

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-00910
Appellate Case No. 2017-001750

RECEIVED
DEC 11 2018
SC Court of Appeals

Darris Hassell, Respondent,

v.

City of Columbia, Appellant.

MOTION TO DETERMINE AND ENFORCE AUTOMATIC STAY

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules and pursuant to *State v. Cooper*, which explains appellate courts have the power to resolve a dispute over whether the automatic stay applies to a case. 342 S.C. 389, 398, 536 S.E.2d 870, 875-876 (2000).

Abbreviated Background

This case was tried to a verdict in May of 2017. The claims against the City of Columbia were for false arrest, malicious prosecution, and negligent supervision. The jury awarded the plaintiff \$200,075 in damages. The verdict was entered May 19, 2017.

After the verdict's entry the City discovered the foreman of the jury failed to disclose during voir dire that he had been arrested by the City roughly a year before the trial occurred.

On June 30, 2017, the City filed a motion for a new trial based on the foreman's failure to disclose his prior arrest. The City attached the incident report from the foreman's arrest to this motion. The City also attached the portion of the transcript from voir dire demonstrating prospective jurors had been directly asked whether they or a member of their family had ever been arrested by the City. See **Attachment A** (the motion for a new trial and attachments).

The City initiated this appeal by serving and filing a notice of appeal in August of 2017. This was after the circuit court denied the City's original motion for new trial but before the circuit court decided the motion involving the foreman's failure to disclose his prior arrest.

Shortly after the notice of appeal was served this Court issued an order remanding the case to the circuit court to consider the motion involving the foreman's failure to disclose his prior arrest.

The circuit court heard the motion on June 27, 2018 and entered a written order denying the motion July 27, 2018. The order denied the motion on a number of grounds including that the City supposedly did not offer any evidence of who discovered the foreman's prior arrest, how it was discovered, or how burdensome it would have been to discover the prior arrest at an earlier point in the litigation. The circuit court ultimately concluded the City either knew or should have known of the foreman's prior arrest. The court believed these things defeated the City's arguments that it was entitled to rely on receiving honest answers during voir dire and that the foreman's prior arrest would have been a material factor in the City's exercise of peremptory strikes. **Attachment B.**

Action Leading to this Request to Determine and Enforce the Stay

The respondent has asked the circuit court to impose sanctions against the City. Respondent filed an original and amended motion to this effect. **Attachment C** (both filings). These were filed after the circuit court entered its order denying the City's new trial motion involving voir dire.

The City filed a written response to the original motion as required by the Frivolous Civil Proceedings Sanctions Act. **Attachment D**. The parties were recently informed the circuit court has scheduled a hearing on the sanctions request for January 8, 2019. **Attachment E**.

ARGUMENT

The circuit court lacks jurisdiction to conduct the upcoming hearing. Rule 205, SCACR explains the appellate court has “exclusive jurisdiction” over the appeal after the notice of appeal is served. The circuit court may only hear petitions for supersedeas as provided by Rule 241 or “matters not affected by the appeal.” Respondent is seeking sanctions for the City’s motion to set aside the verdict. It is difficult to imagine what could be more related to the pending appeal than the City’s motion to set aside the very same verdict the City is appealing.

The circuit court will retain jurisdiction to consider the motion for sanctions if the City’s appeal is not successful. That would be similar to what occurred in *Pee Dee Health Care v. Estate of Thompson*, where the Rule 11 motion was not even filed until after the appeal had been decided and after the case has been remitted. 424 S.C. 520, 524-525, 818 S.E.2d 758, 760 (2018). The concurring opinion in that case expressly noted the circuit court could not conduct further proceedings on a motion for sanctions during the appeal if the motion related to matters on appeal. *Id.* at 541-542, 818 S.E.2d at 758. This bolsters the City’s argument. Again, it is difficult to imagine what could be more related to the City’s appeal than the City’s motion to set aside the very verdict that is on appeal.

It is also helpful to consider *Holmes v. East Cooper Community Hospital*. That case held the circuit court did not abuse its discretion in considering a motion for sanctions that was filed *before* a notice of appeal was served. 408 S.C. 138, 160-162, 758 S.E.2d 483, 495-496 (2014). *Holmes*

relied on the principle that service of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion. It explains that in such instances the appeal is generally dismissed without prejudice as prematurely filed.

Here, the appeal has not been dismissed and the motion for sanctions was not filed before the appeal began. The appeal in this case had been pending for over a year before respondent moved for sanctions. The City's brief on the merits is due January 2, 2019. That is six days before the scheduled hearing on the request for sanctions.

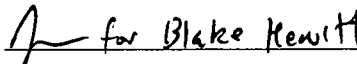
As final points illustrating the direct relationship between the motion for sanctions and the appeal, consider that if the circuit court sanctions the City, the City will have to begin an appeal of *that* order. That briefing that will involve the very same issue—the correctness of the City's motion for a new trial—the City is currently briefing. Similarly, if this Court were to reverse the circuit court's denial of the City's motion for a new trial, the request for sanctions would necessarily fail. The City obviously could not be sanctioned for filing a motion that ultimately prevailed.

For these reasons, the City of Columbia requests an order holding that the upcoming hearing may not proceed as the motion for sanctions is affected by the appeal.

December 11, 2018

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Respectfully submitted,

SC BAR # 77887
 for Blake Hewitt

Blake A. Hewitt # 73674
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Attorneys for Appellant

Attachment A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Darris Hassell,

vs.

City of Columbia,

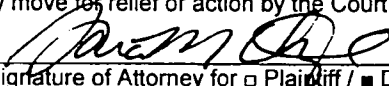
Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2016-CP-40-0910

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Paul L. Reeves, Esquire Post Office Box 11126, Columbia, SC 29211 phone (803) 929-0001; fax (803) 929-0927	Defendant's Attorney: Dana M. Thye, Esquire, SC Bar #1602 Office of the City Attorney Post Office Box 667, Columbia, SC 29202 phone (803) 737-4242; fax (803) 737-4250
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for a new trial Estimated Time Needed: 15 minutes Court Reporter Needed: <input type="checkbox"/> Yes / <input type="checkbox"/> No	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form motion / order I hereby move for relief or action by the Court as set forth in the attached proposed order.  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant June 30, 2017 Date submitted	
SECTION III: Motion Fee <input type="checkbox"/> PAID B AMOUNT: _____ <input checked="" type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the Court; or, reduced to writing from motion made in open court per Judge's instructions Name of Court Reporter: _____ <input checked="" type="checkbox"/> Other: Charge to City of Columbia Account	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	CODE: _____ Date: _____ JUDGE
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED <input type="checkbox"/> CONTESTED B AMOUNT DUE:	

RICHLAND COUNTY
FILED
2017 JUN 30 AM 11:29
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Darris Hassell,)
)
 Plaintiff,)
)
 vs.)
)
 City of Columbia,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 C/A NO.: 2016 -CP-40-0910

**MOTION FOR A NEW TRIAL
 BASED ON NEWLY- DISCOVERED
 EVIDENCE OF JUROR MISCONDUCT
 PURSUANT TO RULE 60(B)(2), SCRC**

2017 JUN 30 AM 11:29
 JENNIFER W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

YOU WILL PLEASE TAKE NOTICE that the Defendant City of Columbia, by and through its undersigned attorney, will move before the Honorable L. Casey Manning of the Court of Common Pleas for the Fifth Judicial Circuit at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day following the service hereof or as soon thereafter as counsel may be heard, for an Order granting Defendant a new trial.

The trial of this matter was held during the term of court the week of May 15, 2017. Natalie Ham appeared as trial counsel for the Defendant and Paul Reeves appeared as counsel for the Plaintiff. On Thursday, May 18, 2017, the jury found for the Plaintiff and awarded \$200,075.00 in damages. Post-trial motions were filed by this Defendant and a hearing was held on those motions on June 2, 2017. Defendant has received no written Order to date. The City comes now asking the Court to grant a new trial based on after-discovered evidence as listed below.

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I. Juror Misconduct

Subsequent to the return of the verdict in this matter, the Defendant City sought to contact jurors serving on this case for the purpose of evaluating appeal. During the City's efforts to locate contact information for the foreperson of the jury, it was discovered that he had been arrested by an officer of the Columbia Police Department barely one year prior to the trial of this case and failed to disclose that arrest when questioned by the Court during voir dire. (Exh. 1, Incident Report & Booking Photo). On June 26, 2017, the undersigned received an official (partial) transcript of the voir dire proceedings before the Court at trial (the portion transcribed including the voir dire questions asked by Court) it was determined that the Court very clearly inquired of the petit jury venire "have you or a close family member ever been arrested by a City of Columbia police officer? Have you or a member of your family ever been arrested by the City? If so, please stand." (Exh. 2, Transcript of Voir Dire of Jury Panel, p. 19.) Only one juror stood and it was not someone ultimately selected.

Pursuant to S.C. Code Ann. §14-7-1050 (1986), the City is entitled to a competent and impartial juror. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called. S.C. Code Ann. §14-7-1020 (1986). The question of impartiality can frequently be determined by a juror's response to voir dire questions from the Court. However, when the juror is not truthful in their response this deprives the party of the impartial jury required by law.

When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the

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party's peremptory challenges. *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. *State v. Savage*, 306 S.C. 5, 409 S.E.2d 809 (Ct. App.1991).

In *Kelly*, we stated the at the first inquiry in the juror disqualification analysis is whether the juror intentionally concealed the information during the *voir dire*. *Kelly*, 331 S.C. at 146, 502 S.E.2d at 106-07. However, in *Kelly* we did not precisely define what constitutes an intentional concealment.

We hold that intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs when the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances. . . .

The test pronounced in *Thompson v. O'Rourke, supra*, makes clear that where a juror's response to *voir dire* amounts to an intentional concealment, the movant need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where the juror's failure to disclose information is "without justification" i.e., intentional, the juror's bias will be inferred. Conversely, where the failure to disclose is innocent, no inference of bias can be drawn. *See Savage*, 306 S.C. at 8, 409 S.E.2d at 810. *See also Doyle v. Kennedy Heating & Service, Inc.*, 33 S.W.3d 199, 201 (Mo.Ct.App.2000) ("If a juror intentionally withholds material information requested on *voir dire*, bias and prejudice are inferred from such concealment... Only where a juror's intentional nondisclosure does not involve a material issue, or where nondisclosure is *unintentional*, should the trial court inquire into prejudice." (Emphasis in original)).

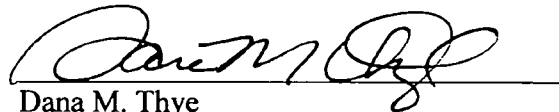
State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001). (Attached.)

There can be no question that the question was incredibly straight forward as to whether anyone had been arrested by the Columbia Police Department. The fact that this juror's arrest happened a year (almost to the day) before the trial means it is unlikely that

ost

this juror forgot about the arrest. As such, the failure to disclose the arrest is intentional concealment and the Court can infer that the juror was not impartial. The City is entitled to an impartial jury panel.

WHEREFORE, Defendant prays for an Order granting Defendant a new trial based on newly-discovered evidence of the intentional concealment of juror bias.



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Attorney for Defendant City of Columbia

June 30, 2017
Columbia, South Carolina

EXHIBIT 1

Columbia Police Department
SC0400100

INCIDENT REPORT

INFORMATION ONLY

CASE NUMBER

160015996

NCIC

INQ.	ENTD.
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EVENT	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. 56-01-20 No Drivers License ALL OTHER OFFENSES	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	HIGHWAY/ROAD/ALLE		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input checked="" type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
	2. 56-5-6520 SEATBELT VIOLATION 90Z ALL OTHER OFFENSES	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	HIGHWAY/ROAD/ALLE		
	3.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)
3000 N BELTLINE BLVD, COLUMBIA, SC

ZIP CODE 29204-0000 WEAPON TYPE NONE

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	DISPATCH DATE/TIME 24 HR. CLOCK	DEPART. TIME	LOCATION NO.
05/20/2016	09:41		05/20/2016	09:42	05/20/2016	09:41	09:42	11:00	327

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
RHINEHART, TONY	#1 ST #2 #3	J	B	M	54 /	N	803-545-3500	803-545-3500

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
1 JUSTICE SQ	COLUMBIA	SC	29201-0000	2212

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
CITY OF COLUMBIA	#1 ST #2 #3	J			/		803-545-3500	803-545-3500

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
1 JUSTICE SQ	COLUMBIA	SC	29201-0000	212

VS SELENURE (MCT.1) YES NO EXPLAIN- COMPLAINT OF ANY NON-SELENURES YES NO

VICTIM(S) USING ALCOHOL YES NO UNK DRUGS: YES NO UNK TYPE: TWOMANVEH ONEMANVEH DETECTIVES PLASMT. OTHER ALONE ASSISTED *J-This Jurisdiction. S-State. O-Out of State. U-Unknown.

SUBJECT	<input checked="" type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	
	<input type="checkbox"/> RUNAWAY	TAYLOR, RICHARD, TIERS	W	M	54 /	N	1961	602	220	BRO	BLU	
	<input type="checkbox"/> WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
	<input type="checkbox"/> WARRANT	RELATED OFFENSE(S) 90Z 90Z DAYTIME PHONE EVENING PHONE										
<input checked="" type="checkbox"/> ARREST	ADDRESS CITY COLUMBIA STATE SC ZIP CODE LOCATION NO. 641											
<input checked="" type="checkbox"/> JAIL	SUBJECT(S) USING ALCOHOL <input type="checkbox"/> YES NO <input checked="" type="checkbox"/> UNK <input type="checkbox"/> ARRESTED NEAR OFFENSE SCENE <input checked="" type="checkbox"/> YES NO <input type="checkbox"/> DATE/TIME OF OFFENSE 5/20/2016 9:41:00 AM DATE/TIME OF ARREST 5/20/2016 9:42:00 AM											
<input type="checkbox"/> SUMMONS	DRUGS: <input type="checkbox"/> YES NO <input checked="" type="checkbox"/> UNK <input type="checkbox"/> TYPE: TOTAL # ARRESTED 01											

DAY OF THE WEEK	HOW REPORTED	A= OFFICER DISPATCHED ON CALL	D= COMPLAINT WRITTEN IN	DIFF. FACTOR	A= RESISTANCE/HOSTILITY	E= COMPLAINANT FRE- QUENTLY INTOXICATED
S M T W T F S U N K		B= REPORT TAKEN BY PHONE	E= OFFICER INITIATED	N	B= WEAPONS	F= DOMESTIC
		C= COMPLAINANT WALKED IN	F= OTHER		C= UNFOUNDED CALLS	N= NORMAL

AT THE ABOVE DATE AND TIME, REPORTING OFFICER OBSERVED THE LISTED SUBJECT DRIVING THE LISTED VEHICLE WESTBOUND AT THE ABOVE INCIDENT LOCATION. R/O OBSERVED THE LISTED SUBJ. DRIVING WITHOUT HIS SEATBELT ON. R/O CONDUCTED A TRAFFIC STOP AND ACCORDING TO NCIC AND UNIT 720 THE LISTED VEHICLE LICENSE WAS STOLEN OUT OF THE CITY AND ACCORDING TO SCDMV THE LISTED SUBJ. DRIVERS LICENSE WAS SUSPENDED FOR CHILD SUPPORT, FAILURE TO PAY AND NO INSURANCE. THE LISTED SUBJ. WAS PLACED UNDER ARREST AND THE SUBJ. VEH. WAS TOWED BY COLLISION(1). THE VEH. LICENSE WAS REMOVED BY R/O AND RETURNED TO SCDMV ON SHOP RD. ACCORDING TO LIBERTY MUTUAL INSURANCE THE INSURANCE WAS CANCEL. THE VEH. THE SUBJ. DRIVERS LICENSE WAS SUSPENDED FOR ALMOST 1.5 YEARS AND HAS NOT BEEN RETURNED TO SCDMV. THE SUBJ. DL WAS TAKEN BY R/O AND

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
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TYPE (GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	

SUBJECT IDENTIFIED YES NO SUBJECT LOCATED YES NO S. F. CN ACTIVE ADM. CLOSED ARRESTED UNDER 18 EX-CLEAR UNDER 18 UNFOUNDED ARRESTED 18 AND OVER EX-CLEAR 18 AND OVER

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

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
RHINEHART TONY	5/20/2016 2:00:00 PM	11177	UHALL ROBERT J	5/30/2016 11:57:49 AM	20019
FOLLOWUP INVESTIGATION <input type="checkbox"/> YES NO <input checked="" type="checkbox"/> OFFICER					

ADDITIONAL NARRATIVE

Agency Name: Columbia Police Department	ORI #: SC0400100	Report Date/Time: 05/20/2016 09:41	OCA #: 160015996
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RETURNED TO SCDMV ON SHOP. THE SUBJ. WAS LATER TRANSPORTED TO ASGDC FOR BOOKING. THE VEHICLE LICENSE WAS UNDER \$1,000.00. THE CORRECT VEHICLE LICENSE FOR THE LISTED VEHICLE IS SC FEZ 274 (15). THE SUBJ. STATED HAD PURCHASED THE VEH. ABOUT (2) MONTHS AGO OFF CRAIGSLIST.

AGENCY: Columbia Police Department
 ORI #: SC0400100
 Report Date / Time: 05/20/2016 09:41
 Incident #: 160015996

ADDITIONAL VEHICLES

STATUS: 3		RELATED TO: TAYLOR, RICHARD, T		VEHICLE TYPE: 2 OR 4 DOOR SEDAN (PASSENGER)	
VIN AND/OR LICENSE NO. BFE 299			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO. JN8AR05S8VW161824			STATE SC		
YEAR OF REGISTRATION 0616		YEAR OF EXPIRATION 6/30/2016		YEAR 1997	MAKE NISS
MODEL NISS-PTH	STYLE SUV	COLOR GOLD		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					

Thye, Dana

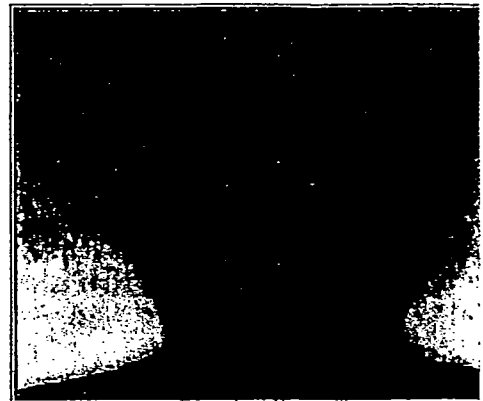
From: Hemlepp Jr., Mike
Sent: Monday, June 26, 2017 4:23 PM
To: Thye, Dana
Subject: Sent from Snipping Tool

Alvin S. Glenn Detention Center

6/26/2017 4:22:14 PM

Offender is not currently detained

OffenderID: 633862 **Home Phone:** [REDACTED]
Last Name: TAYLOR **Home Address:** [REDACTED]
First Name: RICHARD **Contact Name:** NONE GIVEN
Middle Name: T. **Contact Phone:** [REDACTED]
SSN: [REDACTED] **Contact Address:** NONE GIVEN
Sex: Male **Occupation:** ATHLETIC DEPT./NON-VET
Race: White **Employer Name:** HAMMOND MIDDLE SCHOOL
DOB: [REDACTED] 1961 **Employer Phone:** [REDACTED]
Hair: Grey **Employer Address:** COLUMBIA
Eyes: Hazel
Weight: 250
Height: 74



[Current Charges](#) [Criminal History](#) [Image History](#)

Offender ID	Bond Type	City	City	Start Date/Time	End Date/Time	Status
37517HB	PR	CITY	CITY	5/20/2016 11:45:00 AM	5/21/2016 2:07:35 PM	Tr
37521HB	PR	CITY	CITY	5/20/2016 11:45:00 AM	5/21/2016 2:07:35 PM	Tr

Bond Types: SB-Surety Bond • CB-Cash Bond • PR-Personal Recognizance • BD-Bond Denied

EXHIBIT 2

I N D E X

WITNESS/DESCRIPTION

PAGE NUMBER

Voir Dire of Jury Panel

4

Certificate Page

24

this jury panel feel like the police should not be sued?
If so, please stand.

(No response.)

THE COURT: Is any member of this jury panel a member of the -- of the organization Blue Lives Matter? If so, please stand.

(No response.)

THE COURT: Now, have you or a close family member ever been arrested by a City of Columbia police officer? Have you or a member of your family ever been arrested by the City? If so, please stand.

(Juror stands.)

THE COURT: Yeah. Will you approach? Would you come up? I need you to come up so I can talk to you privately.

WHEREUPON the Court and counselors gather outside the hearing of the rest of the jury panel to here juror's statement as follows:

THE COURT REPORTER: Your juror number, please?

THE JUROR: 183.

THE COURT: And that was question No. 2.

THE JUROR: Right.

THE COURT: And the question was: Do you have any personal issues with the City of Columbia?

THE JUROR: No.

THE COURT: Oh, you don't.

Attachment B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Darriss Hassell,)
)
Plaintiff,)
)
vs.)
)
City of Columbia,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2016 -CP-40-0910

ORDER

On June 30, 2017, the City of Columbia (hereinafter referred to as the City) motioned pursuant to S.C.R.Civ.P. 60(B)(2), for a new trial on the grounds of juror misconduct. A jury had rendered a verdict against the City on May 18, 2017. The City moved for a new trial based upon the City's allegation that it came upon "after discovered evidence" of juror misconduct that could not have been known at or near the time of the seating of the juror or during the trial.

PROCEDURAL HISTORY

On June 30, 2017 the defendant, the City of Columbia, motioned pursuant to S.C.R. Civ. P. 60(B)(2) for a new trial alleging that the City came upon "after-discovered evidence" of juror misconduct (hereinafter, this motion shall be referred to as the "60(B)" motion). The 60(B) motion is the third post-trial motion filed by the City. The City filed a Motion for New Trial within the time frame allowed by this Court after the verdict was rendered on May 18, 2017. The City then filed an Amended Motion for a New trial outside the applicable time frame. This Court heard the timely filed post-trial motion and denied the motion. The Court denied the Amended Motion for a New Trial because the Motion was not timely filed.

The court questioned the appearance of Mr. Hewitt as there was no order substituting trial counsel, Natalie Ham. Natalie Ham was the attorney of record at the trial. She filed the first two post-trial motions and argued those motions before this Court. She has not been relieved as counsel for the City.

After Ms. Ham's appearance at the post-trial motions, Dana Thye filed an appearance on behalf of the City of Columbia. Ms. Thye filed the 60(B) motion on June 30, 2017, approximately 44 days after the trial. The City did not seek an order substituting counsel regarding Ms. Thye. Subsequent to Ms. Thye's appearance on behalf of the City, a Notice of Appearance was filed on December 1, 2017 on behalf of Teresa A. Knox and W. Michael Hemlepp, Jr, both appearing for the City. Again, no order substituting counsel was provided to this Court. John Nichols filed a Notice of Intent to Appeal the verdict behalf of the City with the Clerk of Court for Richland County. Subsequent to Mr. Nichols' appearance, Mr. Hewitt filed a Notice of Appearance on behalf of the City. The City presented no order substituting trial counsel.

Present for the hearing was the plaintiff by and through his counsel of record, Paul L. Reeves and Todd Lyle. Mr. Hewitt appeared for the City. Ms. Hamm did not appear.

LEGAL ANALYSIS

It does not always follow, as a rule of law, that a new trial should be granted when after trial there is discovered the presence of a relative on the jury. There would be no room for the exercise of discretion if a new trial followed as a matter of law." *Smith v. Quattlebaum*, 76 S.E.2d 154, 157 (S.C. 1953). Generally, the denial of a new trial motion will be disturbed only upon a showing of an abuse of discretion. *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). Where a new trial motion is based upon allegations that a juror gave misleading and incomplete

answers on *voir dire*, the trial court's denial of that motion will be affirmed absent a prejudicial abuse of discretion. *State v. Kelly*, 331 S.C. 132, 145, 502 S.E.2d 99, 106 (1998). See also *Knowlton v. Greenwood Indep. Sch. Dist.*, 957 F.2d 1172, 1177 (5th Cir.1992) (A denial of a new trial based on alleged jury misconduct is reviewed for an abuse of discretion.) The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627–28 (2000). The trial court is in the best position to determine the credibility of the jurors; therefore, the appellate Courts grant broad deference on this issue. *Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc.*, 384 S.C. 441, 446, 682 S.E.2d 489, 492 (S.C. 2009).

It is the duty of the trial Judge to ascertain the qualifications of the jurors, and when the discharge of this responsibility is thwarted by mischance, or otherwise, it is within the Court's inherent power to remedy the situation, when brought to his attention, even after *sine die* adjournment of court, by the granting of a new trial, if, in its discretion, necessary. *Smith* (S.C. 1953). In this case the Court quoted the trial judge as he considered the motion for new trial:

I am clearly of the opinion that the plaintiff, under the testimony and the law in this case, was entitled to the verdict which was rendered. The testimony fully supported the verdict as rendered by the jury.... It is my opinion that a just verdict was rendered in this case and that the ends of justice will be served by not disturbing the verdict rendered.

Id. at 391, 157.

The *Smith* Court went on to state “[I]f respondent's right to a verdict was a close issue, or questionable, then undoubtedly Judge Pruitt would have ordered a new trial, even though he concluded the juror was impartial. . . .” *Id.* In a civil matter a defeated party is not entitled to a new trial for every act of misconduct by or affecting the jury, as such misconduct . . . does not *ipso*

facto justify the grant of a new trial; but in order that a new trial may be granted on such ground the misconduct of the jury must relate to a material matter in dispute and must be such as to indicate an influence of bias or prejudice in the minds of the jurors. *Vestry* at 447, 493. (S.C. 2009).

S.C. Code Ann. §14-7-1030 states that “objections to jurors called to try prosecutions, actions, issues, or questions arising out of actions or special proceedings in the various courts of this State, if not made before the juror is impaneled for or charged with the trial of the prosecution, action, issue, or question arising out of an action or special proceeding, is waived; and if made thereafter is of no effect. This section provides objections to jurors not made prior to impanelment are waived. If an objection is made after impanelment, the objecting party must demonstrate he could not have discovered the ground for the objection through due diligence. *Southern Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 162, 332 S.E.2d 102, 105 (Ct.App.1985); see *Thompson v. O'Rourke*, 288 S.C. 13, 14, 339 S.E.2d 505, 506 (1986). *Wilson v. Childs*, 315 S.C. 431, 434 S.E.2d 286, 289 (S.C. App. 1993). See also the due diligence requirement of S.C.R.Civ.P. 60(B)(2).

A party seeking a new trial based upon the disqualification of a juror must show: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict. *Gray v. Bryant*, 379 S.E.2d 894, 896 (S.C. 1989). The burden is on the moving party. *Id.* During argument, the City relied upon *Long v. Norris and Associates* 342 S.C. 561, 536 S.E.2d 5 (Ct. App. 2000) as one of the controlling cases on the issue of juror misconduct. *Long*, a case from the Court of Appeals, affirmed the necessity of the moving party to prove the three elements set forth in *Gray*.

The analysis of the City's motion must begin with Rules 59 and 60(b) S.C.R.Civ.P. *Gray* at 286, 895. Both rules are relevant to the analysis of the timeliness of the City's position. *Id.* Rule 59, S.C.R. Civ.P., requires that a motion for a new trial be made no later than ten days after entry of judgment. Rule 59 does not provide any procedure by which a party can amend a motion for a new trial or add new grounds after the expiration of the ten-day period. *Id.* at 286, 895. *Gray* holds that Rules 59 and 60(b) must be read together, as Rule 60(b), S.C.R. Civ.P., reads in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (2) newly discovered evidence which by *due diligence* could not have been discovered in time to move for a new trial under Rule 59(b);

Id. at 286, 895. [Emphasis added]

DISCUSSION

1. John Doe was not disqualified from service as a juror simply because of his prior arrest.

The City presented insufficient information to allow this Court to find that the juror was unqualified. The mere fact that John Doe had been arrested by the City at some point prior to the juror selection for this trial would not have necessarily excluded him from jury service. Assuming the juror heard and understood the question and answered that he had been arrested for a traffic ticket from the City, this Court would have followed with questions to determine whether the juror could remain impartial and render a fair verdict for both parties. If the juror voiced impartiality and lack of prejudice, the juror would have remained in the pool of prospective jurors as evidenced by the following.

The trial record supports this circumstance. During juror *voire dire*, Juror 183 came forward in response to the Court's question, "[N]ow, have you or a close family member ever been arrested by a City of Columbia police officer?" (Trial Transcript p.20). Juror 183 indicated that a close family member had been "arrested by the County and the City." *Id.* The Court then inquired about whether Juror 183 would be able to be a fair juror in this case. Juror 183 affirmed his/her fairness and was placed in the pool for selection. The decision to disqualify a juror is within the sound discretion of the trial judge. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d at 624 (there is no abuse of discretion for disqualifying jurors when the jurors have stated they are able to give the parties a fair trial).

John Doe was not disqualified by virtue of his prior history and affirmed under oath his duty to render a just verdict. *Wilson v. Childs* 315 S.C. 431, 434 S.E.2d 286 (S.C. App. 1993) ("Moreover, in response to a *voire dire* question, [the juror in question] stated he could give both parties an impartial trial.... *Wilson* at 436, 290). Here, the City has produced no evidence for this Court to find the juror disqualified. The City's trial counsel did not appear at the motions hearing. No information was produced regarding the circumstances surrounding why the juror did not respond and whether the juror heard and understood the question. There is no evidence presented by the City to show disqualification. The Court finds that the City has provided insufficient evidence to show this juror was or would have been disqualified.

2. The grounds for the City's objection to the juror were known or could have been known to the City

The first exhibit to the City's motion was a document which appears to be from the Alvin S. Glenn Detention Center showing information regarding the detention of juror John Doe. This

information appears to have been created at or near the time of the arrest of John Doe, on or about May 21, 2016. The information is presented as a screen shot from an internet source.

The City offered no evidence as to how this information was found, who found the information and when, during the exercise of due diligence the information could have been found. There are no affidavits or other evidence upon which the City relies to show that it could not have known of this juror's arrest and present such information to the Court's attention prior to the verdict or within the time frame for post-trial motions.

The Court has considered the two exhibits attached to the City's motion. The first exhibit is from the Alvin S. Glenn Detention Center. Unfortunately, the Court is left with no information regarding the facts surrounding the City's ability to know of this document in a timely manner, the difficulty in knowing of the document and what, if any, due diligence did the City exercise regarding the knowing of this document and the information contained therein.

The Court notes that the document shows information that could have led a reasonable attorney to determine that the juror and the arrestee could be one and the same, had the City exercised reasonable diligence in reviewing the jury prior to the verdict. It is logical to determine that if the City found this document to support its motion, it follows that the City could have known of this document in time to file an objection, as it appears to have been available for almost one year prior to jury selection. *Bryant* holds that the moving party could not have known about the grounds for the alleged misconduct prior to the verdict. *Gray* at 288, 896.

The second exhibit to the City's motion is an incident report from the arrest of John Doe by the City. This information appears to have come from the City's police department records. The City provided no evidence as to who found this document, how the document came to be

found and whether the document could have been found prior to the verdict. The City failed to show whether due diligence requires the City to review its own records for information related to jurors who may be selected to try a case where the arrest by one of its officers is legal. The City presented no information from trial counsel or any other sources relevant to whether such information could have been easily accessed or whether it would have been burdensome to do so.

The Court would point out that it can be reasonably inferred that the ticket by which John Doe came to be arrested would have also been docketed within the City of Columbia Municipal Court records. The City failed to provide any evidence about the number of places within the City's records the information about John Doe could have been housed; however, it follows that there are at least two file repositories where the information regarding John Doe may have been found. Regardless, the City failed to provide any evidence as whether Doe's records could have been accessed and how that process would have been accomplished. The City failed to address whether the search of its records was burdensome, how much time, if any, would be necessary to review the records, and whether the records were assessed by trial counsel or why she could not access these records. All of these questions were left unanswered by the City.

The information presented in the incident report appears to be more than sufficient to identify the juror. The identifying information would have led a reasonable attorney to determine that the juror and the arrestee could be one and the same, had the City exercised reasonable diligence in reviewing its records. If the City found these records for purposes of this motion, then it follows that with due diligence, the same information was available prior to the verdict. *Id.* See also S.C.R.Civ.P. 59(b) (Rule 59(b) requires that any "after discovered evidence" must newly discovered evidence which by due diligence could not have been discovered in time to move for a

and now claims prejudice even though such prejudice was brought about by its own negligence. *Gray* at 288, 896.

The City relied primarily upon the *Long* case to support the finding of juror misconduct and the grant of a new trial. *Long* affirmed that the burden was on the moving party to show juror misconduct. *Long* affirmed the moving party must show 1) juror disqualification 2) that the moving party could not have known of the misconduct and 3) the moving party was not negligent in not knowing of the juror misconduct. *Long* at 570, 10. Otherwise *Long* is distinguishable from this case, in part due to the defendant in that matter presenting sufficient evidence regarding the three elements necessary for the Court to grant a new trial. The City, as outlined above, had failed to present sufficient evidence to support the grant of a new trial.

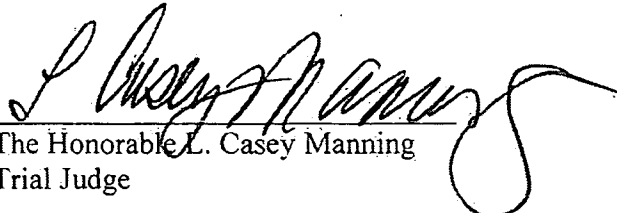
CONCLUSION

Based upon the presentation by the City and the Plaintiff, this Court makes the following findings of fact based upon a preponderance of evidence:

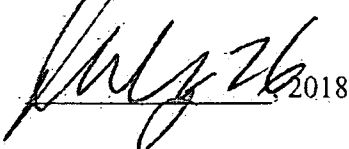
1. The City has the burden of proof as to the showing juror misconduct as set forth in *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989).
2. The City did not have Trial Counsel of record present at the hearing and she produced no evidence by affidavit;
3. Mr. Hewitt has not properly appeared as Counsel of Record for the City, as no Order has been entered as required by S.C.R.Civ.P. Rule 11.
4. Regardless of the whether Mr. Hewitt has made a proper appearance as Counsel of Record for the City, pursuant to S.C.R.Civ.P. Rule 11, this Court has given proper consideration to the evidence, or lack thereof, presented by the City;

5. The City did not meet the burden of proof as to any of the three elements of *Gray*;
6. The City did not provide any evidence that the juror was disqualified.
7. This Court further finds that even if the juror had been found to be disqualified, the City failed to show the remaining elements of *Bryant*.
8. The City did not provide any evidence to demonstrate that it could not have known of the juror's misconduct prior to or during trial.
9. The City did not provide sufficient evidence to refute that it was negligent in failing to discover the juror's misconduct.
10. The City failed to address with any competent evidence as to why it did not or could not review the City's records relevant to the juror in question from the City of Columbia Police Department and the City of Columbia Municipal Court files or the records from the Richland County Public Index.
11. The City failed to address the issue of the City's exercise of due diligence related to the allegation of juror misconduct;
12. Accordingly, the City's motion for a new trial pursuant to S.C.R.Civ.P 60(B)(2) is denied.

AND IT IS SO ORDERED.


The Honorable L. Casey Manning
Trial Judge

Columbia, South Carolina


2018

Attachment C

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Darriss Hassell,)
)
Plaintiff,)
)
vs.)
)
City of Columbia,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2016 -CP-40-0910

MOTION FOR ATTORNEYS FEES

YOU WILL PLEASE TAKE NOTICE that Counsel Plaintiff Darius Hassell, will move before Fifth Judicial Circuit Court, Richland County at 1701 Main Street, Columbia, South Carolina, 29201, on the 10th day after service or as soon thereafter as this matter may be scheduled and heard, for an Order awarding attorney's fees and expenses to Plaintiff.

This motion is based upon the grounds that Defendant City of Columbia filed a motion for new trial based upon the allegations of juror misconduct. The motion was heard by the original Trial Judge, L. Casey Manning, on June 27, 2018. The Defendant's presentation was devoid of any necessary facts to demonstrate and support Defendant's position regarding the issues of juror misconduct. Defendant's trial counsel did not appear at the hearing nor was any evidence introduced at the hearing to support the Defendant's claims.

The Defendants' motion was wholly without any evidentiary foundation, as required by the controlling case law. The case law cited by Defendant clearly set forth the requirements that were necessary for Defendant to prove through competent evidence in order to demonstrate the allegation of juror misconduct. Here the Defendants made no effort to provide any evidentiary support for their position including the following:

1. Trial counsel did not appear therefore there was no information presented as to what actions trial counsel took or failed to take regarding the allegations of juror misconduct.
2. No evidence was presented to by Defendant to in support of the bare allegation of juror misconduct.

For these reasons and others, the Plaintiff seeks and Order for Attorney's Fees and Costs associated with opposing this motion, paid by the Defendant.

Respectfully Submitted,

REEVES & LYLE, LLC

s/Paul L. Reeves

Paul L. Reeves
Post Office Box 11126
Columbia, SC 29211
803.929.0001
803.929.0927 Facsimile
Paul@ReevesandLyle.com

Attorney for the Plaintiff

August 16, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	C/A NO.: 2016 -CP-40-0910
)	
Darriss Hassell,)	
)	
Plaintiff,)	AMENDED MOTION FOR ATTORNEYS
vs.)	FEEES AND SANCTIONS
)	UNDER SCRCP RULE 11
)	
City of Columbia,)	
)	
Defendant.)	
_____)	

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before the Trial Judge for the Fifth Judicial Circuit, Richland County Court of Common Pleas, at the Richland County Courthouse, 1701 Main Street, Columbia, South Carolina 29201 on the tenth day after service or a date and time thereafter as this matter might be scheduled and heard, for an Order for attorney's fees, costs, and sanctions under SCRCP Rule 11. Plaintiff filed a motion for attorneys fees and costs on August 16, 2018. The Plaintiff omitted the request for sanctions and other relief under SCRCP Rule 11. Defendant also alleged that Plaintiff failed to consult with Defendant regarding the motion.

Plaintiff now files this amended notice of motion and motion based upon the grounds that the Defendant, City of Columbia, filed a motion for a new trial alleging juror misconduct. The Defendant's motion was heard by the trial judge, L. Casey Manning, on June 27, 2018. The Defendant's presentation was devoid of any necessary facts to demonstrate and support Defendant's position regarding the issues of juror misconduct. Defendant's trial counsel did not appear at the hearing nor was any evidence introduced at the hearing to support the Defendant's claims.

The Defendant's motion was wholly without any evidentiary foundation as required by the controlling case law. The law cited by Defendant clearly set forth the requirements that were

necessary for the Defendant to prove through competent evidence the allegation of juror misconduct.

Here, the Defendant made no effort to provide any evidentiary support for its allegations, including the following:

1. Trial counsel did not appear; therefore, there was no information presented as to what actions trial counsel took or failed to take regarding the allegation of juror misconduct.

2. No evidence was presented by the Defendant to support the Defendant's allegations of juror misconduct.

For these reasons and others, the Plaintiff seeks an Award for attorney's fees, costs and sanctions as allowed by SCRCRCP Rule 11. Plaintiff will rely upon the case law and statutory authority as the basis of his position. Plaintiff has consulted with Defendant's Counsel; however, the parties are unable to come to an agreement as to a resolution of this motion.

Respectfully Submitted,
REEVES & LYLE, LLC

s/Paul L. Reeves
Paul L. Reeves
Post Office Box 11126
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Attorney for the Plaintiff

September 14, 2018
Columbia, South Carolina

Attachment D

A motion for sanctions under the Act must be filed within 10 days of receiving notice of the entry of a judgment. *Russell v. Wachovia Bank*, 370 S.C. 3, 20, 633 S.E.2d 722, 730 (2006). The circuit court denied the City's motion for a new trial on July 27, 2018. Plaintiff's motion for fees and costs was not filed until August 16.

Third, this matter is on appeal, and the motion is stayed pending the appeal as it involves matters affected by the appeal. A circuit court retains jurisdiction to handle "matters not affected by the appeal." Rule 205, SCACR. The motion for fees and costs relates directly to the matters on appeal. Plaintiff is not seeking sanctions for discovery abuse or conduct collateral to the circuit court's judgment. Plaintiff seeks sanctions for the City's motion to set aside the very judgment on appeal.

Finally, this response is filed pursuant to the Frivolous Civil Procedures Sanctions Act, and specifically, S.C. Code Ann. § 15-36-10(D), which requires a party against whom sanctions is requested to respond within 30 days. Again, Plaintiff's counsel has informed the City's counsel that an amended motion for fees and costs will be filed. The City will promptly amend this response if Plaintiff's motion is indeed amended.

Respectfully submitted,

September 17, 2018

Teresa A. Knox
W. Michael Hemlepp
OFFICE OF THE CITY ATTORNEY
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(803) 737-4242
taknox@columbiasc.net
wmhemlepp@columbiasc.net

s/Blake A. Hewitt
Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Defendant

Attachment E

From: Courtmail40_DoNotReply@sccourts.org
To: Erin Bridges
Cc: henley.anne@richlandcountysc.gov
Subject: Motion "MATFEE-Motion/Attorney Fees" for Case "2016CP4000910-Darris Hassell vs City Of Columbia , defendant, et al" was added to a Motions Roster for 1/8/2019 at 2:00 PM
Date: Friday, December 07, 2018 2:26:25 PM

The above referenced case has been SCHEDULED for Motions Hearing before Judge L. Casey Manning in Courtroom 2E. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing to cmanninglc@sccourts.org

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-00910

RECEIVED

DEC 11 2018

SC Court of Appeals

Darris Hassell, ..... Respondent,

v.

City of Columbia ..... Appellant.

**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Motion to Determine and Enforce Automatic Stay* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Paul L. Reeves, Esquire  
Reeves and Lyle, LLC  
PO Box 11126  
Columbia, SC 29211

December 11, 2018

  
Erin Bridges

December 11, 2018

VIA HAND DELIVERY

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RECEIVED  
DEC 11 2018  
SC Court of Appeals

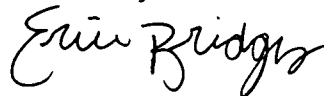
RE: Darris Hassell v. City of Columbia  
Appellate Case No.: 2017-001750

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Motion to Determine and Enforce Automatic Stay* in reference to the above matter. I have enclosed a proof of service of this document on counsel for the Respondent and a \$50.00 check for filing this motion. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges  
Paralegal to Blake A. Hewitt  
BLUESTEIN THOMPSON SULLIVAN, LLC

/emb

Enclosures

cc: Paul L. Reeves, Esquire  
W. Mike Hemlepp, Esquire