he is entitled to immunity.

Respectfully submitted,



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Robert L. Mebane, Jr. (S.C. Bar # 78043)

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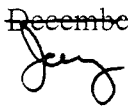


EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Dr. Gregg Battersby

Plaintiff

v.

Sheriff John Skipper, in his official capacity

Defendant

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

A TRUE COPY

FILED

MAY - 1 2015

COMM. LIST

Jury Trial Demanded

C.A. No: 2015-CP-04

INTRODUCTION

Plaintiff, Dr. Gregg S. Battersby, files this Complaint under the South Carolina Tort Claims Act for malicious prosecution, abuse of process, and false arrest and/or imprisonment against Defendant, Sheriff John Skipper, in support of which he presents the following:

PARTIES

- 1) Plaintiff, Dr. Gregg S. Battersby, is licensed to practice chiropractic in South Carolina. Plaintiff resides and has a practice in Anderson County.
- 2) Defendant, Sheriff John Skipper, is Sheriff of Anderson County, South Carolina. Defendant Skipper is answerable for neglect of duty or misconduct in office of any deputy under S.C. Code §23-15-10. Plaintiff was arrested by the Anderson County Sheriff's Office (ACSO) without probable cause on August 3, 2013. Defendant Skipper is being sued in his official capacity.

JURISDICTION

- 1) All events occurred within the purview of this Court.
- 2) All events occurred within the last two years.

MA TERIAL FACTS
CON STITUTE

1. Plaintiff is a chiropractor and has his practice in a part of his home.
2. On Aug. 2, 2013, Plaintiff was arrested on one count of indecent exposure by the ACSO.
3. The ACSO alleged that Plaintiff had exposed his genitals to a patient at his place of business.
4. The case number is 2013AC7410190898.
5. The alleged patient was Carrie Neal.
6. The incident report was filed with the ACSO.
7. On July 29, 2013, Neal made an audio statement.
8. Neal alleged she was in Plaintiff's laundry room and made no mention of seeing Plaintiff's genitals.
9. Members of the ACSO changed her statement in the incident report claiming Neal was in Plaintiff's "massage/therapy area" and Plaintiff did "expose his penis to."
10. Members of the ACSO changed Neal's statement to fit the elements of indecent exposure.
11. Neal told Detectives Ashley and Hendrix that Neal's lawyer was not going to pay Plaintiff for the services he rendered to Neal in treating her injuries sustained in an automobile accident.
12. The bill totaled \$12,100.00.
13. Detective Ashley said, "good, him him."
14. On August 20, 2013, Detective Ashley told Plaintiff's criminal lawyer that there was no audio statement.
15. Plaintiff made multiple requests for the audio statement from the Anderson County Assistant Solicitor, Kristian Reeves.

16. Reeves made at least 4 requests to the ACSO to turn over the case file containing the audio statement and was ignored. Those dates were August 16, 2013, September 19, January 3, 2014 and February 27, 2014.

17. On or about January 28, 2014, the Sheriff's Office provided information pursuant to a discovery request from Plaintiff.

18. The audio statement was not found.

19. Reeves told Plaintiff the ACSO told her there was no audio statement.

20. Plaintiff filed a Motion to Compel the production of the audio statement on Feb. 28, 2014.

21. A short time later the ACSO produced the non-existent audio statement.

22. Once the Reeves heard the audio statement she dismissed the criminal charge against Plaintiff on April 24, 2014.

23. Members of the ACSO changed alleged victim's statement to obtain an arrest warrant.

24. The ACSO withheld the exoneratory audio statement from the magistrate, victim and Plaintiff.

25. Members of the ACSO either knew or should have known the magistrate would not issue an arrest warrant after hearing the exoneratory audio statement.

26. The ACSO lacked probable cause to obtain the arrest warrant.

27. Plaintiff was restrained against his will by the ACSO.

28. The ACSO's restraint of Plaintiff was intentional.

29. Plaintiff's restraint was unlawful as it lacked probable cause.

30. Plaintiff's chiropractic license has been indefinitely suspended since Aug. 29, 2013 as a result of the criminal charge.

31. Members of the ACSO inhibited and continued the prosecution of Plaintiff by withholding the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

32. Members of the ACSO acted with an ill-regulated mind which was not sufficiently cautious to avoid causing injury to Plaintiff.

33. Members of the ACSO's actions were the deliberate intentional doing of a wrongful act without just cause or excuse.

34. Members of the ACSO linked such facts and circumstances as would create the belief in a reasonable mind acting on the facts within the knowledge of the members of the ACSO that Plaintiff was guilty of a crime for which he had been charged.

35. Members of the ACSO knew the state of Neal would not fit the elements of instant exposure so he charged them to fit the crime.

36. Members of the ACSO acted with ulterior purpose in withholding the exculpatory audio statement.

37. Members of the ACSO's actions were motivated by his expressed hatred towards Plaintiff.

38. Members of the ACSO's willful act of withholding the exculpatory audio statement inhibited and perpetuated the prosecution and is not proper in the regular conduct of the proceeding.

39. Members of the ACSO either knew or should have known that changing the instant report and withholding the audio statement violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

40. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO

41. Plaintiff is a chiropractor and had his practice in a part of his home.
42. On Aug. 2, 2013, Plaintiff was arrested on one count of indecent exposure by the ACSO.
43. The case number is 2013AO116900194.
44. The ACSO alleged that Plaintiff had exposed himself to a patient at his place of business.
45. The alleged patient was Jan Morton.
46. Jan Morton filed her incident report on July 8, 2013.
47. The incident report was filed with Deputy Morton.
48. Morton alleged Plaintiff opened the door wearing a "men's robe" and during his treatment he "dropped his robe to the floor" and was completely nude with a "fully erect penis".
49. Morton alleged Plaintiff did not "accept any sexual contact".
50. On July 13, 2013, Detectives Ashley and Hendrix got an audio statement from Morton.
51. In the audio statement, Morton alleged Plaintiff "came to the door. He had a towel on" and "I'm watching this man's robbing his stuff on tape."
52. Detective Ashley even questioned Morton about her allegation that Plaintiff was wearing a towel by saying "He had a towel on?"
53. Detective Ashley said in the audio statement "we'll see about going after his house."
54. Detective Hendrix told Morton to get another patient to file an incident report "Encourage her that the two together would be strong."

55. Detective Ashley also encouraged Morton to get another patient to file by saying "Stronger than just one."

56. On August 22, 2013, the ACSO sent Plaintiff's attorney the incident report and supplemental reports.

57. The supplemental report contained no reference to the audio statement being taken of Morton on July 18, 2013.

58. This entry was left out to hide the existence of the audio statement from the magistrate, solicitor and Plaintiff.

59. On August 26, 2013, Detective Ashley told Plaintiff's criminal lawyer that there was no audio statement.

60. Plaintiff received another copy of the supplemental report in January of 2014.

61. This supplemental report contained the entry of the audio statement as well as other entries of events that occurred prior to August 22, 2013 that were missing from the earlier supplemental report.

62. Plaintiff made multiple requests for the audio statement from the Anderson County Assistant Solicitor, Kristen Reeves.

63. Reeves made at least 4 requests to the ACSO to turn over the case file containing the audio statement and was ignored. Those dates were August 16, 2013, September 10, January 3, 2014 and February 27, 2014.

64. On or about January 28, 2014, the Solicitor's Office provided information pursuant to a discovery request from Plaintiff.

65. The audio statement was not listed.

66. Reeves told Plaintiff the ACSO told her there was no audio statement.

67. Plaintiff filed a Motion to Compel the production of the audio statement on Feb. 26, 2014.

68. A short time later the ACSO produced the non-verbal audio statement.

69. Once the Reeves heard the audio statement she dismissed the criminal charge against Plaintiff on April 24, 2014.

70. On June 18, 2014, Morton testified the incident report used to obtain the arrest warrant was not done by her.

71. Morton denied the list of facts set forth in the incident report.

72. Deputy Marter gave a deposition on Aug. 1, 2014.

73. Plaintiff showed Marter the transcript of Morton's audio statement.

74. Plaintiff showed Marter that Morton claimed Plaintiff was wearing a towel, not a man's robe.

75. Marter claimed there was no probable cause citing the two contradictory statements.

76. Members of the ACSO ignored discrepancies in the alleged victim's statements in obtaining the arrest warrant.

77. Members of the ACSO withheld the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

78. Members of the ACSO manipulated official documents to hide the existence of the audio statement.

79. Members of the ACSO either knew or should have known the magistrate would not issue an arrest warrant after hearing the exculpatory audio statement.

80. The ACSO lacked probable cause to obtain the arrest warrant.

81. Plaintiff was restrained against his will by the ACSO.

53. The ACSO's restraint of Plaintiff was intentional.

53. Plaintiff's restraint was unlawful as it lacked probable cause.

54. Plaintiff's chiropractic license has been arbitrarily suspended since Aug. 20, 2013 as a result of the criminal charge.

55. Members of the ACSO initiated and continued the prosecution of Plaintiff by withholding the exculpatory audio statement from the magistrate, solicitor and Plaintiff.

56. Members of the ACSO acted with an ill-regulated mind which was not sufficiently cautious before causing injury to Plaintiff.

57. Members of the ACSO's actions were the deliberate intentional doing of a wrongful act without just cause or excuse.

58. Members of the ACSO lacked such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the members of the ACSO that Plaintiff was guilty of a crime for which he had been charged.

59. The contradictory stories of Marion would call into question the veracity of her allegations.

60. Members of the ACSO acted with ulterior purpose in manipulating official documents and withholding the exculpatory audio statement.

61. Members of the ACSO's actions were motivated by his expressed hatred towards Plaintiff.

62. Members of the ACSO's willful act of manipulating official documents and withholding the exculpatory audio statement initiated and perpetuated the prosecution and is not proper in the regular conduct of the proceeding.

93. Members of the ACSO either knew or should have known that changing the incident report, manipulating official documents, and withholding the audio statement violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

94. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT ONE CAUSE OF ACTION-MALICIOUS PROSECUTION

95. Plaintiff re-alleges paragraphs 1-94.

96. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being maliciously prosecuted.

97. Members of the ACSO either knew or should have known that changing the incident reports and withholding the audio statement violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

98. Members of the ACSO's actions constituted malicious prosecution as the elements have been set forth herein.

99. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO CAUSE OF ACTION-MALICIOUS PROSECUTION

100. Plaintiff re-alleges paragraphs 1-99.

101. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being maliciously prosecuted.

102. Members of the ACSO either knew or should have known that changing the incident reports, manipulating official documents, and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

103. Members of the ACSO's actions constituted malicious prosecution as the elements have been set forth herein.

104. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT ONE CAUSE OF ACTION ABUSE OF PROCESS

105. Plaintiff alleges paragraphs 1-104.

106. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being abused in the legal process.

107. Members of the ACSO either knew or should have known that changing the incident reports and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

108. Members of the ACSO's actions constituted abuse of process as the elements have been set forth herein.

109. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO CAUSE OF ACTION-ABUSE OF PROCESS

110. Plaintiff recites paragraphs 1-109.

111. The aforementioned acts, omissions, and/or commissions of the Defendant Skipper in his official capacity and/or by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being stored in the legal process.

112. Members of the ACSO either knew or should have known that changing the incident reports, manipulating official documents and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

113. Members of the ACSO's actions constituted abuse of process as the elements have been set forth herein.

114. As a proximate cause of members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT ONE CAUSE OF ACTION-FALSE ARREST AND/OR IMPRISONMENT

115. Plaintiff alleges paragraphs 1-114.

116. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being falsely imprisoned.

117. Members of the ACSC either knew or should have known that changing the incident reports and withholding the audio statements violated Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

118. Members of the ACSC's actions constituted false arrest and/or imprisonment as the elements have been set forth herein.

119. As a proximate cause of Members of the ACSC's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

COUNT TWO CAUSE OF ACTION-FALSE ARREST AND/OR IMPRISONMENT

120. Plaintiff alleges paragraphs 1-119.

121. The aforementioned actions, conduct and/or omissions of the Defendant Skipper in his official capacity and/or, by and through his agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the Defendant Skipper, resulted in the Plaintiff being falsely imprisoned.

122. Members of the ACSC either knew or should have known that changing the incident reports/manipulating official documents and withholding the audio statements violated

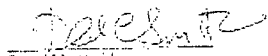
Plaintiff's clearly established constitutional right to no deprivation of liberty or property without probable cause.

123. Members of the ACSO's actions continued false arrest and/or imprisonment as the elements have been set forth herein.

124. As a proximate cause of Members of the ACSO's actions, Plaintiff has lost professional income, his future ability to practice chiropractic has been destroyed, and he has suffered immense mental and emotional pain, insomnia, headaches, ulcers, suffering, and humiliation.

RELIEF

Plaintiff requests this Court grant judgment in his favor for compensatory damages against Defendant Shipper. These two claims are to be considered separate and distinct events under the South Carolina Tort Claims Act. Plaintiff also requests this Court grant costs, legal fees, and any other relief this Court deems just and proper.


Donald L. Smith

Respectfully submitted,

Donald L. Smith (564) 542-9285
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Date: May 1, 2015

EXHIBIT B

AGENCY I.D.
SC0040000

INCIDENT REPORT

CASE NUMBER

2,0,1,3,-,3,3,6,7,4

HCIC

INO. N EXT. N

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
	1. SEXUAL EXPOSURE INCIDENT (36C)		☒ YES ☐ NO	☐ YES ☐ NO	Other/Unknown		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Of	
	2.		☐ YES ☐ NO	☐ YES ☐ NO				
	3.		☐ YES ☐ NO	☐ YES ☐ NO				
WITNESS NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE	
	7800 HIGHWAY 81 S, STARR e 1:10 pm appt.					29684		
	INCIDENT DATE	24 HR. CLOCK	TO DATE	24 HR. CLOCK	DEPART DATE/TIME 24 HR. CLOCK	LOCATION NO.		
	06/02/2013	13:00	06/02/2013	14:00	07/08/13 19:00 19:30 20:00	3		
SUBJECT NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	
	MORTON, JAN, GANTER			☒ J ☐ O ☐ U	W	F	37	
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
	201 CENTERVILLE RD		ANDERSON	SC	29625	4		
SUBJECT NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	
	MORTON, JAN, GANTER		OK	☒ J ☐ O ☐ U	W	F	37	
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
	201 CENTERVILLE RD		ANDERSON	SC	29625	4		
SUBJECT NO. 1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
	504	1180	BLN	BLU				
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
	201 CENTERVILLE RD		ANDERSON	SC	29625	4		
SUBJECT NO. 1	VISIBLE INJURY (FACT, 1)		EXPLAIN - NONE		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO			
	VICTIM (NO. 1) USING ALCOHOL: ☐ YES ☒ NO		UNK. ☐	DRUGS: ☐ YES ☒ NO	UNK. ☐	TYPE:		
	TWO-MAN VEH. ☐		ONE-MAN VEH. ☒	DETECTIVE/PLAINT. ☐	OTHER ☐	ALONE ☒	ASSISTED ☐	
	* J - This Jurisdiction. S - State. O - Out of State. U - Unknown							
SUBJECT NO. 1	SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	
	☒	BATTERSBY, GREGG,		W	M	40	N	
	☐ FUGITIVE	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
SUBJECT NO. 1	☐ WARRANT	7800 S HWY 81		STARR	SC	29684	3	
	☐ ARREST	SUBJECT (NO. 1) USING ALCOHOL: ☐ YES ☒ NO		UNK. ☐	ARRESTED WEAR OFFENSE SCENE: ☐ YES ☒ NO	DATE/TIME OF OFFENSE		
	☐ JAIL	DRUGS: ☐ YES ☒ NO		UNK. ☐	TOTAL # ARRESTED		DATE/TIME OF ARREST	
	☐ SUNDRIES							
NARRATIVE	On 7-8-13 Deputy Marter received a report of sexual indecent exposure. I spoke with Jan Morton whom is a patient of the subject. She advised further that the subject, while at her appointment at the office, did expose himself to her while performing chiropractic services. The exposure was unwanted and unsolicited by the victim and she left the office as soon as it occurred. This incident did occur in Anderson County. 6/1/13 e 1:10 pm Appt.							
PROPERTY EST.	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE			
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ ADJ. CLOSED ☐ UNFOUNDED ☐		ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐	
	☐ YES ☒ NO		☐ YES ☒ NO				☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER ☐	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY		DATE		UNIT NUMBER		APPROVING OFFICER	
	MARTER, P. D.		07/08/13		450		SGT. WILLIAMSON, GREG	
ADMINISTRATIVE	FOLLOW-UP INVESTIGATION: ☒ YES ☐ NO		OFFICER		DATE		UNIT NUMBER	
			ASHLEY, S. W.		07/09/13		096	

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

2,0,1,3,-,3,3,6,7,4

NCIC

INO.	ENTD.
N	N

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 of 1 PAGES

CONT-FROM-PG-1 RESTRICTED TO INVESTIGATIONS

On 7-8-13 Deputy Marter received a report of sexual indecent exposure. I spoke with the victim whom advised that while arriving at the office which is also Battersby's residence he had answered the door in a men's robe. He asked her in and disappeared for a few minutes. Upon returning he was still in his robe, but had her get onto the exam table as he started to do chiropractic adjustments in her neck area. He then used a mechanical massager to work upon her neck area. After completing this he then asked her to move to the other table and she lied face down and he began to use the same item to massage her lower extremities. She stated this was not normal and felt that it was inappropriate as he was moving lower towards her bottom area and he was way too close to her while doing this. She stated that she felt very uncomfortable and wanted to leave the office. As the victim got up to leave, Battersby had dropped his robe to the floor and was very close to her with a fully erect penis. She felt like if she did not leave he may try and assault her. There was no explanation for his behavior nor did he attempt any sexual contact of her at that moment. She quickly left the location without further incident. She further advised that the subject has been calling her over the last three weeks attempting to get her back in the office so far she had declined and wont return.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY									
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
MARTER, P. D.		07/08/13				SGT. WILLIAMSON, GREG		096	
						FOLLOW-UP INVESTIGATION ☒ YES ☐ NO		07/09/13	
						OFFICER ASHLEY, S. W.			

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION
CASE NO. 8:14CV761-HMH

Dr. Gregg Battersby,

Plaintiff,

vs.

Dr. Joseph Carew, et al,

Defendants.

DEPOSITION OF JAN MORTON GANTNER

DATE TAKEN: June 18, 2014

TIME BEGAN: 1:12 p.m.

TIME ENDED: 3:54 p.m.

LOCATION: Law Office of Donald Smith
122 North Main Street
Anderson, Carolina

REPORTED BY: Traci L. Barr, RPR

Page 56	Page 58
1 kind of -- It's not in his record. It's not 2 there. 3 MS. MORTON: I read in the court document that he 4 had, I don't know if it was Arizona or Ohio, 5 and I don't know if it was the judge, I was 6 just skimming over it, but said that he had 7 shown signs or something of anger and agitation 8 as -- I don't know what case it was, but as it 9 continued. 10 MR. ASHLEY: I didn't see it. I'll have to read over 11 it again. I just got it last week. 12 MS. MORTON: I don't want to be a statistic. My 13 husband, he's wanting me to get my concealed 14 weapons permit. 15 MR. ASHLEY: Listen, I don't know. 16 MS. MORTON: Talking about -- 17 MR. ASHLEY: You're probably in more danger going to 18 the mall. You know what I mean? 19 MS. MORTON: I don't know. That man to do what he 20 did, it took a lot of nerve. 21 MR. ASHLEY: Well, let's get to that. So was this a 22 morning visit appointment? 23 MS. MORTON: It was afternoon. I had sent him a 24 message. I cut my trip short. My husband and 25 I had our 11-year anniversary. I had an	1 He said, it doesn't work. 2 So he told me to come on in. Because his home 3 -- his office is inside his house. 4 MR. ASHLEY: Yeah. 5 MS. MORTON: And I came in, and I walked straight to 6 the office and sat down on the examination 7 table where I always sit. And he stood outside 8 of the doorway. It's like a double doorway. I 9 don't know if there is French doors there or 10 not. I think there are because I think they're 11 open. He sat on the outside of the doorway but 12 talked to me. 13 MR. ASHLEY: Was there anybody else in the room at 14 the time that you know of? 15 MS. MORTON: Not that I know of. 16 MR. ASHLEY: He doesn't have a secretary or 17 something? 18 MS. MORTON: See, I don't really know. I don't even 19 know if he has a girlfriend or he's married. 20 I've been there one time and there was a lady 21 there cleaning, but that's the only time. I've 22 been there and there be a patient there. I 23 think that was my very first visit. But I 24 don't recall ever seeing anyone other than his 25 dog.
Page 57	Page 59
1 appointment scheduled for that Monday, and this 2 was on Saturday. And I sent him a text message 3 and asked him if he had any availabilities for 4 that day, that he wasn't feeling well. He text 5 me back and he said, can you come now. 6 MR. ASHLEY: What was he treating you for? 7 MS. MORTON: It was supposed to be upper, like for my 8 -- shoulder blades up. 9 MR. ASHLEY: Up? 10 MS. MORTON: And my neck was -- what the doctor said, 11 it was either shingles or a cervical spine, 12 which apparently this is your cervical, yeah. 13 So anyway, he asked me if I could come now, and 14 I said yes and I thanked him. I said, thank 15 you for fitting me in in such short notice. 16 I drove down there, and I rang the doorbell. 17 It was cracked. And I knocked because he 18 didn't come to the door. He came to the door. 19 He had a towel on. 20 MR. ASHLEY: He had a towel on? 21 MS. MORTON: He had a towel, yes, sir. It was like a 22 brownish, reddish color. 23 And he came in and he apologized for taking so 24 long, and I said, it's okay. I said, I rang 25 the doorbell.	1 MR. ASHLEY: Okay. So you're for your examination -- 2 MS. MORTON: I'm sitting there, and he's on the 3 outside of the doorway and he's asking me what 4 all my issues are. All I can think about is 5 why is he in his towel. And so I just babbled 6 to him. I don't know what I said to him. 7 Probably a repeat of the same thing I tell him 8 every time; vision, back, you know, not feeling 9 well. My skin was sore to the touch. That was 10 the shingles. 11 And, anyway, so he told me -- I told him I was 12 extremely nervous, shaky, and I held out my 13 hands and I showed him. And he told me to lay 14 back and relax on the table. He still had not 15 entered that office room. He was still in like 16 the outside. Like if this was the doorway, he 17 was on the opposite end of the doorway. So I 18 told him -- he told me to lay back and relax. 19 I said, take your time, I'm in no hurry. 20 I laid back, closed my eyes. I look up, and 21 he's standing over me with still a towel on. I 22 thought he was going to get dressed, but that's 23 not what happened. I didn't feel good. 24 Anyway, so he was standing on my right side. 25 He just -- he took his hands or fingers and he

1 pushed down in, because the pains I've
 2 complained about is a wrapping pain that wraps
 3 around my ribs and it just dives into my
 4 stomach. I have lost 34 pounds while being
 5 sick. He just jabbed his fingers in there to
 6 the point that I like coughed and I actually
 7 blew saliva everywhere he pushed so hard. Then
 8 he adjusted my back. Then he turned around to
 9 go do my neck. And at that point -- I'm always
 10 kind of weary about my neck. I don't like the
 11 neck popping. He was standing there with a
 12 towel, and all I could think about was that
 13 towel coming off possibly.
 14 And I asked him, I was like -- I asked him,
 15 first time ever, I said, don't pop my neck.
 16 I'm not relaxed. I'm wound way too tight.
 17 Something to that effect is what I said to him.
 18 And he told me okay. And then he just mashed
 19 on my neck and told me to relax and breathe,
 20 and I did, and he popped my neck twice and told
 21 me to lay there and relax for a second or
 22 something. I guess to keep -- he tells me that
 23 sometimes in case I'm dizzy, I guess. I don't
 24 know. Because I've never been a big
 25 chiropractor -- never been in my life until I

1 went to him.
 2 Then as normal routine he told me to get on the
 3 next table where I actually lay on my tummy,
 4 and it's where they just push on your hips.
 5 Nothing unusual happened there.
 6 At this time normally I leave after that, but
 7 he told me to get on this other table, which is
 8 like beside the next table. There is a table
 9 in between them. And it moves up and down.
 10 It's like it stretches your spine and moves
 11 side to side, the bottom part from like waist
 12 down. And he did that, and then he put this
 13 thing on me that vibrates, which I've had that
 14 done while I was on vacation. First time I had
 15 ever had it done, as a matter of fact, was at
 16 the beach. When I had it done at the beach,
 17 they set it up here and vibrated. He went
 18 across my upper back a little bit, but he
 19 mostly focused on buttocks and kind of where my
 20 legs meet my butt cheeks, that area, and I
 21 won't say lower back but that area. That's
 22 when I started getting creeped out. I'm laying
 23 face down. And then after he gets done with
 24 that -- because I had on a shirt and it comes
 25 up and it ties. So the back was exposed, from

1 here up I mean. After that vibrating thing, I
 2 feel something on my back, and it doesn't feel
 3 like the normal massage -- he's never done this
 4 to me before, but it didn't like what I got at
 5 the beach just about every day. So I go to
 6 look up to see what he's doing, and that's when
 7 I noticed that he has nothing on and he's
 8 standing there with an erection and --
 9 MR. ASHLEY: So he's buck solid --
 10 MS. MORTON: Completely. Not --
 11 MR. ASHLEY: Is he saying anything?
 12 MS. MORTON: The only thing he asked me did it feel
 13 good or did something feel good. I can't
 14 remember. Because at that point I went into
 15 getting out of there.
 16 MR. ASHLEY: Yeah.
 17 MS. MORTON: I don't even know if I had my purse. I
 18 don't -- I don't remember. I don't even know
 19 if I paid him. I just -- it was shocking. It
 20 was very shocking.
 21 MR. ASHLEY: Did you say anything to him?
 22 MS. MORTON: I don't know. I honestly don't -- I
 23 don't know if I did or not.
 24 MR. ASHLEY: He's in the state he's in --
 25 MS. MORTON: Yeah, and I'm thinking that wasn't a

1 hand I felt on me. I'm thinking this man's
 2 rubbing his stuff on me.
 3 And I got in my car. I drove up the road. I
 4 pulled over at that store on the right. I went
 5 in there and tried to buy some cigarettes. I
 6 couldn't function. I couldn't talk to the man
 7 at the store. He didn't know what to do with
 8 me.
 9 MR. ASHLEY: That's Holly's (phonetic), isn't it?
 10 MS. MORTON: Real nice guy, older gentleman.
 11 But anyway, I think I got cigarettes. I don't
 12 even know. But I was on my way to go meet my
 13 husband and my children for lunch, is where I
 14 was going. We were going shopping and have
 15 lunch and it was -- I just couldn't pull myself
 16 together. I don't know.
 17 MR. ASHLEY: So have you had any more contact with
 18 him since then?
 19 MS. MORTON: He called me the following day or on
 20 that Monday. I had an appointment that he had
 21 scheduled for me, because he contacted me while
 22 I was on vacation. He knew I was on vacation.
 23 He knew it was my anniversary because I
 24 complained about going on vacation and feeling
 25 so horrible. He contacted me via text on my

EXHIBIT D

AGENCY I.D.
SC0040000

INCIDENT REPORT

CASE NUMBER

BCIC

2, 0, 1, 3, - 3, 6, 9, 5, 2

INO. N EXT. N

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
	1. INDECENT EXPOSURE (36C)				☒ YES ☐ NO	☐ YES ☐ NO	Commercial/Office		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
	2.				☐ YES ☐ NO	☐ YES ☐ NO				
	3.				☐ YES ☐ NO	☐ YES ☐ NO				
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE		
	7800 HIGHWAY 81 S, STARR						29684			
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DEPT. DATE	DEPT. TIME	TIME ARRIVED	DEPART TIME	
	05/23/2013	13:00		05/23/2013	14:00	07/25/13	14:30	14:30	15:30	
SUBJECT NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	
	NEAL, CARRIE, LYNN				OK	☒ S ☐ O ☐ U	W	F	41	
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
	4145 HWY 29 S				ANDERSON	SC	29626	3		
NARRATIVE	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	
	NEAL, CARRIE, LYNN				OK	☒ S ☐ O ☐ U	W	F	41	
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
	4145 HWY 29 S				ANDERSON	SC	29626	3		
PROPERTY EST.	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
	506	135	BRO	BRO						
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
	4145 HWY 29 S				ANDERSON	SC	29626	3		
ADMINISTRATIVE	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO ☐ EXPLAIN —				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO					
	VICTIM (NO. 1) USING ALCOHOL: ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE:									
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ *J—This Jurisdiction. S—State. O—Out of State. U—Unknown									
	SUBJECT (NO. 1) USING ALCOHOL: ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE:				ARRESTED NEAR OFFENSE SCENE: ☐ YES ☒ NO ☐ TOTAL # ARRESTED					
ADMINISTRATIVE	SUBJECT NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.	DATE OF BIRTH	
	BATTERSBY, GREGG, NEWTON				W	M	56	N	08/12/56	
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
	7800 S HWY 81				STARR	SC	29684	3		
ADMINISTRATIVE	SUBJECT (NO. 1) USING ALCOHOL: ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE:				ARRESTED NEAR OFFENSE SCENE: ☐ YES ☒ NO ☐ TOTAL # ARRESTED				DATE/TIME OF OFFENSE	
ADMINISTRATIVE	The listed victim did report to this R/O that, on occasion of the listed Incident date, the subject did expose his genitalia without consent or request of the victim. The victim was a patient of the subject's chiropractic practice. The offense did occur in the office/therapy area. The subject does also reside at this location.									
ADMINISTRATIVE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
ADMINISTRATIVE	TYPE (GROUP)							TOTAL VALUE		
	STOLEN									
	DAMAGED									
	RECOVERED									
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADJ. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	☒ YES ☐ NO		☒ YES ☐ NO							
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
ASHLEY, S. W.		07/30/13	408	SIMPSON, BRENT		07/30/13	437			
				FOLLOW-UP INVESTIGATION: ☐ YES ☒ NO		OFFICER		07/30/13	408	

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

NCIC

2,0,1,3,-,3,6,9,5,2,

INO.	ENTD.
N	N

☐ ORIGINAL REPORT
☐ MODIFIES ORIGINAL
☒ SUPPLEMENTAL REPORT
☐ CASE STATUS CHANGE
☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS
☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY
 PAGE 1 of 1 PAGES

Investigations only

7/25/2013@ 1430 HRS THE LISTED VICTIM/COMPLAINANT DID MEET WITH THIS I/O AT ACSO IN I/O'S OFFICE. VICTIM DID MAKE AUDIO STATEMENT TO I/O DESCRIBING EVENTS THAT DID OCCUR WHILE SHE WAS AT THE SUBJECT'S PLACE OF BUSINESS. SUBJECT DOES CONDUCT CHIROPRACTIC BUSINESS AT HIS RESIDENCE. THE SUBJECT'S OFFICE LOCATION IS THE INCIDENT LOCATION. THE SUBJECT DID EXPOSE HIS GENETALIA TO THE VICTIM WHILE BOTH WERE IN HIS OFFICE/THERAPY AREA. THIS WAS DONE WITHOUT CONSENT OR REQUEST OF THE VICTIM. THE VICTIM HAD BEEN INVOLVED IN A TRAFFIC ACCIDENT AND HAD BEEN TREATED BY THE SUBJECT. THE VICTIM DID ARRANGE VIA PHONE CONVERSATION TO MEET WITH SUBJECT AT INCIDENT LOCATION TO OBTAIN AN ITEMIZED BILLING OF SERVICES RENDERED. THE VICTIM RETURNED TO THE OFFICE OF THE SUBJECT, ON THE INCIDENT DATE, TO OBTAIN AN ITEMIZED ACCOUNT OF CHARGES THAT SHE DID NEED FOR REPORTING TO HER INSURANCE PROVIDER. THE CHIROPRACTIC OFFICE WAS ADVERTISED BY ROADSIDE SIGN AND THE LICENSE OF CHIROPRACTIC MEDICINE IS REGISTERED WITH THE STATE OF SOUTH CAROLINA LLR AS THE LOCATION OF HIS PRACTICE. THE VICTIM IS REPRESENTED BY ATTORNEY TOM DUNAWAY IN THE SUIT INVOLVING THE TRAFFIC ACCIDENT. THE TREATMENT BEGAN ON 9/5/12 AND ENDED 1/2/13, WITH OUT INDECENT INCIDENT.

5/23/13 THE VICTIM DID ARRIVE AT THE INCIDENT LOCATION TO RETRIEVE THE BILL. UPON ARRIVAL, THE VICTIM WAS MET IN THE OFFICE BY THE SUBJECT WHO WAS WEARING A ROBE. THE VICTIM STATED THAT SHE WAS NOT ALARMED BUT WAS SOMEWHAT TAKEN ABACK BY THE SUBJECT'S DRESS. THE VICTIM STATED THAT SHE REMAINED IN THE TREATMENT AREA WHILE THE SUBJECT DID EXIT TO RETRIEVE THE ITEMIZED BILL. SUBJECT RETURNED UNCLOTHED AND EXPOSED HIMSELF TO THE VICTIM. VICTIM LEFT BUSINESS IMMEDIATELY.

VICTIM DID PROVIDE COPY OF THE ITEMIZED BILL

DID FIND THAT THE VICTIM' CHIROPRACTIC LICENSE HAD BEEN REVOKED IN THE STATE OF ARIZONA, EFFECTIVE 10/27/2008 AND SUSPENDED IN THE STATE OF OHIO FOR SIMILAR ACTIONS.

ALSO SEE ACSO CASE# 2013-33674

7/30/2013 OBTAINED WARRANT 2013A0410100898 FOR INDECENT EXPOSURE (16-15-0130) FOR THE LISTED SUBJECT BY JUDGE WM. SHARP

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 14 ☒ ARRESTED 14 AND OVER	☐ EX-CLEAR UNDER 14 ☐ EX-CLEAR 14 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
ASHLEY, S. W.		03/26/14				
FOLLOW-UP INTERVIEW				☐ YES ☒ NO		OFFICER 07/30/13 408

EXHIBIT E

ARREST WARRANT

2013A0410900191

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

THE STATE

2013-33674

against

Gregg Newton Battersby

Address: 7800 Highway 81 S

Starr, SC 29684-8983

Phone: _____ SSN: _____
Sex: M Race: W Height: 6 3 Weight: 225DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0040000Prosecuting Agency: Anderson County SheriffProsecuting Officer: S Ashley - 408Offense: Sex / Indecent exposureOffense Code: 0091Code/Ordinance Sec: 16-15-0130This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 South Main Street
Po Box 8002
Anderson, SC 29622

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Personally appeared before me the affiant S Ashleybeing duly sworn deposes and says that defendant Gregg Newton Battersbydid within this county and state on or about 6/1/2013State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Anderson)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Indecent exposureI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on June 1, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts
to victim Jan G. Morton at 7800 Hwy. 81S, a public place or property within view of a street or highway.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Affiant's Address 305 Camson RoadAnderson, SC 29625-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/1/2013 defendant Gregg Newton Battersby

did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:

☒ County/ ☐ Municipality of AndersonDESCRIPTION OF OFFENSE: Sex / Indecent exposureHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 7/29/2013Signature of Issuing Judge
Samuel Matthew Lollis
Judge Code: 7222

(L.S.)

Judge's Address 12 W. Main St
Williamston, SC 29697-Judge's Telephone (864)847-5560Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

S.C. Attorney General
April 21, 2003
SCCA 518

CO

EXHIBIT F

ARREST WARRANT

2013A0410100898

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

THE STATE

2013-38952

against

Gregg Newton Battersby

Address: 7800 Highway 81 S

Starr, SC 29684-8983

Phone: SSN: Sex: M Race: W Height: 6 3 Weight: 225

DL State: SC DL #:

DOB: Agency ORI #: SC0040000

Prosecuting Agency: Anderson County Sheriff

Prosecuting Officer: S Ashley - 408

Offense: Sex / Indecent exposure

Offense Code: 0091

Code/Ordinance Sec: 16-15-0130

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 South Main Street
Po Box 8002
Anderson, SC 29622

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Personally appeared before me the affiant S Ashley

being duly sworn deposes and says that defendant Gregg Newton Battersby

did within this county and state on or about 5/23/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Anderson)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Indecent exposure

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on May 23, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to Carrie Neal at 7800 Hwy 81 S, a residence and a chiropractic business open to the public.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Affiant's Address 305 Camson Road

Anderson, SC 29625-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/23/2013

defendant Gregg Newton Battersby

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Anderson

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Indecent exposure

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me
on 7/30/2013

(L.S.)

Signature of Issuing Judge

William Daniel Sharp

Judge Code: 7013

Judge's Address 2404 N. Main St.

Anderson, SC 29621-

Judge's Telephone (864)260-4156

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

S.C. Attorney General
April 21, 2003
SCCA 518

EXHIBIT G

STATE OF SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF	)	
	)	
GREGG NEWTON BATTERSBY, DC	)	
License No. DC.3011	)	HEARING REGARDING TEMPORARY
	)	ORDER OF SUSPENSION
(2013-24)	)	
	)	
Respondent.	)	

Given before Tina F. Behles, Nationally Certified Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:04 p.m. on Wednesday, October 30th, 2013 at the offices of the South Carolina Department of Labor, Licensing and Regulation, 110 Centerview Drive, Columbia, South Carolina.

Reported by:
Tina F. Behles, CVR-M

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Gregg N. Battersby, DC - 10/30/2013

1 method of providing adequate assurances to the
2 board that it's not risking the public health
3 and safety as we move forward as expeditiously
4 as we can consistent with due process for a
5 final adjudication. So that's basically what
6 we've -- we're presenting here today.

7 MS. DRAWDY: And your honor -- Dr. Banks, if I could
8 just briefly so that -- put a little more
9 maybe layman's terms. I want to be clear. A
10 fellow doctor of chiropractic work, he
11 maintains his innocence as we're all entitled
12 to do. On the criminal charges, he has gone
13 into court and he has -- he has -- he comes
14 today cloaked in innocence. He's neither been
15 convicted by a trial or by any plea. And all
16 they have are two statements from two
17 individual women. And I submit to you, Dr.
18 Banks, if you go out of this room and are
19 alone with someone, they can then go to law
20 enforcement and give a statement. That
21 statement is probable cause for a warrant.
22 That's all that took place in this case.

23 There has been a preliminary hearing in
24 the criminal matter. The State has no further
25 evidence. They have two statements from two

EXHIBIT H

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

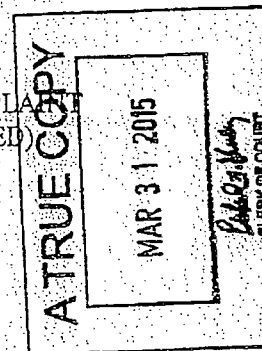
Gregg Battersby,)

Plaintiff,)

-vs-)

J. Kirkman Moorhead,)
Krause, Moorhead & Draisen, P.A.,)
Allstate Insurance Company,)
Allstate Northbrook Indemnity Company)
Defendants.)

SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)
C.A. No.: 2015-CP-00667



Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto the Court that:

Jurisdictional Allegations

1. The Plaintiff is a citizen and resident of the County of Anderson, State of South Carolina.
2. The individual Defendant, J. Kirkman Moorhead, is a citizen and resident of the County of Anderson, State of South Carolina.
3. Upon information and belief, Defendant Krause, Moorhead & Draisen, P.A. is a business organized and existing under the laws of the State of South Carolina, having its primary place of business in the County of Anderson, State of South Carolina.
4. The Defendant, Allstate Northbrook Indemnity Company (Allstate), is an insurance company doing business in the State of South Carolina.
5. The facts and circumstances alleged herein and giving rise to the Plaintiff's Complaint occurred in the County of Anderson, State of South Carolina.

6. All events occurred within the last two years.
7. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.
8. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).

Count One Factual Allegations

9. Plaintiff is a chiropractor practicing out of his home.
10. Defendant J. Kirkman Moorhead is a partner at Defendant Krause, Moorhead & Draisen, P.A.
11. Defendant J. Kirkman Moorhead has a client named Jan Morton.
12. Defendant J. Kirkman Moorhead and Morton conspired to concoct a story claiming Plaintiff indecently exposed himself to Morton on June 1, 2013.
13. Defendant J. Kirkman Moorhead instructed Morton to file criminal charges against Plaintiff with the Anderson County Sheriff's Office (ACSO).
14. Morton initially claimed that Plaintiff was wearing a men's robe and no sexual contact, then 10 days later she claimed Plaintiff was wearing a towel and he was rubbing his "stuff" on her back.
15. Defendant J. Kirkman Moorhead instructed Morton to get a friend of hers, Carrie Neal, to file a similar criminal complaint with the ACSO.
16. This was done to help strengthen their false claims.
17. Plaintiff was arrested by ACSO, on or about August 2, 2013, based on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A. and Morton's false statement.

18. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton knew the statement was false and intended for the ACSO to act on their false statement.

19. The ACSO relied on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement to be truthful and had no knowledge of its falsity.

20. The ACSO had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement.

21. Plaintiff was restrained against his will as a result of Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's false statement.

22. The restraint lacked probable cause and was unlawful.

23. This was done to make their stories more believable.

24. Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A. have fostered and facilitated defamatory, fraudulent claims against Plaintiff.

25. Defendants J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A., filed a complaint with the South Carolina Department of Labor, Licensing and Regulation (LLR) on behalf of Morton.

26. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton have filed multiple contradictory statements with different agencies.

27. The criminal charges were dismissed on April 24, 2014 by the Anderson County Solicitor.

28. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A. knew or should have known that the stories of Morton were false.

29. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton made

these defamatory statements to the ACSO, LLR, and others, claiming Plaintiff indecently exposed himself to Morton.

30. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton caused the arrest and loss of livelihood of Plaintiff.

31. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A. lacked probable cause in conspiring with Morton to file criminal charges against Plaintiff.

32. These actions were done with malice and intent to harm Plaintiff.

33. Defendants Moorhead and Krause, Moorhead & Draisen, P.A. acted with Morton with the sole intention of perpetuating a fraudulent civil action against Plaintiff.

34. Plaintiff suffered damages, financial, physical and emotional, as a result of Defendants', Moorhead and Krause, Moorhead & Draisen, P.A., actions.

Count Two Factual Allegations

35. Defendant Allstate was the automobile insurance carrier for Carrie Neal.

36. Defendant Allstate knew that Neal had an outstanding balance owed to Plaintiff in the amount of \$12,100.00 for treatment relating to an automobile accident.

37. Around August of 2013, Neal reached a settlement with Defendant Allstate.

38. Defendant Allstate failed to pay Plaintiff for the care given to Neal.

39. Neal failed to pay Plaintiff.

40. Defendant Allstate knew Plaintiff had a medical lien on the outstanding balance that directed Defendant Allstate to pay Plaintiff directly. Defendant Allstate owed a duty to Plaintiff to assure his bill was paid and Defendant Allstate breached that duty.

41. Defendant Allstate and Neal conspired to deny payment to Plaintiff.

42. Plaintiff has been damaged by Defendant Allstate's failure to pay his bill.

FOR A FIRST CAUSE OF ACTION

43. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 42 above.

44. The aforementioned actions, conduct and/or omissions of the Defendants resulted in Plaintiff being falsely arrested and imprisoned and/or deprived of his liberty against his will without justification or probable cause.

45. As a direct and proximate result of the Plaintiff's false arrest and imprisonment by the Anderson County Sheriff's Department on behalf of Defendants, its agents, servants, and/or employees, the Plaintiff has been damaged, both actual damages and punitive damages, for which damages the Defendants are liable.

FOR A SECOND CAUSE OF ACTION

46. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 45 above.

47. The aforementioned actions, conduct and/or omissions of the Defendants expressly or by implication gave Plaintiff's colleagues, patients, and/or others the impression that Plaintiff was engaging in wrongful or illegal activity.

48. The aforementioned insinuation, and/or inference of wrongdoing, constitutes a publication of defamatory matter that was defamatory to the Plaintiff.

49. As a direct and proximate result of the Defendants' defamation of the Plaintiff, Plaintiff has been damaged, for which compensatory, special and punitive damages the Defendants are liable.

FOR A THIRD CAUSE OF ACTION

50. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 49 above.

51. Defendants intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct.

52. Defendants' conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

53. The actions of the defendant caused plaintiff's emotional distress; and the emotional distress suffered by the plaintiff was severe such that no reasonable man could be expected to endure it.

54. The aforementioned actions, conduct and/or omissions of the Defendants constitute intentional infliction of emotional distress.

55. The Plaintiff has suffered actual damage as a direct and proximate result of the intentional infliction of emotional distress at the instigation of the Defendants.

56. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION

57. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 56 above.

58. The aforementioned actions, conduct and/or omissions of the Defendants constitute malicious prosecution.

59. The Plaintiff has suffered actual damage as a direct and proximate result of the malicious prosecution at the instigation of the Defendants.

60. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A FIFTH CAUSE OF ACTION

61. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 60 above.

62. The aforementioned actions, conduct and/or omissions of the Defendants constitute conspiracy.

63. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendants.

64. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SIXTH CAUSE OF ACTION

65. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 64 above.

66. The aforementioned actions, conduct and/or omissions of the Defendants constitute fraud.

67. The Plaintiff has suffered actual damage as a direct and proximate result of the fraud at the instigation of the Defendants.

68. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SEVENTH CAUSE OF ACTION

69. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 68 above.

70. Defendants had the ulterior motive of filing the criminal complaint and complaint with the LLR to seek monetary damages from Plaintiff in a civil suit.

71. Defendants' willful act in the use of the process that was not proper in the regular conduct of the proceeding.

72. The aforementioned actions, conduct and/or omissions of the Defendants abuse of process.

73. The Plaintiff has suffered actual damage as a direct and proximate result of the abuse of process at the instigation of the Defendants.

74. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR THE EIGHTH CAUSE OF ACTION

75. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 74 above.

76. The aforementioned actions, conduct and/or omissions of the Defendant Allstate and Neal constitute conspiracy.

77. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendant Allstate and Neal.

78. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendant Allstate in an amount to be determined by the jury.

FOR THE NINTH CAUSE OF ACTION

79. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 78 above.

80. The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute negligence.

81. The Plaintiff has suffered actual damage as a direct and proximate result of the negligence at the instigation of the Defendant Allstate.

82. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendant Allstate in an amount to be determined by the jury.

FOR THE TENTH CAUSE OF ACTION

83. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 82 above.

84. The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute gross negligence. Defendant Allstate acted without slight care as to the affect of their actions.

85. The Plaintiff has suffered actual damage as a direct and proximate result of the gross negligence at the instigation of the Defendant Allstate.

86. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendant Allstate in an amount to be determined by the jury.

WHEREFORE, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and pray for judgment against the Defendants, for

actual, special, and punitive damages in an amount to be determined by the jury which Plaintiff alleges to be in excess of Twenty-five Thousand and No/100 (\$25,000.00) Dollars actual and special damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRPC, for the costs of this action, and for such other and further relief as this court may deem just and proper.

Anderson, South Carolina
March 31, 2015


Donald L. Smith
ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

EXHIBIT I

Jan Morton

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION
CASE NO. 8:14CV761-HMH

Dr. Gregg Battersby,

Plaintiff,

vs.

Dr. Joseph Carew, et al,

Defendants.

DEPOSITION OF JAN MORTON GANTNER

DATE TAKEN: June 18, 2014

TIME BEGAN: 1:12 p.m.

TIME ENDED: 3:54 p.m.

LOCATION: Law Office of Donald Smith
122 North Main Street
Anderson, Carolina

REPORTED BY: Traci L. Barr, RPR

Jan Morton

Page 92	Page 94
1 Q. Yes, you. 2 A. I don't know. 3 Q. He asked me to move to a third table that was 4 hinged in the middle. 5 Had you been on that table before? 6 A. Yes. 7 Q. Then you state, he moved my lower body left and 8 right, up and down. I had never done this 9 before. 10 How was he moving your lower body left and 11 right, up and down, on the third table? 12 A. I'm trying to remember. I think -- it feels 13 like -- it's hard to explain, but the back end 14 where your feet would be, it feels like they go 15 side to side and up and down, is how it feels. 16 Q. Were you being moved by a machine or by Dr. 17 Battersby? 18 A. He was manipulating the table. 19 Q. So the table itself was moving? 20 A. Yes. 21 Q. Were you on your back? 22 A. I was on my stomach. 23 Q. You were on your stomach? 24 A. Yes. 25 Q. Did it assist you?	1 Was the machine actually on your buttocks? 2 A. Yes. 3 Q. Did he state why he was putting it on your 4 buttocks? 5 A. No. 6 Q. Had that ever been part of your treatment 7 before? 8 A. No. 9 Q. To your knowledge -- let me ask you this. If 10 you were lying down on a table on your stomach, 11 was your head pointed one way or another? 12 A. No. It had like these things your head kind of 13 went into. 14 Q. Almost like - I'm sure the wrong statement - 15 but a hole that your face would go into? 16 A. Yes. 17 Q. Okay. So could you see whether or not he was 18 still clothed? 19 A. No. 20 Q. When I say, clothed, I mean with a towel around 21 his waist? 22 A. No, I could not see. 23 Q. Did you ask him to stop treating you with the 24 machine on your buttocks? 25 A. No.
Page 93	Page 95
1 A. I'm sorry? 2 Q. Did the movements assist you in any way? 3 A. No, not that I'm aware of. 4 Q. Okay. You then state, he cut on a vibration 5 machine and placed it on my mid to upper back 6 -- 7 A. Uh-huh. 8 Q. -- then went down from my neck to lower back, 9 then moved up -- then he moved to my lower 10 buttocks in the area of the crease of my 11 thighs. 12 Was that still on the third table? 13 A. Yes, this should be on -- we should be on the 14 fourth table. Yeah, it was the fourth table. 15 Q. Did he use the vibration machine on you on the 16 third table? 17 A. No, sir. 18 Q. When you moved to the fourth table, were you 19 lying on your stomach? 20 A. Yes, sir. 21 Q. Had he used that vibration machine on you 22 before? 23 A. No. 24 Q. You then state, he didn't go back up but stayed 25 on my rear end for maybe 30 seconds.	1 Q. But you began to feel uncomfortable? 2 A. Yes. 3 Q. You then state, he shut the machine off and 4 then I felt something on my right lower middle 5 back. 6 Are you talking about your right as you're 7 lying down, facing down? 8 A. Right, my right side. 9 Q. All right. Is that the side from which he was 10 moving the machine? 11 A. He had the -- it's hard to pinpoint exactly 12 where the machine was because it's almost like 13 you lose sensation. 14 Q. Understood. 15 A. So I'm not exactly sure where the machine was, 16 on the left or the right or in the middle. 17 Q. Then you state, he shut the machine off and 18 then I felt something on my right lower middle 19 back. In retrospect, I believe that this was 20 his penis. 21 Now, were you still looking through the hole in 22 the table at the time? 23 A. I actually sat up or turned to sit up. 24 Q. Turned toward him? 25 A. Turned to the right, yes.

Jan Morton

Page 96	Page 98
1 Q. And then what happened? 2 A. And that's when I saw that he had no longer had 3 the towel on. 4 Q. Did you see his penis? 5 A. Yes. 6 Q. Was it erect? 7 A. Yes. 8 Q. How close was he to you? 9 A. Standing right by me. 10 Q. Was he a foot away from you or closer? 11 A. Closer. 12 Q. Okay. Then you write, he asked if it felt good 13 in a sort of low voice. 14 Was that a voice he did not ordinarily use? 15 A. Correct. He asked me that before I actually -- 16 before I turned around. I don't know if that's 17 what prompted me to look. 18 Q. Would you repeat that, please? 19 A. He -- the words where he asked me that, he 20 asked me that before I saw him without the 21 towel on. In between the machine and -- he 22 asked me that. 23 Q. So he asked you if this felt good in a low 24 voice. Because of these sort of 25 out-of-the-ordinary things, I raised up to find	1 Q. Was that in the course of seeking medical 2 treatment? 3 A. Yes. 4 Q. Did you discuss these events specifically with 5 the chiropractor? 6 A. I didn't go into any details with him, but he 7 knew that I was upset. I was looking for a 8 chiropractor. I needed care. And he wanted -- 9 he wanted to know who was previously treating 10 me, and I explained to him there were some 11 issues and I didn't want to go back, and he 12 understood. 13 Q. Other than that there were issues, did you 14 state anything more specific about Dr. 15 Battersby's conduct to the -- 16 A. I don't remember specifically what I said. He 17 knew that it was not just a misunderstanding or 18 -- he actually referenced a leprechaun when 19 speaking with me. 20 Q. I beg your pardon? 21 A. I know. I only remember so much of that 22 conversation, but he was telling me to please 23 come in and speak with him. He promised me 24 there would be no leprechauns in his office, I 25 didn't have to have an adjustment, but he just
Page 97	Page 99
1 him nude with an erect penis. 2 A. Right. 3 Q. Do you recall telling the police at any time 4 that you saw him with an erect penis? 5 A. I don't recall. 6 Q. Prior to making this statement to LLR, had you 7 reported it to any other authority other than 8 the police? 9 A. Any authority? 10 Q. Right, any other authority. 11 A. Prior -- I'm sorry, ask -- 12 Q. Prior to contacting LLR. 13 A. Yeah, I spoke with the police. 14 Q. Did you contact the legislator? 15 A. Oh, no. 16 Q. Did you contact your representative? 17 A. No. 18 Q. Did you speak to another chiropractor? 19 A. Yes. 20 Q. Who? 21 A. I don't remember his name. Nick, I think is 22 his first name. 23 Q. Was it Dr. Thayer? 24 A. I don't know. It was at, I think, Hanner 25 Chiropractic.	1 wanted to prove to me that not all 2 chiropractors were bad. He knew I had had some 3 kind of bad experience. 4 Q. Okay. But other than saying that you had a bad 5 experience, did you go into any detail about 6 what that bad experience was with your treating 7 physician? 8 A. I don't recall. 9 Q. All right. Returning back to the statement to 10 LLR, you then state, I jumped up and got out of 11 the door quickly. 12 Is that true? 13 A. Yes. 14 Q. There was no conversation or explanations. 15 Is that true? 16 A. That's true. 17 Q. I just left quickly. I did not pay. 18 Is that true? 19 A. I don't believe I did pay. 20 Q. Has Dr. Battersby ever demanded payment from 21 you for that session? 22 A. Not that I'm aware of. 23 Q. Do you recall receiving a bill from him for 24 that session? 25 A. No.

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ANDERSON SC

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Dr. Gregg Battersby)

Plaintiff,)

v.)

Sheriff John Skipper, in his official capacity)

Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
SUMMARY JUDGMENT

C.A. No.: 2015-CP-04-01034

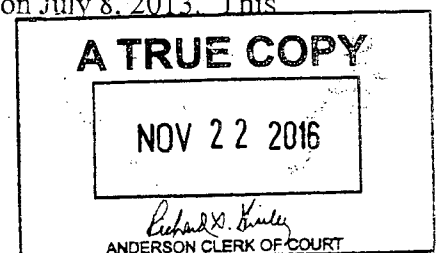
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[Signature]

INTRODUCTION

Plaintiff filed this Complaint against Defendant for malicious prosecution, abuse of process and false arrest/imprisonment. Defendant arrested Plaintiff without probable cause by withholding exculpatory audio statements from the magistrate and solicitor and fabricating an incident report to fit the elements of the indecent exposure charge. Plaintiff files this Memorandum in Opposition to Defendant's Motion for Summary Judgment, in support of which he presents the following:

MEMORANDUM

On or about August 2, 2013, Defendant arrested Plaintiff without probable cause and he spent 12 hours in jail. The unlawful arrest was based on uncorroborated allegations by two patients. Plaintiff is a chiropractor operating out of part of his personal residence. The case numbers associated with this arrest are 2013A0410900191 and 2013A0410100898. Defendant alleged that the Plaintiff had exposed himself to the patients at his place of business on May 23, 2013 and June 2, 2013. The alleged patients are Jan Morton and Carrie Neal. Morton filed an incident report on July 8, 2013. This



was five weeks after the alleged incident occurred. In the incident report, Morton alleged the Plaintiff answered the door wearing only a "men's robe" and during her treatment, he "dropped his robe to the floor" and was completely nude with a "fully erect penis." The supplemental report stated Morton claimed that the Plaintiff did not, "attempt any sexual contact." (Exhibit 1).

Ten days later, on July 18, 2013, Detectives Stan Ashley and Michelle Hendrix obtained a recorded statement from Morton. The audio statement of Morton alleged Plaintiff "came to the door. He had a towel on." Detective Ashley responded "He had a towel on?" This showed Ashley was questioning the difference with the incident report. Morton went on to say "I'm thinking this man's rubbing his stuff on me." Morton even changed the number of treatment tables she was on during the visit. She stated in her incident report that she was on 2 treatment tables and in the audio statement she was on 3 treatment tables. Detective Hendrix told Morton to get another patient to file an incident report, "Encourage her that the two (2) together would be strong." Detective Ashley also encouraged Morton to get another patient to file by saying, "stronger than just one." Detective Ashley told Morton, "we'll see about going after his license". (Exhibit 2). Detectives Ashley and Hendrix never contacted Plaintiff to get his statement even though they indicated in the audio statement that they were going to do it. On July 29, 2013, Defendant sought an arrest warrant against Plaintiff.

On the insistence of Detectives, Ashley and Hendrix, Morton got her good friend Carrie Neal to file a criminal complaint against Plaintiff. She made similar assertions as Morton. Neal had motive in making the false allegations because Plaintiff treated her for an automobile accident and owed Plaintiff \$12,100.00 for her care. She spoke to her lawyer, Atty. Tom Dunaway, who was handling her personal injury claim and told him her concocted story. He told

her that Plaintiff's outstanding bill would not be paid. As a result, she would be able to keep that money. On July 25, 2013, Neal went to Detectives, Ashley and Hendrix, and filed the criminal complaint, 8 weeks after the alleged incident. An audio statement was taken at that time. In the statement, Neal claimed that on May, 23, 2013 Plaintiff indecently exposed himself to her. This was weeks after Plaintiff had discharged her from his care. She claimed that the incident occurred in the laundry room of Plaintiff's residence. Neal also made no mention of seeing Plaintiff's genitalia. In later testimony, *Neal specifically denied seeing Plaintiff's genitalia.*

(Exhibit 3).

Page 63:

11 Q. Could you tell -- forgive me for asking
12 the question, but could you see his penis at any
13 point?
14 A. No. No.

Detective Ashley wrote in his incident report that the incident occurred in Plaintiff's "office/therapy area" and that Plaintiff exposed his genitalia to her. (Exhibit 4). This was done in order to meet the elements of the charge of indecent exposure.

SC Code §16-15-130 (A)(1) It is unlawful for a person to willfully, maliciously, and *indecently expose his person in a public place*, on property of others, or to the view of any person on a street or highway.

Detectives could not meet the elements of the crime if they used the story relayed by Neal so they changed her story to fit the elements. Detectives needed Neal to file charges in order to arrest Plaintiff so they falsified her incident report. Detective Ashley filed no supplemental report or made any reference to the existence of Neal's audio statement in the incident report effectively hiding its existence from everyone until March 26, 2014. (Exhibit 5). Ashley filed the supplemental report after he left the sheriff's office on March 6, 2014 for employment at the

Anderson County Fire Department. This was done in order to cover-up his withholding the audio tapes from the solicitor. Detective Ashley was so sloppy in creating Neal's supplemental report that he mixed in the facts that Morton had alleged. When Neal told Detective Ashley that her lawyer was not going to pay Plaintiff's outstanding bill, he responded, "good, hurt him". Detective Ashley's judgment was clouded for some unknown reason.

In the federal court case filed against Detective Ashley and Hendrix, they admitted that the alleged incidents occurred in Plaintiff's home. (Exhibit 15). Defendant also admitted that the alleged incidents happened in Plaintiff's home in their Memorandum in Support of Motion for Summary Judgment. Plaintiff's home is not a public place under South Carolina law.

On August 22, 2013, Plaintiff's counsel received copies of the incident reports and supplemental reports from the Anderson County Sheriff's Office (ACSO). The last entry on the supplemental report for Morton was July 9, 2013. (Exhibit 6). No reference was made of the audio statement being taken from Morton on July 18, 2013. This information would have been denied to the magistrate in obtaining the arrest warrant. In January of 2014, Plaintiff received discovery from the Solicitor's Office. Morton's supplemental report contained the missing entries after the July 9, 2013 entry that weren't posted on the August 22, 2013 supplemental report. (Exhibit 7). Detectives created an entirely new supplemental report. This was evidenced by spelling errors in the July 9, 2013 entry that weren't there in the January document. At some point in time, Detectives created an entirely new supplemental report with the missing information so as to make it not look suspicious. Detectives were tampering with official documents. This information was also withheld from the magistrate at the preliminary hearing.

On August 30, 2013, the preliminary hearing was held. Detective Ashley testified. He

did not produce the audio statements for the magistrate to hear the conflicting stories. After the hearing, Sarah Drawdy, Plaintiff's criminal attorney, asked Detective Ashley if there were any audio statements. He told her there were no audio statements from Neal and Morton. This was an intentional act to deny Plaintiff the ability to defend himself against the false allegations.

Plaintiff made multiple requests for the Sheriff's Office and the Solicitor's Office to produce the audio recording. The Solicitor's Office sent Detective Ashley emails on August 16, 2013, September 10, 2013, January 3, 2014, and February 27, 2014 requesting a copy of the case files. (Exhibit 8). Detective Ashley refused to provide the requested case files. When the detectives eventually gave the case file of Morton to the Solicitor's Office it didn't contain the audio statement. On February 10, 2014, Plaintiff was told by the Solicitor's Office that there was no audio statement in the case file provided by the detectives. (Exhibit 9). Plaintiff's counsel filed a Motion to Compel the production of the audio statements on February 28, 2014. It wasn't until March 21, 2014 that the Solicitor's Office received the audio statement of Morton. The Sheriff's Office still hadn't given the case file with audio statement for Neal to the Solicitor's Office. (Exhibit 10). The only reason the detectives turned over the audio statements was that the criminal charges would be dismissed if they weren't provided. Plaintiff was provided a copy of the audio statements. Upon listening to the audio statements, it was obvious there were glaring discrepancies with the incident reports. Plaintiff contacted Assistant Solicitor Reeves to have her listen to the audio statements. Shortly thereafter, the Solicitor's Office dismissed the criminal charges against the Plaintiff. The dismissal was on April 24, 2014. (Exhibit 11). Solicitor Chrissy Adams indicated that the reason the charges were dismissed was that there were "substantial issues with the facts" as relayed by Neal and Morton. (Exhibit 12). The only facts

in the possession of the detectives and the solicitor were the incident reports and the audio statements. Those "substantial issues" were only discovered when the detectives turned over the audio statements to the Solicitor's Office. No evidence was ever obtained by the detectives to corroborate Morton and Neal's stories.

On August 1, 2014, Deputy Marter gave a deposition. Plaintiff showed Deputy Marter the transcript of Morton's audio statement. Plaintiff showed Deputy Marter that Morton had originally claimed the Plaintiff had been wearing a "men's robe" and the transcript said he had been wearing a towel. Deputy Marter testified on Page 10: (Exhibit 13).

5 Q So based on your responsibilities as a
6 deputy, this page 3 is what she told you.
7 A Yes, yes. This is, for the most part,
8 exactly what she told me went on.

Deputy Marter wrote in the incident report what Morton told him. She told him that Plaintiff was wearing a men's robe and denied any sexual contact. Deputy Marter went on to testify on Page 14 that citing the contradictory statements by Morton there was *no probable cause*. (Exhibit 13).

2 Q If the only evidence -- if that's the
3 word you used -- is the statement of the victim, if
4 a victim has two contradictory statements, do you
5 have probable cause?
6 MR. MATTHEWS: Object to the form.
7 THE WITNESS: Not in my opinion, no. You
8 don't because you need -- you're going to have
9 to have a little more than just a belief
10 that's going on.
11 You have to have some substantial proof
12 that you believe that person committed the
13 crime.

Deputy Marter testified that the only evidence in the case file against Plaintiff was the

incident report and the follow-up investigation showing Detectives, Ashley and Hendrix, took an audio statement from Morton. No other corroborating evidence was in Morton's case file. Detectives ignored discrepancies in the alleged victim's statements used in obtaining the arrest warrants. Detective Ashley went to the magistrates with just the incident report and supplemental report minus any reference to the audio statements being taken. Detective Ashley withheld the audio statement from the magistrate. Detective Ashley did this knowing he couldn't get arrest warrants with the contradictory statements. The solicitor made multiple requests for the entire case file in the months after Plaintiff's arrest. Detectives ignored the requests. Detectives withheld the exculpatory audio statement from the magistrate, solicitor and Plaintiff. Detectives lacked probable cause to obtain the arrest warrant. Detectives acted with malice.

At the hearing before the South Carolina Board of Chiropractic Examiners (Board) on October 30, 2013, Plaintiff's counsel stated that there was probable cause to arrest Plaintiff on the incident report of each woman. Plaintiff had not received the conflicting audio tapes until March of 2014. Plaintiff had no idea that there were conflicting statements made by Morton and Neal, in addition to the fabrication of Neal's incident report. If the audio tapes had been timely turned over to Plaintiff in his initial discovery request in August of 2013, Plaintiff's counsel never would have made such a statement. This statement was made without the full knowledge of the facts that were in the possession of Defendant before the arrest warrants were sought. This is the same reason the solicitor sought indictments and the magistrate signed the arrest warrants. Everyone lacked the all evidence in the possession of the Defendant. Detective Ashley admitted in testimony that no evidence to corroborate the allegations of Neal and Morton.

The Board held an evidentiary hearing on July 28, 2015. After hearing the evidence they

dismissed Neal and Morton's allegations *with prejudice*. The Board uses a preponderance of evidence standard in making its decision. This means that the Board felt that the allegations did not prove to be at least 51% believable. This is not much higher than the probable cause bar.

In Plaintiff's suit against Allstate and Attorney Kirk Moorhead, Plaintiff was establishing a cause of action for the conspiracy to commit fraud by Attorney Moorhead and Morton. It had nothing to do with Defendant's involvement with Neal. Plaintiff was showing the intent by those defendants to deceive the ACSO into arresting Plaintiff by filing the incident report on July 8, 2013. Morton and Moorhead intended the allegations to be believed by the ACSO thus establishing an element of the cause of action. Plaintiff's pleading was in regards to the filing of the initial incident report and not the subsequent audio statement given by Morton. Defendant had every right to believe Morton's first statement. Defendant should not have believed her after her second statement. Plaintiff has withdrawn that pleading. It was up to the detectives to use their professional abilities to recognize Moorhead and Morton's deception when Morton made the conflicting statement on July 18, 2013. Defendant failed to do so and went even further by withholding evidence and falsifying official documents. The motivation was to take down a doctor.

Probable cause rests only on what the Defendant knew at the time of arrest and not what anyone else may have said. It is for these reasons that there are issues of material fact remaining.

ARGUMENT

DEFENDANT LACKED PROBABLE CAUSE TO ARREST PLAINTIFF

In order for an arrest to be lawful there must be probable cause. The arresting officer must have more than a mere suspicion that a person committed a

crime. Some evidence must support the officer's belief. It is obvious that the Detectives knew they did not have evidence that would support probable cause so they manufactured and withheld evidence. "Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. *State v. George*, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996); *Deaton v. Leath*, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983). "'Probable cause' is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise." *Jones v. City of Columbia*, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990)." See *Jackson v. City of Abbeville*, 623 S.E.2d 656 (SC, 2005). "The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. *Wortman v. City of Spartanburg*, 310 S.C. 1, 425 S.E.2d 18 (1992). "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." *Id.* at 4, 425 S.E.2d at 20. Probable cause may be found somewhere between suspicion and sufficient evidence to convict. *Thompson v. Smith*, 289 S.C. 334, 336-37, 345 S.E.2d 500, 502 (Ct.App.1986), overruled in part on other grounds by *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990). In determining the presence of probable cause for arrest, the probability cannot be technical, but must be factual and practical considerations of

everyday life on which reasonable, prudent and cautious men, not legal technicians, act. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App.1999).” See *State v. Brannon*, 666 S.E.2d 272, 379 S.C. 487 (S.C. App., 2008). When looking at the evidence known to the detectives in Morton you find two contradictory statements and nothing else. When looking at the evidence known to the detectives in Neal you find her statement not satisfying the elements of the indecent exposure charge.

No person looking at the evidence would believe that Plaintiff committed the crime of indecent exposure. Morton’s story changed in the ten days after she filed her incident report with the ACSO. Detectives knew there was a problem with her story when Detective Ashley questioned her about Plaintiff wearing a towel. This is a drastic difference from her incident report where she claimed Plaintiff was wearing a men’s robe. When Deputy Marter was presented with the audio statement transcripts, he said there was *no probable cause citing the contradictory statements*. Detective Ashley testified on page 46 that he had no other information other than Neal and Morton’s statements. (Exhibit 14).

8 Q So other than what they told you, do you

9 have anything else?

10 A Uh-uh.

11 Q That would be no?

12 A No. Excuse me.

Detectives had no other evidence supporting the conflicting stories of Neal and Morton. “The unsupported assertion or belief of the officer does not satisfy the requirement of probable cause. *Jones v. United States*, 362 U.S. 257, 269, 80 S.Ct. 725, 735, 4

L.Ed.2d 697 (1960); *Grau v. United States*, 287 U.S. 124, 53 S.Ct. 38, 77 L.Ed. 212 (1932); *Byars v. United States*, 273 U.S. 28, 29, 47 S.Ct. 248, 71 L.Ed. 520 (1927).” See *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). Detectives may not ignore exculpatory evidence when determining if probable cause exists. “As a corollary, moreover, of the rule that the police may rely on the totality of facts available to them in establishing probable cause, they also may not disregard facts tending to dissipate probable cause.” See *Bigford v. Taylor*, 834 F.2d 1213, 1988 U.S. App. LEXIS 49 (5th Cir. Tex. 1988). In this case, the only evidence was the contradictory statements of Neal and Morton. One must look at the totality of the evidence in determining if Plaintiff committed the criminal acts. Detectives obtained no corroborating evidence to support Neal and Morton’s claims. “This totality of the circumstances approach is far more consistent with our prior treatment of probable cause than is any rigid demand that specific “tests” be satisfied by every informant’s tip. Perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a “practical, nontechnical conception.” *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302 1311, 93 L.Ed. 1879 (1949). “In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.*, at 175, 69 S.Ct., at 1310. Our observation in *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981), regarding “particularized suspicion,” is also applicable to the probable cause standard: The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are

law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.” See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1982). The Anderson County Solicitor, Chrissy Adams, in dismissing the charges, stated that “there were substantial issues with the facts” as relayed by Morton and Neal after receiving the audio statements. Detective Ashley testified that the only evidence he had against Plaintiff were the statements by Morton and Neal. Solicitor Adams, being a reasonable and prudent person, knew that there was no probable cause because Morton’s stories conflicted and the statement of Neal did not satisfy the elements of the charge. In addition, Deputy Marter testified that there was no probable cause citing Morton’s conflicting stories. He is a reasonable and prudent person. When a reasonable and prudent person looks at Morton’s two stories they would come to one conclusion, that there was no probable cause. Detectives not only ignored the exculpatory evidence but withheld it from the magistrate, solicitor, and Plaintiff as well as tampered with official documents to hide their existence. A reasonable and prudent person would not fabricate an incident report and tamper with official documents in order to make an arrest.

The statements of Morton raise the question of whether they are truthful or not. Morton’s story changed in just ten days. These are not miniscule changes. *Morton changes her story from Plaintiff wearing a men’s robe and no sexual contact to him wearing a towel and rubbing his “stuff” on her back.* What a suspect is wearing is very important in establishing probable cause. “Our second case, *United States v. McClinnhan*, 660 F.2d 500 (D.C.Cir.1981), involved a gun tip, not a drug tip. Police received an anonymous telephone report that a black male wearing jeans, a black hat, and a black coat was carrying a sawed-off shotgun in a black

briefcase near 16th and Crescent Streets, N.W., in the District of Columbia. Officers drove to the area and observed a man matching the reported description standing one foot away from a black briefcase. The police approached the man, McClinnhan, identified themselves, and conducted a frisk. A later search of the briefcase uncovered a sawed-off shotgun. Id. at 501.” See *U.S. v. Clipper*, 973 F.2d 944, 297 U.S.App.D.C. 372 (C.A.D.C., 1992). “On that same morning, Douglas Brooks was watching television at his home near the intersection of Liberty and Magrath Streets, which was a block and a half away from Thompson's home. Sometime after 2:00 a.m., Brooks heard a loud noise coming from his back door which sounded like someone was trying to kick the door in. Brooks investigated the noise and saw someone jump off of his back porch. Brooks chased the man until he ran across Colonial Drive. Brooks stopped pursuing the suspect, and turned around to see a patrol car responding to the call at Thompson's house. Brooks flagged the officer down, informed him of the incident at his home, and described the suspect as wearing dark clothing. As Officer Robert Lee Gibson was driving to Thompson's house in response to her call to 911, he saw a man in dark clothing run across Colonial Drive as he approached Liberty Street. Gibson informed another officer that he saw the suspect running down Colonial Drive. Police circle the area to find the suspect. Minutes later, the police located Simmons, who was hiding in some nearby bushes. He was wearing a black t-shirt with white writing on it.” See *State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (S.C. App., 2002). There is a big difference between a men's robe and a towel. Morton even changed the number of treatment tables she was on during the visit. She stated in her incident report that she was on 2 treatment tables and in the audio statement she was on 3 treatment tables. In her incident report she stated that she feared being sexually assaulted. In her audio statement, she made no mention

of sexual assault. Morton claimed that Plaintiff was calling her to reschedule her appointment in the 3 weeks prior to her filing the incident report on July 8, 2013. Her phone records show no such calls were made by Plaintiff. All this calls into question her truthfulness. Detectives did nothing to substantiate her claims. In fact, they did the opposite. They hid her audio statement from others knowing that their existence threatened their probable cause.

Detectives changed what Neal told them to fit the elements of the indecent exposure charge. It is clear that if they took the statement as told by Neal to the magistrate they would not get an arrest warrant. Neal told them that the alleged incident occurred in the laundry room of Plaintiff's residence. This is not a public place. Defendant even agrees that the alleged incident occurred in Plaintiff's home. Neal never said she saw Plaintiff's genitalia. In fact, in a later deposition she specifically denied seeing it. Detective Ashley did not submit a truthful affidavit to the magistrate by claiming the alleged incident occurred in Plaintiff's office/therapy area and the Plaintiff exposed his genitalia. Once again, detectives withheld this exculpatory audio statement from magistrate and solicitor.

The information provided by an alleged victim must be reasonably trustworthy. "Whether [an] arrest was constitutionally valid depends ... upon whether, at the moment the arrest was made, the officers had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had *reasonably trustworthy information* were sufficient to warrant a prudent man in believing that the [person arrested] had committed ... an offense. Id. at 91, 85 S.Ct. at 225; see also Michigan v. DeFillippo, 443 U.S. at 37, 99 S.Ct. at 2632. Thus, it is the "facts and circumstances within [the officers']

knowledge and of which they had *reasonably trustworthy information*" at the time of arrest to which we turn." See *Clay v. Conlee*, 815 F.2d 1164 (C.A.8 (Ark.), 1987). "Law enforcement officers may obviously rely on statements made by the victims of a crime to identify potential suspects. *But such information does not, on its own, support a finding of probable cause if the information is not reasonably trustworthy or reliable.* See *Cortez v. McCauley*, 478 F.3d 1108, 1116-22 (10th Cir.2007) (en banc); *United States v. Shaw*, 464 F.3d 615, 623-26 (6th Cir.2006); *Clay v. Conlee*, 815 F.2d 1164, 1168 (8th Cir.1987)." See *Stoot v. City of Everett*, 582 F.3d 910 (9th Cir., 2009). "Probable cause to arrest exists only when the facts and circumstances within the officers' knowledge, and of which they have *reasonably trustworthy information*, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *United States v. Valenzuela*, 365 F.3d 892, 896 (10th Cir. 2004)." See *Cortez v. McCauley*, 478 F.3d 1108, 2007 U.S. App. LEXIS 3678 (10th Cir. N.M. 2007). "The jury was presented with evidence that Raines decided to instruct Bickley to issue the warrants on the basis of two unsigned statements of an outside undercover investigator whose job was to inform on employees. *There were inconsistencies between Chaney's statements and Chaney's field notes and Whirlpool did no independent investigation.* The jury could have concluded that a reasonable person would not have found probable cause to arrest Barber on the basis of this information and would have done more investigation. Raines' professed cancellation of the warrants after hearing Barber's side of the story at the noon meeting on June 28, 1990 also indicates that the smallest effort at further investigation would have shown the warrants unfounded. *The jury therefore could have reasonably concluded that there was no probable cause for the warrants.* The jury may infer malice from this lack of probable cause." See *Barber*

v. Whirlpool Corp., 34 F.3d 1268, 1994 U.S. App. LEXIS 23645, 128 Lab. Cas. (CCH) P57,754, 30 Fed. R. Serv. 3d (Callaghan) 103, 9 I.E.R. Cas. (BNA) 1492 (4th Cir. S.C. 1994). The information of Neal and Morton cannot be considered reasonably reliable. The fact that the Solicitor's Office dismissed the criminal charges after hearing the audio statements show that no probable cause existed, but that is not what the detectives were after. They didn't care that Plaintiff didn't commit the crime, they just wanted an arrest. Detectives are required to obtain some supporting evidence when confronted with obvious discrepancies in alleged victim's statements. Detectives did nothing. Detectives lacked probable cause to arrest Plaintiff.

Detectives omitted the exculpatory audio statements from the evidence presented to the magistrate when seeking the arrest warrants. They also omitted the audio statements at the preliminary hearing and at the Grand Jury proceedings. Detectives intentionally delayed recording the notation on Morton's supplemental report of the audio statement being taken for several months to hide its existence. Detectives withheld the audio statements from the solicitor for nine months. They also created Neal's supplemental report eight months after her audio statement was given and two weeks after Detective Ashley left his employment at the sheriff's office. It wasn't until Plaintiff filed a Motion to Compel the production of the audio statements that the detectives were pressured to present them or risk the dismissal of the criminal charge. "However, the combination of the police officer's deliberate falsehood and his omission of critical facts pollute the affidavit to the extent that a magistrate could not have found that probable cause existed to issue the search warrant." See

State v. Missouri, 524 S.E.2d 394, 337 S.C. 548 (S.C. 1999). "As this recitation suggests, an arrest warrant issued by a magistrate or judge does not, in itself, shelter an officer from liability for false arrest. See *Sherwood v. Mulvihill*, 113 F.3d 396, 399 (3d Cir. 1997). Rather, a plaintiff may succeed in a S 1983 action for false arrest made pursuant to a warrant if the plaintiff shows, by a preponderance of the evidence: (1) that the police officer "knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant;" and (2) that "such statements or omissions are material, or necessary, to the finding of probable cause." *Id.*" See *Wilson v. Russo*, 212 F.3d 781 (3rd Cir., 1999). There was no supporting evidence to make anyone believe that Plaintiff committed the crime, just two contradictory statements from Morton and facts not consistent with the elements of indecent exposure from Neal. Detectives cannot shield themselves by claiming the magistrate issued an arrest warrant and the Grand Jury issued an indictment. ***"By parallel reasoning, a prosecutor's decision to charge, a grand jury's decision to indict, a prosecutor's decision not to drop charges but to proceed to trial – none of these decisions will shield a police officer who deliberately supplied misleading information that influenced the decision.*** It is true that at some point after a person is arrested, the question whether his continued confinement or prosecution is unconstitutional passes over from the Fourth Amendment to the due process clause (and after conviction to the Eighth Amendment's cruel and unusual punishments clause, but that is not relevant here). But the causal inquiry is unchanged. ***If police officers have been instrumental in the plaintiff's continued confinement or prosecution, they cannot escape liability by pointing to the decisions of prosecutors or grand jurors or magistrates to confine or prosecute him.***" See *Goodwin v. Metts*, 885 F.2d 157, 161-163, 1989 U.S. App. LEXIS 13728,

8-13 (4th Cir. S.C. 1989). "However, Ienco's claims are not based upon the officers' perjured testimony. Instead, he argues that the officers withheld exculpatory information and lied to the federal prosecutors who successfully indicted him. Neither the withholding of exculpatory information nor the initiation of constitutionally infirm criminal proceedings is protected by absolute immunity." See *Ienco v. City of Chicago*, 286 F.3d 994, 1000, 2002 U.S. App. LEXIS 6769, 14-15 (7th Cir. Ill. 2002).

Detectives' actions come into total clarity when you look at what they did in handling the allegations of Neal. Not only did they hide the exculpatory evidence but they changed the incident report to fit the elements of indecent exposure. Neal stated that her alleged incident happened in the laundry room of Plaintiff's residence and that she did not see his genitalia. "S.C. Code Ann. § 16-15-130(A) (2003 & Supp. 2009) ("It is unlawful for a person to willfully, maliciously, and indecently expose his person in a public place, on public property, or to the view of any person on a street or highway.") (emphasis added); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); *State v. Williams*, 280 S.C. 305, 306-07, 312 S.E.2d 555, 556 (1984) (citing with favor the *definition of "public place" appearing in the fourth edition of Black's Law Dictionary and noting that it was "common knowledge" that the particular locations at issue were not private residences*). See *State v. Nations*, Opinion No. 2010-UP-071 (S.C. App. 2/1/2010) (S.C. App., 2010). Plaintiff's laundry room is not a public place. Detective Ashley even said in the audio statement that a person can be nude in his own home. Detectives knew the incident report had to indicate a public place so they changed her story to it happening in Plaintiff's office/therapy area and that his genitalia was exposed. Neal did not

see Plaintiff's genitalia. Neal's story would not meet the elements of indecent exposure. Defendant claims that it doesn't matter what room the alleged incident occurred in, yet the arrest warrant affidavit indicated a room that gave the magistrate the impression that the alleged incident occurred in a public place. One needs to ask why he didn't indicate the alleged incident occurred in Plaintiff's laundry room. A public place is an element needed to establish probable cause. Detectives needed Neal's claim in order to get an arrest warrant according to their comments on the audio statements. What makes the detectives' actions more egregious is that they violated Plaintiff's rights in these two separate criminal cases. The solicitor never would have sought an indictment if the audio statements were not withheld. This was evidenced by the solicitor's statements to the media when she said there were substantial issues with the facts that legally prevented the case from going further and they had no choice but to dismiss the charges. No magistrate would issue a warrant or Grand Jury indict if they were presented with the contradictory statements. The arrest warrant, indictment and preliminary hearing cannot shield Defendant from liability.

When the detectives failed to tell the magistrate and the Grand Jury of the contradictory statements told by Morton they were not submitting a completely truthful affidavit. Detectives did not submit a truthful affidavit to the magistrate in Neal by claiming the alleged incident occurred in Plaintiff's office/therapy area and the Plaintiff exposed his genitalia. *"Several courts have gone even further and held that an officer who induces a magistrate to issue a warrant not supported by probable cause by submitting a completely truthful affidavit may be held liable under Sec. 1983 for a resulting Fourth Amendment violation, if he should have known, at the time he applied for the warrant, that the affidavit*

did not establish probable cause. See *Briggs v. Malley*, 748 F.2d 715 (1st Cir.1984), *aff'd sub nom. Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986); *Garmon v. Lumpkin County*, 878 F.2d 1406 (11th Cir.1989) (same). Accordingly, I would not reach the question whether a defense of qualified immunity might be available on these facts. But see *DeLoach*, 922 F.2d at 621-22 (affiant who makes deliberate or reckless misrepresentations in order to obtain an arrest warrant is not entitled to qualified immunity, because his conduct is *per se* objectively unreasonable); *Olson*, 771 F.2d at 281-82 (same); cf. *Malley v. Briggs*, 475 U.S. at 345, 106 S.Ct. at 1098 (when police officer applies for arrest warrant on the basis of an affidavit that a reasonable officer in his position would have known failed to establish probable cause, his application for the warrant is not objectively reasonable for purposes of qualified immunity analysis, because it "create[s] the unnecessary danger of an unlawful arrest")." See *Wilkes v. Young*, 28 F.3d 1362 (4th Cir. 1994).

We will address the elements of malicious prosecution. "The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Law*, 368 S.C. at 435, 629 S.E.2d at 648. In this cause of action, malice is "the deliberate intentional doing of a wrongful act without just cause or excuse." *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982) (internal quotation omitted). It does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition. *Law*, 368 S.C. at 437, 629 S.E.2d at 649. Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person.

Moreover, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. In an action for malicious prosecution, ***malice may be inferred from a lack of probable cause to institute the prosecution.***” See *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 259 Ed. Law Rep. 918 (S.C. App., 2010).

Detectives instituted and continued the original criminal proceedings against Plaintiff. They applied for the arrest warrant. They continued the prosecution by withholding the exculpatory audio statements from the solicitor. The criminal charges were dismissed by the solicitor once she heard the audio statements some nine months later. Detectives acted with malice by arresting Plaintiff without probable cause. The detectives' sole motivation was to make an arrest and take down a doctor. They didn't care that their actions violated Plaintiff's rights. They knew it was wrong to change the statement of Neal and withhold both audio statements from the magistrate, solicitor, and Plaintiff. Detectives tampered with the supplemental reports of both Neal and Morton to hide the existence of the audio statements. These were deliberate intentional wrongful acts done without cause or excuse. As discussed earlier, the detectives lacked probable cause to arrest Plaintiff on the questionable allegations of Neal and Morton. Defendant maliciously prosecuted Plaintiff.

We will address the false arrest/imprisonment cause of action. “In order to prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Andrews v.*

Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct.App.1989).” See *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (S.C. App., 1999). Detectives restrained Plaintiff by arresting him. He was held in jail for nearly 12 hours. The restraint was intentional since they took Plaintiff from his home and took him to jail. The restraint was unlawful since it lacked probable cause. False arrest is depriving someone of their liberty. Defendants falsely arrested and imprisoned Plaintiff.

Both malicious prosecution and false arrest are dependent on a finding of probable cause. Detectives obtained the arrest warrants with facially invalid affidavits. This negates probable cause. “In Gist, the trial court had granted the motion for summary judgment by the Sheriff's Department on the false arrest claim because a magistrate issued the warrant for the plaintiff's arrest. The South Carolina Court of Appeals held that the action did not arise from the Sheriff's execution of the warrant but rather from “allegedly securing the warrant without probable cause. Therefore, the Sheriff's Department is not shielded from liability by the arrest warrant” and it was improper to dismiss the false arrest claim. 521 S.E.2d at 167. See also Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005) (Both false arrest and malicious prosecution claims are predicated on the lack of probable cause. “Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime . . .”).” See *Dorn v. Prosperity*, 2008 U.S. Dist. LEXIS 59867, 2008 WL 3318876 (D.S.C. Aug. 6, 2008). Defendant needed to provide the facts as relayed by Neal and Morton in the warrant affidavit, not false generalities to deceive the magistrate into issuing the warrants.

DEFENDANT ABUSED LEGAL PROCESS BY ARRESTING PLAINTIFF WITHOUT

PROBABLE CAUSE, WITHHOLDING AND TAMPERING WITH EVIDENCE

We will address the abuse of process cause of action. Charging an innocent person with a crime is not what the criminal justice system is designed for and not legitimate in the use of the process. “The first element, an “ulterior purpose,” exists if the process is used to secure an objective that is “not legitimate in the use of the process.” *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct.App.2012) (citation omitted). *** However, “[o]ne who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability for harm caused by the abuse of process.” *Id.* at 75, 567 S.E.2d at 255–56 (quoting Restatement (Second) of Torts § 682 (1977)). The collateral objective must be the “sole or paramount reason for acting.” *Id.* at 75, 567 S.E.2d at 256. The tort centers on events occurring outside the process *** The second element, a “willful act,” has been described as “[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process[.]” *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107. The “willful act” element consists of three components: (1) “a ‘willful’ or overt act”; (2) “in the use of the process”; (3) “that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Food Lion, Inc.*, 351 S.C. at 71, 567 S.E.2d at 254 (citations omitted).” See *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128 (S.C., 2014).

Detective Ashley is running for Anderson County Sheriff and a conviction of a high profile individual would help his campaign. Detective Ashley had the collateral objective to make the arrest to bolster his political aspirations. Detectives acted outside of the process by withholding the exculpatory audio statements from the magistrate, solicitor, and Plaintiff for nearly nine months, and tampering with official documents. They sought arrest warrants without probable

cause and are acts not authorized by the process. They acted willfully in withholding exculpatory evidence and tampering with official documents to secure the conviction of an innocent man.

These acts are improper and unauthorized. Detectives are required by law to turn over evidence to the magistrate, solicitor and Plaintiff. Detectives charged Plaintiff with crimes they knew he didn't commit. They just wanted to arrest a doctor. Detectives had to hide evidence and manufacture statements in order for the magistrate to sign the arrest warrants. This is not proper in the regular course of the proceedings. Defendant committed an abuse of process.

A SHERIFF CAN BE SUED UNDER THE SOUTH CAROLINA TORT CLAIMS ACT

The South Carolina Tort Claims Act (SCTCA) is the exclusive remedy for wrongs committed by the State. It waives sovereign immunity. "The common law doctrine of sovereign immunity was abolished by the South Carolina Supreme Court in *McCall* by *Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In 1986, the legislature enacted the South Carolina Tort Claims Act, S.C.Code Ann. §§ 15-78-10 to -200 (Supp.1997), which waives immunity while also providing specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances. The Tort Claims Act "is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." 2 S.C.Code Ann. § 15-78-20(b) (Supp.1997)." See *Wells v. City of Lynchburg*, 501 S.E.2d 746, 331 S.C. 296 (S.C. App., 1998). "The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct.App.2005) (citing *Flateau v. Harrelson*,

355 S.C. 197, 584 S.E.2d 413 (Ct.App.2003); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998)); *Hawkins v. City of Greenville*, 358 S.C. 280, 291, 594 S.E.2d 557, 563 (Ct.App.2004). "Notwithstanding any provision of law, 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." S.C.Code Ann. § 15-78-200 (2005); see also *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (2001) (observing the Tort Claims Act is the exclusive remedy for tort claims against governmental entities), *aff'd*, 354 S.C. 161, 580 S.E.2d 440 (2003)." See *Proctor v. Dept. of Health*, 628 S.E.2d 496, 368 S.C. 279 (S.C. App., 2006). Defendant was acting within the scope of his official duties when he unlawfully arrested Plaintiff. Defendant is liable for his unlawful actions under state law. "The Act provides that, subject to limitation, a governmental entity is "liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances." *Id.*; S.C.Code Ann. § 15-78-40 (Supp.1993)." See *Steinke v. SC DEPT. OF LABOR, LICENSING*, 336 S.C. 373, 520 S.E.2d 142 (S.C., 1999). Defendant arrested Plaintiff without probable cause on the allegations of Neal and Morton. Defendant is confused as to the interpretation of the SCTCA. The Act only provides for relief if the Defendant was acting within his official duties. If Defendant were not, he would be liable personally for his actions. That is why he is being sued in his "official capacity" as sheriff of Anderson County. The sheriff's deputies were acting within the scope of their official duties when investigating the allegations of Neal and Morton. They were also acting in their official duties when obtaining the arrest warrants.

South Carolina law creates vicarious liability on the sheriff for the misconduct or negligent acts of his deputies. SC Code § 23-13-10 states as follows:

The sheriff may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. *The sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy.*

The sheriff is responsible for the actions of his deputies "In addition, Appellants obtained a verdict against Sheriff Metts only due to a South Carolina statute making Sheriffs vicariously liable for the misconduct of their deputies. (J.A. at 313); see S.C.Code Ann. § 23-13-10 (Law. Co-op.1976)." See *Goodwin v. Metts*, 973 F.2d 378 (C.A.4 (S.C.), 1992). *Goodwin* is very similar to the case at hand. A deputy withheld exculpatory evidence from solicitor's office. The court found that Sheriff Metts was liable for the acts of his deputies. "The Supreme Court of South Carolina has expressly ruled that a sheriff's responsibility for the acts of his deputy is not dependent on the doctrine of respondeat superior. Instead, liability is based on the deputy's position as the sheriff's representative for whose official acts the law holds the sheriff strictly accountable. *Rutledge v. Small*, 192 S.C. 254, 6 S.E.2d 260, 262 (1939). The sheriff's liability is clearly defined in *Teasdale v. Hart*, 2 Bay 173, 175 (S. C.1798): "Every sheriff [is] liable for the acts of all his officers, and all persons acting under him in every subordinate capacity; and they on their parts, are bound to conduct themselves in the like manner as the sheriff himself ought to do, if he was present; and he is not to be let off, on account of the blunders, misconduct, or errors of any of his inferior agents." See *Scott v. Vandiver*, 476 F.2d 238 (4th Cir. 1973).

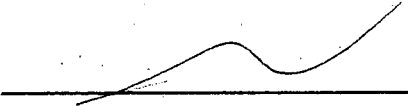
Plaintiff is suing the Defendant in his "official capacity" as sheriff of Anderson County under the South Carolina Tort Claims Act (SCTCA). The SCTCA was created to allow the

citizens of South Carolina an ability to seek redress from the State for damages. “The Tort Claims Act provides: 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.” See *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (S.C. App., 1999). The sheriff is a state officer created by the South Carolina Constitution. “We affirm pursuant to Rule 220(b)(1), SCACR, in light of our settled law that the sheriff and the sheriff's deputies are state officers and not county employees. See S.C. Const. art. V, § 24 (establishing the sheriff as an elected office); S.C. Code Ann. § 23-13-10 (Supp. 2008) (granting the sheriff authority to hire deputies and holding the sheriff responsible for the neglect or misconduct of his deputies).” See *Thompson v. Dorchester County*, Opinion No. 2009-MO-059 (S.C. 11/9/2009) (S.C., 2009). It is clear that South Carolina law creates liability for the sheriff for the misconduct of his deputies.

CONCLUSION

The only question that needs to be answered is this. Did the detectives have evidence that would establish probable cause to arrest Plaintiff? The answer is no. Probable cause does not rest on what may have been said by others not involved in the investigation. If the detectives had told the magistrate that on July 8, 2013 Morton claimed Plaintiff was wearing a men's robe and that no sexual contact occurred, and on July 18, 2013 she claimed Plaintiff was wearing a towel and was rubbing his “stuff” on her back, the magistrate would not have issued an arrest warrant. The affidavit was lacking in any reference to the different versions of Morton's stories. The detectives also changed the incident report for Neal to reflect the elements of indecent exposure.

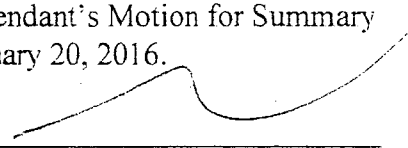
Defendant has admitted that the alleged incidents occurred in Plaintiff's home which is not a public place by law. Neal also denied seeing Plaintiff's private parts. This in and of itself destroys probable cause in that the essential elements of the indecent exposure charge is negated. The magistrate never would have issued the arrest warrant if given the unaltered facts relayed by Neal. The detectives created a supplemental report for Neal eight months after the events occurred. The detectives went further by hiding the exculpatory audio statements from the magistrate, solicitor, and Plaintiff for nine months. They tampered with official records to hide the existence of the exculpatory audio statements. A deputy involved in the investigation, Deputy Marter, testified that there was no probable cause for the arrest. Defendant is responsible for the actions of his deputies. There are genuine issues of material fact remaining. It is for these reasons that Defendant's Motion for Summary Judgment must be DENIED.



Dr. Gregg N. Battersby pro se
7800 Hwy. 81 South
Starr, SC 29684
Telephone: (864) 570-0077
Email: greggbattersby@gmail.com

CERTIFICATE OF SERVICE

Plaintiff served this Memorandum in Opposition to Defendant's Motion for Summary Judgment on Defendant's attorney by regular U.S. Mail on January 20, 2016.



Dr. Gregg N. Battersby

EXHIBITS

- 1) Supplemental report for Jan Morton on July 8, 2013
- 2) Audio tape transcript of Jan Morton, July 18, 2013
- 3) Deposition and audio tape transcript of July 25, 2013 for Carrie Neal
- 4) Carrie Neal incident report on July 30, 2013
- 5) Carrie Neal supplemental report created by Ashley on March 26, 2014
- 6) Jan Morton supplemental report received on August 22, 2013
- 7) Jan Morton supplemental report received in January of 2014
- 8) Emails from Anderson County Solicitor's Office to Ashley requesting case files
- 9) Emails from Anderson County Solicitor's Office to Plaintiff stating no audio tapes in case files on February 10, 2014
- 10) Interdepartmental email from Anderson County Solicitor's Office noting receipt of the case file of Jan Morton on March 21, 2014
- 11) Nolle Prosequi of criminal charge regarding Jan Morton and Carrie Neal
- 12) Anderson Independent Mail article quoting Solicitor Adams
- 13) Deposition of Deputy Marter
- 14) Deposition of Ashley
- 15) Federal Court Reply by Defendants Ashley, Hendrix, and Williamson

AGENCY I.D.
SCD040000

SUPPLEMENTARY REPORT

CASE NUMBER

2,0,1,3 - 3,3,6,7,4

MCC

IND. EXT.
N N

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL WITNESS	☐ ADDITIONAL EVIDENCE PROPERTY
☐ MOVING ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENSE	☐ ADDITIONAL RECEIVED PROPERTY

CONT-FROM-PG-1 RESTRICTED TO INVESTIGATIONS

On 7-6-13 Deputy Marter received a report of sexual indecent exposure. I spoke with the victim whom advised that while arriving at the office which is also Batterby's residence he had answered the door in a man's robe. He asked her in and disappeared for a few minutes. Upon returning he was still in his robe, but had her get onto the exam table as he started to do chiropractic adjustments in her neck area. He then used a mechanical massager to work upon her neck area. After completing this he then asked her to move to the other table and she lied face down and he began to use the same item to massage her lower extremities. She stated this was not normal and felt that it was inappropriate as he was moving lower towards her bottom area and he was way too close to her while doing this. She stated that she felt very uncomfortable and wanted to leave the office. As the victim got up to leave, Batterby had dropped his robe to the floor and was very close to her with a fully erect penis. She felt like if she did not leave he may try and assault her. There was no explanation for his behavior nor did he attempt any sexual contact of her at that moment. She quickly left the location without further incident. She further advised that the subject has been calling her over the last three weeks attempting to get her back in the office so far she had declined and wont return.

ADMINISTRATIVE

REPORT FORWARDED ☐ YES ☒ NO	SUBJECT LOCATED ☐ YES ☒ NO	ACCOMPLISHED ☒ YES ☐ NO	ADJ. CLOSED ☐ UNFOUNDED	APPROVED UNDER 10 ☒ APPROVED UNDER 10/10/13	EXCERPT UNDER 10 ☐ EXCERPT UNDER 10/10/13
SECTION FOR DISPOSITIONAL CLEARANCE: 1. ☐ DISPOSITIONAL CLEARANCE 2. ☐ NO PROSECUTION 3. ☐ EXTENSION PERIOD 4. ☐ VICTIM REQUESTS COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
REPORTING OFFICER MARTER, P. D.	DATE 07/08/13	DATE 07/08/13	APPROVED OFFICER SGT. WILLIAMSON, GREG	DATE 07/09/13	UNIT 095
FOLLOWUP INVESTIGATION ☒ YES ☐ NO			OFFICER ASHLEY, S. W.		

1 appointment scheduled for that Monday, and this
2 was on Saturday. And I sent him a text message
3 and asked him if he had any availabilities for
4 that day, that he wasn't feeling well. He text
5 me back and he said, can you come now.

6 MR. ASHLEY: What was he treating you for?

7 MS. MORTON: It was supposed to be upper, like for my
8 shoulder blades up.

9 MR. ASHLEY: Up?

10 MS. MORTON: And my neck was -- what the doctor said,
11 it was either shingles or a cervical spine,
12 which apparently this is your cervical, yeah.
13 So anyway, he asked me if I could come now, and
14 I said yes and I thanked him. I said, thank
15 you for fitting me in in such short notice.
16 I drove down there, and I rang the doorbell.
17 It was cracked. And I knocked because he
18 didn't come to the door. He came to the door.
19 He had a towel on.

20 MR. ASHLEY: He had a towel on?

21 MS. MORTON: He had a towel, yes, sir. It was like a
22 brownish, reddish color.
23 And he came in and he apologized for taking so
24 long, and I said, it's okay. I said, I rang
25 the doorbell.

1 went to him.
2 Then as normal routine he told me to get on the
3 next table where I actually lay on my tummy,
4 and it's where they just push on your hips.
5 Nothing unusual happened there.
6 At this time normally I leave after that, but
7 he told me to get on this other table, which is
8 like beside the next table. There is a table
9 in between them. And it moves up and down.
10 It's like it stretches your spine and moves
11 side to side, the bottom part from like waist
12 down. And he did that, and then he put this
13 thing on me that vibrates, which I've had that
14 done while I was on vacation. First time I had
15 ever had it done, as a matter of fact, was at
16 the beach. When I had it done at the beach,
17 they set it up here and vibrated. He went
18 across my upper back a little bit, but he
19 mostly focused on buttocks and kind of where my
20 legs meet my butt cheeks, that area, and I
21 won't say lower back but that area. That's
22 when I started getting creeped out. I'm laying
23 face down. And then after he gets done with
24 that -- because I had on a shirt and it comes
25 up and it ties. So the back was exposed, from

1 here up I mean. After that vibrating thing, I
2 feel something on my back, and it doesn't feel
3 like the normal massage -- he's never done this
4 to me before, but it didn't like what I got at
5 the beach just about every day. So I go to
6 look up to see what he's doing, and that's when
7 I noticed that he has nothing on and he's
8 standing there with an erection and --

9 MR. ASHLEY: So he's buck solid --

10 MS. MORTON: Completely. Not --

11 MR. ASHLEY: Is he saying anything?

12 MS. MORTON: The only thing he asked me did it feel
13 good or did something feel good. I can't
14 remember. Because at that point I went into
15 getting out of there.

16 MR. ASHLEY: Yeah.

17 MS. MORTON: I don't even know if I had my purse. I
18 don't -- I don't remember. I don't even know
19 if I paid him. I just -- it was shocking. It
20 was very shocking.

21 MR. ASHLEY: Did you say anything to him?

22 MS. MORTON: I don't know. I honestly don't -- I
23 don't know if I did or not.

24 MR. ASHLEY: He's in the state he's in --

25 MS. MORTON: Yeah, and I'm thinking that wasn't a

1 hand I felt on me. I'm thinking this man's
2 rubbing his stuff on me.
3 And I got in my car. I drove up the road. I
4 pulled over at that store on the right. I went
5 in there and tried to buy some cigarettes. I
6 couldn't function. I couldn't talk to the man
7 at the store. He didn't know what to do with
8 me.

9 MR. ASHLEY: That's Holly's (phonetic), isn't it?

10 MS. MORTON: Real nice guy, older gentleman.

11 But anyway, I think I got cigarettes. I don't
12 even know. But I was on my way to go meet my
13 husband and my children for lunch, is where I
14 was going. We were going shopping and have
15 lunch and it was -- I just couldn't pull myself
16 together. I don't know.

17 MR. ASHLEY: So have you had any more contact with
18 him since then?

19 MS. MORTON: He called me the following day or on
20 that Monday. I had an appointment that he had
21 scheduled for me, because he contacted me while
22 I was on vacation. He knew I was on vacation.
23 He knew it was my anniversary because I
24 complained about going on vacation and feeling
25 so horrible. He contacted me via text on my

1 MR. ASHLEY: Around here?

2 MS. MORTON: Yeah. I'm trying to think of -- off of
3 Clemson Boulevard. 1998. They had me in ICU,
4 had me in there under like a Jane Doe. I don't
5 remember a whole lot other than somebody --
6 they broke all the -- my orbits or orbiters.
7 And they were afraid that bone fragments were
8 going to pierce my brain. I was in bad shape.

9 MR. ASHLEY: Wow.

10 MS. MORTON: I couldn't see for a month. And so I am
11 a little emotional about doing this.

12 MR. ASHLEY: I gotcha.

13 MS. MORTON: I'm afraid of people. People are crazy.

14 MR. ASHLEY: You have my number on that card, the
15 260-4428.

16 MS. MORTON: Uh-huh.

17 MR. ASHLEY: We'll see -- we're going to have to go
18 talk to him and try to figure out how to do it.
19 If you talk to that lady, you know, just suck
20 it up and see if you can do what you're doing.
21 Just, you know --

22 MS. HENDRICKS: Encourage her that the two together
23 would be strong.

24 MR. ASHLEY: Stronger than just one. Because without
25 I might could something with this, and we'll

1 see about going after his license.

2 MS. MORTON: Yeah. He doesn't need to be practicing.

3 MR. ASHLEY: And save some other young lady the pain.

4 It's obvious you're not getting over this

5 anytime soon. I hope you do.

6 MS. MORTON: It's scary.

7 MR. ASHLEY: I gotcha.

8 MS. MORTON: And I think that he -- he specializes in

9 pediatrics, so that's really what --

10 MR. ASHLEY: Yeah, the idea of a young girl or

11 whatever.

12 MS. MORTON: Yeah. It's --

13 MR. ASHLEY: Well, I don't know what you did with my

14 pen. You lost it. You're going to have to

15 quit losing my pen like that.

16 MS. MORTON: Are y'all partners?

17 MR. ASHLEY: Yeah, we're partners.

18 MS. HENDRICKS: Can't you tell?

19 MS. MORTON: Yeah.

20 MR. ASHLEY: Well, I'll get back with you.

21 MS. MORTON: Okay.

22 MR. ASHLEY: I'll let you know. I'm going to see

23 what we can do.

24 MS. MORTON: Yeah, please do.

25 MR. ASHLEY: I'm going to see what we can do about

1 was naked and two to three feet from you, he was
2 handing you a bill at around waist height?

3 A. Uh-huh.

4 Q. Okay. I think you said -- your earlier
5 testimony was you could tell he was naked, because
6 he had no pants on?

7 A. Yeah, he had no shirt on. There was
8 nothing here, but I did not see -- I could not see
9 if his penis -- I could not see if it was erect, or
10 not.

11 Q. Could you tell -- forgive me for asking
12 the question, but could you see his penis at any
13 point?

14 A. No. No.

15 Q. Then you state in your notice -- or in
16 your e-mail to investigator Singh, "He went on to
17 explain some things about the bill, but I was so
18 shocked that I have no idea what he said." Is that
19 correct?

20 A. Uh-huh.

21 Q. Ma'am, you have to answer yes or no.

22 A. I'm sorry.

23 Q. That's okay.

24 A. Yes. And I believe, if I'm not mistaken,
25 that he was saying something about the claim form,

1 I said I can't believe he was naked. And I thought
2 -- in my head I thought well maybe he was getting
3 something out of the dryer and, you know, and at the
4 time -- from the door it was just shirtless. I
5 couldn't see anything else.

6 DETECTIVE ASHLEY:

7 Yeah.

8 MS. NEAL:

9 But then he said come on in, let me grab that for
10 you. And I stepped in. I didn't go any further
11 than the laundry room.

12 DETECTIVE ASHLEY:

13 You were in the laundry room --

14 MR. ORBEN:

15 Uh-huh (affirmative).

16 DETECTIVE ASHLEY:

17 -- that's right when you come in?

18 MS. NEAL:

19 Uh-huh (affirmative).

20 DETECTIVE ASHLEY:

21 He disappears to go get --

22 MS. NEAL:

23 Uh-huh (affirmative).

24 DETECTIVE ASHLEY:

25 -- the form?

4 2/3

AGENCY I.D.
SC0040000

INCIDENT REPORT

CASE NUMBER

2,0,1,3 - 3,6,9,5,2

NCIC

INQ. N
ENTD. N

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. INDECENT EXPOSURE (36C)		☒ YES ☐ NO	☐ YES ☐ NO	Commercial/Office		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Of.
	2.		☐ YES ☐ NO	☐ YES ☐ NO			
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE
	7800 HIGHWAY 81 S, STARR					29684	
	INCIDENT DATE	IN HR. CLOCK	TO	DATE	IN HR. CLOCK	DISP. DATE	DISP. TIME
05/23/2013		13:00		05/23/2013	14:00	07/25/13	14:30
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
NEAL, CARRIE, LYNN		OK		☒ S ☐ O ☐ U	W	F	41
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
						3	
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
	NEAL, CARRIE, LYNN		OK		☒ S ☐ O ☐ U	W	F
	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
						3	
SUBJECT NO. 1	NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
	BATTERSBY, GREGG, NEWTON		OK		☒ S ☐ O ☐ U	W	M
	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
						3	
DATE OF BIRTH		HEIGHT	WEIGHT	HAIR	EYES	HAZ	
08/12/56		600	200	BAL	HAZ		
DATE OF OFFENSE		DATE/TIME OF ARREST					
The listed victim did report to this R/O that, on occasion of the listed incident date, the subject did expose his genitalia without consent or request of the victim. The victim was a patient of the subject's chiropractic practice. The offense did occur in the office/therapy area. The subject does also reside at this location.							
APPROPRIATION OF THE LAW ENFORCEMENT AGENCY							
APPROPRIATION OF RECOVER LAW ENFORCEMENT AGENCY							
PROPERTY EST.	TYPE (THEFT)	TOTAL VALUE					
	STOLEN						
	DAMAGED						
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		ARRESTED UNDER 14		EX-CLEAR UNDER 14
	☒ YES ☐ NO		☒ YES ☐ NO		☒ YES ☐ NO		☐ EX-CLEAR 14 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY
REPORTING OFFICER		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
ASHLEY, S. W.		07/30/13	408	SIMPSON, BRENT		07/30/13	437
FOLLOW-UP INVESTIGATION		OFFICER		DATE		UNIT NUMBER	
☐ YES ☒ NO				07/30/13		408	

5

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

2,0,1,3,-,3,6,9,5,2,

RCD

IND. ENT.
N N☐ ORIGINAL
REPORT
☐ INDEXED
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIM
☐ ADDITIONAL
OFFENSES☐ ADDITIONAL
SUSPECT/PROPERTY
☐ ADDITIONAL
DISCOVERED PROPERTY

PAGE 1 OF 1 PAGES

Investigations only

7/25/2013@ 1430 HRS THE LISTED VICTIM/COMPLAINANT DID MEET WITH THIS MO AT ACSO IN MO'S OFFICE. VICTIM DID MAKE AUDIO STATEMENT TO MO DESCRIBING EVENTS THAT DID OCCUR WHILE SHE WAS AT THE SUBJECT'S PLACE OF BUSINESS. SUBJECT DOES CONDUCT CHIROPRACTIC BUSINESS AT HIS RESIDENCE. THE SUBJECT'S OFFICE LOCATION IS THE INCIDENT LOCATION. THE SUBJECT DID EXPOSE HIS GENITALIA TO THE VICTIM WHILE BOTH WERE IN HIS OFFICE/THERAPY AREA. THIS WAS DONE WITHOUT CONSENT OR REQUEST OF THE VICTIM. THE VICTIM HAD BEEN INVOLVED IN A TRAFFIC ACCIDENT AND HAD BEEN TREATED BY THE SUBJECT. THE VICTIM DID ARRANGE VIA PHONE CONVERSATION TO MEET WITH SUBJECT AT INCIDENT LOCATION TO OBTAIN AN ITEMIZED BILLING OF SERVICES RENDERED. THE VICTIM RETURNED TO THE OFFICE OF THE SUBJECT, ON THE INCIDENT DATE, TO OBTAIN AN ITEMIZED ACCOUNT OF CHARGES THAT SHE DID NEED FOR REPORTING TO HER INSURANCE PROVIDER. THE CHIROPRACTIC OFFICE WAS ADVERTISED BY ROADSIDE SIGN AND THE LICENSE OF CHIROPRACTIC MEDICINE IS REGISTERED WITH THE STATE OF SOUTH CAROLINA LLR AS THE LOCATION OF HIS PRACTICE. THE VICTIM IS REPRESENTED BY ATTORNEY TOM DUNAWAY IN THE SUIT INVOLVING THE TRAFFIC ACCIDENT. THE TREATMENT BEGAN ON 8/5/12 AND ENDED 12/13, WITH OUT INDECENT INCIDENT.

8/23/13 THE VICTIM DID ARRIVE AT THE INCIDENT LOCATION TO RETRIEVE THE BILL. UPON ARRIVAL, THE VICTIM WAS MET IN THE OFFICE BY THE SUBJECT WHO WAS WEARING A ROBE. THE VICTIM STATED THAT SHE WAS NOT ALARMED BUT WAS SOMEWHAT TAKEN ABACK BY THE SUBJECT'S DRESS. THE VICTIM STATED THAT SHE REMAINED IN THE TREATMENT AREA WHILE THE SUBJECT DID EXIT TO RETRIEVE THE ITEMIZED BILL. SUBJECT RETURNED UNCLOTHED AND EXPOSED HIMSELF TO THE VICTIM. VICTIM LEFT BUSINESS IMMEDIATELY.

VICTIM DID PROVIDE COPY OF THE ITEMIZED BILL

DID FIND THAT THE VICTIM CHIROPRACTIC LICENSE HAD BEEN REVOKED IN THE STATE OF ARIZONA, EFFECTIVE 10/27/2006 AND SUSPENDED IN THE STATE OF OHIO FOR SIMILAR ACTIONS.

ALSO SEE ACSO CASE# 2013-33574

7/30/2013 OBTAINED WARRANT 2013A0410100898 FOR INDECENT EXPOSURE (16-15-0130) FOR THE LISTED SUBJECT BY JUDGE W.M. SHARP

SUBJECT IDENTIFIED
☒ YES ☐ NOSUBJECT LOCATED
☒ YES ☐ NO☒ ACTIVE ☐ ARRESTED
☐ SUSPENDED☐ ARMED UNDER 18
☒ ARMED 18 AND OVER☐ SEXUAL UNDER 18
☐ SEXUAL 18 AND OVERREASON FOR EXCEPTIONAL CIRCUMSTANCE: 1. ☐ OFFENDER DEAD 2. ☐ NO PROSECUTION 3. ☐ EXTRAJURISDICTION 4. ☐ VICTIM DECLINED COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER

DATE

NEXT
REPORT

APPROVING OFFICER

DATE

NEXT
REPORT

ASHLEY, S. W.

03/28/14

FOLLOWUP
INVESTIGATION☐ YES ☒ NO

OFFICER

07/30/13

408

ADMINISTRATIVE

(3) (7D)
6

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

2013-33674

NCC

NO.	EXTD.
N	N

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIM
☐ ADDITIONAL
OFFENDER

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 2 PAGES

INVESTIGATIONS ONLY

7/9/13 @ 1525 HRS DID ATTEMPT PHONE CONTACT WITH LISTED VICTIM ON 225-6610. RECORDING STATED THAT "NUMBER IS NO LONGER IN SERVICE"

ADMINISTRATIVE

SUBJECT IDENTIFIED
☐ YES ☒ NO

SUBJECT LOCATED
☐ YES ☒ NO

☒ ALIVE ☐ ADM. CLOSED
☐ UNEMPLOYED

☐ ARRESTED UNDER 11
☒ ARRESTED 18 AND OVER

☐ ENCLAWED UNDER 11
☐ ENCLAWED 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)
ASHLEY, S. W.

DATE
07/10/13

DATE
07/09/13

APPROVING OFFICER

DATE

UNIT
NEWARK

FOLLOW-UP
INVESTIGATION ☒ YES ☐ NO ☐ OFFICER
ASHLEY, S. W.

07/09/13

7

AGENCY LD.
SC0043000

SUPPLEMENTARY REPORT

CASE NUMBER

NCIC

2,0,1,3 - 3,3,6,7,4

IND.	ENTD.
N	N

☐ ORIGINAL
REPORT

☒ SUPPLEMENTAL
REPORT

☐ ADDITIONAL
VICTIM

☐ ADDITIONAL
STOLEN PROPERTY

PAGE 2 OF 2 PAGES

INVESTIGATIONS ONLY

7/9/13 @ 1526 HRS DID ATTEMPT PHONE CONTACT WITH LISTED VICTIM ON 225-6610. RECORDING STATED THAT "NUMBER IS NO LONGER IN SERVICE"

7/18/2013 DID GO TO THE LISTED VICTIM'S RESIDENCE ALONG WITH DETECTIVE M.HENDRIX. TOOK AUDIO STATEMENT OF ACCOUNT OF THE EXPOSURE BY THE LISTED SUBJECT-BATTERSBY,VICTIM DOES STATE THAT SHE WAS THE PATIENT OF BATTERSBY AND THAT HIS OFFICE IS LOCATED AT HIS RESIDENCE. EXAM ROOM IN THE RIGHT FRONT AS FACING THE RESIDENCE. MOTON DID GIVE HER CURRENT PHONE NUMBER AS 1 AND HER HUSBAND-JONATHON'S NUMBER AS 1 LOCATED THROUGH SC LLR THAT BATTERSBY USES ADDRESS OF 7800 HWY 81-S,STARR,SC AS HIS BUSINESS ADDRESS.

DID FIND THAT GREGG N BATTERSBY'S LICENSE TO PRACTICE CHIROPRACTIC MEDICINE IN THE STATE OF ARIZONA HAD BEEN SUSPENDED DUE TO SEXUAL EXPOSURE OHIO LICENCE HAD BEEN SUSPENDED FOR 10 DAYS ALSO.

ALSO SEE EXTRA VICTIM IN CASE 2013-36852- CARRIE NEAL

7/29/2013 OBTAINED FROM MAGISTRATE S.LOLLIS WARRANT #2013A0410900191. INDECENT EXPOSURE 16-15-0130

ATTORNEY S.DRAWDY DID CONTACT THIS VO VIA PHONE TO CONFIRM THAT WARRANT ISSUED FOR BATTERSBY AND THAT SHE WOULD BE REPRESENTING HIM.

8/15/2013 REQUESTED FAX COPY OF WARRANTS AND REPORT TO INVESTIGATOR KEVIN PATE OF SC DEPT OF LICENSING AND LABOR-FAX NUMBER 202-896-4555. DEPT DID CONTACT THIS VO WITH REQUEST.

8/30/2013 @ 0900 HRS DID ATTEND THE PRELIM HEARING OF BATTERSBY-ATTORNEY S.DRAWDY. BOUND OVER.

SUBJECT SEX/ETHNICITY
☐ YES ☒ NO

SUBJECT LOCATED
☐ YES ☒ NO

☒ ACTIVE ☐ ADJL CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 14
☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 14
☐ EX-CLEAR 18 AND OVER

REASON FOR SUPPLEMENTAL CLEARANCE: 1. ☐ OFFENDER DEATH

2. ☐ NO PROSECUTION

3. ☐ EXTRACTION DENIED

4. ☐ VICTIM DECLINES COOPERATION

5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

ASHLEY, S. W.

07/10/13

FOLLOWUP INVESTIGATION ☒ YES ☐ NO

OFFICER
ASHLEY, S. W.

07/09/13

8 ③
Mike Baskin

From: Mike Baskin
Sent: Thursday, February 27, 2014 10:20 AM
To: sashley@andersonsheriff.com
Cc: rgebing@andersonsheriff.com
Subject: FW: 2013-33674 & 2013-36952 defendant Gregg Battersby

Stan

WE NEED A COPY OF YOUR CASE FILES IN 2013-33674 & 2013-36952 defendant Gregg Battersby

MIKE BASKIN
SOLICITOR'S OFFICE
CELL 864-760-9062
OFFICE 864-260-4360
FAX 864-260-4187

From: Mike Baskin
Sent: Friday, January 03, 2014 12:04 PM
To: sashley@andersonsheriff.com
Subject: FW: 2013-33674 & 2013-36952 defendant Gregg Battersby

Stan

WE NEED A COPY OF YOUR CASE FILES IN 2013-33674 & 2013-36952 defendant Gregg Battersby

MIKE BASKIN
SOLICITOR'S OFFICE
CELL 864-760-9062
OFFICE 864-260-4360
FAX 864-260-4187

From: Mike Baskin
Sent: Tuesday, September 10, 2013 9:59 AM
To: sashley@andersonsheriff.com
Subject: FW: 2013-33674 & 2013-36952 defendant Gregg Battersby

Stan

WE NEED A COPY OF YOUR CASE FILES IN 2013-33674 & 2013-36952 defendant Gregg Battersby

MIKE BASKIN
SOLICITOR'S OFFICE
CELL 864-760-9062

8

OFFICE 864-260-4360
FAX 864-260-4187

From: Mike Baskin
Sent: Friday, August 16, 2013 10:43 AM
To: sashley@andersonsheriff.com
Subject: 2013-33674 & 2013-36952 defendant Gregg Battersby

Stan:

WE NEED A COPY OF YOUR CASE FILES IN 2013-33674 & 2013-36952 defendant Gregg Battersby

MIKE BASKIN
SOLICITOR'S OFFICE
CELL 864-750-9062
OFFICE 864-260-4360
FAX 864-260-4187

9

Thank you, ma'am.

Kristin W. Reeves <kreeves@sofi10th.com>

2/10/1

4

to me

Don,

Looking through the file, I don't see that there are any audio records. I was; however, provided with some phone records from Mrs. Drawdy, when she was representing the Defendant. Did she share those with you, or would you like us to provide you with a copy?

From: Don Smith [mailto:attorneydonaldsmith@gmail.com]

Sent: Thursday, February 06, 2014 9:56 PM

To: Kristin W. Reeves

Subject: Re: Gregg Battersby



Don <attorneydonaldsmith@gmail.com>

2/10/1

4

to Kristin

I believe that I have them already. They formed the basis for my last correspondence. I was under the impression that you had recordings of some exchanges involving the victims. I'm sorry.

10
Mike Baskin

From: Mike Baskin
Sent: Friday, March 21, 2014 5:01 AM
To: Kristin W. Reeves
Subject: RE: G. Battersby

HE HAS TWO CASES ON THIS FOOL. I GOT THE CASE FILE WITH THE VIDEO INTERVIEW WITH JAN MORTON ON 2013-33674. THE OTHER CASE 2013-36952 WITH THE VICTIM CARRIE NEAL I HAVE NOT RECEIVED. I CALLED ROB GEBING AGAIN THIS PAST MONDAY TRYING TO GET STAN TO GET THIS FILE TOGETHER. ME AND JIMMY ARE MISSING SEVERAL FILES OF STAN'S THAT WHY I CALLED ROB. STAN IS SUPPOSED TO BE COMING BY THE SHERIFF'S OFFICE IN THE MORNINGS TO WORK ON HIS CASES BEFORE HE GOES TO THE FIRE DEPARTMENT ACCORDING TO ROB. I PITY THE SOLICITOR THAT GET STAN'S FIRST ARSON CASE. BUT WHOEVER HE CHARGES WILL PROBABLY HAVE A CDV ALSO SO WE WILL GET THE CASE.

From: Kristin W. Reeves
Sent: Thursday, March 20, 2014 3:57 PM
To: Mike Baskin
Subject: G. Battersby

Did we ever get any victim statements from Stan Ashley on the above case? Please say we did!

*Kristin W. Reeves
Assistant Solicitor
10th Circuit Solicitor's Office
P.O. Box 8002
Anderson, South Carolina 29622
(864) 260-1024 Telephone
(864) 260-4187 Facsimile*

STATE OF SOUTH CAROLINA

2013GS0402177
INDICTMENT NUMBER

COUNTY OF ANDERSON

2013A0410900191
CASE NUMBER

CASE DISPOSITION HISTORY

Defendant:

Battersby, Gregg Newton
7800 Highway 81 S

SS# 272462759
Sex: M
Race: W

DOB: 1956-08-12
DL#: 101781394
DL State: SC

Starr, SC

Date of Arrest: 2013-08-02

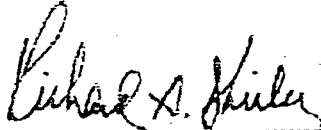
Filed with Clerk: 2013-08-08

Offense Description: Sex / Indecent exposure

Disposition: Nolle Prosequi

Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: April 24, 2014



Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

APR 23 2014

STATE OF SOUTH CAROLINA)

2013GS0402178
INDICTMENT NUMBER

COUNTY OF ANDERSON)

2013A0410100898
CASE NUMBER

CASE DISPOSITION HISTORY

Defendant:

Battersby, Gregg Newton
7800 Highway 81 S

SS# 272462759
Sex: M
Race: W

DOB: 1956-08-12
DL#: 101781394
DL State: SC

Starr, SC

Date of Arrest: 2013-08-02

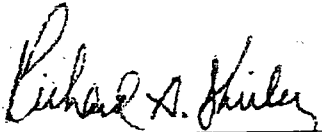
Filed with Clerk: 2013-08-08

Offense Description: Sex / Indecent exposure

Disposition: Nolle Prosequi

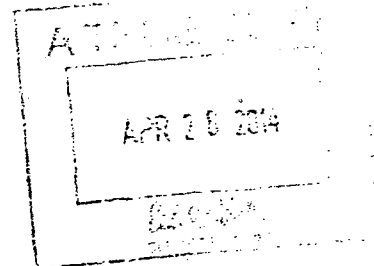
Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: April 24, 2014



Richard A. Shirley, Clerk of Court

General Sessions, Anderson County



Exonerated Starr chiropractor sues former patients

By Kirk Brown

kirk.brown@independentmail.com
864-260-1259

Criminal charges of indecent exposure have been dropped against Starr chiropractor Gregg Battersby.

Battersby now is suing two of his former patients who he says made false accusations against him. The lawsuit filed last month in Anderson by attorney Donald Smith seeks financial damages from Carrie Neal and Jan Morton for conspiracy, defamation and fraud.

No response to the suit has been filed by Neal or Morton. They could not be reached for comment Monday.

The Anderson County Sheriff's Office arrested Battersby in August 2013 after two women told an investigator that the chiropractor had exposed himself in his home-based office at 7800 S.C. 81 South. Prosecutors decided not to pursue the charges in April, court records show.

"The victims in this case were credible witnesses," 10th Judicial Circuit Solicitor Chrissy Adams said in an email. "However, there were substantial issues with the facts, as relayed by the victims, which legally prevented the case from going forward."

Smith said the allegations against his client

were untrue.

"I firmly believe that nothing of this sort happened," he said.

According to Battersby's lawsuit, he treated Neal 87 times between Sept. 5, 2012, and May 8, 2013. Neal owed \$12,100 to Battersby, the suit contends.

The suit says Morton claimed that Battersby called her repeatedly during the three weeks before she filed a complaint with sheriff's officials in July 2013. The suit says that phone records indicate that Battersby "did not place a single phone call" to Morton during that period.

Battersby also has filed a federal lawsuit against the

South Carolina Board of Chiropractic Examiners, which temporarily suspended his license on Aug. 20, 2013. The suit seeks to have the suspension lifted.

The board took action against Battersby without giving him due process, said Smith, who also is representing Battersby in the federal case.

"There was a rush to judgment," Smith said.

An attorney for the chiropractic board has argued that the federal suit should be dismissed on numerous grounds, including Battersby's failure to exhaust administrative remedies.

Follow Kirk Brown on Twitter
@KirkBrown_AIM

Report: Robbers used handgun, bear hug in stickup

By Mike Ellis

ellism@independentmail.com
864-260-1277

CLEMSON — Two men allegedly used a handgun and a bear hug to rob the Tiger Point Convenience Store in Pendleton.

One of the men, Ceasar Lamonte Hunter, 40,



Curry



Hunter

The convenience store

faces. One of the men used a handgun while the other man, described as more heavysset, "bear-hugged" the clerk and took him to the register, according to a deputy's report.

Curry and Hunter have been charged with armed robbery and possession of a weapon during the

been charged with possession of a stolen vehicle.

Curry and Hunter remain in the Anderson County Detention Center. A bond of \$65,000 has been set for Curry's release and Hunter's bond is set at \$75,000.

1 BY MR. SMITH:
 2 Q If you could tell me exactly what we see
 3 here in Exhibit 1, I'd greatly appreciate that.
 4 A Okay. We have -- looks like a certified
 5 copy of an incident report from Anderson County
 6 Sheriff's Office, case number 2013-33674.
 7 It was received by myself on 6/2 of 2013,
 8 about 1 o'clock in the afternoon.
 9 Q Can you give us the details of what
 10 happened here, who's involved?
 11 A Yes, sir. The lady came in and filed a
 12 complaint, said that she was a victim of some sort
 13 of sexual battery.
 14 Her name is Jan Ganter Morton, that was
 15 my victim. She gave me a basic synopsis of what
 16 she described went on in the office, and I wrote a
 17 report based on that information that she gave me.
 18 Q Now, the supplemental, what is that?
 19 A This supplemental? We usually put a
 20 basic on most of the reports. Any type of a sexual
 21 battery or anything that's pertinent information,
 22 could be involving a juvenile or something like
 23 that.
 24 We put the basic elements of what
 25 occurred, without going into too much, and then we

1 do an investigative supplemental, which is what she
 2 definitely told me, so we don't want it released to
 3 the public.
 4 Some news medias and papers will get
 5 ahold of this and put in verbatim, you know, and
 6 that's not really anybody's business but the victim
 7 and defendant.
 8 Q Now, with regard to that supplemental
 9 aspect, page 3, where do you get that information?
 10 A She told me this directly as to what her
 11 best recollection of what occurred that day.
 12 Q So this is essentially her statement.
 13 MR. MATTHEWS: Object to form.
 14 THE WITNESS: No. I don't think it's her
 15 statement. She's giving me a report of what
 16 happened. She didn't actually give me a
 17 written statement.
 18 BY MR. SMITH:
 19 Q So this is -- how would you describe this
 20 verbiage here? Is it your take on what she said?
 21 A Yes. Yes, sir. She described to me what
 22 occurred that day, and in chronologic order, as
 23 best I could, that's how I put it back on paper.
 24 Normally, once I receive a report like
 25 this, I just receive a report only. Whether it's

1 factual or not, I don't know whether she's telling
 2 the truth or not.
 3 It's assigned to an investigator to be
 4 further investigated.
 5 Q So based on your responsibilities as a
 6 deputy, this page 3 is what she told you.
 7 A Yes, yes. This is, for the most part,
 8 exactly what she told me went on.
 9 Q With regard to how Dr. Battersby was
 10 dressed, what does it say in your incident report?
 11 A Let's see. Says he was dressed in a
 12 man's bathrobe.
 13 Q Now, is there a possibility that you're
 14 wrong in your translation?
 15 A Oh, of course. I mean, I can only go by
 16 what she's telling me. He could have been fully
 17 dressed and in an outfit, but that's what she's
 18 telling me.
 19 Q So that is what she told you.
 20 A Yes.
 21 MR. SMITH: All right. I'm going to mark
 22 Plaintiff's Exhibit 2.
 23 (Plaintiff's Exhibit 2, Jan Morton
 24 Transcript Page 7, marked for identification.)
 25 BY MR. SMITH:

1 Q Plaintiff's Exhibit 2 is a page from her
 2 deposition, and I'll ask that you look down to the
 3 about the middle, right here.
 4 And if you could read that for me, I'd
 5 appreciate it.
 6 A Okay. I looked up and Dr. Battersby was
 7 standing over me and still in his towel.
 8 Q That's fine right there, sir.
 9 A Okay.
 10 Q Is that different than your incident
 11 report?
 12 MR. MATTHEWS: Object to the form.
 13 Please answer.
 14 THE WITNESS: According to this, yes. It
 15 says here that I reported that it was a men's
 16 robe.
 17 BY MR. SMITH:
 18 Q As a deputy and someone who does part of
 19 an investigation, anyway -- don't you?
 20 A Yes, sir.
 21 Q Would you find that to be contradictory?
 22 MR. MATTHEWS: Object to form.
 23 Please answer.
 24 BY MR. SMITH:
 25 Q How would you analyze that?

13

Page 12

Page 14

1 A If this was a deposition that she gave,
2 and this is my report that she gave at the time,
3 that's definitely a contradiction because she told
4 me that he had a robe on when he come to the door.

5 And that states that he had a towel on,
6 so that is different.

7 Q With regard to these cases, are there a
8 lot of facts, fingerprints, things of that nature?

9 A As far as that goes, I don't know.

10 Basically, I was a desk officer assigned at the
11 time, and I just received an incident report from
12 the person.

13 It's assigned to an investigator, at
14 which point, they get an actual written statement
15 from the victim or suspect, if they deal with them
16 directly.

17 Q That question right there was very poor,
18 and I admit to that.

19 When you have an indecent exposure case,
20 are there forensic materials that you can look at
21 in trying to evaluate whether this event occurred?

22 A If there's any videotape or anybody got a
23 video camera of it, if it's outdoors or outside
24 somewhere, we always try to get that as a means of
25 proving what's going on.

Page 13

1 Q If there is only a statement of a victim,
2 and there are two different statements, where do
3 you get probable cause from?

4 MR. MATTHEWS: Object to form.

5 THE WITNESS: Well, I didn't sign the
6 warrant.

7 BY MR. SMITH:

8 Q I understand that, sir. What is probable
9 cause to you?

10 A Probable cause to me is --

11 MR. MATTHEWS: Object to form.

12 THE WITNESS: I'm sorry.

13 MR. MATTHEWS: Please go ahead and
14 answer.

15 BY MR. SMITH:

16 Q I'm not talking about this case. I'm
17 asking you just in general, what is probable cause?

18 A Okay. Probable cause to me is that I
19 have suspicion or reason to believe that the case
20 did occur based on statements, witnesses, and
21 witness accounts, written or otherwise.

22 And that the suspect that I'm speaking to
23 probably had something to do with it, or did have
24 something to do with it. At that point, I base my
25 probable cause on arrest, at that point, if all

1 those factors are in place.

2 Q If the only evidence -- if that's the
3 word you used -- is the statement of the victim, if
4 a victim has two contradictory statements, do you
5 have probable cause?

6 MR. MATTHEWS: Object to the form.

7 THE WITNESS: Not in my opinion, no. You
8 don't because you need -- you're going to have
9 to have a little more than just a belief
10 that's going on.

11 You have to have some substantial proof
12 that you believe that person committed the
13 crime.

14 Two, if you're the investigator on
15 something, you should also talk to all the
16 parties involved, anybody that you can speak
17 with.

18 Based on all that, you get statements
19 from everybody. Then, at that point, if you
20 believe you got enough for a warrant, you go
21 see our magistrate.

22 If the magistrate agrees, they'll issue a
23 warrant based on probable cause on the case.
24 But if it doesn't meet those criterions,
25 they're not going to sign a warrant for you.

Page 15

1 BY MR. SMITH:

2 Q The case against Dr. Battersby, are you
3 aware of anything besides that incident report you
4 did?

5 A No, sir. The only other information that
6 I have when I pulled this is their follow-up
7 investigation. That's the only thing that I know
8 of.

9 Q What is involved with the follow-up
10 investigation that you read?

11 A Let's see. Looks like Detective Ashley
12 did attempt to contact the listed victim. He did
13 get ahold of her, at one point in time.

14 He had Michelle Hendricks with him, which
15 is also an investigator with our division. They
16 took an audio statement account of the listed
17 subject, and victim did state that she was a
18 patient of Dr. Battersby, and that, you know, just
19 went over where the office was, and so forth.

20 But this right here, this is not
21 something that I created myself. I just read this
22 after the fact.

23 Q So with regard to what you did, that
24 being the incident report, you feel pretty
25 comfortable with what you wrote?

14

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1 A Yes.

2 Q Do you know if Ms. Neal alerted Ms.

3 Morton of this alleged incident?

4 A I'm not aware.

5 Q You're not aware in that you don't

6 believe it occurred?

7 A Oh, I'm not aware that she notified one

8 or the other, or if they communicated or conspired

9 or anything of that nature. I'm not aware of it.

10 Q If Ms. Neal didn't tell Ms. Morton in the

11 nine days that transpired from her incident, would

12 that seem odd to you?

13 A Yeah. It would probably not seem odd, if

14 they didn't. What would seem odd to me is if they

15 didn't communicate, you know. Knowing that they

16 both went to the same doctor, you know, that would

17 be my, you know -- but that's what I would do, but

18 I don't know what -- you know.

19 I can't say if that's exactly what was

20 done here, whatever.

21 Q With regard to where the --

22 Dr. Battersby, where is his office?

23 A It's on 7800 Highway 81 South in Starr.

24 Q Where does he live?

25 A He lives at 7800 Highway 81 South, Starr.

Page 45

1 Q Is there a difference between the living

2 area and the office itself?

3 A I've not been inside the house, but I was

4 told that there is. There is an examination area

5 in the front.

6 Q Where did these alleged incidents occur?

7 A In the examination area.

8 Q Do you recall telling Ms. Morton that you

9 were going to go after Dr. Battersby's license?

10 A I don't recall. I'm not going -- you

11 know, I didn't go after his license, so I never

12 notified LLR.

13 Q You don't recall saying, We'll see about

14 going after his license?

15 A I don't recall that.

16 Q How were you able to verify that either

17 of the women were at Dr. Battersby's office on the

18 day they stated the exposure occurred?

19 A Can you repeat that.

20 Q Yes, sir. One said the incident occurred

21 May 23rd; the other said June 2nd.

22 Do you have any way of knowing that they,

23 in fact, were at the house or at the office on

24 those particular dates?

25 A With Neal, I think the dates she went to

Page 46

1 pick up an itemized bill. And I think the date was

2 close to, or that day. She went ahead and he had

3 prepared the itemized bill.

4 And Morton -- just went off what date --

5 she had somewhat a reference, and she was exact on

6 the date, I guess from her appointment calendar or

7 whatever.

8 Q So other than what they told you, do you

9 have anything else?

10 A Uh-uh.

11 Q That would be no?

12 A No. Excuse me.

13 Q The fact that Morton had a fraudulent

14 check, would that give you an issue with regard to

15 her statement?

16 MR. MATTHEWS: Object to form.

17 THE WITNESS: No.

18 BY MR. SMITH:

19 Q Were you aware that her driver's license

20 was suspended?

21 A I've got it -- let's see where I've got

22 her. I have her DL information. Yes, it was.

23 It's suspended. She was caught numerous times

24 driving under suspension.

25 Q Would you take that into consideration in

Page 47

1 any way regarding her allegations?

2 A Uh-uh.

3 Q That would be a no?

4 A No.

5 Q How much did Ms. Morton pay

6 Dr. Battersby?

7 MR. MATTHEWS: Object to form.

8 THE WITNESS: I don't recall.

9 BY MR. SMITH:

10 Q Do you know if either of the victims paid

11 him?

12 MR. MATTHEWS: Object to form.

13 THE WITNESS: I don't recall.

14 BY MR. SMITH:

15 Q Do you use Ping records in

16 investigations?

17 A No. I'm not familiar with them.

18 Q You don't know what Ping records would

19 be?

20 A We don't use them.

21 Q Do you know what they are?

22 A No.

23 Q So they've never been used in any of your

24 investigations?

25 A I'm not familiar with them.

15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Dr. Gregg N. Battersby	)	Civil Action No. 8-15-cv-66-BHH-JDA
	)	
Plaintiff,	)	
	)	DEFENDANTS STANLEY ASHLEY,
vs.	)	MICHELLE HENDRIX AND GREG
	)	WILLIAMSON'S REPLY TO THE
Stanley Ashley, Michelle Hendrix, Greg	)	PLAINTIFF'S RESPONSE TO THEIR
Williamson, and John Does 1-20	)	MOTION FOR SUMMARY JUDGMENT
	)	
Defendants.	)	
	)	

Defendants Stanley Ashley, Michelle Hendrix, and Greg Williamson respectfully submit the following Reply to the Plaintiff's Response to their Motion for Summary Judgment.

In his Response to these Defendants' Motion for Summary Judgment, the Plaintiff's primary argument is that no probable cause existed for his arrest because an incident report written by Deputy Patrick Marter states that the Plaintiff was wearing a robe at the time he exposed himself to Jan Morton; whereas, in a recorded statement, Ms. Morton, herself, stated that the Plaintiff was wearing a towel prior to his exposing himself to her. This minor discrepancy—which, again, is a discrepancy between what was written by Deputy Marter in a one paragraph summary of his interview with Jan Morton and what was stated by Jan Morton to Investigator Ashley, directly, and what she verified later in deposition testimony—has no bearing on whether probable cause existed to arrest the Plaintiff.¹ As set forth in these Defendants' Memorandum in support of their Motion for Summary Judgment, it is difficult to imagine how a

¹ The Plaintiff also cites to Ms. Morton's statement during her interview with Investigator Ashley where she said, "I'm thinking that wasn't a hand I felt on me. I'm thinking this man's rubbing his stuff on me." Based on the context of this statement, it is clear that Ms. Morton was simply considering all of the possibilities based on the Plaintiff's conduct. Ms. Morton did not affirmatively state that she saw Plaintiff "rubbing his stuff" on her.



police officer could obtain better evidence of probable cause than an identification by name of assailants provided by a victim, unless, perchance, the officer were to witness the crime himself." *Torchinsky v. Siwinski*, 942 F.2d 257, 262 (4th Cir. 1991) (internal citations omitted).

In this case, the only evidence contained in the record is that the victim, Jan Morton, stated that the Plaintiff exposed himself to her. This is reflected in Deputy Marter's initial report; it is reflected in Investigator Ashley's recorded interview with Ms. Morton; and it is reflected in Ms. Morton's later deposition testimony. This allegation never changed. Furthermore, in the newspaper article the Plaintiff touts as vindication, the Solicitor states that the "victims in this case were credible witnesses." The Plaintiff attempts to rely upon a hypothetical posed to Deputy Marter in a deposition to establish that no probable cause existed for his arrest; however, Deputy Marter's response has no bearing on this case. In the passage cited by the Plaintiff, the Plaintiff's attorney asks Deputy Marter a hypothetical question about probable cause. (Deposition Testimony of Deputy Patrick Marter, p. 13, lines 16-17, prefacing a question by stating, "I'm not talking about this case. I'm asking you just in general, what is probable cause?"). He then asks, "[i]f a victim has two contradictory statements, do you have probable cause?" (Deposition Testimony of Deputy Patrick Marter, p. 14, lines 3-5).

In this case, the victim, Ms. Morton, did not make two contradictory statements. Again, the only two statements containing her express account of the crime (the audio recording of the interview with Investigator Ashley and her later sworn deposition testimony) are consistent. Furthermore, Deputy Marter's one paragraph summary of his interview with Ms. Morton is also consistent with the audio recording and the later deposition testimony in that it states that the Plaintiff exposed himself to Ms. Morton while she was a patient in the Plaintiff's home. The fact that Deputy Marter's summary references a robe, whereas the recorded interview (and later

A
15

deposition testimony) references a towel, is immaterial. Based on the above, probable cause existed for the Plaintiff's arrest.

Next, other than the Plaintiff's own unfounded and conclusory allegations, there is no evidence to demonstrate that any of the Defendants deliberately withheld any information in obtaining the arrest warrant.² As also set forth in more detail in these Defendants' Memorandum in Support of their Motion for Summary Judgment, Investigator Ashley relayed the pertinent facts relating to the Plaintiff's charge to the Magistrate, who ultimately issued the Arrest Warrant. Investigator Ashley's Affidavit stated that "on June 1, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to victim Jan G. Morton at 7800 Hwy. 81S, a public place or property within view of a street or highway." This statement does not contain any misinformation and relays the pertinent facts as conveyed directly by Ms. Morton to Investigator Ashley during his interview with her.

The Plaintiff compares a Supplementary Report he claims was produced in August of 2013 with one that he claims was produced in January of 2014 and concludes that information was deliberately withheld. This conclusion defies logic. If it were truly of the intention of these Defendants to withhold evidence, it would not follow that they would alter a report *produced to the Plaintiff* to list the very evidence the Plaintiff claims they were deliberately withholding. Furthermore, the information contained in the audio recording of Investigator Ashley's interview with Ms. Morton is the exact information that was contained in Investigator Ashley's Affidavit—that the Plaintiff exposed himself to Ms. Morton. Thus, there is simply no evidence to support

² Under the Plaintiff's theory, as a practical matter, it would be impossible for an officer to secure an arrest warrant without fear of liability. The Plaintiff would impose a burden on all officers of putting aside the major elements necessary to support a good faith belief that a crime has occurred in favor of combing through the minutiae contained in the record to determine that there is not some minor inconsistency contained therein that must be presented to the magistrate.



the Plaintiff's allegation that any of the Defendants deliberately withheld information or provided misinformation.

Additionally, the Plaintiff states that the Defendants "were tampering with official documents." Again, there is simply no evidence to support this assertion. A review of the Supplementary Reports referred to by the Plaintiff shows that the reports were updated each time new action was taken on the case. The Supplementary Report the Plaintiff alleges was produced in August appears to simply be an earlier copy of the Supplementary Report created prior to the additional actions described in the later Supplementary Report. Thus, there is no evidence that any of the Defendants deliberately withheld any exculpatory evidence and, since the Plaintiff's arrest was supported by probable cause as confirmed by a neutral magistrate and a Grand Jury, the Defendants are entitled to judgment as a matter of law.

Finally, the Plaintiff fails to establish any evidence to support a claim arising under the due process clause of the Fourteenth Amendment. The Plaintiff also fails to identify a viable legal theory to support his claim. He first cites to a number of cases outside the Fourth Circuit outlining various duties of police officers. He then cites to *Goodwin v. Metts*, 855 F.2d 157, 1989 U.S. App. LEXIS 13728 (4th Cir. 1989) for the proposition that "it is not necessary that a conviction be obtained in order for Plaintiff's due process rights to be violated." This proposition ignores the current state of the law. As this Court noted in *Windham v. Graham*, 2008 U.S. Dist. LEXIS 72996 (D.S.C. Aug. 14, 2008), the Fourth Circuit has qualified the duty set forth in *Goodwin* so that liability will arise only where "the officer's failure to disclose the exculpatory information deprived the § 1983 plaintiffs of their right to a fair trial." *Id.* (emphasis in original) (quoting *Taylor v. Waters*, 81 F.3d 429, 436 n.5 (4th Cir. 1996)). See also *Jean v. Collins*, 221 F.3d 656, 659 (4th Cir. 2000). In the present case, the Plaintiff concedes that the charges were dismissed. Therefore, there could not have been any deprivation of his right to a

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fair trial. Therefore, the Plaintiff cannot establish a claim for a due process violation under the Fourteenth Amendment.

Additionally, the Plaintiff fails to address the fact that he fails to meet even the minimum threshold necessary to establish a cause of action under § 1983 for a due process violation based on an officer's alleged failure to produce exculpatory evidence—a *Brady* violation (i.e., that the officers actually failed to produce material exculpatory evidence). *Jean v. Collins*, 221 F.3d 656, 659 (4th Cir. 2000). Even if the alleged discrepancy between Deputy Marter's one paragraph summary of his interview with Jan Morton and the recorded interview with Jan Morton were material, which it is not, the only evidence in the record is that the recorded statement was produced. Therefore, there can be no withholding of evidence necessary to establish a *Brady* violation. As the Fourth Circuit stated in *Jean, supra*, without an underlying *Brady* violation, there can be no liability under § 1983 for an alleged violation of an individual's due process rights under the Fourteenth Amendment. Therefore, the Defendants are entitled to judgment as a matter of law on the Plaintiff's claim based on an alleged violation of his due process rights under the Fourteenth Amendment.

CONCLUSION

For the reasons set forth above, and as set forth in more detail in these Defendants' Memorandum in Support of their Motion for Summary Judgment, these Defendants would respectfully submit that there is no evidence to support the Plaintiff's claims arising under 42 U.S.C.A. § 1983. Alternatively, the Defendants would respectfully submit that they are entitled to qualified immunity. Therefore, the Defendants respectfully request that this court enter judgment in their favor.

[signature page to follow]



Respectfully submitted,

/s/ Charles F. Turner, Jr.

Charles F. Turner, Jr. (#5849)

Anne R. Culbreath (#7266)

J. Adam Russell (#10254)

WILLSON JONES CARTER & BAXLEY, P.A.

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Greenville, SC 29607

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Attorneys for Defendants,

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Greenville, SC
October 16, 2015

1 A. Yes.

2 Q. And you did not, is that right?

3 A. All except for Dr. Battersby, that I'm
4 aware of.

5 Q. And why didn't you pay Dr. Battersby?

6 A. Because there was an incident that
7 happened with Dr. Battersby, and it was an ongoing
8 -- I don't know -- case. And until that had come to
9 a conclusion, I was not -- I was awaiting the
10 results of what was going to happen with that.

11 Q. Yes, ma'am. When you go to a restaurant,
12 you don't like the food, do you not pay?

13 A. If there's something wrong with it, I will
14 not.

15 Q. What did you have to see before Dr.
16 Battersby would be paid?

17 A. Well, I -- there was something -- I mean,
18 would you like -- do you want me to tell you what
19 happened?

20 Q. Certainly.

21 A. Okay. I was released from his care, and I
22 was -- with this automobile accident, I was seeing
23 several doctors. I had been to the hospital in an
24 ambulance, and I was told I needed to see a
25 chiropractor, which is when I went to Dr. Battersby.

1 to make sure he was home, which I did.

2 And when I called, he was home. He said
3 he had made a copy, and that I could come by at any
4 time. I did, I went to his house, I parked where I
5 always parked, went to the back door, which is where
6 I always had and seen other patients go. He
7 answered the -- the door is -- his screen door, the
8 top part is screen, and the bottom part is not.
9 It's whatever -- you can't see through it, but he
10 did not have a shirt on when I was walking up the
11 stairs. And I said, "Hey, I'm here to get that
12 itemized bill," and he said, "Okay, yeah. Let me go
13 grab that for you. Come on in."

14 Well, I opened the door, stood in the
15 laundry room, which is right there when you first
16 walk into his home, and when he came back in, he was
17 completely naked and holding the bill in between us.
18 He explained several things I think about the bill,
19 but I was pretty shocked. I didn't know why he was
20 naked, or if he did this regularly. You know, it
21 had never happened before, but again, I don't
22 normally go to any doctors' offices or any other
23 place of businesses and have the person I'm seeing
24 naked. So I don't -- at that point in time, I can't
25 -- I couldn't even tell you what -- because he was

1 That's not an exculpatory statement. That's just as
2 damning as her original statement to the sheriff's
3 department when she initially made the report.

4 Again, if there's a delay in the audio statement, it
5 certainly didn't cause him any prejudice. He got the
6 charges dismissed. I think in his complaint, he said
7 that a motion to compel was filed and the audio statement
8 was produced shortly thereafter. There's been no -- the
9 charges were certainly already instituted. There was
10 already a basis for the institution of the charges, and
11 the statement is not exculpatory. In fact, it confirms
12 exactly what she had said.

13 Your Honor, we have raised several other grounds. I
14 will talk about them very briefly. We've talked about
15 Sheriff Skipper is sued, and we believe he's entitled to
16 immunity under the tort claims act. There's also an
17 issue as to the ongoing matter with the other parties,
18 the investigators, for almost the same thing other than a
19 1983 case, and we think under 12(b)(8) the case should be
20 dismissed.

21 And then finally under § 15-78-60, under the Tort
22 Claims Act, subsections 2, 3, and 4, there are exemptions
23 for serving lawful process for instituting judicial
24 proceedings. And we believe that we're entitled to
25 immunity under that section as well.

1 an independent third-party witness, every time there was
2 an alleged indecent exposure or a sexual battery without
3 harm, they would never -- hardly any of those cases would
4 ever be brought and charged.

5 And while I am sympathetic to Dr. Battersby's
6 position, the facts in this case remain the same. These
7 ladies have said from the very beginning and are saying
8 now under oath that Dr. Battersby exposed himself. Dr.
9 Battersby himself, his lawyer concedes their probable
10 cause and in pleadings says that the sheriff's department
11 had a right to rely on their statements. And on that
12 basis, we believe there's no material issue of fact for
13 this case would move forward and we're entitled to
14 summary judgment.

15 Thank you.

16 THE COURT: Dr. Battersby, let me just tell
17 you, I have not read your memorandum at this point. I
18 will.

19 MR. BATTERSBY: Okay.

20 THE COURT: It just wasn't sent to me ---

21 MR. BATTERSBY: That's fine. That's fine.

22 THE COURT: Okay. I'll be glad to hear from
23 you.

24 MR. BATTERSBY: Well, I'd like to thank
25 opposing counsel too for making a lot of my argument.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2016-000973

Dr. Gregg Battersby, Appellant,

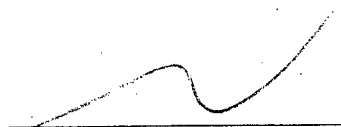
v.

Sheriff John Skipper, in his official capacity, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. It contains no matter which is irrelevant to the appeal.

December 10, 2016


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SC Court of Appeals