

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SEP 29 2017
SC Court of Appeals

Jocelyn Newman, Fifth Judicial Circuit

Appellate Case No.: 2016:002503

Valeria Farr,.....Appellant

v.

Leon Lott in his Capacity as Richland County Sheriff and the Richland
County Sheriff's Office Respondents

RECORD ON APPEAL

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asked to see it, while he was shining his flashlight in between Plaintiff's legs. Terrified, she did not resist and allowed Stephens to view between her legs.

After a period of time, Stephens then started again onto the highway. During this time, he advised that he "would work something out" with Plaintiff if she would "help him out." Stephens then stopped his vehicle on Bluff Road, exited the vehicle, and opened the passenger door to again shine his flashlight between Plaintiff's legs. Stephens then asked what was inside of her vagina, and then shined the light on it. Continued to be frightened, Plaintiff inserted her finger into her vagina and rubbed herself while Stephens watched by way of flashlight. During this time, Plaintiff became so terrified that she began shaking.

Stephens restarted the vehicle and proceeded onward to the detention center advising her, "Yeah, I'm going to help you out. You will be able to work something out." Specifically, Stephens assured her that he would drop one of the violations when they appeared to court.

Stephens then pulled over for a third time. On this occasion, he pulled over on the street that leads into the detention center in front of a bail bonding office. Stephens opened the door of the vehicle and asked Plaintiff if she needed to rub and check her upper thighs to see if they were all right. He then asked her what she had in her top. Plaintiff then patted her chest area with her handcuffed hands to demonstrate to Stephens that she had no weapons. Despite her assurances, Stephens claimed that he had not seen enough, and insisted on seeing more. Plaintiff then pulled down her top exposing her breast while Stephens was shining his flashlight watching her.

Stephens eventually restarted the vehicle and proceeded to the detention center. At or about the time of booking, Plaintiff informed two detention officers that she was being sexually harassed by Stephens. Detention center officials initiated protocols for Plaintiff to file an official complaint against Stephens. Stephens attempted to remove Plaintiff from the detention center, but was prohibited from doing so by detention center officers. Stephens then left the area.

Stephens was subsequently fired by the Defendant Sheriff and arrested by the Sheriff's investigators for Criminal Sexual Conduct (Third Degree) and Misconduct in Office.

Plaintiff brought the instant action in this Court alleging that Stephens acted unlawfully and engaged in a series of acts of sexual misconduct. Based upon these allegations, Plaintiff asserts causes of action against the Defendants Lott in his capacity as Richland County Sheriff and

Richland County Sheriff's Department (hereinafter, "RCSD") for negligence and assault and battery against pursuant to the South Carolina Tort Claims Act.¹

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

III. ANALYSIS

A. Generally

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

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

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. *See, Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. *See*, S.C. Code Ann. §15-78-40. Additionally, the Act continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit.

B. Immunity under S.C. Code Ann. §15-78-60(17)

S.C. Code Ann. §15-78-60(17) provides that governmental entities are not liable for a loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." This Court recognizes that the Defendant Sheriff is a constitutional officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina. Thus, the determination by this Court as to any potential liability on the part of the Defendant Sheriff turns solely on the clear language of the South Carolina Tort Claims Act.

Plaintiff's claims in her Complaint exclusively center on the alleged actions of Tracy Stephens, who was acting as a RCSD Sheriff's Deputy. In his motion, the Defendant Sheriff avers that, based upon the record in this matter, Stephens' actions clearly fall under this relevant exception prescribed by the Tort Claims Act. Therefore, this Court is tasked with deciding as a matter of law whether Stephens' conduct at the relevant times were (1) undertaken outside of the scope of his official duties; or that which constituted (2) actual malice; or (3) an intent to harm Plaintiff.

ISSUE: SCOPE OF OFFICIAL DUTIES

The Act's definition of an "employee" refers to "any officer, employee, or agent 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." S.C. Code Ann. § 15-78-30(c).

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.” S.C. Code Ann. § 15-78-20(f); *see also*, *Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct. App.1998) (noting that § 15-78-20(f) limits coverage to employees acting within the scope of official duty). According to the Act, “‘Scope of official duty’ or ‘scope of state employment’ means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C. Code Ann. § 15-78-30(i).

In the present case, on May 23, 2013, Stephens was arrested for Criminal Sexual Conduct (Third Degree) and Misconduct in Office. On September 11, 2013, these felony charges were True Billed by a Richland County Grand Jury. Accordingly, by way of the allegations in the Complaint as well as the separate determinations of probable cause, it is uncontroverted that Stephens: (1) sexually harassed and molested Plaintiff; (2) expressly forced and coerced her to expose herself and fondle herself; (3) committed an assault and battery on Plaintiff; and (4) offered to drop charges against her in exchange for sexual favors.

The Defendants argue that a law enforcement officer who explicitly commits an unlawful act (*i.e.*, Stephens using coercion to engage in a sexual battery upon a subject and by offering to dismiss charges in exchange for sexual favors) is not only exceeding his authority but clearly acting in contravention with the official business of the Sheriff.² This Court agrees.

“If scope of employment is a broader term than scope of official duties -- the term used in the governmental immunity statute -- it follows that acts not within the scope of employment are not within the scope of official duties.” *See, Frazier v. Badger*, 361 S.C. 94, 102, 603 S.E.2d 587, 591 (2004). Respondeat Superior applies in situations where the employee conduct *is within the scope* of his official duties. Where the servant is not serving the master’s business purpose, the relationship is suspended. No matter the length of time. *See, Doe v. Smith*, No.2014-UP-267, 2014 WL 2968925, at *1 (June 30, 2014).³

² *See, Crittenden v. Thompson-Walker Co.*, 288 S.C.112, 341 S.E.2d 385 (Ct. App. 1986) (distinguishing scope of servant’s employment from scope of servant’s authority and holding acts outside servant’s authority are still within his scope of duty if done in furtherance of master’s business).

³ Courts have generally recognized that respondeat superior holds master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant’s employment. *See, e.g., Froneburg v. Smith*, 406 S.C. 37, 743 S.E.2d 625, 633 (Ct. App. 2013). However, if the servant steps outside from the master’s business for some wholly disconnected purpose, the

South Carolina courts have specifically considered whether an employee was acting within the scope of his employment when he commits a sexual assault. The weight of authority advances the proposition that an employee's sexual harassment and/or assault is not within the employer's scope of employment. *See, e.g., Frazier, Supra* (holding an assistant principal was acting outside the scope of his employment when he made sexual advances on a teacher).

This analysis has been similarly applied to law enforcement officers. In *Doe v. S.C. State Budget & Control Bd.*, 329 S.C. 214, 494 S.E.2d 469 (1998), the Court reviewed the employer's exposure in light of a police officer's sexual assaults of women during traffic stops. In the underlying facts, the officer would stop female motorists on suspicion of DUI and give them the option of being arrested or having sexual intercourse. The Court observed that "no cogent argument could be made" that this police officer "was furthering the business of his employer at the time he sexually assaulted" the females. *Id.*, at 473. Therefore, the officer's acts were not within the scope of his official duties, and therefore the general tort liability policy did not provide coverage for the female subject's injuries. *Id.*, at 472.

In subsequent rulings, a Sheriff was found to be acting outside the scope of his employment when he sexually assaulted subordinates. *See, Loadholt v. S.C. State Budget & Control Bd.*, 528 S.E.2d 670 (Ct. App. 2000). Although the Sheriff made the victims report to his office to discuss county business and was working in his county office, the *Loadholt* Court found that his official duties did not encompass all conduct he engaged in while on duty, including the alleged sexual assault as he was not furthering the business of his employer at that time. Correspondingly, in *Padgett v. S.C. Ins. Reserve Fund*, 531 S.E.2d 305 (Ct. App. 2000), the Court of Appeals held that a professor was acting outside the scope of his official duties when he sexually assaulted a student.⁴

Therefore, this Court rules in accordance with prevailing South Carolina law that, "sexual harassment by a government employee is not within the employee's 'scope of employment.'" *Frazier*, 603 S.E.2d at 591.

master/servant relationship is temporarily suspended. No matter how short the time. *See, Kase v. Ebert*, 392 S.C. 57, 61-62, 707 S.E.2d 456, 458 (Ct. App. 2011).

⁴ *See, e.g., South Carolina Med. Malpractice Lab. Ins. J.U.A. v. Ferry*, 291 S.C. 460, 663, 354 S.E.2d 378, 381 (1987) (explaining that the scope of professional services does not include all forms of conduct simply because the person in the profession engages in such conduct).

ISSUE: ACTUAL MALICE AND INTENT TO HARM

"Malice is the deliberate intentional doing of a wrongful act without just cause or excuse." See, *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982). "Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person." See, *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Actual Malice has been found where the "defendant actuated by ill will in what he did with the design to causelessly and wantonly injure the plaintiff." See, *Swicegood v. Lott*, 379 S.C. 346, 353, 665 S.E.2d 211, 213 (Ct. App. 2008).

That as to the intent to harm element, the Court of Appeals has held that an "intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in misconduct towards an adult. *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 9, 530 S.E.2d 132, 136 (Ct. App. 2000).

Notably and by way of responses to Defendants' Request to Admit pursuant to Rule 36, SCRCF, Plaintiff has adopted the position in this litigation that Stephens' actions with respect to Plaintiff as alleged in the Complaint constituted both actual malice and intent to harm. Moreover, in Plaintiff's own deposition testimony, she repeatedly characterized Stephens' state of mind as "sick" and stipulated that Stephens acted with an intent to harm and actual malice.

In this action, Plaintiff elected to not name as a party-defendant the specific person who she claims committed the various illegal acts and/or torts upon her.⁵ Instead, Plaintiff identified the Richland County Sheriff, the law enforcement agency which employed Stephens at the relevant times. Taking the facts in a light most favorably to Plaintiff, the principal or sole RCSD employee whose acts or omissions with respect to these criminal and intentional acts was Stephens. Yet, Stephens was never named as a party-defendant. Therefore, the Defendant Sheriff -- the only law enforcement party-defendant in this action -- is entitled to absolute sovereign immunity for any such alleged loss resulting from his employee's conduct constituting actual fraud and/or intent to harm pursuant to §15-78-60(17).

⁵ Pursuant to S.C. Code Ann §15-78-70(a) and (b), an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

C. Negligent hiring, training, supervision, and retention

The Defendants additionally argue that they are entitled to summary judgment with respect to Plaintiff's cause of action asserting negligent hiring, negligent training, negligent supervision, and negligent retention.

In *James v. Kelly Trucking Co.*, 377 S.C. 628; 661 S.E.2d 329, (2008), the Supreme Court held that:

Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort. In circumstances *where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public*, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public. As this recitation suggests, the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct.

See Id., at 330-331, (Internal citations omitted) (Bolded for emphasis)

"To state a claim for negligent retention, a plaintiff must allege the employer had knowledge of its employee's habit of prior wrongdoings, and despite the foreseeability of the harm to third parties, the employer failed to terminate the offending employee before he caused the harm." *See, Callum v. CVS Health Corp.*, 137 F.Supp.2d 817, 860 (D.S.C. 2015).

However, our Courts have addressed the type of wrongdoing which would provide suitable notice to the employer. Thus, any prior act must bear key similarities to the consequent ultimate harm, *to wit*:

Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements -- knowledge of the employer and foreseeability of harm to third parties. These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. *From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.* Such factual considerations -- especially questions related to proximate cause inherent in the concept of foreseeability -- will ordinarily be determined by the fact finder, and not as a matter of law.

Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.

See, Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447, 450 (Ct. App. 2005).

The Defendants argue the lack of competent evidence that Stephens engaged in previous conduct for which to place RCSD on notice that he created an unreasonable or undue risk of harm to the public. Plaintiff argues that there were two prior instances in which the Defendants are directly and independently liable in this regard.

PREVIOUS INSTANCE: MICAH SANDERS

Plaintiff contends that she is not the first person this Deputy had sexually harassed and molested. In fact, there is a pattern of this Deputy doing the same type of activities. Specifically, Plaintiff contends that Stephens had sexually harassed and molested a female subject identified as Ms. Micah Sanders.

On May 16, 2013, Ms. Sanders provided a written statement to the Defendants' Internal Affairs investigator, advising the Defendants of Stephens' actions at the time of her arrest *to wit*: On May 14, 2013, Stephens placed Ms. Sanders under arrest for shoplifting. During the transport to the detention center, Stephens asked that Ms. Sanders, "help him help her," without specifying what he meant by doing so. According to Ms. Sanders, "Stephens also stopped our ride right before we entered the (detention) center and asked once again: 'Did I have any weapons?' (He also) asked, 'What was pointing out of my chest or the bulge in my chest?' and I said, 'Nothing.' He did not do anything appropriate other than ask me the [sic] questions."

This Court finds that there is no evidence that, with respect to Ms. Sanders, Stephens acted in a similar manner with that of his alleged treatment of Plaintiff. At worst, Ms. Sanders stated that Stephens asked questions that might be construed as inappropriate or harassing in nature. However, Sanders does not contend -- nor has Plaintiff presented any evidence -- that Stephens coerced, molested, assaulted, or committed a sexual battery upon her.

Moreover, the Defendants argue that, assuming *arguendo* that Stephens treatment of Sanders did suggest that Stephens was an unreasonable risk of harm to the public, the factual timeline clearly reveals that the Defendants were never placed on actual or constructive of such risk. This Court recognizes that Ms. Sanders had interacted with Stephens hours before Stephens' arrest of Plaintiff. However and pursuant to positions adopted in discovery responses

in this matter, Ms. Sanders advised the Defendants of her involvement the day after Stephens' alleged assault upon Plaintiff. Thus, any and all pertinent information was relayed to the Sheriff after Stephens' involvement with Plaintiff and therefore, the Sheriff never had the benefit of notice of such wrongdoing.

PREVIOUS INSTANCE: STEPHENS' TEENAGED SON

Plaintiff presented evidence relating to an event in which Stephens and his teenaged son were allegedly involved in verbal exchange that turned physical in the front yard of their residence. On March 5, 2013, Stephens' wife initiated an internal affairs complaint reporting that her son was being obstinate and disrespectful to Stephens. She advised IA investigators that as Stephens grabbed their son, Stephens' hand inadvertently struck her son's eye. The three individuals -- Stephens, Mrs. Stephens, as well as the teenaged boy -- all stated that Stephens' actions were likely an accident and not intentional.

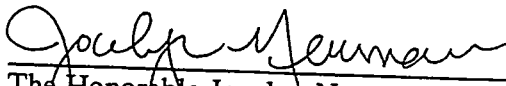
The *Doe v. ATC* Court, *Supra*, considered the matter of an employee inappropriately having touched the legs of, kissed, and making persistent sexual comments to a disabled adult female. The employee had a prior incident with another employee in which he made sexually inappropriate comments to her. The Court of Appeals held that, although both incidents were sexual in nature, there lacked a sufficient nexus to the ultimate harm as the prior incident was a "far cry from the reprehensible, persistent pattern of abuse" against the disabled female.

In this March 2013 event, there appears to be no dispute that Stephens was parenting a disrespectful and recalcitrant teenaged son during which time Stephens accidentally struck him in the eye. The record is devoid of evidence that Stephens acted in a deliberate and intentional manner with respect to his son. Regardless, this Court observes that these domestic-related circumstances were of a different and distinct nature for which to establish a foreseeable risk for the wrongful misconduct as is alleged in the case at bar.

As a result, Plaintiff has presented no previous circumstance in which the Defendant Sheriff had actual or constructive knowledge that Stephens -- either while on duty or otherwise -- engaged in any form of sexual harassment, discrimination, abuse, or misconduct with respect to female subjects or arrestees. Consequently and pursuant to *Doe v. ATC* Court, *Supra*, this Court concludes that no reasonable fact finder can find a nexus or similarity between the prior acts and the ultimate harm caused and summary judgment is warranted.

IT IS THEREFORE ORDERED that the motion for summary judgment with respect to the Defendants Sheriff Lott and the RCSD is **GRANTED** and that the above-entitled action is hereby dismissed with prejudice.

IT IS SO ORDERED.



The Honorable Jocelyn Newman
Presiding Judge, Fifth Judicial Circuit

November 9, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Valeria Farr

Plaintiffs,

v.

Leon Lott
in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department)

Defendants.

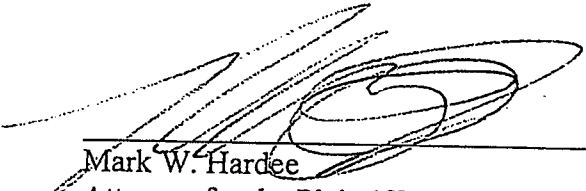
SUMMONS
(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2015 APR 29 PM 4:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, 2231 Devine Street, Suite 202, Columbia, South Carolina 29205, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE HARDEE LAW FIRM



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Columbia, South Carolina
April 29, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Valeria Farr)
Plaintiff)
vs.)
Leon Lott)
in his capacity as Richland County Sheriff)
and the Richland County Sheriff's Department)
Defendants)

IN THE COURT OF COMMON PLEAS

COMPLAINT
Jury Trial Requested

RICHLAND COUNTY
FILED
2015 APR 29 PM 4:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Plaintiff complaining of the Defendants would respectfully allege:

1. The Plaintiff is a citizen and resident of Richland County, South Carolina.
2. The Defendant Leon Lott is the elected sheriff of Richland County, South Carolina, and to enabled him to execute his statutory duties, he has created the Richland County Sheriff's Department, which operates in Richland County, South Carolina. The Defendants employed Deputy Sherriff's as employees and agents to work on there behalf.
3. The Plaintiff was previously a military police officer in the army and was deployed in Iraq.
4. Due to her military service and events she witnessed and experienced in a combat area, the Plaintiff developed, and continues to suffer from, Post-Traumatic Stress Syndrome.
5. On May 15, 2013, the Plaintiff was driving her mother's car, and noticed that the breaks were not working properly. She had trouble stopping the vehicle and had to pull into a Waffle House next to a Kangaroo gas station on Two Notch Rd. The Plaintiff walked

over to the Kangaroo gas station to buy a bottle of brake fluid, when she was approached by a Deputy with the Richland County Sheriff Department. As a Deputy of the Richland County Sheriff's Department, he was an employee and agent of the Defendants working within the scope of his duties.

6. The Deputy questioned her and asked for her driver's license.
7. Due to the Post-Traumatic Stress Syndrome suffered by the Plaintiff, she panicked and ran from the Deputy.
8. The Plaintiff was eventually apprehended by the Deputy, arrested and put in the back of his marked vehicle. She was placed into the back of the Deputy's vehicle to be transferred to the Alvin S. Glenn Detention Center.
9. While in the Deputy's vehicle, he began telling her that they could "work something out". He then pulled off to the side of the road on I-77 south bound, and began asking her if she had any weapons or anything like that.
10. The Deputy asked her "what's that bump in front of your dress", at which time the Plaintiff replied that it was her private area. The Deputy then asked to see it, while he was shining his flash light in between the Plaintiff's legs.
11. Since she was terrified, compounded by her PTSD, she did not resist, and allowed the Deputy to view between her legs.
12. After a while the Deputy then pulled back onto the highway and began driving the vehicle. At that time he told her that he would work something out with her if she would "help him out". The Deputy stopped his vehicle on Bluff Rd, got out and opened the passenger door to shine his flashlight between the Plaintiff's legs. Because the Plaintiff was so terrified, the Plaintiff did not resist his efforts. The Deputy then asked what was

- inside of her vagina, and then shined the light on it. Because she was terrified, the Plaintiff inserted her finger into her vagina and rubbed herself while the Deputy watched.
13. At this point the Plaintiff became so terrified that she began shaking, the Deputy again directed the flashlight on her private area.
14. After a while the Deputy got back in the vehicle and proceeded to take her to the Alvin S. Glenn Detention Center telling her “yea I’m going to help you out. You will be able to work something out” and told her he would drop one of the violations when they went to court.
15. The Deputy then pulled over for a third time on the street that leads into the Alvin S. Glenn Detention Center in front of a bail bonding office and opened the door of the vehicle and asked the Plaintiff if she needed to rub and check her upper thighs to see if they were alright. He then asked her what she had in her top. The Plaintiff then attempted to pat her chest area with her handcuffed hands to show the Deputy that there was no weapons there. However, the Deputy said that he had not seen enough, and wanted to see more. The Plaintiff then pulled down her top exposing her breast. The Deputy was shining his flashlight watching her.
16. The Deputy eventually got back into the vehicle and took the Plaintiff to the Alvin S. Glenn Detention Center. While there, the Plaintiff encountered two corrections officers, and informed them she was being sexually harassed by the Deputy. The officers notified their Sargent, who made phone calls and asked if the Plaintiff would file a complaint. The Deputy attempted to take the Plaintiff back out of the detention center, but was prohibited from doing so by the correctional officers. He then left.

17. The Plaintiff was not the first person this Deputy had sexually harassed and molested. In fact there is a pattern of this Deputy doing the same type of activities.
18. The Deputy was subsequently fired and arrested.

FIRST CAUSE OF ACTION
Negligence

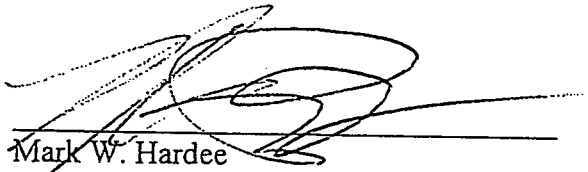
19. The Defendants were negligent, grossly negligent, willful, wonton and reckless in the following particulars:
- A). By sexually harassing and molesting the Plaintiff.
 - B). By the negligent hiring of the Deputy in question.
 - C). By the negligent retention of the Deputy in question.
 - D). For the negligent training of the Deputy in question.
 - E). For failing to properly supervise the Deputy in question.
 - F). By offering to drop charges against the Plaintiff for sexual favors.
 - G). By an agent and employee of the Defendants misusing his authority and victimizing a citizen of Richland County.
20. Due to the negligent, gross negligent, willful, wonton and reckless behavior by the Defendants, the Plaintiff suffered severe emotional injuries, including the exasperation of her PTSD she developed in service to our country. These actions caused severe mental and emotional distress, which manifested itself in physical ailments including, loss of sleep, loss of appetite, bouts of depression, and other mental and emotional problems leaving her disabled and unable to work.

SECOND CAUSE OF ACTION

21. A member of the Richland County Sherriff's Department working for the Defendant Leon Lott, committed assault and battery on the Plaintiff in the course of his duties.
22. This was accomplished by the Deputy using his authority to force the Plaintiff to expose herself, and fondle herself.
23. Due to the unwanted and outrageous assault and battery, the Plaintiff has suffered severe mental and emotional distress which manifested itself in physical ailments including, loss of sleep, loss of appetite, bouts of depression and other mental and emotional problems leaving her disabled and unable to work.

WHEREFORE, having fully complained of the Defendants, the Plaintiff prays for actual and punitive damages in an amount to be determined by a jury, for the cost of this action, and for such other and further relief as the court deems just and proper.

THE HARDEE LAW FIRM



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(803) 799-0470 (fax)

Columbia, South Carolina
April 29, 2015

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

5. That as to Paragraph Two (2), the Defendants deny that the RCSD is a legal entity of the State, but assert that the proper entity is the Sheriff of Richland County in his official capacity and that his office constitutes a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* and is under the jurisdiction of said Act. The Defendants deny that any of Plaintiff's causes of action are meritorious. Except as stated herein, the Defendants deny this paragraph and demand strict proof thereof.

6. That as to Paragraph Four (4), the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, deny same and demand strict proof thereof. Further responding, the Defendants crave reference to any and all medical or psychological diagnoses as well as supporting health care records and documentation for the most accurate information of what is contained therein.

7. That as to Paragraphs Five (5), Six (6), and Seven (7), the Defendants only admit upon information and belief that on May 15, 2013 at or about 2:00 a.m., RCSD Deputy Tracy Stephens observed Plaintiff operating her vehicle while committing multiple criminal and/or traffic infractions. Further responding, Tracy Stephens initiated a lawful traffic stop at or near 8310 Two Notch Road in Richland County and placed Plaintiff in investigative detention. At such time, Plaintiff fled on foot. Except as stated herein, the Defendants deny these paragraphs and demand strict proof thereof.

8. That as to Paragraph Eight (8), the Defendants generally admit same. The Defendants additionally assert upon information and belief, that following a lawful search of Plaintiff's vehicle and after conducting an investigation, Tracy Stephens charged Plaintiff

ADL
#2

with Driving under the Influence, Simple Possession of Marijuana, Driving Under Suspension, and Open Container.

9. That as to Paragraphs Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), and Fifteen (15), the Defendants lack sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, deny same and demand strict proof thereof. To the extent that these paragraphs contain factual allegations against the Defendants, the Defendants categorically deny same and further assert that as to the allegations contained within in these paragraphs, Tracy Stephens was acting outside the scope of his employment as a Richland County deputy and not acting in the performance of his official duties as a law enforcement officer.

10. That as to Paragraph Sixteen (16), the Defendants only admit upon information and belief that on May 15, 2013 at or about 4:36 a.m., Plaintiff was booked into the Alvin S. Glenn Detention Center ("ASGDC"). The Defendants further allege that at or about the time of booking, Plaintiff advised one or more ASGDC employees that she was sexually harassed by Tracy Stephens. Except as stated herein, the Defendants deny this paragraph and demand strict proof thereof.

11. That as to Paragraph Seventeen (17), the Defendants deny same upon information and belief and demand strict proof thereof.

12. That as to Paragraph Eighteen (18), the Defendants admit same.

13. That as to Paragraphs Nineteen (19), Twenty (20), and Twenty-three (23), the Defendants deny same in its entirety and demand strict proof thereof.

14. That as to Paragraphs Twenty-one (21) and Twenty-two (22), the Defendants only admit upon information and belief that at the relevant times Tracy Stephens engaged in criminal sexual conduct and misconduct in office with respect to Plaintiff. The Defendants further assert that in committing these criminal offenses, Tracy Stephens was acting outside

ADP
#3

the scope of his employment as a Richland County deputy and not acting in the performance of his official duties as a law enforcement officer. Except as stated herein, the Defendants deny these paragraphs and demand strict proof thereof.

15. Any and all averments inconsistent with the foregoing are denied. Further, the Defendants assert that Plaintiff is not entitled to the relief requested in the Complaint, or any other relief against the Defendants.

FOR A FOURTH DEFENSE

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

FOR A FIFTH DEFENSE

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

FOR A SIXTH DEFENSE

18. The Defendants are entitled to immunity under *Long v. Seabrook* and its progeny.

FOR A SEVENTH DEFENSE

19. The Defendants allege, upon information and belief, that any damages alleged to have been caused by the Defendants, which are specifically denied, must be apportioned between the Defendants and other tortfeasors pursuant to § 15-78-100(c) of S.C. Code of Laws as amended.

FOR AN EIGHTH DEFENSE

20. The Defendants allege any and all claims for punitive damages should be dismissed as such damages are not properly recoverable under the common laws of the

ADL
#4

State of South Carolina or the South Carolina Tort Claims Act, S.C. Code Annotated § 15-78-120(b).

FOR A NINTH DEFENSE

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

FOR A TENTH DEFENSE

22. The Defendants allege upon information and belief that Plaintiff's injuries and damages, if any, were due to and proximately caused by the sole negligence, reckless, willful, and wanton conduct on the part of someone other than the Defendants, and therefore the Defendants are not liable to Plaintiff for such actions in any way.

FOR AN ELEVENTH DEFENSE

23. The Defendants allege, upon information and belief, that any injury or damages alleged in Plaintiff's Complaint were due to, occasioned by, or caused by intervening criminal acts on the part of someone other than the Defendants, without which acts Plaintiff would not have sustained any injuries or damages as are set forth in the Complaint, all of which the Defendants plead as a bar to this action.

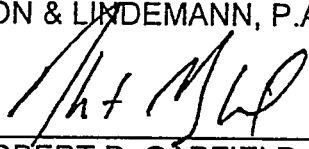
FOR A TWELFTH DEFENSE

24. Plaintiff's causes of action are, in whole or in part, barred by collateral estoppel and/or issue preclusion.

ADL
#5

WHEREFORE, having fully answered the Complaint of Plaintiff, the Defendants Leon Lott In his capacity as Richland County Sheriff and the Richland County Sheriff's Department pray that same be dismissed with prejudice and for such other and further relief as the Court deems just and presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: 

ROBERT D. GARFIELD
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
F: (803) 806-8855
rgarfield@dml-law.com

Counsel for Defendants

Columbia, South Carolina

June 4, 2015

106
#6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) Civil Action Number: 2015-CP-40-2679

Valeria Farr,
Plaintiff,

v.

Leon Lott In his capacity as Richland
County Sheriff and the Richland County
Sheriff's Department,
Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant, does hereby certify that service of the **Answer** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 4th day of June, 2015, addressed as follows:

Mark W. Hardee, Esquire
2231 Devine Street, Suite 202
Columbia, South Carolina 29205

Shelley E. Stafford

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2015-CP-40-2679

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT ON
BEHALF OF DEFENDANTS**

**[PRIORITY MATTER PURSUANT
TO RULE 40(a)(2), SCRCP]**

Leon Lott In his capacity as
Richland County Sheriff and the
Richland County Sheriff's Department,

Defendants.

TO: MARK W. HARDEE, ESQUIRE, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Leon Lott In his capacity as Richland County Sheriff and the Richland County Sheriff's Department (hereinafter, "RCSD") will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 56, SCRPC, granting summary judgment to the Defendants and dismissing with prejudice the causes of actions set forth in the Plaintiff's Complaint. The Defendants' motion is based upon the following grounds:

1. The Defendants are entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(17).
2. The Defendants are entitled to absolute sovereign immunity under S.C. Code Ann. § 15-78-60(20).
3. The Plaintiff is unable to prove the Defendants acted with negligence or gross negligence with regards to the circumstances relevant to the Plaintiff's claim.

4. As a matter of law, the Plaintiff can prove no injury that resulted from the actions or inactions of the Defendants.

5. Any injuries and damages sustained by the Plaintiff as set forth in the Complaint were due to and caused by the intervening or superseding negligence/actions of a third party.

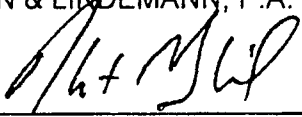
6. Any injuries and damages sustained by the Plaintiff as set forth in the Complaint were due to and caused by intervening criminal acts on the part of someone other than the Defendants.

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

The Defendants' motion is based upon the pleadings filed in this case; the General Sessions file of *State of South Carolina v. Tracy Alexander Stephens*, Indictment Nos. 2013GS4005188 and 2013GS4005185; Plaintiff's Responses to First Set of Requests for Admissions and Supplementary Interrogatories to Plaintiff on Behalf of Defendants dated February 8, 2016; the rules of court; and such other matters as may be presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY:


ROBERT D. GARFIELD
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
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T: (803) 806-8222
rgarfield@dml-law.com

Counsel for Defendants

Columbia, South Carolina

May 5, 2016

106
#2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) Civil Action Number: 2015-CP-40-2679

Valeria Farr,
Plaintiff,

v.

Leon Lott
In his capacity as Richland County Sheriff
And the Richland County Sheriff's
Department,

Defendants.

CERTIFICATE OF SERVICE

MAY -5 PM 4:12

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Cover Sheet, Notice of Motion and Motion for Summary Judgment on Behalf of Defendants** in the above-captioned action was made upon all counsel of record by electronic mail and by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 5th day of May, 2016, addressed as follows:

Mark W. Hardee, Esquire
2231 Devine Street, Suite 202
Columbia, South Carolina 29205
mwhardee@bellsouth.net

Shelley E. Stafford

2. Following her arrest, Plaintiff complained that during the interim in which she was transported, she was sexually harassed and molested by Mr. Stephens.

3. On May 22, 2013, Mr. Stephens' employment with the Defendants was severed. Moreover, arrest warrants were issued against Mr. Stephens for Criminal Sexual Conduct (Third Degree) and Misconduct in Office with respect to these alleged actions. See, Richland Co. Public Index, Warrant Nos. 2013A4010400118 and 2013A4010400119.

4. On September 11, 2013, the Richland County Grand Jury issued true billed indictments pertaining to Mr. Stephens as to the aforementioned charges. See, *Id.*, Indictment Nos. 2013GS4005188 and 2013GS4005185.

5. Mr. Stephens' charges are presently pending in General Sessions Court for Richland County and is being prosecuted by the Fifth Circuit Solicitor's Office.

6. By way of the undersigned counsel's communication on today's date with the Assistant Solicitor prosecuting same, the undersigned is informed that the State intends to call this matter to trial after June 2, 2016. The undersigned is further advised that Mr. Stephens is being represented by Todd Rutherford, Esq., who has protection from court obligations until after the adjournment *sine die* of the General Assembly.

7. It is undisputed that the issues in the instant civil action and criminal matter overlap and are factually coextensive. In her Complaint, Plaintiff alleges that Mr. Stephens sexually harassed and molested her and then he further misused his authority as a law enforcement officer by offering to drop her charges in exchange for sexual favors. As a result of Mr. Stephens' actions, Plaintiff avers that she suffered emotional damages, including but not limited to an exacerbation of a previously diagnosed Post Traumatic Stress Disorder. This civil suit alleges negligence and assault and battery solely against the Defendants, Mr. Stephens' employer at the time of the relevant events.

8. During the upcoming criminal trial, Plaintiff, as the State's victim/witness, and Mr. Stephens may potentially furnish sworn testimony. Further, to the extent that Mr. Stephens is convicted of one or both of the pending criminal charges, such an occurrence will have a significant effect on the viability of Plaintiff's civil claims in addition to the defenses asserted by the Defendants, including but not limited to those contained within the Defendants' Answer in this matter.

9. The Court has discretion to stay a civil action in its entirety. The Supreme Court has determined that "it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended." See, *Wallace v. Kato, et al*, 549 U.S. 384, 393-394 (2007)(citing *Heck v. Humphrey*, 512 U.S. 477, 487-488, n.8 (1994)).

10. It is therefore respectfully requested that the Court stay the present civil action in its entirety pending the outcome of the parallel criminal prosecution currently underway. Once the criminal charges are subsequently resolved, the parties can then pursue a status conference with the Chief Administrative Judge, at the Court's preference.

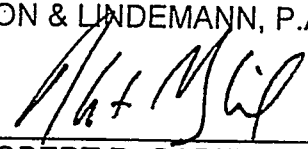
The Defendants submit that the requested relief is not sought for the purpose of delay; would cause no prejudice to Plaintiff; is in the interests of justice and appropriate under the circumstances.

The Defendants' motion is based upon the pleadings filed in this case, the Richland County Public Index information pertaining to *State of South Carolina v. Tracy Alexander Stephens* referenced herein, the statutory and common law of the State of South Carolina, the rules of court, and such other matters as may be properly presented to the Court.

ADL
#3

DAVIDSON & LINDEMANN, P.A.

BY:



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rgarfield@dml-law.com

Counsel for Defendants

Columbia, South Carolina

May 3, 2016

ADG
#4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) Civil Action Number: 2015-CP-40-2679

Valeria Farr,
Plaintiff,

v.

Leon Lott
In his capacity as Richland County Sheriff
And the Richland County Sheriff's
Department,

Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Cover Sheet, Notice of Motion and Motion to Stay Proceedings on Behalf of Defendants** in the above-captioned action was made upon all counsel of record by electronic mail and by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 3rd day of May, 2016, addressed as follows:

Mark W. Hardee, Esquire
2231 Devine Street, Suite 202
Columbia, South Carolina 29205
mwhardee@bellsouth.net

Shelley E. Stafford

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Valeria Farr,

Plaintiff

vs.

Leon Lott in his capacity as Richland County
Sheriff and the Richland County Sheriff's
Department,

Defendants

IN THE COURT OF COMMON PLEAS

Civil Action No: 2015-CP-40-2679

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

RICHLAND COUNTY
FILED
2016 OCT 11 PM 4:34
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

FACTS

May 15, 2013, Valeria Farr was arrested by Richland County deputy Tracy Stephens for minor traffic violations and a simple possession charge.

While transporting the Plaintiff to the detention center, deputy Stephens acting under color of law, wearing a uniform issued by the Richland County Sheriff, driving a Richland County Sheriff's Department vehicle and armed with a weapon provided by Richland County Sheriff acted violently and aggressively to Ms. Farr, by sexually assaulting her. Deputy Stephens demanded that Ms. Farr perform various sex acts on herself while he watched. (statement of Farr)

The Plaintiff has sued Richland County Sheriff Leon Lott for the actions of his agent, deputy Stephens, as well as his hiring and retention of deputy Stephens, even though Sheriff Lott

knew that deputy Stephens had anger management problems, and was criminally violent towards weaker individuals. (complaint)

STANDARD

Summary judgment should only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law, Rule 56 (c) SCRPC; *Lanham v. Blue Cross & Blue Shield of S.C., Inc* 349 SC 356,361,563 SE2d 331,333 (2002) "Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law and should not be granted even when there is no dispute as to evidicery facts if there is disagreement concerning the conclusions to be drawn from those facts," *Lanham* 349 S.C.at 362, 563 SE2d at 333. All ambiguities, conclusions, and inferences arising from the evidence should be viewed in the light most favorable to the non-moving party. *Williams v. Chesterfield Lumber Co.* 267 S.C. 607, 230 SE2d 447 (1976).

"In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co. Inc.* 381 S.C. 326, 330, 673 SE2d 801, 803 (2009)

ARGUMENT

Through discovery, the Plaintiff discovered that deputy Stephens had two prior complaints against him in the months prior to his activities towards Ms. Farr as well as an incident happening the same night that Ms. Farr was assaulted. (see incident reports dated March 5, 2013 and April 15, 2013; statement of Micha Sanders) One of the prior incidents occurred March 5, 2013 and involved Mr. Stephens acting in an aggressive manner, using poor judgment,

and poor anger management against a weaker individual (his stepson). The two incidents, prior to the incident with Ms. Farr, were known to Sheriff Lott, and he did nothing to protect the public from deputy Stephens, by either retraining, suspending or firing the deputy.

In fact, one of the was incidents investigated as a criminal matter. On March 5, 2013 officer Stephens apparently struck his stepson causing him to get a black eye. (incident report dated March 5, 2013) This matter was investigated as a criminal matter, However, unlike every other law enforcement agency in South Carolina, Sheriff Lott chooses to conduct his own internal criminal investigations, rather than farm it out to SLED or some other outside agency.

Although, Sheriff Lott's employees investigating the crime, felt that there was enough to go forward with the criminal investigation. However, in Fact, the investigator told the victim that either a judge or the prosecutor would decide whether to prosecute. Sheriff Lott apparently saw officer Stephen's defense attorney, Representative Todd Rutherford, and based on his conversation with Mr. Rutherford, he decided not to take any further action against deputy Stephens. (investigation report)

The Plaintiff has retained an expert witness, James Flowers who has experience investigating against law enforcement officers when he was employed by SLED. (affidavit of Mr. Flowers) Mr. Flowers has opined that Sheriff Lott was negligent in his investigation of the prior criminal actions of deputy Stephens, and that deputy Stephens should not have been working at the time of the incident with Valeria Farr as he should have been terminated due to his prior transgressions. (affidavit of Mr. Flowers)

There is also evidence that Sheriff Lott allowed an inappropriate culture to evolve at the Sheriff's department.

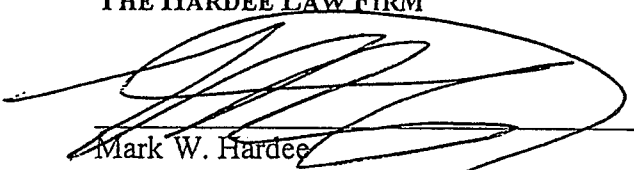
When Tracy Stephens was asked if people at the sheriff's department joked around about sexual situations and dealings with suspects to create a hostile sexual environment, he answered he did not remember. (deposition of Stephens) When asked if he sexually harassed Ms. Farr so he could brag to his co-workers, Mr. Stephens plead the Fifth Amendment. (deposition of Stephens).

There is more than enough evidence in this case for a jury to find that Sheriff Lott was negligent in his retention of deputy Stephens and training deputy Stephens, as well as his supervision of deputy Stephens, all of which were the approximate cause of the injuries to Ms. Farr.

CONCLUSION

Based on the above the Summary Judgment Motion should be denied.

THE HARDEE LAW FIRM



Mark W. Hardee

Attorney for the Plaintiff

2231 Devine St, Suite 202

Columbia, South Carolina 29205

(803) 799-0905

(803) 799-0470 (fax)

Columbia, South Carolina
October 11, 2016

STATEMENT OF VALERIA FARR

ATTORNEY-CLIENT DOCUMENTS

RICHLAND COUNTY SHERIFF'S DEPARTMENT

1A-061 13

Complaint Form

I, Valeria Nichole Farr do hereby affirm that I wish to file a complaint against an employee of the Richland County Sheriff's Department. I further affirm that the information provided by me is true and complete to the best of my knowledge. I have been advised that any false, misleading or untrue statements, accusations or allegations made by me may subject me to civil and/or criminal prosecution under Section 16-9-30, of the South Carolina Code of Laws which prohibits any "False swearing before persons authorized to administer oaths." I further understand that in the course of an investigation of my complaint, I may be required to meet with a member(s) of the Richland County Sheriff's Department to discuss this complaint further, or submit to a polygraph examination. VNF

I HAVE (READ/HAD READ TO ME) THE ABOVE ADVISEMENT AND I UNDERSTAND ITS CONTENTS.

VNF

Complainant's Name: Valeria Nichole Farr
(Print)

DOB: 07/26/85

Race: BLK

Sex: F

Address: 1716 Dupont Dr
Street

Columbia, S.C.
City

29223
Zip Code

Residence Telephone: 8037089212

Business Telephone: 8033622396

Name(s) and description of personnel involved:

Officer's Name (Print)	Division	S#	Race	Sex	Tag #
<u>Officer Stephen</u>			<u>BLK</u>	<u>Male</u>	

Officer's Name (Print)	Division	S#	Race	Sex	Tag #

Name of Officer Taking Complaint: Eleanor B. Savage
(Print)

Signature of Complainant: [Signature]

Date of Complaint: 05-15-2013

Time of Complaint: 1420

Sworn to me this 15th day of May, 20013

Eleanor B. Savage
Notary Public

My Commission Expires: 4/7/2019

ATTORNEY-CLIENT DOCUMENTS

RICHLAND COUNTY SHERIFF'S DEPARTMENT

Complaint Form

1A-06113

Description of complaint: I, ~~Valeria~~ N. Farr was in fact driving in
my mother Valeria Jacobs 2001 Chevrolet Blazer when I noticed
that my brakes were not working. I attempted to pull into the
Kangaroo Gas Station on Two Notch rd, but the truck wouldn't
slow down so I had to ~~be~~ going and pull into the Waffle
House on Two Notch rd. Once I pulled into Waffle House
I parked the car in a parking spot and walked over to the Kangaroo
Gas Station next door to buy a bottle of brake fluid. I was there
approached by An Officer Tracy Stephens asking me why my vehicle
was going so fast when I explained to him that the vehicle didn't
have any brakes (that the brakes went out on me) Officer Stephens
asked me for my identification / ~~license~~ and proceeded to
walk back to my vehicle so I ~~turn~~ ^{approached} I was later ~~to~~ ^{by} ~~was~~ ^{approached}
and under arrest and put into the back of a squad car while my jacket
was being searched ^{by} 3-5 ^{other} officers in front of about 8 total.
I ^{was} then transported to the Waffle House with Officer
Stephens where he performed a sobriety test. I asked
another Officer on scene if I could have my jacket back
and he informed Officer Stephens that it was okay for me
to have it. Officer Stephens replied that he would give me jacket
and that he was transporting me to do a B.A. test (BAC on Sobriety test)
Once we left Officer Stephens began ^{telling} ~~asking~~ me

Page 2 of 2

pg 2 of 2

ATTORNEY-CLIENT DOCUMENTS

RICHLAND COUNTY SHERIFF'S DEPARTMENT

Complaint Form

1A-061 12

(continued)

Description of complaint: that he was gonna work something out with me,
that he was gonna work something out with me, and then he
pulled off onto the side of the road on 77 South bound and
was asking me if I had any weapons or anything like that. I
told him NO that I didn't have anything on me and he insisted
that I show him so I began to put myself down with my hands
clapped behind my back until Officer Stephens asked me what
a bump was in my dress (my private area) I told him that it was
my private area and he asked me to see it while he was shining
his flashlight in between my legs. I complied b/c I was scared
at the time, but I didn't understand or believe what was
happening at the moment with an officer of the law. Officer
Stephens then pulled back on the road and told me that I
didn't have to worry about the resisting arrest charge
and that he would help me out if I help him out and
that he was going to be dropping my DUS to the lowest terms
and reducing it to reckless something charge when he pulled back off
of the road again. This time Officer Stephens turned around
and shone his flashlight on ^{me} again and asked me to see my private
area again and I did it b/c I was intimidated by the law and I was
scared. After my legs were open again, and while Officer
Stephens was shining his ^{flash} light on my private area, Officer Steden

Page 2 of 2

3

pg 2 of

RICHLAND COUNTY SHERIFF'S DEPARTMENT

1A-061 13

Page 4 of 2

pg 4 of

ATTORNEY-CLIENT DOCUMENTS

RICHLAND COUNTY SHERIFF'S DEPARTMENT

1A-061 13

Complaint Form

Description of complaint: So you get a hole in your shirt up there?? So I told him no and he told me to let him see. I pulled both of my breasts with handcuffed hands ~~VALE~~ to show Officer Stephens that there was nothing there and he told me that that was not good enough that he wanted to see more ^{and to pull my shirt down} so I pulled my top down and pulled my breasts and he closed the door and got back inside his vehicle to continue driving me up to Alvin S. Glen. Once we got there Officer Stephens informed me that he was dropping 6 charges to 4 charges, working with the solicitor on 2 of my charges (DUS & DWI) and that he was getting those dropped. He also informed me that he was bringing out the ABC circulation charge, and that if he couldn't drop the simple possession charge that he was gonna get me classes and tests. I was escorted inside to take a B.A. test where I informed two Correctional Officers including Ms. Mackie that I was seeing a lawyer due to sexual harassment from Officer Stephens. They called in a Sgt. West of Alvin S. Glen who put in a incident report and made phone calls to her higher ups. I also filed a complaint with the nurse at Alvin S. Glen on record as well as informing my mother after I was allowed to use the phone. What Officer Stephens did was wrong, immoral and unprofessional. I'm not the only female who has had this incident with him and I pray that it comes to an end. I'm also going to speak ^{with} my doctors at the VA as well as a couple of resources. I turned Officer Stephens in to his superiors at Internal Affairs,

→ Nothing follows ←

ATTORNEY-CLIENT DOCUMENTS

RICHLAND COUNTY SHERIFF'S DEPARTMENT

IA - 061 13

Complaint Form

Description of complaint: Complainant: Valeria N. Farr

Questions:

1. Where was the 1st Stop?

A - I-77 Southbound between Two Rivers Rd passing interstate -

2. How long were you on the side of the road?

A - 1st time about 5-6 minutes or 3-4 minutes

2nd - Bluff Rd - Long as about 10 minutes

3rd - near ASGDC - (ponding company) about 2 or 3 minutes only -

COMPLAINT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Valeria Farr

Plaintiff(s)

vs.

Leon Lott

in his capacity as Richland County Sheriff and
the Richland County Sheriff's Department

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015CP4002679

(Please Print)

Submitted By: Mark W. Hardee

Address: 2231 Devine St, Suite 202
Columbia, SC 29205

SC Bar #: 7857

Telephone #: 803-799-0905

Fax #: 803-7990470

Other:

E-mail: mwhardee@bellsouth.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

- Torts - Personal Injury
☒ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

- Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

- Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699)

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-26-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Valeria Farr

Plaintiffs,

v.

Leon Lott
in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department)

Defendants.

IN THE COURT OF COMMON PLEAS

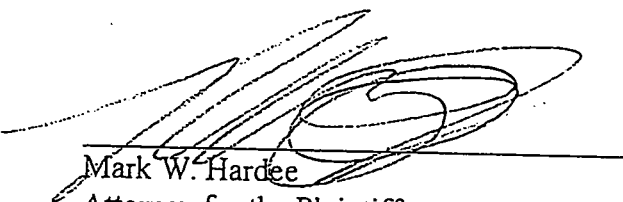
SUMMONS
(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2015 APR 29 PM 4:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, 2231 Devine Street, Suite 202, Columbia, South Carolina 29205, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE HARDEE LAW FIRM



Mark W. Hardee

Attorney for the Plaintiff
2231 Devine Street, Suite 202
Columbia, South Carolina 29205
(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
April 29, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Valeria Farr)

Plaintiff)

vs.)

Leon Lott)

in his capacity as Richland County Sheriff)
and the Richland County Sheriff's Department)

Defendants)

IN THE COURT OF COMMON PLEAS

COMPLAINT

Jury Trial Requested

RICHLAND COUNTY
FILED
2015 APR 29 PM 4:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Plaintiff complaining of the Defendants would respectfully allege:

1. The Plaintiff is a citizen and resident of Richland County, South Carolina.
2. The Defendant Leon Lott is the elected sheriff of Richland County, South Carolina, and to enabled him to execute his statutory duties, he has created the Richland County Sheriff's Department, which operates in Richland County, South Carolina. The Defendants employed Deputy Sherriff's as employees and agents to work on there behalf.
3. The Plaintiff was previously a military police officer in the army and was deployed in Iraq.
4. Due to her military service and events she witnessed and experienced in a combat area, the Plaintiff developed, and continues to suffer from, Post-Traumatic Stress Syndrome.
5. On May 15, 2013, the Plaintiff was driving her mother's car, and noticed that the breaks were not working properly. She had trouble stopping the vehicle and had to pull into a Waffle House next to a Kangaroo gas station on Two Notch Rd. The Plaintiff walked

over to the Kangaroo gas station to buy a bottle of brake fluid, when she was approached by a Deputy with the Richland County Sheriff Department. As a Deputy of the Richland County Sheriff's Department, he was an employee and agent of the Defendants working within the scope of his duties.

6. The Deputy questioned her and asked for her driver's license.
7. Due to the Post-Traumatic Stress Syndrome suffered by the Plaintiff, she panicked and ran from the Deputy.
8. The Plaintiff was eventually apprehended by the Deputy, arrested and put in the back of his marked vehicle. She was placed into the back of the Deputy's vehicle to be transferred to the Alvin S. Glenn Detention Center.
9. While in the Deputy's vehicle, he began telling her that they could "work something out". He then pulled off to the side of the road on I-77 south bound, and began asking her if she had any weapons or anything like that.
10. The Deputy asked her "what's that bump in front of your dress", at which time the Plaintiff replied that it was her private area. The Deputy then asked to see it, while he was shining his flash light in between the Plaintiff's legs.
11. Since she was terrified, compounded by her PTSD, she did not resist, and allowed the Deputy to view between her legs.
12. After a while the Deputy then pulled back onto the highway and began driving the vehicle. At that time he told her that he would work something out with her if she would "help him out". The Deputy stopped his vehicle on Bluff Rd, got out and opened the passenger door to shine his flashlight between the Plaintiff's legs. Because the Plaintiff was so terrified, the Plaintiff did not resist his efforts. The Deputy then asked what was

- inside of her vagina, and then shined the light on it. Because she was terrified, the Plaintiff inserted her finger into her vagina and rubbed herself while the Deputy watched.
13. At this point the Plaintiff became so terrified that she began shaking, the Deputy again directed the flashlight on her private area.
14. After a while the Deputy got back in the vehicle and proceeded to take her to the Alvin S. Glenn Detention Center telling her "yea I'm going to help you out. You will be able to work something out" and told her he would drop one of the violations when they went to court.
15. The Deputy then pulled over for a third time on the street that leads into the Alvin S. Glenn Detention Center in front of a bail bonding office and opened the door of the vehicle and asked the Plaintiff if she needed to rub and check her upper thighs to see if they were alright. He then asked her what she had in her top. The Plaintiff then attempted to pat her chest area with her handcuffed hands to show the Deputy that there was no weapons there. However, the Deputy said that he had not seen enough, and wanted to see more. The Plaintiff then pulled down her top exposing her breast. The Deputy was shining his flashlight watching her.
16. The Deputy eventually got back into the vehicle and took the Plaintiff to the Alvin S. Glenn Detention Center. While there, the Plaintiff encountered two corrections officers, and informed them she was being sexually harassed by the Deputy. The officers notified their Sargent, who made phone calls and asked if the Plaintiff would file a complaint. The Deputy attempted to take the Plaintiff back out of the detention center, but was prohibited from doing so by the correctional officers. He then left.

17. The Plaintiff was not the first person this Deputy had sexually harassed and molested. In fact there is a pattern of this Deputy doing the same type of activities.
18. The Deputy was subsequently fired and arrested.

FIRST CAUSE OF ACTION
Negligence

19. The Defendants were negligent, grossly negligent, willful, wonton and reckless in the following particulars:
- A). By sexually harassing and molesting the Plaintiff.
 - B). By the negligent hiring of the Deputy in question.
 - C). By the negligent retention of the Deputy in question.
 - D). For the negligent training of the Deputy in question.
 - E). For failing to properly supervise the Deputy in question.
 - F). By offering to drop charges against the Plaintiff for sexual favors.
 - G). By an agent and employee of the Defendants misusing his authority and victimizing a citizen of Richland County.
20. Due to the negligent, gross negligent, willful, wonton and reckless behavior by the Defendants, the Plaintiff suffered severe emotional injuries, including the exasperation of her PTSD she developed in service to our country. These actions caused severe mental and emotional distress, which manifested itself in physical ailments including, loss of sleep, loss of appetite, bouts of depression, and other mental and emotional problems leaving her disabled and unable to work.

SECOND CAUSE OF ACTION

21. A member of the Richland County Sherrieff's Department working for the Defendant Leon Lott, committed assault and battery on the Plaintiff in the course of his duties.
22. This was accomplished by the Deputy using his authority to force the Plaintiff to expose herself, and fondle herself.
23. Due to the unwanted and outrageous assault and battery, the Plaintiff has suffered severe mental and emotional distress which manifested itself in physical ailments including, loss of sleep, loss of appetite, bouts of depression and other mental and emotional problems leaving her disabled and unable to work.

WHEREFORE, having fully complained of the Defendants, the Plaintiff prays for actual and punitive damages in an amount to be determined by a jury, for the cost of this action, and for such other and further relief as the court deems just and proper.

THE HARDEE LAW FIRM


Mark W. Hardee
Attorney for the Plaintiff
2231 Devine St, Suite 202
Columbia, South Carolina 29205
(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
April 29, 2015

**INCIDENT REPORT DATED
MARCH 5, 2013**

RICHLAND COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT

CASE NUMBER **IA-025-13** NCIC 13

AGENCY I.D.
SCOR 400000

1303023105

FIG EXTD

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM ☒ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST ☐ GOVERNMENT ☐ RELIG ORGN ☐ SOC/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFFICER		
	1 INFORMATION				☒ YES ☐ NO	☐ YES ☒ NO	13				
	2				☐ YES ☐ NO	☐ YES ☐ NO					
	3				☐ YES ☐ NO	☐ YES ☐ NO					
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER):						SUBDIVISION	ZIP CODE	WEAPON TYPE		
	[REDACTED] (R7)							29229	40		
	INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	REPORTER DATE / TIME 24 HR CLOCK	REPORTER TIME	AREA	GRID		
	03052013	1230		03052013	1230	03052013	1240	1258	1315		
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RES	RACE	SEX	AGE	ETH	DAYTIME PHONE	
	STEPHENS, IRENE				J	B	F	34	N	60 [REDACTED]	
	ADDRESS									EVENING PHONE	
	1204 Bradford Ridge Ln									60 [REDACTED]	
	CITY									STATE	
COLUMBIA									SC		
ZIP CODE									29229		
SUBJECT NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RES	RACE	SEX	AGE	ETH	EVENING PHONE	
	[REDACTED]				J	B	M		N	61 [REDACTED]	
	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC							
	505	80	1	2							
	ADDRESS										
	[REDACTED]										
	CITY									STATE	
	COLUMBIA									SC	
	ZIP CODE									29229	
	VISIBLE INJURY (MCT 1) ☒ YES ☐ NO EXPLAIN ABBASION (EYE)			COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO							
VICTIM (NO) USING ALCOHOL ☐ YES ☐ NO ☒ UNK			DRUGS ☐ YES ☐ NO ☒ UNK TYPE								
☐ TWO-MAN VEH ☐ ONE-MAN VEH ☐ DET/J SPEC ASMT ☐ OTHER ☐ ALONE ☐ ASSISTED			GANG RELATED ☐ NO ☐ YES								
NARRATIVE	☒ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS										
	NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR
	STEPHENS, TRACY			B	M	31	N	[REDACTED]	601	230	1
	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC			NCC NUMBER							
	ADDRESS			CITY							
	[REDACTED]			COLUMBIA							
	STATE			SC							
	ZIP CODE			29229							
	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☒ UNK			ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO			OFFENSE DATE				
	GRUGS ☐ YES ☐ NO ☒ UNK TYPE			TOTAL # ARRESTED			ARREST DATE				
COMP REPORTS ON THE ABOVE LISTED DATE AND TIME THAT THE LISTED VICTIM AND SUBJECT WERE INVOLVED IN A VERBAL ALTERCATION THAT TURNED PHYSICAL, AT THE ABOVE LISTED LOCATION. COMP REPORTS THAT THE VICTIM WAS DISRESPECTFUL TO THE SUBJECT AND WAS BEING OBSTINATE. COMP REPORTS THAT THE SUBJECT GRABBED THE VICTIM BY HIS SHIRT, AT WHICH TIME THE SUBJECTS HAND ACCIDENTALLY STRUCK THE VICTIMS EYE. COMP DECLINED EMS. COMP DECLINES PROSECUTION. COMP REQUESTED A REPORT FOR DOCUMENTATION. R/C OBSERVED THE VICTIMS LEFT EYE TO BE DARKENED INSIDE THE WHITE AREA IN LEFT CORNER. PHOTOGRAPHS OBTAINED AND SENT TO CRIME PICS.											
ADMINISTRATIVE	PROPERTY		SEIZED	1	BURNED	1	DAMAGED	1			
	☐ 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										
	S NO.	REPORTING OFFICER(S)	DATE	S NO.	APPROVING OFFICER	DATE					
1601	Pruitt, Jason	03052013									
FOLLOW UP INVESTIGATION						S NO.	OFFICER	DATE			
☐ YES ☐ NO											

RICHLAND COUNTY SHERIFF'S DEPARTMENT INTERNAL AFFAIRS

STATEMENT

State of South Carolina
County of Richland

Personally appeared before me this 14 day of March 2013, at 1010 hours, an Officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Dep. Tracy Stephens. IA-025-123

Q: Lt. L. Payne

A: Dep. T. Stephens

Re: Assault complaint against [REDACTED]

Q: Tell me about the incident involving [REDACTED]

A: On March 5 between 1200 and 1500 hrs my kids had a half day of school, upon arrival at my address of [REDACTED], my wife Irene Stephens and my son [REDACTED] arrived at my residence. As I proceeded to talk to my son in reference to his behavior and his grades at school, he began to display a poor attitude. As I asked him to step out of the vehicle he hesitated, as if he did not want to get out. I asked him on multiple occasions to get out of the vehicle, however he did not comply. As I placed my right hand on his right shoulder to escort him out of the vehicle he began to sigh, huff, and puff. I proceeded to spank him on his rear side with my right hand. He fled on foot around the car. I gave him a direct order to come here, on multiple occasions, however he refused. Shortly after he got back into the vehicle on the passenger side and locked the door. I entered the vehicle on the passenger side. I unlocked the rear passenger door and escorted my son out of the vehicle and began to spank him again on the rear side as he continued to resist. Shortly after he escaped again, as I continued to lecture him on his behavior, he became very disrespectful and I continued to spank him less than a minute. At that time my seven year old arrived home from the bus stop. And my wife and kids left to go to their residents at [REDACTED]. Shortly after I was notified that my wife had called law enforcement, in order to document the incident because of my son [REDACTED] complained of his left eye hurting. She wanted to document it for school purposes.

Q: How did [REDACTED]'s eye get injured?

A: To my knowledge I'm not sure, however I did take him to an eye specialist. Per my attorney's advice. The doctor's preliminary examination stated it could be consistent with a poke, not being struck, because there was no bruising on inside or outside of the eye. The doctor stated it could have been a result of being upset, or a family history of early signs of glaucoma.

Q: Did you hit J [redacted] in his eye?

A: No sir

Q: Were you on duty during this incident?

A: No sir

Q: Were you in uniform during this incident?

A: No sir

Q: Did this incident occur in the Region you are assigned to?

A: No sir

Q: You have been given the opportunity to submit a written statement. Is it your intention to use this question and answer session as your written statement?

A: yes sir

Q: Do you have anything else you would like to add to this statement?

A: no sir

This statement was made in the presence of Lt. Larry Payne of the Richland County Sheriff's Department Internal Affairs.

All of the above is the truth, the whole truth and nothing but the truth.

Signed

Witness

Witness

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 14 DAY OF March 2013.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 10/20/2019.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

1A - 025 13

Internal Investigation Advisement

You are hereby advised that you are the subject of an Internal Investigation being conducted by the Department. The nature of the investigation is an administrative inquiry into:

ASSAULT

62

Read the following carefully and initial each item.

I understand that I will be asked questions narrowly related to the performance of my official duties and/or fitness for department.

I understand that I am entitled to all rights and privileges guaranteed me by the laws and the Constitution of this State and the Constitution of the United States, and that statements or information provided by me as a part of this administrative investigation cannot be used against me in any subsequent criminal proceeding.

I understand that I may have counsel of my choosing present with me during the course of this investigation, and may consult with such counsel as desired.

I understand that if I refuse to answer questions during this investigation, or if I am untruthful, such action may result in my dismissal from the Sheriff's Department.

I understand that statements or information provided by me as part of this administrative investigation may be used against me in subsequent disciplinary actions.

I understand that if I am placed on Administrative Leave with pay, that I must make myself available to officials of the Sheriff's Department, and provide contact numbers where I may be reached during my absence from duty.

I understand that I am to refrain from discussing this investigation with anyone other than the appropriate authority.

I HAVE READ THIS ADVISEMENT AND I FULLY UNDERSTAND ITS CONTENTS.



Signature of Employee

Date March 14 2013

Witness

Date 03/14/13

IA - 025 13

Investigative Followup Report: 1303023105/5

Primary Information

Report Number: 1303023105/5
 Case Number: 1303023105
 Case Status: OPEN
 Case Lead LEO: Weeks, Lancy
 Type Of Report: Investigative Followup
 Report Date/Time: 03/05/2013 23:22
 Description: Faust follow up
 Reporting LEO: Faust, Stephen Scott (703 / Special Victims Unit / Richland County Sheriff's Dept)
 Approval Status: Open
 Expense Status: Not Posted

Narrative

Open Narrative Document
 Hide Narrative Text

030513 At approx. 930 AM IO was contacted by Sgt. Strange who stated the Desk Sgt. contacted him and requested an investigator contact SRO Godfrey in reference to a possible child abuse and that the suspect was a Deputy, named Tracy Stephens. IO confirmed we had a Tracy Stephens that worked with us but to IO's knowledge, IO had never met him. IO contacted SRO Godfrey who stated that [redacted] reported to school with a bruised eye and [redacted] stated that Tracy Stephens hit him because he would not get out of the front passenger seat of the family vehicle. IO informed SRO Godfrey that IO would get back him on who was going to work it since it involved a RCSD Deputy. In the mean time, IO told him to call a RCSD Lab Unit to properly document the injuries. IO passed this information on to Capt. Weeks, Major Smith and Chief Wilson and requested input as to if IO should work it or should it be turned over to IA or SLED. While IO waited, SRO Godfrey mentioned that [redacted] said that he did tell a police officer what happened when it happened. IO started looking into that aspect and would learn from Lt. Ashe and Capt. Porter that on the 5th, the boy's mother actually called RCSD to report the incident, as documented in 13030231-05. One of the reasons was so that when he went to school, the SRO would know what happened and that it was reported. However, the SRO was not notified. IO would track down the report that had not yet been approved in ACISS. IO was informed that CID would work it per the Sheriff and that Major Smith said that it needed to be assigned to a LT or higher and that Capt. Weeks would head up the investigation. Since Capt. Weeks was in a meeting on an unrelated matter, IO went to Longleaf Middle School to interview the victim. IO's thinking was that Law Enforcement needed to talk to the victim before anyone could negatively influence him to not tell the truth about what actually happened. IO arrived at the school at approx. 11:45 am and met with SRO Godfrey, who called the victim to his office. IO introduced myself to IO and IO requested that SRO Godfrey contact a guidance counselor to sit in with us so we would have a witness to verify that no coercion could be accused by the suspect on us with the victim. 5th grade counselor Boswell-Glasco came in and [redacted] and her both were explained as to why IO was there and IO asked [redacted] if he was willing to talk to IO about how his eye was injured. [redacted] said he was willing to talk to IO and when asked, he stated that he was not scared or intimidated to talk to IO. IO asked [redacted] if he knew the difference between a truth and a lie. [redacted] stated that a truth was telling what happened while a lie was not telling what actually happened. IO asked [redacted] if anyone had told him not to tell the truth about what happened to his eye, and [redacted] said yes. IO asked him what he meant and he said that his mother said not to tell his friends or students what happened but if an adult asked what happened, that he was to tell the truth. IO asked [redacted] if he intended to tell IO the truth and [redacted] said he would. IO asked [redacted] how his eye was injured and to start from the beginning. [redacted] stated that yesterday around 12:30 PM IO would clarify and learn that he was out of school early because the school had a half day. He, his mom, his baby brother (1 year old [redacted]) and his sister (3 month old [redacted]) went to Tracy's house to wait for [redacted] brother, to get off the bus. While they waited, Tracy pulled up. [redacted] referred to him as his dad, though it is actually his step-father. [redacted] states that [redacted] is cranky, do they let him out of the car, and that is when his dad pulled up, approx. 2 minutes later and he was in his uniform and patrol car. [redacted] stated that his dad took [redacted] in to get dressed. [redacted] stated that his mom called his dad and told him that [redacted] should be there any minute and to bring [redacted] back out. When his dad brought [redacted] back out, he was going to buckle her up and asked [redacted] (who was standing in the open door and the seat) to get out of the way. [redacted] asked why, and said that he (dad) wasn't coming with him, do why did he want him out of the car. [redacted] states that is when his dad grabbed him by the shirt and jacked him out of the car, holding him by his shirt. [redacted] stated that he had him up against the car and was telling him to respect him and that he [redacted] should listen to him. [redacted] stated he responded and said, why should I when you are not my dad, while he was knocking his dad's arms off of him. [redacted] stated that he walked away from his dad, and started going around the car and his dad started to follow him around the car. [redacted] stated that his dad told him to come here, and [redacted] responded that why should he when he was angry with him. [redacted] stated that he jumped in the car and locked the door, but his dad unlocked it (I imagine that his mother could have been the one to unlock it but [redacted] said that his dad unlocked it). [redacted] stated that when his dad unlocked the car, he pulled him out and onto the ground and was trying to grab his arms / hands. [redacted] stated that he was knocking his dad's arms away and that his dad's fist hit him in the eye. [redacted] stated that his fist / arm was not pulled back (IO can demonstrate how [redacted] showed IO). During this, IO asked if his mom saw it and was said. [redacted] indicated that his mom asked his dad if he hit him several times and that his dad repeated that he did not hit him. IO asked him if he felt his dad hit him by accident. [redacted] hesitated as if he was thinking about it, and said kinda but when asked again, he indicated it could have been an accident. IO had [redacted] demonstrate how his dad was holding him and how he actually came to strike his eye. IO asked [redacted] if he was willing to put dictate this again so IO could put in a written form. [redacted] stated that his step dad said that he wasn't ever to give a statement when he was in trouble with out his step father being there. IO informed [redacted] that that was ok and that he did not have to give one. IO thanked him for his time and IO and Boswell-Glasco went and called his mother (Irene Stephens), to let her know what was going on and asked her if she could come to the school to see if she would allow IO to take a written statement from [redacted]. Irene stated that she could be at the school in 15 minutes. IO met with Irene alone, only because the SRO and Boswell-Glasco were some where else. IO explained why and how we got to this point, and informed her that my job and purpose was to find out if a crime had been committed. Irene was asked if Tracy hit [redacted] and if it was an accident or was he on purpose. Irene stated that she saw the actual strike, that from her drivers seat she could see out the rear passenger door, which is where they were, and that she saw how [redacted]'s eye was actually injured. Irene stated that she did feel it was an accident, that Tracy was holding [redacted] and [redacted] was holding on to Tracy's clothing. Tracy used his arm to knock [redacted]'s arm off of his clothes and in doing so as his arm came up, [redacted]'s eye was struck. IO informed her of what [redacted] said, that she asked Tracy if he hit [redacted] and that Tracy denied it. Irene immediately stated that what she actually asked Tracy was, she repeatedly asked if he hit [redacted] intentionally, and Tracy repeatedly stated no. Tracy stated she wouldn't have asked if Tracy hit him because she saw it, and repeated that she asked if he hit [redacted] intentionally. Tracy went on to say that she felt it was an accident and that if she thought it was intentionally done, she would say so and would have handled Tracy because she would allow no one to intentionally harm any of her children. Irene told IO a story about how she almost got arrested when she got upset and went after a teacher who she was told put her hand on [redacted]. Irene seemed genuine and actually help IO understand how the strike occurred. By her explanation, it seemed like Tracy came up with a movement with his hands to knock [redacted]'s arms off of grabbing Tracy's clothing and in doing so his fist struck his eye. Irene numerous times in repeated that she did not feel it was intentional and that she did not want to prosecute. IO informed her that we would take her wishes into consideration but we going to investigate it fully and that it would ultimately be determined by an Asst. Solicitor or Magistrate on prosecution, but that it had to be determined that an actual crime had occurred. Irene asked if IO wanted to get a statement from [redacted] and IO stated that IO wanted a statement from her and [redacted] better that she get [redacted] to the Dr. and that a statement from her could be done at a later time. IO told her that IO felt comfortable with what IO had from [redacted], but IO felt she could shed a great deal of clarification on the incident and needed to give a statement. IO asked if she was willing to do it Fri PM and she stated yes. IO supplied her with IO's number and asked if she would call IO and IO would come to her so she would be inconvenienced. Irene stated she would call and IO confirmed her # with the one on the report. IO also told her that she could tell Tracy about anything we discussed and encourage her to make sure Tracy was also willing to give a statement, that if there was no crime, we needed to know by getting a statement to document his account of the situation. IO briefed Capt. Weeks who stated that she called Tracy to schedule an appointment for him to supply a statement but had to leave a voicemail. Just before IO

IA - 025 13

went home, I/O informed Capt. Weeks that I/O would also call Tracy, and when I did it was from I/O's recorded 3055 desk line. I/O spoke to Tracy, who would inform I/O that he gave a statement the day before. I/O explained how and why I/O was called today, and that I/O was unaware of what transpired with other Deputies the day before until today when the SRC called I/O. I/O stated that the incident report was very limited with information and that I/O needed to get a statement from him, but Tracy stated that he didn't want to give a statement. I/O informed Capt. Weeks, Major Smith and Chief Wilson. I/O later learned that Capt. Weeks got a call from Tracy, who informed her that any questions should be referred to his attorney Todd Rutherford.

030713 I/O observed a called and message from Tracy who asked I/O to call him back at his number. This message was on 030613 after we spoke. I/O called Tracy and he informed I/O that he called I/O back yesterday to inform I/O the same thing he did to Capt. Weeks, that he retained Todd Rutherford and to refer all questions to him. I/O stated that I/O had learned that and stated ok, and said bye.

030813 I/O saw the Sheriff at a luncheon for Job Corps, and the Sheriff informed I/O that he saw Todd Rutherford and Todd stated that he had a Dr prepared to say that the eye injury was a result of ~~XXXXX~~ high blood pressure. I/O informed Capt. Weeks and Major Smith of this.

Record Status Information

Record Origination Operator: Faust, Stephen Scott (703 / Special Victims Unit / Richland County Sheriff's Dept)
Record Origination Date: 01/05/2013 23:22
Last Update Operator: Faust, Stephen Scott (703 / Special Victims Unit / Richland County Sheriff's Dept)
Last Update Date: 02/09/2013 2:37

ACISS system is powered by Richland County Sheriff's Department

Printed: 02/14/2013
11:55:14 AM

Supplemental Report Report: 1303023105/3

1A - 025 13

Primary Information	
Report Number:	1303023105/3
Case Number:	1303023105
Case Status:	OPEN
Case Lead LEO:	Weeks, Lancy
Type Of Report:	Supplemental Report
Report Date/Time:	03/06/2013 0:00
Reporting LEO:	Gore, James (1289 / Uniform 2 / Richland County Sheriff's Dept)
Approved By:	ACISS (Richland County Sheriff's Dept)
Approved Date/Time:	03/08/2013 7:00
Approval Status:	Approved
Expense Status:	Not Posted

Synopsis
OTHER RESPONSES 1204 BRADFORD RIDGE LN I RESPONDED ALONG WITH DEP PRUITT AND SGT DAVIS TO AN ASSAULT. DEP PRUITT SPOKE WITH THE MOTHER AND THE CHILD. THE MOTHER WANTED A REPORT MADE ABOUT AN INCIDENT THAT OCCURRED BETWEEN THE FATHER AND SON. THE MOTHER STATED THAT THE SON WAS BEING DISRESPECTFUL AND THE FATHER GRABBED THE BOYS SHIRT COLLAR AND WHILE DOING THAT THE FATHERS HAND STRUCK THE BOYS LEFT EYE. DEP PRUITT INTERVIEWED THE CHILD TO SEE IF THE STRIKE TO THE EYE WAS INTENTIONAL. THE CHILD SHOOK HIS HEAD NO AND SHOWED DEP PRUITT HOW THE FATHER GRABBED HIS SHIRT. I WASN'T ABLE TO SEE ANY VERY OBVIOUS SWELLING TO THE CHILDS EYE. THE MOTHER INSISTED ON A REPORT DUE TO THE FACT WHEN THE CHILD RETURNED BACK TO SCHOOL IF THE EYE DID SWELL SHE WANTED IT DOCUMENTED HOW IT OCCURRED. DEP PRUITT COMPLETED A REPORT FOR THE MOTHER AND I DEPARTED THE SCENE. I DID CAPTURE AUDIO OF THE INCIDENT ON CAR CAMERA.

Narrative
Open Narrative Document Show Narrative Text

Record Status Information	
Record Origination Operator:	ACISS (Richland County Sheriff's Dept)
Record Origination Date:	03/08/2013 7:00
Last Update Operator:	ACISS (Richland County Sheriff's Dept)
Last Update Date:	03/08/2013 7:00

ACISS Report Reviewed by Richland County Sheriff's Department

Revision 03/06/2013
11:04:38 0:17

Supplemental Report Report: 1303023105/2

IA-025 13

Primary Information

Report Number: 1303023105/2
 Case Number: 1303023105
 Case Status: OPEN
 Case Lead LEO: Weeks, Lancy
 Type Of Report: Supplemental Report
 Report Date/Time: 03/07/2013 0:00
 Reporting LEO: Davis, Stacey (881 / Uniform 2 / Richland County Sheriff's Dept)
 Approved By: ACISS (Richland County Sheriff's Dept)
 Approved Date/Time: 03/07/2013 14:00
 Approval Status: Approved
 Expense Status: Not Posted

Synopsis

On March 5, 2013 at approximately 1300 hours LT Ashe instructed me to respond to ~~Richland County Sheriff's Dept~~. LT Ashe told me this location was the home of a Richland County Sheriff's Deputy and the call was reference a domestic situation. Upon arrival Cpl. Gore and Deputy Pruitt had already arrived on scene. Cpl. Gore advised me that Deputy Stephens' wife called because the couples son was being disrespectful and when the father (Stephens) took corrective action for his son's bad behavior he grabbed his son by the shirt collar. The son resisted and Deputy Stephens accidentally struck him in the eye. I looked at the young mans eye but didn't notice anything abnormal. Mrs. Stephens did request a report for documentation. Cpl. Gore and I left the scene and Deputy Pruitt completed a report.

Narrative

Open Narrative Document
 Show Narrative Text

Record Status Information

Record Origination Operator: ACISS (Richland County Sheriff's Dept)
 Record Origination Date: 03/07/2013 14:00
 Last Update Operator: ACISS (Richland County Sheriff's Dept)
 Last Update Date: 03/07/2013 14:00

ACISS Records Created by Richland County Sheriff's Department

Printed 03/14/2013
 11:06:15 AM

IA - 025 13

Supplemental Report Report: 1303023105/1

Primary Information	
Report Number:	1303023105/1
Case Number:	1303023105
Case Status:	OPEN
Case Lead LEO:	Weeks, Lancy
Type Of Report:	Supplemental Report
Report Date/Time:	03/06/2013 0:00
Reporting LEO:	Pruitt, Jason (1601 / Richland County Sheriff's Dept)
Approved By:	ACISS (Richland County Sheriff's Dept)
Approved Date/Time:	03/07/2013 2:01
Approval Status:	Approved
Expense Status:	Not Posted

Synopsis
VICT REPORTS THAT HE AND THE SUBJECT(FATHER) WERE ARGUING. VICT REPORTS THAT HE REFUSED TO GET OUT OF CAR WHEN HIS FATHER TOLD HIM TO. VICT REPORTS THAT HIS FATHER GRABBED HIM BY THE JACKET COLLAR AND PULLED HIM OUT OF THE CAR AND PUSHED HIM. VICT REPORTS THAT WHEN HIS FATHER GRABBED HIM HE RESISTED, AT WHICH TIME HIS FATHERS HAND STRUCK HIM IN HIS LEFT EYE ON ACCIDENT. VICT REPORTS THAT HIS FATHER DID NOT DIRECTLY PUNCH HIM IN HIS EYE.

Narrative
Open Narrative Document Show Narrative Text

Record Status Information	
Record Origination Operator:	ACISS (Richland County Sheriff's Dept)
Record Origination Date:	03/07/2013 2:01
Last Update Operator:	ACISS (Richland County Sheriff's Dept)
Last Update Date:	03/07/2013 2:01

ACISS Software licensed by Richland County Sheriff's Department

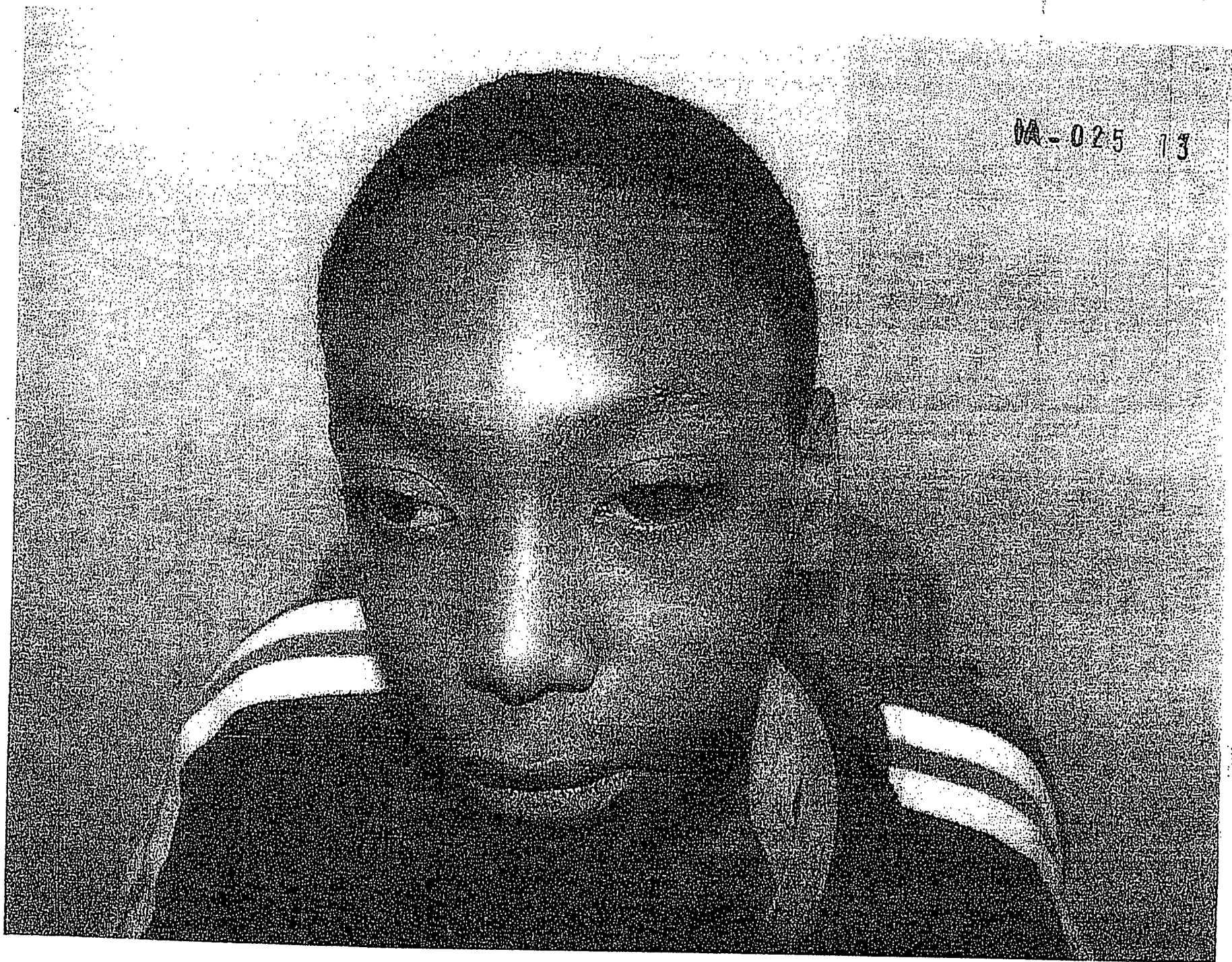
Printed: 03/14/2013
11:07:45 AM

IA-025 13



1A-025 13

0A-025 13



10-17-5

10-17-5

**INCIDENT REPORT DATED
APRIL 15, 2013**

1A - 04-915713

RICHLAND COUNTY SHERIFF'S DEPARTMENT

Complaint Form

I, Bill McBride do hereby affirm that I wish to file a complaint against an employee of the Richland County Sheriff's Department. I further affirm that the information provided by me is true and complete to the best of my knowledge. I have been advised that any false, misleading or untrue statements, accusations or allegations made by me may subject me to civil and/or criminal prosecution under Section 16-9-30, of the South Carolina Code of Laws which prohibits any "False swearing before persons authorized to administer oaths." I further understand that in the course of an investigation of my complaint, I may be required to meet with a member(s) of the Richland County Sheriff's Department to discuss this complaint further, or submit to a polygraph examination.

I HAVE (READ/HAD READ TO ME) THE ABOVE ADVISEMENT AND I UNDERSTAND ITS CONTENTS.

Complainant's Name: [REDACTED]

DOB: [REDACTED]

(Print)

Sex: M

Address: [REDACTED]

Street

Columbia

City

29229

Zip Code

Residence Telephone: [REDACTED]

Business Telephone: [REDACTED]

Name(s) and description of personnel involved.

Officer's Name (Print)

Division

S#

Race

Sex

Tag #

W M

Officer's Name (Print)

Division

S#

Race

Sex

Tag #

B M

Name of Officer Taking Complaint

LARRY DAYNY

Signature of Complainant: [REDACTED]

Date of Complaint: 0415/13

Time of Complaint: 415

Sworn to me this 15 day of April

2003

Notary Public

My Commission Expires: 1019201

Complaint Form

Description of complaint: On the evening of the search, the deputies threatened to kick my bedroom door in if I did not allow the search. I do not have the names or badge numbers of the deputies. They left before I was able to get either. The captain I spoke to was the one next in line to Sheriff Lott.

April 5, 2013

Captain Tom Davis

SC Law Enforcement Division

P.O. Box 21398

Columbia, SC 29221

Dear Captain Davis:

The purpose of this correspondence is follow up on our conversation on April 4, 2013 and to lodge a formal complaint against the Richland County Sheriff's Department for violation of my Fourth Amendment rights against illegal search and seizure. The facts of the incident are follows:

On the evening of April 1, 2013 shortly before midnight, two Richland County Sheriff deputies came to my residence of [REDACTED] Street in Columbia, South Carolina. They knocked on the door, entered the home, and inquired as to whether Ernest McClure resided there. When told that he did not, they asked whether they could search the residence. My brother, who answered the door, explained that they would need to obtain permission from the homeowner. I emerged from my bedroom in the back of the residence and met the deputies in the living room. The deputies told me they had a warrant for Ernest McClure and asked whether he lived there. I informed the deputies that Mr. McClure has not lived there in quite some time. The deputies asked if they could search the home. I inquired as to whether the warrant was a search warrant or an arrest warrant. When told that it was an arrest warrant, I said I would need a minute to call my attorney to inquire as to whether this search was legal. When I picked up my cell phone and proceeded to call my attorney, one of the deputies pushed past me and burst open the door of my bedroom. Once he finished searching my bedroom, he proceeded to open the doors to the other bedrooms in the house, disturbing the sleeping occupants. Finally the deputies exited the residence.

On April 2, 2013, I contacted the Richland County Sheriff's Department to file a formal complaint. I was told that Sheriff Leon Lott was unavailable but would return my call at a later time. I did not receive a callback until April 4, 2013 when I spoke with a captain who informed me that the search had been justified, and since Mr. McClure was still at-large, there is a chance deputies may return to my home in search of him again.

I have been advised by counsel that this constituted an illegal search and as such was a violation of my Fourth Amendment rights. According to the United States Supreme Court's ruling in *Steagald v. United States*, 451 US 204 (1981), an arrest warrant is not sufficient under the Fourth Amendment to constitute search of the home of a third party absent consent or exigent circumstances. In this case, I informed officers that Ernest McClure no longer resided at 1531 Toronto Street. Yet they still proceeded to conduct a warrantless, intrusive search of my home.

when neither consent nor exigency existed. And now, due to my complaints surrounding the incident, I am being threatened with a second baseless search. Such a search would clearly indicate a pattern of harassment by the Richland County Sheriff's Department and thus grounds for legal action.

However, I believe this issue can be resolved with a simple acknowledgment of wrongdoing by the Richland County Sheriff's Office as well as an apology and a formal reprimand for the two deputies involved. Please let me know your thoughts on this incident as well as whether you believe these terms would be agreeable, or if I should seek alternative methods for relief. I look forward to hearing from you

Sincerely,

[REDACTED]

[REDACTED]

Columbia, SC 29204

(803) [REDACTED]

RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS

1A - 049 13

OFFICER STATEMENT

Personally appeared before me this date, an officer duly and legally authorized to administer oaths in the above named County and State aforesaid, comes one

Name: David Bailey DB
(Print)

Date: 04/15/2013

Who makes the following statement under oath to wit:

Deputy Stephens and I went to [REDACTED] in an attempt to serve a warrant on Ernest Howard McClora, he has a warrant for Reckless driving, 07-2013-0026, a Lexington County Bench Warrant signed for service in Richland County. This was just before midnight April 1st 2013. I knocked on the door and got a response from a man from inside, he opened the door and I asked for Mr. McClora and the man said he did not stay there anymore, I explained I had a warrant and would need to verify he wasn't there before I could leave. The man said he only rented a room there and we would need to speak to the home's owner. Both Stephens and I stepped into the living room and waited for the home's owner. Mr. [REDACTED] stepped out and I told him that we had a Warrant for Ernest McClora. Mr. [REDACTED] stated he hadn't stayed at the home for six weeks, my reply was "we will still need to look around to verify he is not here." Mr. [REDACTED] asked if I had a search warrant. I replied "no, I have an arrest warrant, it allows for me to look for a person within a residence, I don't need a search a warrant." I let Mr. [REDACTED] look at the warrant and he said he wasn't sure about that and stated he was going to call his daughter, who was a lawyer, I told him he could call whoever he liked, but we were going to make sure he (McClora) wasn't there. Stephens and I walked through the home and verified no other people were inside. We did not threaten force, apply force, or in any other way physically handle any one within the residence at [REDACTED]. I explained that the walk through was sufficient for me to clear the warrant at the region as a bad address so that Deputies would not continue to come to the home trying to locate McClora there. I advised Corporal Duke of the possibility of a complaint.

Wednesday April 3rd 2013 Captain Porter called me and advised me of the complaint and instructed me to call Captain Lanier at the warrant division and tell him how we conducted the warrant service. I explained this as it is written above to Captain Lanier and he agreed we did nothing wrong as we did not search in unreasonable places for the subject, we only looked in places where he could have likely hid.

This statement was made in the presence of _____
of the Richland County Sheriff's Department.

Senior Corporal Chris Duke

[Signature]

(Signature)

Date 04/15/13

WITNESSES:

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____

DAY OF _____, 200 _____

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

Revised 10/25/01

RICHLAND COUNTY SHERIFF'S DEPARTMENT

Internal Investigation Advisement

You are hereby advised that you are the subject of an internal investigation being conducted by the Department. The nature of the investigation is an administrative inquiry into:

The nature of the contact with residents at [REDACTED] April 1st 2013.

Read the following carefully and initial each item.

- ☒ I understand that I will be asked questions narrowly related to the performance of my official duties and/or fitness for department.
- ☒ I understand that I am entitled to all rights and privileges guaranteed me by the laws and the Constitution of this State and the Constitution of the United States, and that statements or information provided by me as a part of this administrative investigation cannot be used against me in any subsequent criminal proceeding.
- ☒ I understand that I may have counsel of my choosing present with me during the course of this investigation, and may consult with such counsel as desired.
- ☒ I understand that if I refuse to answer questions during this investigation, or if I am untruthful, such action may result in my dismissal from the Sheriff's Department.
- ☒ I understand that statements or information provided by me as part of this administrative investigation may be used against me in subsequent disciplinary actions.
- ☒ I understand that if I am placed on Administrative Leave with pay, that I must make myself available to officials of the Sheriff's Department, and provide contact numbers where I may be reached during my absence from duty.
- ☒ I understand that I am to refrain from discussing this investigation with anyone other than the appropriate authority.

I HAVE READ THIS ADVISEMENT AND I FULLY UNDERSTAND ITS CONTENTS.

Signature of Employee [Signature] Date 4-15-13

Witness [Signature] Date 04/15/13

RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS

IA - 049 13

OFFICER STATEMENT

Personally appeared before me this date, an officer duly and legally authorized to administer oaths in the above named County and State aforesaid, comes one

Name: Tracy Stephens

(Print)

Date: 04/15/2013

Who makes the following statement under oath to wit:

On April 1st 2013 just before midnight Deputy Bailey and I went to [REDACTED] to serve a warrant. Bailey and I made contact with a man who stated he lived there, we asked if Ernest McClora stayed there and the guy replied he did not. Bailey told the man we had to search the residence to verify he no longer lived there. The man said he would have to check with the home's owner, I asked if we could step in, to which the man opened the door and allowed Bailey and I into the residence. A short time after we walked in Mr. [REDACTED] stepped out. Bailey told the man we had an arrest warrant he asked if it was a search warrant to which Bailey replied no, it was an arrest warrant that allows us to look in the home for Ernest McClora. Mr. [REDACTED] said he was going to call his daughter, that she was an attorney and Bailey said he could call who ever he wanted to. we were going to verify McClora no longer stayed there. Bailey and I looked in the common areas and found all, but two rooms to be locked to which we left alone, at no time did we force or threaten to force the doors or physically move any person in the home. We did not find McClora in the home and Bailey returned the warrant to the region marked as "bad address" Bailey explained if we hadn't done that other Deputies could come and enter and look as we did, but he was going to take the warrant out as we had done what we could and believed Mr. [REDACTED] that McClora was in fact no longer a resident at [REDACTED]

End of Statement

This statement was made in the presence of
of the Richland County Sheriff's Department.

Sheriff Corporal Chris Duke

(Signature)

Date 04/15/2013

WITNESSES:

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____

DAY OF _____, 200__

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

Revised 10/25/01

RICHLAND COUNTY SHERIFF'S DEPARTMENT

Internal Investigation Advisement

You are hereby advised that you are the subject of an internal investigation being conducted by the Department. The nature of the investigation is an administrative inquiry into:

The nature of the contact with residents at [REDACTED] April 1st 2013.

Read the following carefully and initial each item.

- ☒ I understand that I will be asked questions narrowly related to the performance of my official duties and/or fitness for department.
- ☒ I understand that I am entitled to all rights and privileges guaranteed me by the laws and the Constitution of this State and the Constitution of the United States, and that statements or information provided by me as a part of this administrative investigation cannot be used against me in any subsequent criminal proceeding.
- ☒ I understand that I may have counsel of my choosing present with me during the course of this investigation, and may consult with such counsel as desired.
- ☒ I understand that if I refuse to answer questions during this investigation, or if I am untruthful, such action may result in my dismissal from the Sheriff's Department.
- ☒ I understand that statements or information provided by me as part of this administrative investigation may be used against me in subsequent disciplinary actions.
- ☒ I understand that if I am placed on Administrative Leave with pay, that I must make myself available to officials of the Sheriff's Department, and provide contact numbers where I may be reached during my absence from duty.
- ☒ I understand that I am to refrain from discussing this investigation with anyone other than the appropriate authority.

I HAVE READ THIS ADVISEMENT AND I FULLY UNDERSTAND ITS CONTENTS.

Signature of Employee

Date 04/15/2013

Witness

Date 04/15/2013



Richland County Sheriff's Department

IA - 049 13

LEON L. LOTT
Sheriff

April 15, 2013

Mr. [REDACTED]
[REDACTED]
Columbia, South Carolina 29229

Re: IA-049-13 (LP)

Dear Mr. [REDACTED]:

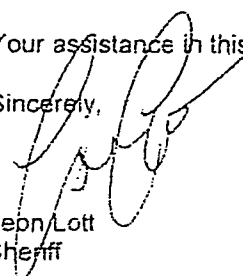
This letter will acknowledge receipt of the information you provided to the Internal Affairs division of the Richland County Sheriff's Department. The Richland County Sheriff's Department will conduct a thorough inquiry into your information.

As part of the Richland County Sheriff's Department's commitment to providing law enforcement services that are fair, effective, and impartially applied, the Internal Affairs division was established to provide citizens with a fair and effective avenue for redress of their legitimate grievances against deputies and employees, and, by the same token, to protect deputies and employees from false charges of misconduct or wrongdoing.

You can be assured that the Richland County Sheriff's Department takes these matters seriously, and you can have confidence that the Department will take appropriate action and will notify you when the inquiry is completed.

Your assistance in this matter is greatly appreciated.

Sincerely,


Leon Lott
Sheriff

LL/lp

5623 Two Notch Road, Columbia, South Carolina 29223
Office: (803) 576-3000
WWW.RCSD.NET
SHERIFF@RCSD.NET

STATEMENT OF MICHA SANDERS

ATTORNEY-CLIENT DOCUMENTS

Continued

RICHLAND COUNTY SHERIFF'S DEPARTMENT INTERNAL AFFAIRS

IA-067 1

STATEMENT

May 14, 2013 I (Micah Sanders) was arrested for shoplifting by officer t. stephens. On the way to the detention center he asked me to "help him, help me" but never replied on how to do so. When I arrived to the detention center I later (6 am may 15, 2013) was bunked with Nicole Farr (Valerie) and she immediately stated she was harrased by an officer as the day went by I later found out she had 4 charges and she let me know that two were dropped because the officer persuaded her to perform sexual favors she let every officer know what happened but I didnt find out the name of the officer until I was in the holding cell with her where she explained the questions he used to lure her into sexual activity. Valerie said that he rubbed her vagina felt

This statement was made in the presence of _____
of the Richland County Sheriff's Department.

Micah Sanders
(Signature)

Date 05/16/13

WITNESSES:

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____

DAY OF _____, 200____

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

may 16/13

ATTORNEY-CLIENT DOCUMENTS

Continued

RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS

IA - 061 13

STATEMENT

her chest, and made her masturbate him. When he asked her did she have any weapons is when he began to touch her, he stopped 3 times before they got to the ~~the~~ ^{the} detention center the interstate, somewhere close to blue road, and right before he entered the gates of the center Stephens also stopped ~~our~~ ^{my} ride right before we entered the center and asked once again "did I have any weapons" asked what was pointing out of my chest or the bulge in my chest and I said "nothing." He did not ~~do~~ ^{do} anything inappropriate other than ask me the questions.

una

This statement was made in the presence of
of the Richland County Sheriff's Department.

Eleanor B. Savage, Sgt
Michele Smith
(Signature)

Date 5/16/13

WITNESSES:

Eleanor B. Savage

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____

DAY OF _____, 200_____

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

Page 2 of 2

INVESTIGATION REPORT

ATTORNEY-CLIENT DOCUMENTS

Case Management Database: Incident Report Report Inquiry (1305003215)

Page 1 of 2

IA - 061 13

Incident Report Report: 1305003215

Primary Information	
Report Number:	1305003215
Case Number:	1305003215
Case Status:	CLOSED
Case Lead LEO:	Unassigned, Leo
Type Of Report:	Incident Report
Report Date/Time:	05/15/2013 0:00
Reporting LEO:	Stephens, Tracy Alexander (1616 / Uniform Regions / Richland County Sheriff's Department) 
Occurred From:	05/15/2013 2:02
Occurred To:	05/15/2013 2:02
Approved By:	ACISS (Richland County Sheriff's Department)
Approved Date/Time:	05/15/2013 7:01
Approval Status:	Approved
Expense Status:	Not Posted

Synopsis
While patrolling near the 8300 block of two notch road and north grampian hill road I observed a gray colored 2001 chev blazer traveling north on US 1 in an erratic manner. The vehicle was traveling at a high rate of speed. The vehicle also crossed the double yellow center line, into the median, and then back onto the roadway. The vehicle also turn into the waffle house without using a turn signal or breaking her speed. I initiated a lawfully traffic stop at the 8310 two notch road and made contact with the driver Ms. Farr, Valeria, Nichole at the gas station where she was purchasing brake fluid. As I approached Ms. Farr she stated she was traveling at a high rate of speed because her brakes have been malfunction and finally went out. Ms. Farr was detained at that point for for investigative purposes. As I walked over to talk with Senior Deputy Bailey about the incident Ms. Farr fled on foot towards the Quality Inn hotel. Following a brief foot case Ms. Farr was apprehended. During a search of Ms. Farr jacket I detected a strong odor of marijuana emitting from her jacket and located a small cigar. I asked Ms. Farr for consent to search her vehicle and she replied "yes". During a search of Ms. Farr vehicle rendered a green plant material that I ready recognized to be marijuana through my experience. Ms. Farr was placed under arrest for simple possession of marijuana. While placing Ms. Farr in custody she appeared unsteady on her feet, had a glazed look and slurred speech. I asked Ms. Farr had she consumed any alcoholic beverages and she stated she has three liquor drinks while she was at the club. Ms. Farr stated she was just leaving the club. I asked Ms. Farr to performed a field sobriety test and she complied. During the HGN test Ms. Farr showed distinct and sustained nystagmus at maximum deviation. Ms. Farr would not follow the stimulus to maximum deviation or continue to look at the stimulus during the entirety of the test. I did observed a lack of smooth tracking and onset of Nystagmus at maximum deviation. During the walk and turn test the Ms. Farr did not place her feet heel to toe in the starting position, and she did not walk heel to toe, Ms. Farr also fell to turn around properly after her ninth step, and did not count aloud. During the one leg stand test Ms. Farr used her arms to balance. Ms. Farr was advised of her Miranda warnings. During inventory search of Ms. Farr vehicle produced a half empty bottle of liquor. A DMV record check of Ms. Farr SCDL# 01156626 revealed her driving

Related Addresses	
<u>Address</u>	<u>Relationship</u>
1. 8300 Block Of Two Notch Rd, Columbia, South Carolina, 29223 	Occurred

Related Subjects						
Name	Relationship	Type	Sex	Race	Age	DOB
1. STATE OF SC 	VICTIM	PERSON	Unknown	Unknown	99 YEARS (Approx.)	—
2. DEPUTY T. STEPHENS 	WITNESS	PERSON	Male	Black	31 YEARS (Approx.)	—
3. FARR, VALERIA NICHOLE 	SUSPECT	PERSON	Female	Black	27 YEARS	7/26/1985

Analysis Information
Location Type Code: HIGHWAY/ROAD/ALLEY (INCLUDES STREETS)
Forced Entry Code: NO

Narrative
Open Narrative Document
Show Narrative Text

ATTORNEY-CLIENT DOCUMENTS

Case Management Database: Incident Report Report Inquiry (1305003215)

Page 2 of 2

1A - 067 13

Record Status Information	
Record Origination Operator:	ACISS (Richland County Sheriff's Department)
Record Origination Date:	05/15/2013 7:01
Last Update Operator:	ACISS (Richland County Sheriff's Department)
Last Update Date:	05/15/2013 7:01

ACISS software licensed by Richland County Sheriff's Department

shutz 05/15/2013
11:22:21 0.14

ATTORNEY-CLIENT DOCUMENTS

Report 1 of 2

ALVIN S. GLENN DETENTION CENTER INCIDENT REPORT

IA - 061 13

Incident Category: _____

Incident Time: 0250 Incident Date: 5-15-13 Incident Location: Pre-booking

Staff Member Reporting Incident: Detention officer A. McKie

Reporting Staff Member's Narrative and Inmates Involved

1st Inmate Involved: Farr, Valeria Inmate #: 596124 Charge: _____

2nd Inmate Involved: _____ Inmate #: _____ Charge: _____
 ON the above date and approximate time ID # McKie went out into pre-booking with Detainee FARR until Deputy Stevenson go out to his car to work on her paper work. Detainee stated to me that she needed to speak to someone. She stated to me that she was sexual harassed by Deputy Stevenson. He stopped three times coming to the jail, she pulled over and stated to her he would lower the charges if she would show him her private area. She said she did, and told her to pull her top down, he flashed his flashlight on her private area, and take her fingers and play with herself told her that he will work out getting rid of the charges & don't worry about it. She stated that she felt intimidated by this happening to her. Sgt. West was informed of the incident.

Reporting Staff Member's Signature: Ava McKie Report Completion Date: 5-15-13

Other Staff Members Involved

Robert Howarth Sgt. Chiquita Dawkins-West

Medical and/or Use of Force Narrative

Medical Attention Necessary: Yes _____ No ☒ Use of Force Necessary: Yes _____ No ☒

IA - 061 13

Supervisor's Narrative

Detainee Farr, Valerie #596124 asked me how do you report sexual harassment from the police. I asked her what happened. She began to state to me that the officer who brought her to the jail pulled his car over three times and asked to see her breast and flashed his flashlight under her dress and made comments about her not having underwear on. The officer was officer Stevens with Richland County Sheriff's Department. Detainee Farr, Valerie stated to me also that she felt intimidated and was scared. She started crying while sitting out in Prehearing area. I told Detainee Farr, V. that upon her release, she needs to contact Richland County Sheriff's Department to make a report. I also informed her that an incident report will be written.

Supervisor's Signature: Sgt. Chiquita Dawkins-Wat Date: 05-15-2013

Inmate Movement and Status Information

1st Inmate: _____ Inmate Number: _____ Moved to Unit: _____
 Pre-Hearing: _____ Cool Down: _____ Suicide Watch: _____ Medical Watch: _____ Protective Custody: _____
 Administrative: _____ Classification: _____ Other Movement Reason: _____
 Property Inventoried By: _____ Inmate Moved By: _____

2nd Inmate: _____ Inmate Number: _____ Moved to Unit: _____
 Pre-Hearing: _____ Cool Down: _____ Suicide Watch: _____ Medical Watch: _____ Protective Custody: _____
 Administrative: _____ Classification: _____ Other Movement Reason: _____
 Property Inventoried By: _____ Inmate Moved By: _____

Watch Commander's Review and Narrative

Watch Commander's Signature: _____ Date: _____

Incident Report Distribution

Medical: _____ Maintenance: _____ Operations: _____ Classification: _____ Professional Standards: _____ RSCO: _____
 Administration: _____ Hearing Officer: _____ Other Distribution: _____

Division Manager's Review and Narrative

Division Manager's Signature: _____ Date: _____

ATTORNEY-CLIENT DOCUMENTS

Page 1 of 1

1A-061 13

Personnel	Images
FIRST NAME: TRACY	
LAST NAME: STEPHENS	
MIDDLE NAME: A	
RANK: Deputy	
RCSD ID#: 1616	
PHOTO DATE: 10/18/2011	
CLASS CODE: SWORN	
EMPLOYEE OLD:	No
AGE:	30
DATE OF BIRTH:	7/20/1981
EYE COLOR:	BROWN
FACIAL HAIR:	NONE
HAIR COLOR:	BLACK
HEIGHT: 601	WEIGHT: 230
RACE: BLACK	SEX: MALE

ATTORNEY-CLIENT DOCUMENTS

Report 2 of 2

ALVIN S. GLENN DETENTION CENTER
INCIDENT REPORT

IA-061 13

Incident Category: _____

Incident Time: 02500 Incident Date: 05-15-13 Incident Location: INTAKE

Staff Member Reporting Incident: OFFICER HORVATH, ROBERT

Reporting Staff Member's Narrative and Inmates Involved

1st Inmate Involved: FARR, VALERIE Inmate #: 596124 Charge: _____

2nd Inmate Involved: _____ Inmate #: _____ Charge: _____

ON THE ABOVE DATE, AND APPROXIMATE TIME
RICHLAND COUNTY SHERIFFS DEPUTY STEPHENS BROUGHT
DETAINEE FARR, VALERIE # 596124 IN TO INTAKE
FOR A BREATH ALIZER TEST. SHORTLY AFTER, HE ASKED
ME TO GO OUT TO HIS CAR TO RETREIVE A DRIVERS
LICENCE HE'D LEFT ON TOP OF HIS PATROL CAR.
I OFFICER HORVATH WENT TO LOOK BUT THE LICENCE
WASNT THERE. SHERIFFS DEPUTY STEPHENS ASKED
ME TO WATCH DETAINEE FARR, VALERIE WHILE
HE WENT TO VEHICLE SALLEY PORT AND FOUND
DRIVERS LICENCE INSIDE HIS PATROL CAR. WHILE
DEPUTY STEPHENS WAS GONE DETAINEE FARR STATED
THAT SHE WISHED TO TALK TO SOMEONE. THAT IS WHEN
SHE TOLD ME THAT SHE WAS AFRAID OF OFFICER
STEPHENS, AND WISHED TO SPEAK TO SOMEONE ABOUT HIM.

Reporting Staff Member's Signature: OFFICER HORVATH, ROBERT Report Completion Date: 05-15-2013

Other Staff Members Involved

Medical and/or Use of Force Narrative

Medical Attention Necessary: Yes _____ No / Use of Force Necessary: Yes _____ No /

ATTORNEY-CLIENT DOCUMENTS

ALVIN S. GLENN DETENTION CENTER
INCIDENT REPORT SUPPLEMENT

IA - 061 13

Incident Category: _____

Incident Time: 0200 Incident Date: 05/15/2013 Incident Location: Pre-bookings

Staff Member Reporting Incident: Sgt. Chiquita Dawkins-West

Supplement Narrative

and would be given to my superiors. She continued to state that he said she would do the things that he asked that he would drop her charges. She stated that she was supposed to be booked in on six charges but he dropped two of them. She also stated that she has previously been a victim of rape and that she was molested from the age of ~~six~~ years old to sixteen years old.

Officer Stevens brought her in at about 02:50 for the breathalyzer machine. I spoke with detainee around 03:50 and officer Stevens had left out of pre-bookings to get to his car to complete her charging documents. He did not return until 04:30 to book her in. Detainee sat in pre-bookings awaiting his return and giving officer Ava McRie and myself statements.

Reporting Staff Member's Signature: Chiquita Dawkins-West Report Completion Date: 05/15/2013

ATTORNEY-CLIENT DOCUMENTS

ARREST WARRANT

2013A4010400119

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Richland / Dentsville Magistrate

THE STATE
 against
Tracy Alexander Stephens

Address: 207 Alderston Way
 Columbia, SC 29229-8791

Phone: SSN: [REDACTED]
 Sex: M Race: B Height: 6 3 Weight: 220
 DL State: SC DL #: 100747501
 DOB: 7/20/1981 Agency ORI #: 04000
 Prosecuting Agency: Richland County Sheriff Department
 Prosecuting Officer: Kevin Isenhoward - 898
 Offense: Sex / Criminal sexual conduct - Third degree

Offense Code: 0162
 Code/Ordinance Sec: 16-03-0654

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:
 Dentsville Magistrate
 2500 Decker Blvd Suite B1 Box 10
 Columbia, SC 29206

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
 Richland / Dentsville Magistrate)

AFFIDAVIT

ORIGINAL Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

Personally appeared before me the affiant Kevin Isenhoward who
 being duly sworn deposes and says that defendant Tracy Alexander Stephens
 did within this county and state on or about 5/15/2013 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Dentsville Magistrate)
 in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - Third degree

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 or about May 15, 2013 while at Interstate 77 near Two Notch Road in the Dentsville Magisterial District of Richland
 County, it is believed that the defendant did commit the crime of Sex / Criminal sexual conduct - Third degree because he did while
 operating under the color of law as a RCSD deputy force the victim, a handcuffed prisoner, to show the def. her vagina. The def.
 also forced the victim to insert her fingers into her vagina. The victim was restrained and under arrest during the crime. The victim
 and def. provided sworn statements contradicting each other. Much of the victim's statement can be confirmed through GPS
 technology in the deputy's patrol car which also disputes the def. statements. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
 Richland / Dentsville Magistrate)

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-
 Affiant's Telephone (803)576-3000

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 5/15/2013 defendant Tracy Alexander Stephens
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Richland / Dentsville Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - Third degree

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 5/22/2013)
 Signature of Issuing Judge (L.S.))
Phillip F Newsom)
 Judge Code: 5014)

Judge's Address 2500 Decker Blvd
Columbia, SC 29206-2323
 Judge's Telephone (803)576-2560

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ATTORNEY-CLIENT DOCUMENTS

9694-B-033

ATTORNEY-CLIENT DOCUMENTS

ARREST WARRANT

2013A4010400118

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Richland / Dentsville Magistrate

THE STATE
 against
 Tracy Alexander Stephens

Address: 207 Alderston Way
 Columbia, SC 29229-8791

Phone: SSN:
 Sex: M Race: B Height: 6 3 Weight: 220
 DL State: SC DL #: 100747501
 DOB: 7/20/1981 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department
 Prosecuting Officer: Kevin Isenhoward - 898
 Offense: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

Offense Code: 0819
 Code/Ordinance Sec: C/L, 17-25-0030

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:

Dentsville Magistrate
 2500 Decker Blvd Suite B1 Box 10
 Columbia, SC 29206

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Richland / Dentsville Magistrate

AFFIDAVIT

ORIGINAL Form Approved by
 S.C. Attorney General
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 SCCA 518

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 being duly sworn deposes and says that defendant Tracy Alexander Stephens
 did within this county and state on or about 5/15/2013 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Dentsville Magistrate)
 in the following particulars:

DESCRIPTION OF OFFENSE: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

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 the crime set forth and that probable cause is based on the following facts:

That on or about 05/15/2013 while at Interstate 77 near Two Notch Road in the Dentsville Magisterial District of Richland County,
 it is believed that the defendant did commit the crime of Misconduct in Office because he did while operating under the color of law
 as a duly sworn RCSD deputy force the victim, a handcuffed prisoner, to show the def. her vagina. The def. also forced the victim to
 insert her fingers into her vagina. The victim and def. provided sworn statements contradicting each other. Much of the victim's
 statement can be confirmed through GPS technology in the deputy's patrol car which also disputes much of the def. statement. As
 such, def. failed to perform his duties appropriately as a Deputy Sheriff, Affiant and others are witness to prove same

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Richland / Dentsville Magistrate

Affiant's Address 5623 Two Notch Road
 Columbia, SC 29223-
 Affiant's Telephone (803)576-3000

ARREST WARRANT

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

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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 5/22/2013

Signature of Issuing Judge (L.S.)
 Phillip F Newsom
 Judge Code: 5014

Judge's Address 2500 Decker Blvd
 Columbia, SC 29206-2323
 Judge's Telephone (803)576-2560

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ATTORNEY-CLIENT DOCUMENTS

9694-B-034

ATTORNEY-CLIENT DOCUMENTS

Investigation Employee Case File History

MA - 067 12

Personnel Profile

Employee Name: STEPHENS, TRACY A
Employee ID: 211692
SSN: [REDACTED]
Gender: M
Race: Black
DOB: 7/20/1981
Height:
Weight:
Hair Color:
Eye Color:

Position: DEPUTY
Rank: DEPUTY
Sworn: Yes
Status: Employee
Hire Date: 10/17/2011
Start Date: 10/17/2011
Department: REGION 2
Bureau:
Assignment:

Case #	Status	Incident Date	Complainant	Allegation	Violation	Finding	Action Type	Suspension Action Taken Hours
IA-025-13	Closed	3/5/2013		105 II (F) (12) - Conduct detrimental to operations of the department.		Non-sustained		No Action Taken
IA-049-13	Open - Forwarded for Review	4/2/2013		105 II (F) (14) - Careless/improper work performance.				
IA-061-13	Open	5/15/2013		105 II (F) (12) - Conduct detrimental to operations of the department.				

View Records Where:

[(Person Type = 'Employee') AND (Employee Name = 'STEPHENS, TRACY A')]

Total: 3

May 17, 2013

1

AFFIDAVIT OF JAMES FLOWERS

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2015-CP-40-02679

Valeria Farr)

Plaintiff(s),)

vs.)

AFFIDAVIT OF JAMES FLOWERS

Leon Lott)

in his capacity as Richland County)

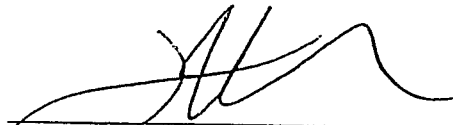
Sheriff and the Richland County)

Sheriff's Department)

Respondent.)

PERSONALLY appeared before me, James Flowers, who being first duly sworn, deposes and says that:

1. That the attached Preliminary Expert Report was prepared by me and the opinions made by me are made within a reasonable degree of certainty within the field of police practices.


James Flowers

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 28 DAY OF

Sept, 2016

Michael (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 9-18-25

Preliminary Expert Report of James A. Flowers Jr.

1. My name is James A. Flowers Jr. and this is a preliminary expert report on the case of Valeria Farr vs. Richland County Sheriff Leon Lott. If I am provided with additional material, my opinion may be amended.

Qualifications of James A. Flowers Jr.

2. My law enforcement career began in 1997 as an agent at the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS) where I supervised individuals placed on Probation or Parole in their daily activities to include; interviewing offenders in an office setting, their homes, and workplaces. Sanctioned offenders that violated conditions of their sentence by ordering them to attend drug counseling, anger management, intensive supervision, or complete public service. Coordinated and supervised warrant sweeps for non compliant offenders. Responsible for taking non compliant offenders to court and tried their cases for return to incarceration.

2. In 1999, I was promoted to Community Policing Coordinator for the statewide SCDPPPS where I planned, coordinated and assisted the Agency Director in implementing a department wide restructuring, which included retraining, redevelopment and new certification of Department's 600 agents, taking the agency to a Class 1 Certified Law Enforcement Agency. Lead Agent responsible for examining, reviewing and investigating all misconduct allegations received by the Department. Monitored closed internal affairs cases to assist the department in evaluating how cases have been handled from in-take through closure. Attended Internal Affairs policy and disciplinary meetings, meeting with high-ranking agency officials, individual group captains in order to keep abreast of individual cases and trends. Responsible for taking appropriate action on complaints that were received from members of the public as well as members of the department during the course of each year.

3. In 2000, I became a certified instructor at the SCDPPPS and the South Carolina Criminal Justice Academy where I instructed state law enforcement agents and basic cadets in the areas of Firearms, Tactical Driving, Defensive Tactics, Pressure Point Control Tactics, Arrest Scenarios, Personal Protective Equipment, and Prisoner Control and Transport.

4. In 2000, I served as a captain of the Special Operation Response Team for the SCDPPPS where I provided the leadership for the department's tactical response to hostage incidents, armed barricade

incidents, high risk warrant service, high risk vehicle stops, dignitary protection, surveillance assistance and any crisis situation deemed appropriate by the department.

5. In 2000, I served on the State Emergency Response Team where I assisted in the coordination of all South Carolina Law Enforcement, Emergency Response and other agencies to respond to state emergencies such as natural disasters, chemical, biological, radiological, nuclear and explosive issues. Also assessed the safety of government buildings in all 46 counties of South Carolina to include exterior and interior safety as well as building plans for emergencies and standard operating procedures.
6. In 2002, I was assigned to the United States Marshal "Operation Intercept" Fugitive Task Force which is a 13 agency task force that targets persons wanted for violent crimes, narcotic offenses, and sexual offenses in South Carolina. Served as the point person for agency coordination from the SCDPPPS.
7. In 2005, I was hired by the South Carolina Law Enforcement Division (SLED) as a Homeland Security Planner. In that position I served as the Pee Dee Homeland Security Coordinator and focal point for key Homeland Security emergency preparedness and response activities statewide. Support the Homeland Security Advisor, State and Regional Counter Terrorism Coordinating Councils (CTCC) involving terrorist threat issues, natural hazards and infrastructure protection. Coordinated the Pee Dee Region Counter Terrorism Coordinating Council. Assisted with the planning of the Buffer Zone Protection Plan at specific critical infrastructure sites throughout the state. Helped Pee Dee Region Counties implement the Incident Command System (ICS) and the National Incident Management System (NIMS).
8. I was the author of the Critical Incident Policy for the SCDPPPS.
9. I transferred into criminal investigations in 2005 at SLED where I investigated major criminal activity in the Midlands Region of South Carolina to include violent crimes such as murder, armed robbery, and rape, as well as property crimes, police and government official corruption, and officer involved shootings. These investigations were prosecuted by local Solicitor's offices or the South Carolina Attorney General's Office.
10. In 2006, I began my service On the SLED Special Weapons and Tactics Team (SWAT). I served as a member of the South Carolina Law Enforcement Division's elite team of agents who responsibilities include performing high-risk operations that fall outside of the abilities of regular patrol agents, including serving high-risk arrest warrants, barricaded suspects, hostage rescue, counter-terrorism, and

engaging heavily-armed criminals. In my duties, I was assigned to the Entry Team, Armored Vehicle Team, and Hostage Negotiations.

11. In 2006, I was assigned to the FBI Violent Crimes Task Force while at SLED. I assisted in the investigation of violent street gangs, crimes of violence, drug-related violence and the apprehension of violent fugitives. Responsibilities included using wiretaps and surveillance on proactive and coordinated targets to obtain federal prosecutions, including violations such as racketeering, drug conspiracy, and firearms violations. I received a Top Secret FBI clearance.

12. I have a B.S. Degree in Criminal Justice from the University of South Carolina and M.S. Degree in Criminal Justice from Troy University.

13. I have been retained as a defense and plaintiff consultant and/or expert in other cases in South Carolina including excessive force, murder, and Officer-involved shootings.

14. I have used force in my career and have investigated use of force cases including physical use of force, intermediate weapons, and deadly force.

15. My experience, training and background are more fully described in my attached resume.

16. My areas of expertise in policing, training, and investigations include but are not limited to officer-involved shooting investigations, police use of force, firearms and defensive tactics training, criminal investigations, interviews and interrogations, internal/administrative investigations.

17. I reviewed the following material in making my opinions:

- Richland County Sheriff's Department Incident Report 1305003215
- Uniform Traffic Tickets (89672, 89673, 89674, 89675) Issued to Valeria Farr
- S.C. Law Enforcement Division Breath Alcohol Analysis Test Report
- Richland County Forensic Examination Report (Marijuana)
- Alvin S. Glenn Detention Center Incident Report
- Internal Affairs Report for Tracey Stephens IA-061-13
- South Carolina Criminal Justice Academy Certification-Compliance
- Richland County Sheriff's Department Complaint Form IA-049-13
- Richland County Sheriff's Department Internal Affairs Investigation IA-025-13
- State of S.C. Civil Action Coversheet

- State of S.C Court of Common Pleas Answer
- State of S.C. Court of Common Pleas Answer to Plaintiff's First Set of Interrogatories on Behalf of Defendants
- State of S.C Court of Common Pleas Response to Plaintiff's Request for Production of Documents on Behalf of Defendants

18. This report is based upon the materials reviewed to date. Should any subsequent information cause me to expand, add, or revise any of my opinions, I will supplement this report.

19. At this point in the development of this case, I do not know whether I will be using any demonstrative aids during my testimony. Should I decide to use any such tool; I will assure that they are made available for review, if requested, prior to their use.

20. The opinions that follow are made within a reasonable degree of certainty within the field of police practices.

Background

21. On 03/05/2013, Tracy Stephens and Middle School aged son were involved in a verbal altercation that turned physical.

22. Stephens grabbed his son by the shirt and struck him in his eye causing bruising and discoloration.

23. Irene Stephens, mother of the juvenile, filed a report on 03/05/2013 with the Richland County Sheriff's Department complaining of an eye abrasion on her son after she witnessed the assault.

24. Deputy Scott Faust went to Longleaf Middle School to interview the juvenile.

25. The juvenile admitted that he was in an altercation with Stephens and that Stephens grabbed him by the shirt and jacked him out of the car, holding him by the shirt. Stephens also held him up against the car.

26. The juvenile got away from Stephens and jumped in the car and locked the door.

27. Stephens unlocked the door and pulled the juvenile out of the car and onto the ground trying to grab his arms and hands.

28. The juvenile was knocking Stephens's arms away and Stephens's fist hit the juvenile in the eye.

29. The Richland County Sheriff's Department interviewed Stephens who admitted to the altercation and to grabbing him and spanking him on three separate occasions during this altercation.

30. Based upon my review of the case materials, it is my belief that Tracey Stephens actions in relation to the altercation with his juvenile son should have resulted in disciplinary action from the Sheriff's department to include termination.

Opinion of Events

31. A reasonable law enforcement officer would not engage in a physical altercation with a middle school aged child resulting in injuries to the child's face from a fist strike.

32. A reasonable law enforcement officer would not drag a middle school aged child out of a car and onto the ground for "disrespect".

33. A reasonable law enforcement officer would not spank a child three times in succession related to one incident.

34. The Richland County Sheriff's Department should have at minimum placed Stephens on administrative leave during a criminal investigation and required retraining to include anger management training.

35. Stephens's case should have been referred to an outside law enforcement agency for criminal prosecution.

36. Stephens assaulted the juvenile on multiple occasions during this incident causing injury to the juvenile based upon his inability to manage his anger.

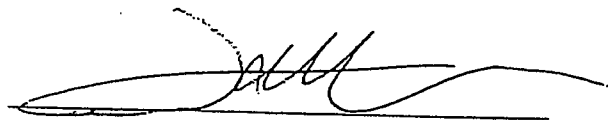
37. An objective outside agency would have charged Stephens's with assault based upon statements from the juvenile, his mother, and Stephens.

38. Mr. Stevens showed a history of violent behavior and lack of anger management. Stephens should have been terminated from employment with the Richland County Sheriff's Department after being charged. Had the Richland County Sheriff terminated Tracey Stephens after assaulting the juvenile, he would not have been employed as a Richland County Deputy Sheriff at the time of his arrest of Valeria Farr and would not have been able to commit his criminal sexual conduct on her.

Conclusion

Deputy Tracey Stephens assaulted his juvenile son during an altercation because his son had begun to display a poor attitude. His reaction to this attitude was above and beyond the normal and reasonable reaction of a reasonable law enforcement officer. Law enforcement officers are trained to keep their cool while others around them are not. Stephens's actions were those of an out of control tyrant as opposed to a calm demeanor law enforcement officer. The Richland

County Sheriff's Department was extremely derelict in their duties. They attempted to perform both a criminal and internal investigation on Stephens. Neither of those investigations resulted in the outcome that was necessary based upon the evidence. The Richland County Sheriff's Department and Sheriff Leon Lott are well known as an agency that investigates their own internal criminal affairs as opposed to calling for outside investigation. Most reasonable and respected law enforcement agencies and Sheriffs, call for outside criminal investigations to internal criminal matters. The South Carolina State legislature attempted to pass a law that required all officer-involved shooting investigations in the state to be handled by the South Carolina Law Enforcement Division. This was because the Richland County Sheriff's Department is the only Sheriff's department in the state that investigates their own shootings. No reasonable Sheriff or Sheriff's Department treats internal criminal investigations with the carefree nature of the Richland County Sheriff's Department. Tracey Stephens should have been terminated from employment and charged. Had he been terminated and charged, he would not have had the opportunity to commit criminal sexual conduct on Valeria Farr. As a result of this well known and publicized self investigation pattern, the Richland County Sheriff's Department and Sheriff Leon Lott were below the standard of care in retaining Stephens and therefore culpable in any actions taken by Deputy Tracey Stephens after this incident.



James Flowers

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 28 DAY OF

Sept, 2016

Nic Glanville (L.S.)

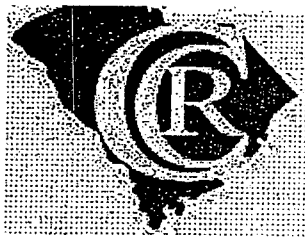
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 9-18-25

DEPOSITION OF TRACY STEPHENS

Transcript of the Testimony of **TRACY STEPHENS**

Date: August 15, 2016



CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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Page 1

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) C/A #: 2015-CP-40-2679
 3
 4
 5 Valerie Farr,)
 6 Plaintiff,)
 7 v.)
 8 Leon Lott in his capacity as)
 9 Richland County Sheriff and the)
 10 Richland County Sheriff Department,)
 11 Defendant.)

THE DEPOSITION OF

TRACY STEPHENS

Monday, August 15, 2016
 10:10 a.m. - 10:20 a.m.

The deposition of Tracy Stephens, taken on
 behalf of the Plaintiff at The Hardee Law Firm, 2231
 Devine Street, Suite 202, Columbia, South Carolina,
 on the 15th day of August, 2016, before Margaret S.
 Smith, Court Reporter and Notary Public in and for
 the State of South Carolina, pursuant to Notice of
 Deposition.

Page 2

APPEARANCES

1 Mark W. Hardee, Esquire
 2 The Hardee Law Firm
 3 2231 Devine Street, Suite 202
 4 Columbia, South Carolina 29205
 5 Attorney for the Plaintiff
 6 Robert D. Garfield, Esquire
 7 Davidson & Lindemann, P.A.
 8 1611 Devonshire Drive, Second Floor
 9 Post Office Box 8568
 10 Columbia, South Carolina 29202-8568
 11 Attorney for the Defendants
 12 J. Todd Rutherford, Esquire
 13 The Rutherford Law Firm
 14 2113 Park Street
 15 Columbia, South Carolina 29201
 16 Attorney for the Deponent, Mr. Tracy Stephens

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MR. STEPHENS PAGE:
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 Signature Sheet.....15
 Certificate.....16

EXHIBITS

(There were no exhibits marked to this deposition.)

STIPULATIONS

It is stipulated and agreed that this deposition is
 being taken pursuant to the South Carolina Rules of
 Civil Procedure.
 It is stipulated by and between counsel and the
 witness that the reading and signing of the following
 deposition be, and the same are, hereby not waived.
 The signature sheet is attached to the deposition at
 page 15.

Page 3

1 TRACY STEPHENS, having been duly sworn, deposes and
 2 testifies as follows:

3 MR. STEPHENS - EXAMINATION BY MR. HARDEE:

4 Q: Mr. Stephens, have you ever had your deposition
 5 taken before?

6 A: No, sir.

7 Q: Okay. I'm going to ask you some questions.

8 Under our rules, if you don't understand a

9 question I ask, rather than talking to your

10 attorney, you're required to ask me to

11 interpret that. So, if you have a question,

12 except for under very limited circumstances,

13 you're really not allowed to talk to your

14 attorney to ask him questions once the

15 deposition starts. Are you under any

16 medication today or any reason why you can't

17 give your deposition?

18 A: No, sir.

19 Q: Okay. On May 15, 2013, were you working with
 20 the Richland County Sheriff's Department?

21 A: What's the date again, sir?

22 Q: May 15th, 2013?

23 A: I don't recall.

24 Q: Do you remember arresting Valeria Farr?

25 A: Yes, sir.

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1 Q: Okay. And that day that you arrested her, were
 2 you working with the Richland County Sheriff's
 3 Department?

4 A: Yes, sir.

5 Q: Were you in your uniform?

6 A: Yes, sir.

7 Q: Were you driving a vehicle provided you by the
 8 Richland County Sheriff's Department?

9 A: Yes, sir.

10 Q: Was it a marked vehicle?

11 A: Yes, sir.

12 Q: Did you arrest and charge Valeria Farr of four
 13 different charges?

14 A: I don't recall.

15 Q: Okay. But you remember arresting her for some
 16 charges?

17 A: Yes, sir.

18 Q: Did you transport her to the Richland County
 19 Detention Center?

20 A: Yes, sir.

21 Q: Was that part of your duties as a deputy of
 22 Sheriff Leon Lott to transport prisoners to the
 23 Richland County Detention Center from time to
 24 time?

25 A: Yes, sir.

1. (Pages 1 to 4)

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1 Q: I know it's hard, but it's easy to talk over
 2 people because people normally do that. But in
 3 a deposition, she has to write down things.
 4 A: I understand, sir.
 5 Q: So, you plead the Fifth to the last question,
 6 is that right?
 7 A: Yes, sir.
 8 Q: Okay. Was there a video running in the car
 9 while you were transporting Valeria Farr?
 10 A: I don't recall.
 11 Q: Did the car -- were cars equipped with cameras
 12 that would show the suspects in the back of the
 13 car?
 14 A: Yes, sir.
 15 Q: Do you remember if it was on or not that night?
 16 A: I don't recall.
 17 Q: Would it be some reason why it would be off?
 18 A: No response.
 19 Q: Did you turn it off?
 20 A: I plead the Fifth, sir.
 21 Q: Did SLED ever talk to you after this incident?
 22 A: No, sir.
 23 Q: So, you were arrested by the Richland County
 24 Sheriff's Department, is that right?
 25 A: I don't recall.

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1 Q: You don't recall if you have pending criminal
 2 charges against you?
 3 A: No, sir.
 4 Q: But SLED never arrested you?
 5 A: No, sir.
 6 Q: Did you ever talk to Sheriff Lott about this
 7 incident?
 8 A: I don't recall.
 9 Q: Did anybody at Richland County Sheriff's
 10 Department ever sit down and review any video
 11 of this incident with you?
 12 A: I don't recall, sir.
 13 Q: In March of -- on March 5th of 2015, were you
 14 accused of assaulting your son?
 15 A: I don't recall, sir.
 16 Q: Do you know if the Richland ---
 17 A: Also, sir, we're here for Ms. Valeria Farr, not
 18 being about personal incidents that I may have
 19 going on.
 20 Q: I understand. I ---
 21 A: If you could direct those lines of questions
 22 only to Valeria Farr, I really appreciate it.
 23 Q: Yes, sir. Unfortunately, under a deposition,
 24 I can ask a wide range of questions, so you're
 25 required to answer.

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1 A: I think that you're fishing, sir, it's an
 2 expedition.
 3 Q: I know this is difficult for you, Mr. Stephens
 4 ---
 5 A: It's not.
 6 Q: --- but I'm allowed to ask these questions.
 7 A: I understand.
 8 Q: Okay. And please don't try and speak over me.
 9 Not because of me but because of the court
 10 reporter. I can hear you, but she has
 11 difficulty.
 12 A: I understand.
 13 Q: On March 5th, 2013, were you accused of having
 14 a physical altercation with your son?
 15 A: Once again, I do not recall, sir.
 16 Q: Okay. Did Richland County Sheriff's Department
 17 investigate that?
 18 A: I don't recall.
 19 Q: Do you know if they're aware of that?
 20 A: I don't recall, sir.
 21 Q: In 2013 -- April 2nd, 2013, were you accused of
 22 violating the civil rights of Ernest McClora?
 23 A: I don't recall, sir.
 24 Q: Do you know if you were ever investigated by
 25 Richland County Sheriff's Department about

Page 12

1 that?
 2 A: I don't recall.
 3 Q: Do you remember ever being suspended because of
 4 either of those alleged incidents?
 5 A: I don't recall, sir.
 6 Q: Do you remember ever being put on desk duties
 7 because of any of those incidents?
 8 A: I don't recall, sir.
 9 Q: Were you on the desk duty the night that
 10 Valeria Farr was arrested?
 11 A: I don't recall.
 12 Q: Were you arrested ---
 13 A: If I arrested her, could I be on desk duty,
 14 sir?
 15 Q: Right. So you were on desk duty?
 16 A: I gave you my answer, sir.
 17 Q: Okay. And you weren't suspended at that time,
 18 right?
 19 A: Again, I don't recall.
 20 Q: You don't recall if you were suspended the
 21 night that you arrested Valeria Farr?
 22 A: If I arrested Valeria Farr, I couldn't have
 23 been suspended, sir.
 24 Q: That's all you needed to say. Do you know a
 25 young lady by the name of Micah Sanders?

3. (Pages 9 to 12)

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Valeria Farr,

Plaintiff,

v.

Leon Lott In his capacity as
Richland County Sheriff and the
Richland County Sheriff's Department,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2015-CP-40-2679

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANTS

STATEMENT OF FACTS

Taking the facts in a light most favorable to Plaintiff, the Defendants Leon Lott In his capacity as Richland County Sheriff and the Richland County Sheriff's Department (hereinafter, "RCSD") submit the following factual background:

ARREST OF PLAINTIFF

On May 15, 2013, Plaintiff was driving her mother's car, and noticed that the brakes were not working properly. See, Comp., ¶ 5. She had trouble stopping the vehicle and had to pull into a restaurant parking area next to a Kangaroo gas station located on Two Notch Road in Richland County. See, *Id.* Plaintiff walked over to the Kangaroo gas station to purchase an item, when she was approached by RCSD Deputy Tracy Stephens. See, *Id.* Deputy Stephens questioned her and asked for her driver's license. See, *Id.*, ¶ 6. Plaintiff panicked and ran from Stephens. See, *Id.*, ¶ 7. Plaintiff was eventually apprehended by Stephens, arrested for multiple criminal and/or traffic infractions, and placed in the back of his marked vehicle en route to the Alvin S. Glenn Detention Center (hereinafter "ASGDC"). See, *Id.*, ¶ 8.

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SEXUAL HARASSMENT

While in his vehicle, Stephens explained to Plaintiff that they could "work something out." See, *Id.*, ¶ 9. Stephens then pulled off to the side of the road on I -77 Southbound, and inquired if she had any weapons or anything of the sort. See, *Id.* In particular, Stephens asked, "what's that bump in front of your dress," at which time Plaintiff replied that it was her private area. See, *Id.*, ¶ 10. Stephens then asked to see it, while he was shining his flashlight in between Plaintiff's legs. See, *Id.* Terrified, she did not resist and allowed Stephens to view between her legs. See, *Id.*, ¶ 11.

SEXUAL BATTERY - FIRST INSTANCE

After a period of time, Stephens then started again onto the highway. See, *Id.*, ¶ 12. During this time, he advised that he "would work something out" with Plaintiff if she would "help him out." See, *Id.* Stephens then stopped his vehicle on Bluff Road, exited the vehicle, and opened the passenger door to again shine his flashlight between Plaintiff's legs. See, *Id.* Stephens then asked what was inside of her vagina, and then shined the light on it. See, *Id.* Continued to be frightened, Plaintiff inserted her finger into her vagina and rubbed herself while Stephens watched by way of flashlight. See, *Id.* During this time, Plaintiff became so terrified that she began shaking. See, *Id.*, ¶ 13.

Stephens restarted the vehicle and proceeded onward to ASGDC advising her, "Yeah, I'm going to help you out. You will be able to work something out." See, *Id.*, ¶ 14. Specifically, Stephens assured her that he would drop one of the violations when they appeared to court. See, *Id.*

SEXUAL BATTERY - SECOND INSTANCE

Stephens then pulled over for a third time. See, *Id.*, ¶ 15. On this occasion, he pulled over on the street that leads into ASGDC in front of a bail bonding office. See, *Id.* Stephens opened the door of the vehicle and asked Plaintiff if she needed to rub and check

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her upper thighs to see if they were all right. *See, Id.* He then asked her what she had in her top. *See, Id.* Plaintiff then patted her chest area with her handcuffed hands to demonstrate to Stephens that she had no weapons. *See, Id.* Despite her assurances, Stephens claimed that he had not seen enough, and insisted on seeing more. *See, Id.* Plaintiff then pulled down her top exposing her breast while Stephens was shining his flashlight watching her. *See, Id.*

Stephens eventually restarted the vehicle and proceeded to ASGDC. *See, Id.*, ¶ 16. At or about the time of booking, Plaintiff informed two detention officers that she was being sexually harassed by Stephens. *See, Id.* ASGDC officials initiated protocols for Plaintiff to file an official complaint against Stephens. *See, Id.* Stephens attempted to remove Plaintiff from the detention center, but was prohibited from doing so by ASGDC officers. *See, Id.* Stephens then left the area. *See, Id.*

Stephens was subsequently fired by the Defendant Sheriff and arrested by the Sheriff's investigators for Criminal Sexual Conduct (3rd Degree) and Misconduct in Office. *See, Id.* ¶ 18.

Plaintiff brought this action in this Court alleging that Stephens acted unlawfully and engaged in a series of acts of sexual misconduct. Based upon these allegations, Plaintiff has brought causes of action against the Defendants Lott In his capacity as Richland County Sheriff and RCSD for negligence and assault and battery against pursuant to the South Carolina Tort Claims Act. *See, generally, Complaint.*

The Defendant Sheriff asserts that he has acted appropriately and reasonably at all relevant times and has filed an Answer categorically denying the allegations in Plaintiff's Complaint. The Defendants now move for summary judgment pursuant to Rule 56, SCRPC, based upon the following grounds:

- I. STEPHENS' CONDUCT FALLS UNDER THE EXCEPTION WITHIN §15-78-60(17) AND THEREFORE, THE DEFENDANT SHERIFF IS ENTITLED TO ABSOLUTE SOVEREIGN IMMUNITY FROM PLAINTIFF'S TORT CLAIMS
 - A. Generally: South Carolina Tort Claims Act
 - B. Analysis of S.C. Code Ann. §15-78-60(17)
 - (1) Stephens' Acting Beyond Scope of his official Duties
 - (2) Stephens' Actual Malice and Intent to Harm
 - C. Proper application of the Act justifies immunity for Defendant Sheriff
- II. PLAINTIFF'S CAUSE OF ACTION RELATING TO THE DEFENDANT'S NEGLIGENT HIRING, TRAINING, SUPERVISION, AND RETENTION IS WITHOUT MERIT AND SHOULD BE DISMISSED
 - A. Generally
 - B. Event: Another female arrestee on same shift
 - C. Event: Parental discipline of teenaged son
- III. THE DEFENDANT RCSD IS NOT AMENABLE TO SUIT

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (Ct. App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991), (citations omitted), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

I. STEPHENS' CONDUCT FALLS UNDER THE EXCEPTION WITHIN §15-78-60(17) AND THEREFORE, THE DEFENDANT SHERIFF IS ENTITLED TO ABSOLUTE SOVEREIGN IMMUNITY FROM PLAINTIFF'S TORT CLAIMS

A. Generally: South Carolina Tort Claims Act

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. See, *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. See, S.C. Code Ann. §15-78-40.

B. Analysis of S.C. Code Ann. §15-78-60(17)

It is undisputed that the Defendant Sheriff is a constitutional officer and thereby a

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state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina and is subject to the terms and conditions of the Tort Claims Act. The Tort Claims Act lists thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit.

S.C. Code Ann. §15-78-60(17) provides that governmental entities are not liable for a loss resulting from "employee conduct *outside the scope of his official duties* or which constitutes actual fraud, *actual malice, intent to harm*, or a crime involving moral turpitude." (bolded for emphasis) Thus, the determination by this Court as to any potential liability on the part of the Defendant Sheriff turns solely on the clear language of the South Carolina Tort Claims Act.

Plaintiff's claims in her Complaint exclusively center on the alleged actions of Tracy Stephens, who was acting as a RCSD Sheriff's Deputy. Therefore, this Court must decide as a matter of law whether Stephens' conduct at the relevant times were (1) undertaken outside of the scope of his official duties; or that which constituted (2) actual malice; or (3) an intent to harm Plaintiff. In the ensuing discussion, the Defendant Sheriff demonstrate to this Court that based upon the record in this matter, Stephens' actions clearly fall under this relevant exception prescribed by the Act.

STEPHENS ACTING BEYOND SCOPE OF HIS OFFICIAL DUTIES

Taking all facts in a light most favorable to Plaintiff, Stephens was certainly acting beyond the scope of his official duties during the events giving rise to this action.

"The remedy provided by [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)." S.C. Code Ann. § 15-78-20(b). "[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental

entity." S.C. Code Ann. § 15-78-70(a). According to the Act, "[n]otwithstanding 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.

The Act's definition of an "employee" refers to "any officer, employee, or agent 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." S.C. Code Ann. § 15-78-30(c).

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." S.C. Code Ann. § 15-78-20(f); *see also, Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct. App.1998) (noting that § 15-78-20(f) limits coverage to employees acting within the scope of official duty).

According to the Act, "'Scope of official duty' or 'scope of state employment' means (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i).

In the present case, on May 23, 2013, Stephens was arrested for Criminal Sexual Conduct (3rd Degree) and Misconduct in Office. See, Exh. A. On September 11, 2013, these felony charges were True Billed by a Richland County Grand Jury. See, Richland County Public Index. Accordingly, by way of the allegations in the Complaint as well as the separate determinations of probable cause, it is undisputed that Stephens: (1) sexually harassed and molested Plaintiff; (2) expressly forced and coerced her to expose herself and

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fondle herself; (3) committed an assault and battery on Plaintiff; and (4) offered to drop charges against her in exchange for sexual favors. See, Comp., ¶¶ 19, 21, 22.

The Defendants submit that a law enforcement officer who explicitly commits an unlawful act (*i.e.*, Stephens using coercion to engage in a sexual battery upon a subject and by offering to dismiss charges in exchange for sexual favors) is not only exceeding his authority but clearly acting in contravention with the official business of the Sheriff.¹

"If scope of employment is a broader term than scope of official duties -- the term used in the governmental immunity statute -- it follows that acts not within the scope of employment are not within the scope of official duties." See, *Frazier v. Badger*, 361 S.C. 94, 102, 603 S.E.2d 587, 591 (2004). Respondeat Superior applies in situations where the employee conduct *is within the scope* of his official duties. Where the servant is not serving the master's business purpose, the relationship is suspended. No matter the length of time. See, *Doe v. Smith*, No.2014-UP-267, 2014 WL 2968925, at *1 (June 30, 2014).

Courts have generally recognized that respondeat superior holds master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment. See, *e.g.*, *Froneburg v. Smith*, 406 S.C. 37, 743 S.E.2d 625, 633 (Ct. App. 2013). However, if the servant steps outside from the master's business for some wholly disconnected purpose, the master/servant relationship is temporarily suspended. No matter how short the time. See, *Kase v. Ebert*, 392 S.C. 57, 61-62, 707 S.E.2d 456, 458 (Ct. App. 2011).

South Carolina courts have specifically considered whether an employee was acting within the scope of his employment when he commits a sexual assault. The weight of

¹ See, *Crittenden v. Thompson-Walker Co.*, 288 S.C.112, 341 S.E.2d 385 (Ct. App. 1986) (distinguishing scope of servant's employment from scope of servant's authority and holding acts outside servant's authority are still within his scope of duty if done in furtherance of master's business).

authority advances the proposition that an employee's sexual harassment and/or assault is not within the employer's scope of employment. See, e.g., *Frazier, Supra* (holding an assistant principal was acting outside the scope of his employment when he made sexual advances on a teacher).

This analysis has been similarly applied to law enforcement officers. In *Doe v. S.C. State Budget & Control Bd.*, 329 S.C. 214, 494 S.E.2d 469 (1998), the Court reviewed the employer's exposure in light of a police officer's sexual assaults of women during traffic stops. In the underlying facts, the officer would stop female motorists on suspicion of DUI and give them the option of being arrested or having sexual intercourse. The Court observed that "no cogent argument could be made" that this police officer "was furthering the business of his employer at the time he sexually assaulted" the females. *Id.*, at 473. Therefore, the officer's acts were not within the scope of his official duties, and therefore the general tort liability policy did not provide coverage for the female subject's injuries. *Id.*, at 472.

In subsequent rulings, a Sheriff was found to be acting outside the scope of his employment when he sexually assaulted subordinates. See, *Loadholt v. S.C. State Budget & Control Bd.*, 528 S.E.2d 670 (Ct. App. 2000). Although the Sheriff made the victims report to his office to discuss county business and was working in his county office, the *Loadholt* Court found that his official duties did not encompass all conduct he engaged in while on duty, including the alleged sexual assault as he was not furthering the business of his employer at that time. Correspondingly, in *Padgett v. S.C. Ins. Reserve Fund*, 531 S.E.2d 305 (Ct. App. 2000), the Court of Appeals held that a professor was acting outside the scope of his official duties when he sexually assaulted a student.²

² See, e.g., *South Carolina Med. Malpractice Lab. Ins. J.U.A. v. Ferry*, 291 S.C. 460, 663, 354 S.E.2d 378, 381 (1987) (explaining that the scope of professional services does

In sum, under South Carolina law, "sexual harassment by a government employee is not within the employee's 'scope of employment.'" *Frasier*, 603 S.E.2d at 591.

STEPHENS' ACTUAL MALICE AND INTENT TO HARM

"Malice is the deliberate intentional doing of a wrongful act without just cause or excuse." See, *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982). "Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person." See, *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Actual Malice has been found where the "defendant actuated by ill will in what he did with the design to causelessly and wantonly injure the plaintiff." See, *Swicegood v. Lott*, 379 S.C. 346, 353, 665 S.E.2d 211, 213 (Ct. App. 2008).

That as to the intent to harm element, the Court of Appeals has held that an "intent to harm will be inferred as a matter of law when a person sexually assaults, harasses, or otherwise engages in misconduct towards an adult. *State Farm Fire and Cas. Co. v. Barrett*, 340 S.C. 1, 9, 530 S.E.2d 132, 136 (Ct. App. 2000).³

As an initial matter and most significantly, Plaintiff alleges and expressly stipulates that Stephens' actions with respect to her constituted actual malice and intent to harm. Specifically, Plaintiff takes the position in this litigation that Stephens' conduct was egregious to the degree so as to constitute not only actual malice but additionally acted with intent to

not include all forms of conduct simply because the person in the profession engages in such conduct).

³ Public official immunity does not protect officials from actions that were corrupt, malicious, or perpetrated outside and beyond the scope of official duties. An action is malicious where it is (1) done wantonly, (2) contrary to the actor's duty, and (3) intended to be injurious to another. *Stafford v. Barnes*, 2016 WL 3580752, at* 5. (M.D. N.C. June 28, 2016). The test by which a tort is to be characterized as reckless, willful, or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the [plaintiff's] rights. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 578, 106 S.E.2d 258, 264 (1958).

cause harm to her. See, Exh. B (Plaintiff admitting pursuant to Rule 36, SCRCP, that Stephens' actions with respect to Plaintiff as alleged in the Complaint constituted both actual malice and intent to harm)

Moreover, in Plaintiff's own deposition testimony, she repeatedly characterized Stephens' state of mind as "sick" and graphically and painfully described the nature of the criminal sexual conduct:

Q: Were you crying?

A: Yes.

Q: Were you --

A: I was crying by the time I got to Alvin S. Glenn (Detention Center).

Q: No, I don't mean by that time. I'm talking about the time that we're going through now, were you crying?

A: Yes, yes. That's how I know that he's sick. Because little did he know when he started making me do that stuff, he didn't do anything to me but open up what I already been through. He didn't do anything to me but made me feel defenseless all over again.

Q: So he could see you crying, right?

A: Yes.

Q: He intended to harm you?

A: Yes.

Q: He was malicious?

A: Yes.

Q: Actual malice?

A: Yes, yes, because he tried to tell me that I got weapons on me that I don't have on me. If you're looking at the inside of my vagina, you see there ain't nothing on the inside of there, like, you sick, like, that's it, like, he's sick, that's it, that's it. I hate him.

See, Exh. C.

Most critically, Plaintiff did not name as a party-defendant the specific person who she claims committed the various illegal acts and/or torts upon her.⁴ Instead, Plaintiff has elected to sue the Richland County Sheriff, the law enforcement agency which employed Stephens at the relevant times. The evidence clearly reflects that the principal or sole RCSD employee whose acts or omissions with respect to these criminal and intentional acts was Stephens. *See, Supra*. Yet, Stephens was never named as a party-defendant. Therefore, the Defendant Sheriff -- the only law enforcement party-defendant in this action -- is entitled to absolute sovereign immunity for any such alleged loss resulting from his employee's conduct constituting actual fraud and/or intent to harm pursuant to §15-78-60(17).

C. Proper application of the Act justifies immunity for Defendant Sheriff

A plain reading of the Tort Claims Act clearly demonstrates that the Defendant Sheriff should be shielded from liability based on the facts in the present case.

When interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. The South Carolina Supreme Court has held that words used in the statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992). More recently, in *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005), the Court of Appeals held that:

The cardinal rule of statutory interpretation is to determine the intent of the legislature. The legislature's intent should be ascertained primarily from the plain language of the statute. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.

⁴ Pursuant to S.C. Code Ann §15-78-70(a) and (b), an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.

(Internal citations omitted)

Therefore, given the plain and ordinary meaning of the aforementioned provisions of the Tort Claims Act, Plaintiff's causes of action against the Defendant Sheriff must fail as a matter of law.

II. PLAINTIFF'S CAUSE OF ACTION RELATING TO THE DEFENDANT'S NEGLIGENT HIRING, TRAINING, SUPERVISION, AND RETENTION IS WITHOUT MERIT AND SHOULD BE DISMISSED

A. Generally

In her second cause of action in her Complaint, Plaintiff brings causes of action with respect to negligent hiring, negligent training, negligent supervision, and negligent retention.

In *James v. Kelly Trucking Co.*, 377 S.C. 628; 661 S.E.2d 329, (2008), the Supreme Court held that:

Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort.

In circumstances *where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public*, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.

As this recitation suggests, the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct.

See *Id.*, at 330-331, (Internal citations omitted) (Bolded for emphasis)

"To state a claim for negligent retention, a plaintiff must allege the employer had knowledge of its employee's habit of prior wrongdoings, and despite the foreseeability of the harm to third parties, the employer failed to terminate the offending employee before he caused the harm." See, *Callum v. CVS Health Corp.*, 137 F.Supp.2d 817, 860 (D.S.C. 2015).

However, our Courts have addressed the type of wrongdoing which would provide suitable notice to the employer. Thus, any prior act must bear key similarities to the consequent ultimate harm, *to wit*:

Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements -- knowledge of the employer and foreseeability of harm to third parties. These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. ***From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.*** Such factual considerations -- especially questions related to proximate cause inherent in the concept of foreseeability -- will ordinarily be determined by the fact finder, and not as a matter of law. ***Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.***

See, *Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447, 450 (Ct. App. 2005).

As will be shown herein, there is no competent evidence that Stephens engaged in previous conduct for which to place RCSD on notice that he created an unreasonable or undue risk of harm to the public. As a result, Plaintiff's claim that the Defendants are directly and independently liable is without merit and this cause of action should be dismissed.

B. Event: Another female arrestee on same shift

In her Complaint, Plaintiff alleges that she is "not the first person this Deputy had sexually harassed and molested. In fact, there is a pattern of this Deputy doing the same type of activities." See, Comp., ¶ 10. Plaintiff's sole basis for such liability with respect to the Defendants, as Stephens' employer, involve the allegation that Stephens had "sexually harassed and molested" a female subject identified as Ms. Micah Sanders. See, Exh D.

Taking the facts in a light most favorable to Plaintiff, on May 14, 2013, Stephens placed Ms. Sanders under arrest for shoplifting. During the transport to the detention center, Stephens asked that Ms. Sanders, "help him help her," without specifying what he meant by doing so. According to Ms. Sanders, "Stephens also stopped our ride right before we entered the (detention) center and asked once again: 'Did I have any weapons?' (He also) asked, 'What was pointing out of my chest or the bulge in my chest?' and I said, 'Nothing.' He did not do anything appropriate other than ask me the [sic] questions." See, Exh D.

Foremost, there is no evidence that, with respect to Ms. Sanders, Stephens acted in a similar manner with that of his alleged treatment of Plaintiff. To be sure, Ms. Sanders stated that Stephens asked questions that might be construed as inappropriate or harassing in nature. However, Sanders does not contend, nor can Plaintiff point to any evidence, that Stephens coerced, molested, assaulted, or committed a sexual battery upon her. However, even if this Court determines that Stephens treatment of Sanders tended to suggest that Stephens was an unreasonable risk of harm to the public, the factual timeline clearly reveals that the Defendants were never placed on actual or constructive of such risk.

On May 16, 2013, Ms. Sanders provided a written statement to the Defendants' Internal Affairs investigator, advising the Defendants of Stephens' actions at the time of her

arrest. See, Exh D. The sequence of events is most critical in this analysis in that Ms. Sanders had interacted with Stephens hours before Stephens' arrest of Plaintiff. Moreover, Ms. Sanders advised the Defendants of her involvement the day after Stephens' alleged assault upon Plaintiff.⁵

Again for sake of argument that even if this Court construes that: (1) Stephens acted inappropriately with respect to Ms. Sanders and (2) in similar fashion to his conduct relating to Plaintiff, the information was relayed to the Sheriff after Stephens' involvement with Plaintiff and therefore, the Sheriff never had the benefit of notice of such wrongdoing.

C. Event: Parental discipline of teenaged son

On March 5, 2013, Stephens' wife initiated an internal affairs complaint alleging that Stephens and her teenaged son were involved in verbal exchange that turned physical in the front yard of their residence. Mrs. Stephens reported that her son was being obstinate and disrespectful to Stephens. She advised IA investigators that as Stephens grabbed their son, Stephens' hand inadvertently struck her son's eye. The three individuals -- Stephens, Mrs. Stephens, as well as the teenaged boy -- all stated that Stephens' actions were likely an accident and not intentional. Deputy Stephens was neither on duty, nor in uniform when the incident occurred. See, Exh. G.

The *Doe v. ATC Court*, *Supra*, considered the matter of an employee inappropriately having touched the legs of, kissed, and making persistent sexual comments to a disabled adult female. The employee had a prior incident with another employee in which he made sexually inappropriate comments to her. The Court of Appeals held that, although both incidents were sexual in nature, there lacked a sufficient nexus to the ultimate harm as the

⁵ Moreover, by way of interrogatories, the Defendants inquired of Plaintiff to furnish any and all "evidence that the Defendant had actual or constructive knowledge of a pattern of misconduct by Stephens." In two sets of responses dated May 25, 2016 and again on August 22, 2016, Plaintiff has conspicuously failed to respond to this question. See, Exhs. E, F.

ADG
#16

prior incident was a "far cry from the reprehensible, persistent pattern of abuse" against the disabled female.

In this isolated March 2013 event, it is undisputed that Stephens was parenting a disrespectful and recalcitrant teenaged son during which time Stephens accidentally struck him in the eye. However, assuming *arguendo* that Stephens had struck him in a deliberate and intentional manner, these circumstances were of a different and distinct nature for which to establish a foreseeable risk for the wrongful misconduct as is alleged in the case at bar. More so, Plaintiff cannot point to any previous occasion or circumstance in which the Defendant Sheriff had actual or constructive knowledge that Stephens -- either while on duty or otherwise -- engaged in any form of sexual harassment, discrimination, abuse, or misconduct with respect to female subjects or arrestees. Put differently, summary judgment is warranted, pursuant to *Doe v. ATC Court*, *Supra*, given that no reasonable fact finder can find a nexus or similarity between the prior acts and the ultimate harm caused.

III. DEFENDANT RCSD IS NOT AMENABLE TO SUIT

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

For this reason and strictly from a procedural perspective, the proper entity to be sued would be the Defendant Richland County Sheriff.

CONCLUSION

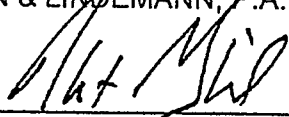
For these reasons, there is clearly an absence of evidence to support Plaintiff's case and Plaintiff's causes of action against the Defendants must therefore be dismissed as a matter of law.

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#17

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:


ROBERT D. GARFIELD
1611 Devonshire Drive, 2nd Floor
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Columbia, South Carolina 29202
T: (803) 806-8222
rgarfield@dml-law.com

Counsel for Defendants

Columbia, South Carolina

October 11, 2016

ADG
#18

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT A

ARREST WARRANT

2013A4010400119

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

THE STATE
against

1305833417R2

Tracy Alexander Stephens

Address: 207 Alderston Way

Columbia, SC 29229-8791

Phone: _____ SSN: 252-39-8215
Sex: M Race: B Height: 6 3 Weight: 220DL State: SC DL #: 100747501DOB: 7/20/1981 Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DepartmentProsecuting Officer: Kevin Isenhoward - 898Offense: Sex / Criminal sexual conduct - Third degreeOffense Code: 0162Code/Ordinance Sec: 16-03-0654This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe 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:

Dentsville Magistrate
2500 Decker Blvd Suite B1 Box 10
Columbia, SC 29206

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA,

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

Personally appeared before me the affiant Kevin Isenhowardbeing duly sworn deposes and says that defendant Tracy Alexander Stephens whodid within this county and state on or about 5/15/2013

violate the criminal laws of the

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

Richland / Dentsville Magistrate

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - Third degreeI 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 or about May 15, 2013 while at Interstate 77 near Two Notch Road in the Dentsville Magisterial District of Richland
County, it is believed that the defendant did commit the crime of Sex / Criminal sexual conduct - Third degree because he did while
operating under the color of law as a RCSD deputy force the victim, a handcuffed prisoner, to show the def. her vagina. The def.
also forced the victim to insert her fingers into her vagina. The victim was restrained and under arrest during the crime. The victim
and def. provided sworn statements contradicting each other. Much of the victim's statement can be confirmed through GPS
technology in the deputy's patrol car which also disputes the def. statements. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

Affiant's Address 5623 Two Notch RoadColumbia, SC 29223-Affiant's Telephone (803)576-3000

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 5/15/2013defendant Tracy Alexander Stephens

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

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - Third degreeHaving 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 meon 5/22/2013

Signature of Issuing Judge

Phillip F Newsom

Judge Code: 5014Judge's Address 2500 Decker BlvdColumbia, SC 29206-2323Judge's Telephone (803)576-2560Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

9694-O-047

ARREST WARRANT

2013A4010400118

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

THE STATE

1306833417R2

against

Tracy Alexander Stephens

Address: 207 Alderston Way

Columbia, SC 29229-8791

Phone: SSN: 252-39-8215

Sex: M Race: B Height: 6 3 Weight: 220

DL State: SC DL #: 100747501

DOB: 7/20/1981 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Kevin Isenhoward - 898

Offense: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

Offense Code: 0819

Code/Ordinance Sec: C/L, 17-25-0030

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:

Dentsville Magistrate
2500 Decker Blvd Suite B1 Box 10
Columbia, SC 29206

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

Personally appeared before me the affiant Kevin Isenhoward

being duly sworn deposes and says that defendant Tracy Alexander Stephens

did within this county and state on or about 5/15/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Dentsville Magistrate) violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

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 or about 05/15/2013 while at Interstate 77 near Two Notch Road in the Dentsville Magisterial District of Richland County, it is believed that the defendant did commit the crime of Misconduct in Office because he did while operating under the color of law as a duly sworn RCSD deputy force the victim, a handcuffed prisoner, to show the def. her vagina. The def. also forced the victim to insert her fingers into her vagina. The victim and def. provided sworn statements contradicting each other. Much of the victim's statement can be confirmed through GPS technology in the deputy's patrol car which also disputes much of the def. statement. As such, def. failed to perform his duties appropriately as a Deputy Sheriff, Affiant and others are witness to prove same

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

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 5/15/2013

defendant Tracy Alexander Stephens

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

☒ County/ ☐ Municipality of Richland / Dentsville Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

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 5/22/2013

Signature of Issuing Judge

Phillip F Newsom

Judge Code: 5014

Judge's Address 2500 Decker Blvd

Columbia, SC 29206-2323

Judge's Telephone (803)576-2560

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

9694-O-048

AGENCY I.D.
SC0 400000

DATE/TIME OF ARREST
5/23/13 1030

RICHLAND COUNTY
SHERIFF'S DEPARTMENT

CASE NUMBER
13058334-17

ARREST REPORT

DEFENDANT NAME (LAST, FIRST MIDDLE) Stephens, Tracy Alexander										RACE B	SEX M	DATE OF BIRTH 07/20/81	PHOTO NUMBER
AGE 31	ETH N	HEIGHT 6'02	WEIGHT 230	HAIR Blk	EYES Bro	SOCIAL SECURITY NUMBER 252-39-8215	VISIBLE SCARS AND MARKS		NO. 1	NO. 2	NO. 3	NO. 4	
ADDRESS (NUMBER & STREET) 207 Alderston Way						CITY Columbia	STATE SC	ZIP CODE 29229	RESIDENT J	PHONE NUMBER			
ALIAS				PLACE OF BIRTH Georgia		DRIVERS LICENSE NUMBER 100747501			STATE SC				
EMPLOYER OR OCCUPATION OR SCHOOL None				PARENT / GUARDIAN		ADDRESS (CITY AND STATE)							
BOOKING OFFICER'S NAME RICHLAND COUNTY DETENTION CENTER						ARRESTING OFFICER Isenhoward		AGENCY RCSD	DEPT. NUMBER 898				
ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE: ☐ SEMI-AUTO ☐ FULL-AUTO ☐ ON VIEW ARREST ☐ SUMMONED ☒ CUSTODY													
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFERRED TO OTHER AUTHORITY * This Jurisdiction S - State O - Out of State U - Unknown													
ARREST LOCATION: 5623 Two Notch Road						CITY Columbia	STATE SC	ZIP CODE 29223					
CHARGE	CSC 3rd Degree					Misconduct in Office							
STATUTE	16-03-0654					17-25-0030							
INVESTIGATION	2013A4010400119					2013A4010400118							
ENTERED DATE	05/22/13					05/22/13							
INVESTIGATOR	Phillip Newsome					Phillip Newsome							
BOND AMOUNT	\$35,000 PR					\$35,000 PR							
CHARGE TYPE / ALTERNATE	NEWSOME					NEWSOME							
COMPLAINANT	State of SC					State of SC							
DATE OF ARREST	05/15/13					05/23/13							
ADDITIONAL CASE NUMBER													
CHARGE													
STATUTE													
INVESTIGATION													
ENTERED DATE													
INVESTIGATOR													
BOND AMOUNT													
CHARGE TYPE / ALTERNATE													
COMPLAINANT													
DATE OF ARREST													
ADDITIONAL CASE NUMBER													
CHARGE													
STATUTE													
INVESTIGATION													
ENTERED DATE													
INVESTIGATOR													
BOND AMOUNT													
CHARGE TYPE / ALTERNATE													
COMPLAINANT													
DATE OF ARREST													
ADDITIONAL CASE NUMBER													
VICTIM NAME OR NEXT OF KIN (LAST, FIRST, MIDDLE) Farr, Valerie Nichole						ADDRESS (NUMBER AND STREET NAME) 1716 Dupont Drive							
CITY Columbia		STATE SC	ZIP CODE 29223	HOME PHONE NUMBER 803-708-9212				WORK PHONE NUMBER 803-363-2396					
VICTIM NOTIFIED OF ARREST: ☒ YES DATE 05/23/13 ☐ NO TIME						VICTIM OR NEXT OF KIN WISHED TO BE PRESENT AT BOND HEARING: ☐ YES ☒ NO							
REPORTING OFFICER(S) Sgt. K. Isenhoward			DATE 05/23/13	DEPT. NO. 898	APPROVING OFFICER Deputy Chief D. Wilson			DATE 05/23/13	CPT. NO. 209				
FOLLOWUP INVESTIGATION ☒ YES ☐ NO						OFFICER NO		05/23/13 898					

9694-O-002

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Valeria Farr,

Plaintiff,

v.

Leon Lott in his capacity as Richland County
Sheriff and the Richland County Sheriff's
Department,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-40-2679

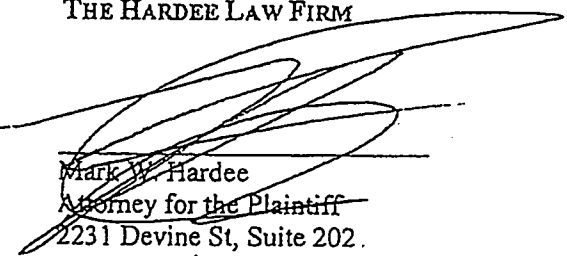
PLAINTIFF RESPONSE FOR FIRST
SET OF REQUEST FOR ADMISSIONS
AND SUPPLEMENTARY
INTERROGATORIES ON BEHALF OF
DEFENDANT

The Plaintiff Valeria Farr hereby answers pursuant to South Carolina Rules of Civil Procedure Rule 33 to the Defendants First Set of Requests for Admissions and Supplementary Interrogatories as follows:

1. Request to Admit #1- The actions taken by the Richland County Sheriff's deputy with respect to Plaintiff as alleged in the Complaint *did not constitute* actual malice.
Answer: Denied
2. Interrogatory # 1- If Plaintiff denies Request to Admit number one, provide a detailed factual basis and explanation for such denial including the source of such information.
Answer: The acts committed and the fact that this was a pattern.
3. Request to Admit # 2-The actions taken by the Richland County Sheriff's deputy with respect to Plaintiff as alleged in the Complaint *did not constitute* an intent to harm.
Answer: Denied

4. Interrogatory # 2- If Plaintiff denies Request to Admit number two, provide a detailed factual basis and explanation for such denial including the source of such information.
Answer: The acts committed and the fact that this was a pattern.

THE HARDEE LAW FIRM



Mark W. Hardee
Attorney for the Plaintiff
2231 Devine St, Suite 202
Columbia, South Carolina 29205
(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
February 8, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Valeria Farr)

Plaintiff(s),)

vs.)

Leon Lott)
in his capacity as Richland County)
Sheriff and the Richland County)
Sheriff's Department)

Respondent.)

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-40-02679

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2016, I served, via first class mail, at the address below, a copy of the Plaintiff Response for First set of Request for Admissions and Supplementary Interrogatories on Behalf of Defendant pertaining to the above-referenced action.

Robert D. Garfield
Davidson & Lindemann, P.A.
1611 Devonshire Dr. Second Floor
Columbia, SC 29202



Vicky McCarter
Legal Assistant

Columbia, South Carolina

Date: 2-8-16

DLSCN 02/10/16

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT C

1 State of South Carolina) In the Court of Common Pleas
 2 County of Richland) Case No: 2015-CP-40-2679

3

4

Valeria Farr)

5

Plaintiff(s),)

6

Deposition

7

vs.)

of

8

VALERIA FARR

8 Leon Lott in his capacity as)
 9 Richland County Sheriff and)
 9 the Richland County Sheriff's)
 10 Department)

10

Defendant(s).)

11

12

13 Deposition of VALERIA FARR, taken before Jennifer
 14 L. Thompson, CVR-M, Nationally Certified Verbatim Court
 15 Reporter and Notary Public in and for the State of
 16 South Carolina, scheduled for 9:30 a.m. and commencing
 17 at the hour of 10:04 a.m., Monday, October 3, 2016, at
 18 the office of Davidson & Lindemann, P.A., Columbia,
 19 South Carolina.

20

Reported by:

21

Jennifer L. Thompson, CVR-M

22

23

24

25

1 Any court, party, or person who has purchased a
2 transcript may, without paying a further fee to the
3 reporter, reproduce a copy or portion thereof as an
4 exhibit pursuant to court order or rule or for internal
use, but shall NOT otherwise provide or sell a copy or
copies to any other party or person without the express
consent of the reporter and/or reporting agency.

5 APPEARANCES

6 For the Plaintiff(s):

7 Mark W. Hardee, Esquire
8 Law Office of Mark W. Hardee
2231 Devine Street, Suite 202
Columbia, SC 29205

9 For the Defendant(s):

10 Robert D. Garfield, Esquire
11 Jasmine Wyman, Attorney
Davidson & Lindemann, P.A.
12 1611 Devonshire Drive, 2nd Floor
Columbia, SC 29204

13 Britton L. All, Attorney
14 Chief Legal Counsel
Richland County Sheriff's Department
15 5623 Two Notch Road
Columbia, SC 29223

1

2 REPORTER'S LEGEND:

3 -- [denotes interruption/change in thought]

4 ... [denotes trailing off/incomplete
thought or statement]5 [sic] [denotes word/phrase that may seem strange or
incorrect; written verbatim]

6 (ph) [denotes phonetic spelling]

7 (unintelligible) [denotes not capable of being
understood]8 (indiscernible crosstalk) [denotes] multiple speakers
at the same time, not capable of
being understood]

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1 STIPULATIONS

2 This deposition is being taken pursuant to
3 the South Carolina Rules of Civil Procedure.

4 - - -

5 The reading and signing of this deposition is
6 waived by the deponent and counsel for the
7 respective parties.

8

9 Whereupon,

10 VALERIA FARR, being duly sworn and cautioned
11 to speak the truth, the whole truth, and nothing
12 but the truth, testified and deposed as follows:

13 Court Reporter: State your full name for the
14 record, please.

15 Witness: Valeria Farr.

16

17 (Excerpted Testimony)

18 BY MR. GARFIELD:

19 Q Were you crying?

20 A Yes.

21 Q Were you --

22 A I was crying by the time I got to Alvin S. Glenn.

23 Q No, I don't mean by that time. I'm talking about
24 the time that we're going through now, were you
25 crying?

1 A Yes, yes. That's how I know that he's sick.

2 Because little did he know when he started making
3 me do that stuff, he didn't do anything to me but
4 open up what I already been through. He didn't do
5 anything to me but made me feel defenseless all
6 over again.

7 Q So he could see you crying, right?

8 A Yes.

9 Q He intended to harm you?

10 A Yes.

11 Q He was malicious?

12 A Yes.

13 Q Actual malice?

14 A Yes, yes, because he tried to tell me that I got
15 weapons on me that I don't have on me. If you're
16 looking at the inside of my vagina, you see there
17 ain't nothing on the inside of there, like, you
18 sick, like, that's it, like, he's sick, that's it,
19 that's it. I hate him.

20 Q I understand. Would you like to take another
21 break?

22 (End of Excerpted Testimony)

23 - - - - -

24

25

1 CERTIFICATE

2
3 Be it known that the foregoing Deposition of
4 VALERIA FARR was taken by Jennifer L. Thompson, CVR-M;

5 That I was then and there a notary public in
6 and for the State of South Carolina-at-Large;

7 That the witness was by me first duly sworn
8 to testify the truth, the whole truth, and nothing but
9 the truth, concerning the matter in controversy
10 aforesaid;

11 The foregoing transcript represents a true,
12 accurate and complete transcription of the testimony so
13 given at the time and place aforesaid to the best of my
14 skill and ability;

15 That I am not related to nor an employee of
16 any of the parties hereto, nor a relative or employee
17 of any attorney or counsel employed by the parties
18 hereto, nor interested in the outcome of this action.

19 Witness my hand and seal this 4th day of October
20 2016.

21 
22 Jennifer L. Thompson, CVR-M

23 Notary Public for South Carolina
24 My Commission Expires: August 14, 2019

25 This transcript may contain quoted material. Such
material is reproduced as read or quoted by the
speaker.

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT D

ATTORNEY-CLIENT DOCUMENTS

Continued

RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS

IA-067 1
STATEMENT

May 14, 2013 I (Amiah Sanders) was arrested for shoplifting by officer T. Stephens. On the way to the detention center he asked me to "help him, help me" but never replied on how to do so. When I arrived to the detention center I later (6 am May 15, 2013) was bunked with Nicole Farr (Valerie) and she immediately stated she was harassed by an officer as the day went by I later found out she had charges and she let me know that two were dropped because the officer persuaded her to perform sexual favors. She let every officer know what happened but I didn't find out the name of the officer until I was in the holding cell with her where she explained the questions he used to lure her into sexual activity. Valerie said that he rubbed her vagina felt

This statement was made in the presence of _____
of the Richland County Sheriff's Department.

W. M. [Signature]
(Signature)

Date 05/16/13

WITNESSES:

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____

DAY OF _____, 200

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

may 18/2

ATTORNEY-CLIENT DOCUMENTS

9694-B-025

ATTORNEY-CLIENT DOCUMENTS

Continued

RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS

IA - 061 13

STATEMENT

her chest, and made her masturbate him. When he asked her did she have any weapons is when he began to touch her, he stopped 3 times before they got to the ~~the~~ detention center the interstate, somewhere close to bluff road, and right before he entered the gates of the center Stephens also stopped ~~our~~ ride right before we entered the center and asked once again "did I have any weapons" asked what was pointing out of my chest or the bulge in my chest and I said "nothing." He did not ~~do~~ ^{do} anything inappropriate other than ask me the questions.

This statement was made in the presence of
of the Richland County Sheriff's Department.

Eleanor B. Savage, Sgt

[Signature]
(Signature)

Date 5/16/13

WITNESSES:

Eleanor B. Savage

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____

DAY OF _____, 200_____

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

page 2 of 2

ATTORNEY-CLIENT DOCUMENTS

9694-B-026

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No. 2015-CP-40-2679
Valeria Farr,	)	
	)	
Plaintiff,	)	PLAINTIFF'S ANSWER TO FIRST SET
	)	OF INTERROGATORIES
v.	)	
	)	
Leon Lott in his capacity as Richland County	)	
Sheriff and the Richland County Sheriff's	)	
Department,	)	
	)	
Defendants.	)	

The Plaintiff Valeria Farr hereby answers pursuant to South Carolina Rules of Civil Procedure Rule 33 to the Defendant's first set of Interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

Answer: Valeria Farr

1716 Dupont Dr

Columbia, SC 29223

Ms. Farr can testify as to the allegations in the Complaint

Micah Sanders

3717 Lamar St

Columbia, SC 29203

Ms. Sanders can testify that she was assaulted by the deputy in a way similar to what happened to the Plaintiff.

Tracy Alexander Stephens

207 Alderston Way

Columbia, SC 29229

(c) The location or place of any such treatment,

Answer: Dorn VA, Columbia, SC; Greenwood, SC

(d) The name and address of any doctor or hospital involved in any such treatment.

Answer: Rebecca Payne- Psychiatrist, Dorn VA Medical Center

15. What is the name and address of the medical doctor, physician, or psychiatrist who diagnosed you with post-traumatic stress disorder as alleged in Paragraphs four (4) and Twenty (20)?

Answer: Rebecca Payne- Psychiatrist, Dorn VA Medical Center

16. In light of your contention that "the Plaintiff was not the first person this Deputy had sexually harassed and molested" as alleged in Paragraph Seventeen (17) of the Complaint, provide the names and addresses of any and all such other individuals who were sexually harassed and molested by this deputy and the dates that these actions took place.

Answer: Micah Sanders
3717 Lamar St
Columbia, SC 29203

17. In light of your contention that "there is a pattern of this Deputy doing the same type of activities", as alleged in Paragraph Seventeen (17) of the Complaint, provide the precise factual bases and circumstances in which you contend the existence of a pattern of such misconduct occurring prior to the events giving rise to this action. Include in your

response the identity and address of any such victim as well as any evidence that this Defendant had actual or constructive knowledge of same.

Answer: The deputy in question, assaulted Micha Sanders in a similar manner as he did to the Plaintiff.

18. Please set forth Plaintiff's employment history within the previous ten (10) years, and for each position or employment, please set forth:

Answer:

(a) Name and address for each employer,

Answer: Allied Barton Security Services, Charlotte, NC

Answer: Avis Rental Car, Charlotte, NC

(b) The job title, nature, and duties of the employment;

Answer: Security Officer

Answer: Clean and detail cars

(c) The name of Plaintiff's immediate supervisor;

(d) The dates of employment;

Answer: 2009 for about 7 months

Answer: 2009 for about 4 months

(e) The reason that Plaintiff left that employment.

Answer: PTSD

Answer: Not receiving any work hours

19. Please set forth Plaintiff's prior arrest history, and for each incident, please set forth:

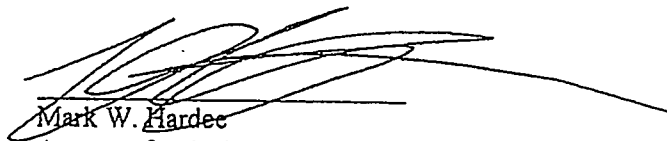
Answer: Attempted Murder (Dismissed); CDV (Dismissed); Charges by the deputy in question (Dismissed).

- (a) The dates of the action
- (b) The jurisdiction in which each such action was filed, charged or indictment was made;
- (c) A description of the nature of each action;
- (d) The result and final disposition of each action (e.g., guilty plea, trial and sentencing information, ect.)

20. State the name, web address, and user name for all blogs, online forums, and social networking websites that Plaintiff has belonged or had membership to from 2005 to the present.

Answer: None

THE HARDEE LAW FIRM



Mark W. Hardee
Attorney for the Plaintiff
2231 Devine St, Suite 202
Columbia, South Carolina 29205
(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
May 24, 2016

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT F

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Valeria Farr,

Plaintiff,

v.

Leon Lott in his capacity as Richland County
Sheriff and the Richland County Sheriff's
Department,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-40-2679

**PLAINTIFF'S SUPPLEMENTAL
ANSWER TO FIRST SET OF
INTERROGATORIES**

The Plaintiff Valeria Farr hereby answers pursuant to South Carolina Rules of Civil Procedure Rule 33 to the Defendant's first set of Interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

Answer: Valeria Farr

1716 Dupont Dr

Columbia, SC 29223

Defendants are in possession of Ms. Farr's written statement

Micah Sanders

3717 Lamar St

Columbia, SC 29203

Defendants are in possession of Ms. Farr's written statement

16. In light of your contention that "the Plaintiff was not the first person this Deputy had sexually harassed and molested" as alleged in Paragraph Seventeen (17) of the Complaint, provide the names and addresses of any and all such other individuals who were sexually harassed and molested by this deputy and the dates that these actions took place.

Answer: Micah Sanders
3717 Lamar St
Columbia, SC 29203

17. In light of your contention that "there is a pattern of this Deputy doing the same type of activities", as alleged in Paragraph Seventeen (17) of the Complaint, provide the precise factual bases and circumstances in which you contend the existence of a pattern of such misconduct occurring prior to the events giving rise to this action. Include in your response the identity and address of any such victim as well as any evidence that this Defendant had actual or constructive knowledge of same.

Answer: The deputy in question, assaulted Micha Sanders in a similar manner as he did to the Plaintiff.

18. Please set forth Plaintiff's employment history within the previous ten (10) years, and for each position or employment, please set forth:

Answer:

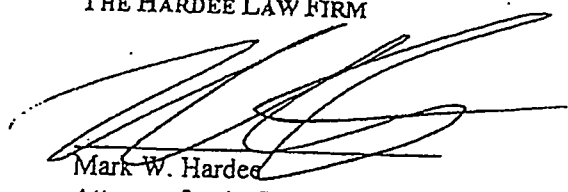
(a) Name and address for each employer,

Answer: Allied Barton Security Services, Charlotte, NC

20. State the name, web address, and user name for all blogs, online forums, and social networking websites that Plaintiff has belonged or had membership to from 2005 to the present.

Answer: None

THE HARDEE LAW FIRM



Mark W. Hardee
Attorney for the Plaintiff
2231 Devine St, Suite 202
Columbia, South Carolina 29205
(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
August 22, 2016

Valeria Farr v. Leon Lott in his capacity as Richland County Sheriff
and the Richland County Sheriff's Department

Civil Action Number: 2015-CP-40-2679

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

EXHIBIT G

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
INCIDENT REPORT**

AGENCY I.D.
SCORI 400000

CASE NUMBER

1A - 025 13

1303023105

SIC

ENDC

EVENT	INCIDENT TYPE				COMPLETED ☒ YES ☐ NO		FORCED ENTRY ☐ YES ☒ NO		PREMISE TYPE 13		UNITS ENTERED		TYPE VICTIM ☒ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST ☐ GOVERNMENT ☐ RELIG ORGN ☐ SOCI PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFFICER					
	1 INFORMATION				☒ YES ☐ NO		☐ YES ☒ NO											
	2				☐ YES ☒ NO		☐ YES ☒ NO											
	3				☐ YES ☒ NO		☐ YES ☒ NO											
SUBJECT NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER) [R7]										SUBDIVISION		ZIP CODE 29229		WEAPON TYPE			
	INCIDENT DATE 03052013		24 HR CLOCK 1230		TO DATE 03052013		24 HR CLOCK 1230		DATE OF BIRTH 03052013		24 HR CLOCK 1240		DATE OF BIRTH 1259		DATE OF BIRTH 1315			
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) STEPHENS, IRENE										RELATIONSHIP TO SUBJECT 1		RES J		RACE E		SEX F	
	ADDRESS 1204 Bradford Ridge Ln										CITY COLUMBIA		STATE SC		ZIP CODE 29229			
	VICTIM'S NAME (LAST, FIRST, MIDDLE) [REDACTED]										RELATIONSHIP TO SUBJECT CH		RES J		RACE S		SEX M	
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC [REDACTED]										CITY COLUMBIA		STATE SC		ZIP CODE 29229			
	ADDRESS [REDACTED]										CITY COLUMBIA		STATE SC		ZIP CODE 29229			
	VISIBLE INJURY (VICT 1) ☒ YES ☐ NO EXPLAIN ABRASION (EYE) ☐ YES ☒ NO COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO										VICTIM (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☒ UNK		DRUGS ☐ YES ☐ NO ☒ UNK TYPE					
	VICTIM (NO. 2) USING ALCOHOL ☐ YES ☐ NO ☒ UNK										DRUGS ☐ YES ☐ NO ☒ UNK TYPE							
	GANG RELATED ☐ YES ☒ NO																	
NARRATIVE	☒ SUSPECT NAME (LAST, FIRST, MIDDLE) STEPHENS, TRACY RACE M SEX M AGE 31 ETH N DATE OF BIRTH [REDACTED] HEIGHT 601 WEIGHT 230 HAIR 1 EYES 2 ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ REMANDS FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC [REDACTED] ADDRESS [REDACTED] CITY COLUMBIA STATE SC ZIP CODE 29229 SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☒ UNK ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO DRUGS ☐ YES ☐ NO ☒ UNK TYPE TOTAL # ARRESTED OFFENSE DATE OFFENSE TIME ARREST DATE ARREST TIME																	
	COMP REPORTS ON THE ABOVE LISTED DATE AND TIME THAT THE LISTED VICTIM AND SUBJECT WERE INVOLVED IN A VERBAL ALTERCATION THAT TURNED PHYSICAL, AT THE ABOVE LISTED LOCATION. COMP REPORTS THAT THE VICTIM WAS DISRESPECTFUL TO THE SUBJECT AND WAS BEING OBSTINATE. COMP REPORTS THAT THE SUBJECT GRABBED THE VICTIM BY HIS SHIRT, AT WHICH TIME THE SUBJECTS HAND ACCIDENTALLY STRUCK THE VICTIMS EYE. COMP DECLINED PROSECUTION. COMP REQUESTED A REPORT FOR DOCUMENTATION. R/O OBSERVED THE VICTIMS LEFT EYE TO BE DARNED INSIDE THE WHITE AREA IN LEFT CORNER. PHOTOGRAPHS OBTAINED AND SENT TO CRIME VICS.																	
	PROPERTY SEIZED 1 DAMAGED 1																	
	ADMINISTRATIVE ☐ ACTIVE ☒ ADAM CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER CEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRAJURISDICTION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY S NO. REPORTING OFFICER(S) DATE S NO. APPROVING OFFICER DATE 1601 Pruitt, Jason 03052013 FOLLOW UP INVESTIGATION ☐ YES ☒ NO S NO. OFFICER DATE																	

9694-J-003

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS**

STATEMENT

State of South Carolina
County of Richland

Personally appeared before me this 14 day of March 2013, at 1010 hours, an Officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Dep. Tracy Stephens, IA-025-123

Q: Lt. L. Payne

A: Dep. T. Stephens

Re: Assault complaint against [REDACTED]

Q: Tell me about the incident involving [REDACTED]

A: On March 5 between 1200 and 1500 hrs my kids had a half day of school, upon arrival at my address of [REDACTED], my wife Irene Stephens and my son [REDACTED] arrived at my residence. As I proceeded to talk to my son in reference to his behavior and his grades at school, he began to display a poor attitude. As I asked him to step out of the vehicle he hesitated, as if he did not want to get out. I asked him on multiple occasions to get out of the vehicle, however he did not comply. As I placed my right hand on his right shoulder to escort him out of the vehicle he began to sigh, huff, and puff. I proceeded to spank him on his rear side with my right hand. He fled on foot around the car. I gave him a direct order to come here, on multiple occasions, however he refused. Shortly after he got back into the vehicle on the passenger side and locked the door. I entered the vehicle on the passenger side. I unlocked the rear passenger door and escorted my son out of the vehicle and began to spank him again on the rear side as he continued to resist. Shortly after he escaped again, as I continued to lecture him on his behavior, he became very disrespectful and I continued to spank him less than a minute. At that time my seven year old arrived home from the bus stop. And my wife and kids left to go to their residents at [REDACTED]. Shortly after I was notified that my wife had called law enforcement, in order to document the incident because of my son [REDACTED] complained of his left eye hurting. She wanted to document it for school purposes.

Q: How did [REDACTED]'s eye get injured?

A: To my knowledge I'm not sure, however I did take him to an eye specialist. Per my attorney's advice. The doctor's preliminary examination stated it could be consistent with a poke, not being struck, because there was no bruising on inside or outside of the eye. The doctor stated it could have been a result of being upset, or a family history of early signs of glaucoma.

Q: Did you hit J. [REDACTED] in his eye?

A: No sir

Q: Were you on duty during this incident?

A: No sir

Q: Were you in uniform during this incident?

A: No sir

Q: Did this incident occur in the Region you are assigned to?

A: No sir

Q: You have been given the opportunity to submit a written statement. Is it your intention to use this question and answer session as your written statement?

A: yes sir

Q: Do you have anything else you would like to add to this statement?

A: no sir

This statement was made in the presence of Lt. Larry Payne of the Richland County Sheriff's Department Internal Affairs.

All of the above is the truth, the whole truth and nothing but the truth.

Signed

Witness

Witness

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 14 DAY OF March, 2013.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 10/20/2019.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

1A - 025 13

Internal Investigation Advisement

You are hereby advised that you are the subject of an Internal investigation being conducted by the Department. The nature of the investigation is an administrative inquiry into:

Assault

62

Read the following carefully and initial each item.

- ☒ I understand that I will be asked questions narrowly related to the performance of my official duties and/or fitness for department.
- ☒ I understand that I am entitled to all rights and privileges guaranteed me by the laws and the Constitution of this State and the Constitution of the United States, and that statements or information provided by me as a part of this administrative investigation cannot be used against me in any subsequent criminal proceeding.
- ☒ I understand that I may have counsel of my choosing present with me during the course of this investigation, and may consult with such counsel as desired.
- ☒ I understand that if I refuse to answer questions during this investigation, or if I am untruthful, such action may result in my dismissal from the Sheriff's Department.
- ☒ I understand that statements or information provided by me as part of this administrative investigation may be used against me in subsequent disciplinary actions.
- ☒ I understand that if I am placed on Administrative Leave with pay, that I must make myself available to officials of the Sheriff's Department, and provide contact numbers where I may be reached during my absence from duty.
- ☒ I understand that I am to refrain from discussing this investigation with anyone other than the appropriate authority.

I HAVE READ THIS ADVISEMENT AND I FULLY UNDERSTAND ITS CONTENTS.

Signature of Employee

Date 11/14/13

Witness

Date 03/14/13

9694-J-006

IA - 025 13

Investigative Followup Report: 1303023105/5

Primary Information

Report Number: 1303023105/5
Case Number: 1303023105
Case Status: OPEN
Case Lead LEO: Weeks, Lancy
Type Of Report: Investigative Followup
Report Date/Time: 02/05/2013 23:22
Description: Faust follow up
Reporting LEO: Faust, Stephen Scott (703 / Special Victims Unit / Richland County Sheriff's Dept)
Approval Status: Open
Expense Status: Not Posted

Narrative

Open Narrative Document

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030610 At approx. 930 AM I/O was contacted by Sgt. Strang who stated the Desk Sgt. contacted him and requested an investigator contact SRO Godfrey in reference to a possible child abuse and that the suspect was a Deputy, named Tracy Stephens. I/O confirmed we had a Tracy Stephens that worked with us but to I/O's knowledge, I/O had never met him. I/O contacted SRO Godfrey who stated that [redacted] reported to school with a bruised eye and [redacted] stated that Tracy Stephens hit him because he would not get out of the front passenger seat of the family vehicle. I/O informed SRO Godfrey that I/O would get back him on who was going to work it since it involved a RCSD Deputy. In the mean time, I/O told him to call a RCSD Lab Unit to properly document the injuries. I/O passed this information on to Capt. Weeks, Major Smith and Chief Wilson and requested input as to if I/O should work it or should it be turned over to IA or SLED. While I/O waited, SRO Godfrey mentioned that [redacted] said that he did tell a police officer what happened when it happened. I/O started looking into that aspect and would learn from Lt. Ache and Capt. Porter that on the 5th, the boy's mother actually called RCSD to report the incident, as documented in 13030231-05. One of the reasons was so that when he went to school, the SRO would know what happened and that it was reported. However, the SRO was not notified. I/O would track down the report that had not yet been approved in ACISS. I/O was informed that CIO would work it per the Sheriff and that Major Smith said that it needed to be assigned to a LT or higher and that Capt. Weeks would head up the investigation. Since Capt. Weeks was in a meeting on an unrelated matter, I/O went to Longleaf Middle School to interview the victim. I/O's thinking was that Law Enforcement needed to talk to the victim before anyone could negatively influence him to not tell the truth about what actually happened. I/O arrived at the school at approx. 11:45 am and met with SRO Godfrey, who called the victim to his office. I/O introduced myself to [redacted] and I/O requested that SRO Godfrey contact a guidance counselor to sit in with us so we would have a witness to verify that no coercion could be accused by the suspect on us with the victim. 5th grade counselor Boswell-Glasco came in and [redacted] and her both wife explained as to why I/O was there and I/O asked [redacted] if he was willing to talk to I/O about how his eye was injured. [redacted] said he was willing to talk to I/O and when asked, he stated that he was not scared or intimidated to talk to I/O. I/O asked [redacted] if he knew the difference between a truth and a lie. [redacted] stated that a truth was telling what happened while a lie was not telling what actually happened. I/O asked [redacted] if anyone had told him not to tell the truth about what happened to his eye, and [redacted] said yes. I/O asked him what he meant and he said that his mother said not to tell his friends or students what happened but if an adult asked what happened, that he was to tell the truth. I/O asked [redacted] if he intended to tell I/O the truth and [redacted] said he would. I/O asked [redacted] how his eye was injured and to start from the beginning. [redacted] stated that yesterday around 12:30 PM I/O would clarify and learn that he was out of school early because the school had a half day; he, his mom, his baby brother (1 year old [redacted]) and his sister (3 month old [redacted]) went to Tracy's house to wait for [redacted] to get off the bus. While they waited, Tracy pulled up. [redacted] referred to him as his dad, though it is actually his step-father. [redacted] states that [redacted] is cranky, do they let him out of the car, and that is when his dad pulled up, approx. 2 minutes later and he was in his uniform and patrol car. [redacted] stated that his dad took [redacted] in to get dressed. [redacted] stated that his mom called his dad and told him that [redacted] should be there any minute and to bring [redacted] back out. When his dad brought [redacted] back out, he was going to buckle her up and asked [redacted] who was standing in the open door and the seat to get out of the way. [redacted] asked why, and said that he (dad) wasn't coming with him, do why did he want him out of the car. [redacted] states that is when his dad grabbed him by the shirt and jacked him out of the car, holding him by his shirt. [redacted] stated that he had him up against the car and was telling him to respect him and that he (dad) should listen to him. [redacted] stated he responded and said, why should I when you are not my dad, while he was knocking his dad's arm off of him. [redacted] stated that he walked away from his dad, and started going around the car and his dad started to follow him around the car. [redacted] stated that his dad told him to come here, and [redacted] responded that why should he when he was angry with him. [redacted] stated that he jumped in the car and locked the door, but his dad unlocked it (I imagine that his mother could have been the one to unlock it but [redacted] said that his dad unlocked it). [redacted] stated that when his dad unlocked the car, he pulled him out and onto the ground and was trying to grab his arms/hands. [redacted] stated that he was knocking his dad's arm away and that his dad's fist hit him in the eye. [redacted] stated that his fist/arm was not pulled back (I/O can demonstrate how [redacted] showed I/O). During this, I/O asked if he mom saw it and was said. [redacted] indicated that his mom asked his dad if he hit him several times and that his dad repeated that he did hit him. I/O asked him if he told his dad hit him by accident. [redacted] hesitated as if he was thinking about it, and said kinda but when asked again, he indicated it could have been an accident. I/O had [redacted] demonstrate how his dad was holding him and how he actually came to strike his eye. I/O asked [redacted] if he was willing to put details this again so I/O could put in a written form. [redacted] stated that his step dad said that he wasn't over to give a statement when he was in trouble with out his step-father being there. I/O informed [redacted] that he was not in trouble and that the reason I/O was there was to find out what happened to his eye. [redacted] indicated that he did not want to give a statement. I/O informed [redacted] that that was ok and that he did not have to give one. I/O thanked him for his time and I/O and Boswell-Glasco went and called his mother (Irene Stephens), to let her know what was going on and asked her if she could come to the school to see if she would allow I/O to take a written statement from [redacted]. Irene stated that she could be at the school in 15 minutes. I/O met with Irene and informed her of what was going on, that I/O was new aware of the report from the 5th, but that I/O nor the SRO was aware of it. I/O met with Irene alone, only because the SRO and Boswell-Glasco were some where else. I/O explained why and how we got to this point, and informed her that I/O and Capt. Weeks were not going to give preferential treatment to Tracy because he was a co-worker, nor were we trying to target him. I/O informed her that my job and purpose was to find out if a crime had been committed. Irene stated that she understood purpose. Irene stated that she saw the actual strike, that from her drivers seat she could see out the rear passenger door, which is where they were, and that she saw how [redacted]'s eye was actually injured. Irene stated that she did feel it was an accident, that Tracy was holding [redacted] and [redacted] was holding on to Tracy's clothing. Tracy used his arm to knock [redacted]'s arm off of his clothes and in doing so as his arm came up, [redacted]'s eye was struck. I/O informed her of what [redacted] said, that she asked Tracy if he hit [redacted] and that Tracy denied it. Irene immediately stated that what she actually asked Tracy was, who repeatedly asked if he hit [redacted] intentionally, and Tracy repeatedly stated no. Tracy stated she wouldn't have asked if Tracy hit him because she saw it, and repeated that she asked if he intentionally hit [redacted]. Tracy went on to say that she felt it was an accident and that if she thought it was intentionally done, she would say so and would have upset and went after a teacher who she was told put her hand on [redacted]. Irene seemed genuine and actually help I/O understand how the strike occurred. By her explanation, it seemed like Tracy came up with a movement with his hands to knock [redacted]'s arm off of grabbing Tracy's clothing and in doing so hit his first struck his eye. Irene numerous times in repeated that she did not feel it was intentional and that she did not want to prosecute. I/O informed her that we would take her wishes into consideration but we going to investigate it fully and that it would ultimately be determined by an Atty. Solicitor or Magistrate on prosecution, but that it had to be determined that an actual crime had occurred. Irene asked I/O wanted to get a statement from [redacted] and I/O stated that I/O wanted a statement from her and that I/O had to [redacted]. Irene stated that I/O could get a statement from [redacted] but that she had to get back to work. It was almost 2 PM at this time, and I/O stated that I/O left it to [redacted] whether she get [redacted] to the Dr and that a statement from her could be done at a later time. I/O told her that I/O felt comfortable with what I/O had from [redacted], but I/O felt she could shed a great deal of clarification on the incident and needed to give a statement. I/O asked if she was willing to do it PM and she stated yes. I/O supplied her with I/O's number and asked if she would call I/O and I/O would come to her so she would be inconvenienced. Irene stated she would call and I/O confirmed her with the one on the report. I/O also told her that she could tell Tracy about anything we discussed and encourage her to make sure Tracy was also willing to give a statement, that if there was no crime, we needed to know by getting a statement to document his account of the situation. I/O briefed Capt. Weeks who stated that she called Tracy to schedule an appointment for him to supply a statement but had to leave a voicemail. Just before I/O

IA - 025 13

went home, I/O informed Capt. Weeks that I/O would also call Tracy, and when I did it was from VO's recorded 3055 desk line. I/O spoke to Tracy, who would inform I/O that he gave a statement the day before. I/O explained how and why I/O was called today, and that I/O was unaware of what transpired with other Deputies the day before until today when the SRC called I/O. I/O stated that the incident report was very limited with information and that I/O needed to get a statement from him, but Tracy stated that he didn't want to give a statement. I/O informed Capt. Weeks, Major Smith and Chief Wilson. I/O later learned that Capt. Weeks got a call from Tracy, who informed her that any questions should be referred to his attorney Todd Rutherford.

030713 I/O observed a call and message from Tracy who asked I/O to call him back at his number. This message was on 030613 after we spoke, I/O called Tracy and he informed I/O that he called I/O back yesterday to inform I/O the same thing he did to Capt. Weeks, that he retained Todd Rutherford and to refer all questions to him. I/O stated that I/O had learned that and stated ok, and said bye.

030813 I/O saw the Sheriff at a luncheon for Job Corps, and the Sheriff informed I/O that he saw Todd Rutherford and Todd stated that he had a Dr prepared to say that the eye injury was a result of ~~an~~ high blood pressure. I/O informed Capt. Weeks and Major Smith of this.

Record Status Information

Record Origination Operator: Faust, Stephen Scott (703 / Special Victims Unit / Richland County Sheriff's Dept)
Record Origination Date: 03/03/2013 23:22
Last Update Operator: Faust, Stephen Scott (703 / Special Victims Unit / Richland County Sheriff's Dept)
Last Update Date: 03/09/2013 2:37

ACISS WEBPAGE GENERATED BY RICHLAND COUNTY SHERIFF'S DEPARTMENT

FILE NO: 130302310502
03/09/13 14:14

Supplemental Report Report: 1303023105/3

1A - 025 13

Primary Information	
Report Number:	1303023105/3
Case Number:	1303023105
Case Status:	OPEN
Case Lead LEO:	Weeks, Lancy
Type Of Report:	Supplemental Report
Report Date/Time:	03/06/2013 0:00
Reporting LEO:	Gore, James (1289 / Uniform 2 / Richland County Sheriff's Dept)
Approved By:	ACISS (Richland County Sheriff's Dept)
Approved Date/Time:	03/06/2013 7:00
Approval Status:	Approved
Expense Status:	Not Posted

Synopsis
OTHER RESPONSES 1204 BRADFORD RIDGE LN I RESPONDED ALONG WITH DEP PRUITT AND SGT DAVIS TO AN ASSAULT. DEP PRUITT SPOKE WITH THE MOTHER AND THE CHILD. THE MOTHER WANTED A REPORT MADE ABOUT AN INCIDENT THAT OCCURRED BETWEEN THE FATHER AND SON. THE MOTHER STATED THAT THE SON WAS BEING DISRESPECTFUL AND THE FATHER GRABBED THE BOYS SHIRT COLLAR AND WHILE DOING THAT THE FATHERS HAND STRUCK THE BOYS LEFT EYE. DEP PRUITT INTERVIEWED THE CHILD TO SEE IF THE STRIKE TO THE EYE WAS INTENTIONAL. THE CHILD SHOOK HIS HEAD NO AND SHOWED DEP PRUITT HOW THE FATHER GRABBED HIS SHIRT. I WASN'T ABLE TO SEE ANY VERY OBVIOUS SWELLING TO THE CHILDS EYE. THE MOTHER INSISTED ON A REPORT DUE TO THE FACT WHEN THE CHILD RETURNED BACK TO SCHOOL IF THE EYE DID SWELL SHE WANTED IT DOCUMENTED HOW IT OCCURRED. DEP PRUITT COMPLETED A REPORT FOR THE MOTHER AND I DEPARTED THE SCENE. I DID CAPTURE AUDIO OF THE INCIDENT ON CAR CAMERA.

Narrative
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Record Status Information	
Record Origination Operator:	ACISS (Richland County Sheriff's Dept)
Record Origination Date:	03/06/2013 7:00
Last Update Operator:	ACISS (Richland County Sheriff's Dept)
Last Update Date:	03/06/2013 7:00

ACISS is not a law enforcement agency. It is a support agency for the law enforcement agencies in the state of South Carolina.

03/06/2013 11:25:00 AM

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-40-2679

Valeria Farr,)
)
Plaintiff,)

**PLAINTIFF RESPONSE FOR FIRST
SET OF REQUEST FOR ADMISSIONS
AND SUPPLEMENTARY
INTERROGATORIES ON BEHALF OF
DEFENDANT**

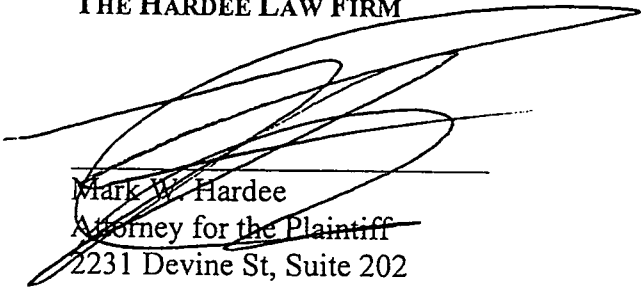
v.)
)
Leon Lott in his capacity as Richland County)
Sheriff and the Richland County Sheriff's)
Department,)
)
Defendants.)
_____)

The Plaintiff Valeria Farr hereby answers pursuant to South Carolina Rules of Civil Procedure Rule 33 to the Defendants First Set of Requests for Admissions and Supplementary Interrogatories as follows:

1. Request to Admit #1- The actions taken by the Richland County Sheriff's deputy with respect to Plaintiff as alleged in the Complaint *did not constitute* actual malice.
Answer: Denied
2. Interrogatory # 1- If Plaintiff denies Request to Admit number one, provide a detailed factual basis and explanation for such denial including the source of such information.
Answer: The acts committed and the fact that this was a pattern.
3. Request to Admit # 2-The actions taken by the Richland County Sheriff's deputy with respect to Plaintiff as alleged in the Complaint *did not constitute* an intent to harm.
Answer: Denied

4. Interrogatory # 2- If Plaintiff denies Request to Admit number two, provide a detailed factual basis and explanation for such denial including the source of such information.
Answer: The acts committed and the fact that this was a pattern.

THE HARDEE LAW FIRM



Mark W. Hardee
Attorney for the Plaintiff
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(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
February 8, 2016

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2015-CP-40-02679

Valeria Farr)

Plaintiff(s),)

vs.)

CERTIFICATE OF SERVICE

Leon Lott)

in his capacity as Richland County)

Sheriff and the Richland County)

Sheriff's Department)

Respondent.)

I hereby certify that on the 8th day of February, 2016, I served, via first class mail, at the address below, a copy of the Plaintiff Response for First set of Request for Admissions and Supplementary Interrogatories on Behalf of Defendant pertaining to the above-referenced action.

Robert D. Garfield
Davidson & Lindemann, P.A.
1611 Devonshire Dr. Second Floor
Columbia, SC 29202



Vicky McCarter
Legal Assistant

Columbia, South Carolina

Date: 2-8-16

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS NONJURY

3
4 VALERIA FARR,)

5 PLAINTIFF,)

6 vs.)

7 LEON LOTT IN HIS CAPACITY AS)
8 RICHLAND COUNTY SHERIFF AND THE)
9 RICHLAND COUNTY SHERIFF'S)
DEPARTMENT,)

10 DEFENDANTS.)

TRANSCRIPT

OF

RECORD

2015-CP-40-2679

11
12 October 11th, 2016
13 Columbia, South Carolina
14

15 B E F O R E:

16 THE HONORABLE JOCELYN NEWMAN, Judge.

17
18 A P P E A R A N C E S:

19 MARK W. HARDEE
20 ESQ.
Attorney for the Plaintiff

21 ROBERT D. GARFIELD
22 ESQ.
Attorney for the Defendants

23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken
during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: All right. Now we are on Valeria Farr
4 versus Leon Lott.

5 Mr. Garfield.

6 MR. GARFIELD: Yes, ma'am, good afternoon.

7 THE COURT: Good to see you.

8 MR. GARFIELD: Good to see you.

9 May it please the Court?

10 THE COURT: Yes, sir.

11 MR. GARFIELD: This is our motion for summary judgment
12 on behalf of the defendants.

13 Your Honor, they're actually two party defendants in
14 this case. One being the Sheriff and one being the Richland
15 County Sheriff's Department. Since the Richland County
16 Sheriff's Department is actually the name of the building
17 headquarters and it does not constitute a legal entity, I'm
18 just going to refer, for housekeeping purposes, as the
19 defendant, which would be the sheriff in his official
20 capacity.

21 THE COURT: Okay.

22 MR. GARFIELD: If I may approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. GARFIELD: This is our memorandum in support I have
25 for you and the clerk and some exhibits which I'll refer to

1 during the argument portion.

2 The facts in this case, Your Honor, taking, taking all
3 the facts in the light most favorably to the plaintiff, most
4 of which is derived from the complaint itself, the events
5 occurred on May 15th of 2013 in which the plaintiff female
6 driving on Two Notch Road in Richland County, she was
7 stopped and arrested by, by Sheriff's Department deputies.
8 The deputies charged the plaintiff with multiple criminal
9 traffic violations. Infractions such as she was driving
10 with a suspended driver's license. They had found some
11 marijuana in her car. She fled the police at some point.
12 She was handcuffed and placed in the back of the patrol car
13 that had been operated by Deputy Tracy Stephens and he's the
14 subject of this matter.

15 Deputy Stephens transported Ms. Farr to the Alvin S.
16 Glenn Detention Center. On the way to the detention center,
17 Mr. Stephens, and, again, all this is from the plaintiff's
18 point of view, Mr. Stephens stopped the car on three
19 different occasions. During each one of these times, Tracy
20 Stephens engaged in a series of coercive and illegal acts.

21 He forced Ms. Farr, the plaintiff, to expose herself,
22 fondle herself repeatedly during these three different stops
23 that were, that were unwarranted obviously. Tracy Stephens
24 offered to dismiss her charges in exchange for sexual
25 favors.

1 By the time Deputy Stephens and the plaintiff arrived
2 at the detention center, and while they came into booking,
3 the plaintiff properly -- she did what she was suppose to.
4 She properly notified the folks at booking of -- that she
5 had just been sexually assaulted. She told them exactly
6 what she knew. Detention center officials immediately
7 notified Richland County Sheriff's Department and the
8 Sheriff's Department initiated both an internal
9 investigation and a criminal investigation into their own
10 deputy.

11 Now---

12 THE COURT: Let me---

13 MR. GARFIELD: Yes, ma'am.

14 THE COURT: ---interrupt you---

15 MR. GARFIELD: Sure.

16 THE COURT: ---real quick. Not on your case.

17 (Pause.)

18 THE COURT: Sorry to interrupt, Mr. Garfield.

19 MR. GARFIELD: Thank you, Your Honor.

20 Deputy Stephens was arrested by his own employer and
21 dismissed as a deputy, and he was charged with criminal
22 sexual conduct in the third degree and misconduct in office.
23 Exhibit A, which is in the notebook which I've handed the
24 Court, you can see Mr. Stephens, both the warrants and the
25 arrest, the booking information.

1 The plaintiff in this case, Your Honor, has sued the
2 Sheriff's Department or the Richland County Sheriff for two
3 causes of action. The first being assault and battery and
4 our basis for dismissal with respect to the first cause of
5 action centers on the South Carolina Tort Claims Act.

6 As Your Honor is aware, the Tort Claims Act governs all
7 civil actions against governmental entities in South
8 Carolina. The Act constitutes a waiver of sovereign
9 immunity, and, however, if an act or omission or an act or
10 inaction by the employee falls within any number of 37
11 exceptions, that acts as an exception to the waiver of
12 sovereign immunity. Therefore, the entity, Your Honor,
13 would enjoy absolute sovereign immunity for suit for money
14 damages in the case.

15 I direct Your, Your Honor's attention to this portion
16 of the Tort Claims Act that's 15-78-60 and all of this is in
17 our brief but I did want to provide this for the Court.

18 Thank you.

19 THE COURT: Thank you.

20 MR. GARFIELD: Is -- I would show Your Honor Subsection
21 17 of one of these 37 exceptions that I'm referring, and
22 that states that the governmental entity is not liable for a
23 loss resulting from employee conduct outside the scope of
24 his official duties or which constitutes actual fraud,
25 actual malice, intent to harm, or crime involving moral

1 turpitude, and I read this, Your Honor, because what I'm
2 about to do, as part of our argument, is we are asserting
3 that there are three components of this subsection 17 which
4 is applicable in this case.

5 The first of the three components is that Mr. Stephens
6 had acted outside the scope of his official duties. What is
7 known as official duties and inside and outside the scope
8 has been defined in 15-78-30 of the Tort Claims Act is
9 15-78-30 Subsection I which states; states scope of official
10 duty or scope of state employment means acting in and about
11 the official business of a governmental entity in performing
12 official duties.

13 In this case, Your Honor, I think it's fairly prudent
14 that I say and fairly agreeable that I say that we have a
15 law enforcement officer who committed an unlawful act here.
16 He used coercion to engage in a sexual battery and offering
17 to dismiss charges in exchange for sexual favors. We take
18 the position that this clearly exceeds the authority. He
19 did this for his own purposes and he act -- he acted outside
20 and not within the official business of the sheriff.

21 There's a couple of cases that I'd like to bring before
22 Your Honor. The first case is -- and all the cases, I'm
23 gonna hand these up, but all of these are addressed, maybe
24 with the exception of this first one, in our memorandum in
25 support.

1 This first one is Armstrong versus Food Lion. It's a
2 Supreme Court case from 2006. 371 S.C. 271. Sorry. I'm
3 just gonna start handing those over to you. Sorry. I
4 handed you two, Your Honor. In which the Supreme Court, in
5 2006, sort of discussed what's involved when someone or the
6 effect of someone acting outside the scope of their
7 employment.

8 The last printed page of this, this is Page 4, the
9 Court just had some instructive language in this that the
10 Court stated that the Trial Court appropriately granted a
11 directed verdict because petitioners failed to produce any
12 evidence that the Food Lion employees were acting within the
13 scope of their employment or in furtherance of Food Lion's
14 business when they attacked the petitioners.

15 I'm gonna pause for a minute. In this case, what the
16 Supreme Court considered was facts involving Food Lion
17 employees on the clock wearing a uniform where they
18 assaulted a patron on the clock. Apparently they knew the
19 patron and they assaulted him despite being -- holding
20 themselves out as Food Lion employees.

21 The Court continues in that it's held that only
22 reasonable inference from the testimony is that Brown and
23 Cameron attacked Ronnie for their own personal reasons and
24 not for any reason related to their employment. They were
25 acting to effect an independent purpose of their own.

1 The last portion states the factor that distinguishes
2 this case from the incident case is that they mentioned two
3 other cases where assaults occurred, not merely in
4 connection with the master's business, but with the purpose,
5 in some way, of furthering the master's business. Here
6 there's no evidence that these employees were furthering
7 Food Lion's business in any manner.

8 I bring that to the Court as an example of what we
9 believe is considered -- what is considered an independent
10 purpose of an employee. Tracy Stephens clearly acted for
11 his own independent purposes. The effect of this, Your
12 Honor, and there's a whole litany of cases, that I believe
13 it's been summed up, in this particular case, in our
14 discussion is fairly comprehensive of this in our brief.
15 It's Pages 6 through 10. But it really stems from this case
16 Frazier versus Badger.

17 It's a Supreme Court case, South Carolina Supreme
18 Court, 361 S.C. 94, it's a 2004 case, that the Supreme Court
19 talked about the ultimate or the direct effect of when an
20 employee acts outside the course and scope or, excuse me,
21 outside the scope of his duties. I direct the Court's
22 attention to Page 6 in the first full column in which the
23 Supreme Court stated we recognize that whether an act is
24 within the scope of employment may be determined by
25 implication from the circumstances of a particular case.

1 The Supreme Court continues in its Frazier case stating
2 that in Prince, referring to an older case obviously, we
3 held that the course of someone's employment requires some
4 act in furtherance of the employer's business. The case --
5 the Supreme Court then states our jurisprudence includes
6 three cases that consider whether sexual advances are within
7 the scope of an employee's employment.

8 The Court holds -- describes three cases, all of which
9 are in our brief. It's very interesting how the Court takes
10 different examples in which employees exceeded the scope and
11 what the effect was.

12 In the first case, this Court held that a police
13 officer's sexual assaults of women during traffic stops were
14 not within the scope of his official duties and, therefore,
15 the acts were not covered under the State's general tort
16 liability policy. In another case that really dealt with
17 coverage issues, Your Honor, the Court stated, in the second
18 case, the Court of Appeals held that a professor was not
19 acting within the scope of his employment when he sexually
20 harassed a student. Therefore, the professor's conduct was
21 not covered under the University's liability insurance
22 policy. In the third case, the Court of Appeals held that a
23 sheriff's sexual advances toward three of his female
24 officers was not within the scope of his -- the sheriff's
25 official duties.

1 The end result is, Your Honor, according to these
2 cases, sexual harassment by a governmental employee is not
3 within the employee's scope of employment. Therefore, in
4 the present case, we hold that Badger's sexual advances
5 towards Frazier were outside the scope of his official
6 duties or employment.

7 Now -- so to apply it to these facts, Tracy Stephens
8 engaged in sexual battery with respect to the plaintiff. He
9 was arrested for criminal sexual conduct third degree and
10 also misconduct in office. The matters were taken before a
11 Richland County Grand Jury. They returned true bills for
12 indictments, which Your Honor is, is aware that that
13 demonstrates a prima facie finding of probable cause and he
14 has been prosecuted in General Sessions Court for these
15 charges. Clearly his acts were to carry out personal or
16 independent motives or purposes. Clearly he was acting in
17 not furthering the official business of the sheriff for
18 performing his official duties.

19 By these facts alone, the sheriff should enjoy absolute
20 sovereign immunity from suit under Subsection 17. But for
21 completeness, Your Honor, they're two other components of
22 this subsection that are present in this matter, and that is
23 the other portion, Subsection 17.

24 Tracy Stephens acted with both actual malice and intent
25 to harm with respect to the plaintiff. Actual malice has

1 been defined by the Court of Appeals of South Carolina. I'm
2 reticent to bring this case up. This is Swicegood versus
3 Lott because this was not a case that I prevailed on, but it
4 had some excellent language to this effect in which the
5 Court stated actual malice in this situation, I'm reading
6 from Page 5 first column, actual malice is a situation that
7 refers to common law actual malice and has been defined by
8 situations where the defendant was -- actually had ill will
9 in what he did with the design to causally and wantonly
10 injure the plaintiff.

11 Intent to harm has been addressed by the Court of
12 Appeals of South Carolina in State Farm Fire & Casualty
13 Company versus Barrett, it's a 2000 case, 340 S.C. 1, in
14 which the Court, in this particular case, stated that we
15 hold an intent to harm will be inferred as a matter of law
16 when a person sexually assaults, harasses, or otherwise
17 engages in sexual misconduct towards an adult. So we have
18 the definitions and the authority that addresses both intent
19 to harm and actual malice.

20 Probably, most importantly, the question as to whether
21 Tracy Stephens acted with actual malice and intent to harm
22 can really be derived by this, and I believe it's Exhibit B
23 that's in the notebook before Your Honor, and, in that
24 Exhibit B, we specifically asked plaintiff's counsel to
25 admit or deny this and Your Honor can see that he did deny,

1 which effect -- had the evidentiary effect, under Rule 36,
2 of admitting that the actions taken by Tracy Stephens with
3 respect to the plaintiff in both number one and number two
4 did constitute actual malice and it did constitute an intent
5 to harm.

6 Most recently in this case we were able to depose the
7 plaintiff in this matter, and I believe that should be on
8 Exhibit C, and as Your Honor can tell, and I'm about to read
9 into the record, Ms. Farr repeatedly characterizes Mr.
10 Stephens state of mind as sick where she graphically and
11 really painfully describes the manner and nature of the
12 criminal assault. In Exhibit C, I asked her -- and I can
13 wait for the Court to be situated.

14 I'm sorry. I'm going all over the place.

15 MR. HARDEE: Have you gotten her deposition back?

16 MR. GARFIELD: It's a, it's a, it's a deposition
17 excerpt of this portion.

18 THE COURT: All right.

19 MR. HARDEE: I mean I didn't know you had her
20 deposition.

21 MR. GARFIELD: No, I do not. This is the excerpt of
22 the deposition.

23 The question was were you crying?

24 A. Yes. I was crying by the time I got to Alvin S.
25 Glenn.

1 Q. No, I don't mean by that time. I'm talking about
2 the time that we're going through now. Were you crying?

3 A. Yes. Yes, that's how I know that he's sick because
4 little did he know, when he started making me do that stuff,
5 he didn't do anything to me but open up what I already been
6 through. He didn't do anything to me but made me feel
7 defenseless all over again.

8 Q. So he could see you crying, right?

9 Yes.

10 Q. He intended to harm you?

11 A. Yes.

12 Q. He was malicious?

13 A. Yes.

14 Q. Actual malice?

15 A. Yes. Yes. Because he tried to tell me that I got
16 weapons on me and I don't have on me. If you're looking at
17 the inside of my vagina, you see there ain't nothing on the
18 inside of there. Like you sick. Like that it's. Like he's
19 sick. That's it. That's it. I hate him.

20 We took a break at that point.

21 Your Honor, so the evidence in this case really does
22 clearly show that there was actual malice and intent to harm
23 and he was acting beyond the scope and why that is
24 significant is that the plaintiff is not named. The actual
25 person who committed the crime doesn't admit the person who

1 did all of these things, Tracy Stephens, instead the
2 plaintiff opted to sue the sheriff, the entity who actually
3 was the employer at the relevant times, and the sheriff is a
4 sole law enforcement party defendant in the action, would
5 certainly be entitled to absolute sovereign immunity from
6 these intentional and malicious acts.

7 The second cause of action is negligent training and
8 supervision. As the Court knows, that's an independent
9 theory of liability against the sheriff.

10 In this case, the complaint, in the complaint, the
11 plaintiff alleges that the Sheriff's Department had allowed
12 a pattern of bad conduct by Tracy Stephens, that Mr.
13 Stephens had a history of assaulting subjects and committing
14 sexual battery.

15 The guiding law on this point appears to be James
16 versus Kelly. It's a Supreme Court case from 2007, 377 S.C.
17 628. It's a 2007 case. In the printed Page Number 3, the
18 Supreme Court recognized, just as an employee can act to
19 cause another's injury in a tortuous manner, so can the
20 employer, so can an employer be independently liable in
21 tort. In circumstances where an employer knew or should
22 have known that its employment of a specific person created
23 an undue risk of harm to the public, a plaintiff may claim
24 that the employer was itself negligent in hiring,
25 supervising or training the employee, or that the employer

1 acted negligent entrusting its employee with the tool that
2 created an unreasonable risk of harm to the public.

3 As this recitation suggests, the employer's liability
4 under such a theory does not rest on the negligence of
5 another but on the employer's own negligence. Stated
6 differently, the employer's liability under this theory is
7 not derivative. It is direct.

8 The question, therefore, Your Honor, with respect to
9 our motion for summary judgment in the second cause of
10 action is whether the sheriff had actual or constructive
11 notice that its employment of Mr. Stephens created an undue
12 risk of harm to the public. What it appears from the
13 discovery and so far in this case, the plaintiff attempts to
14 overcome summary judgment by providing two instances in
15 which the conduct may be relevant to a negligent training
16 and supervision case.

17 The first is a female named Micah Sanders. I believe
18 that's M-I-C-A-H. And, in discovery, the plaintiff has
19 furnished the name of Ms. Sanders. Apparently, when the
20 plaintiff was in detention, when Ms. Farr was in detention
21 after her encounter with Mr. Stephens, she struck up a
22 jailhouse conversation with Ms. Sanders and Ms. Sanders had
23 conveyed to her that, low and behold, she had a similar
24 run-in with Mr. Stephens. The two ladies were discussing.
25 As soon as the Sheriff's Department finds out about Ms.

1 Sanders, internal affairs pursues Ms. Sanders and gets a
2 statement from her and she gives a statement and that's
3 Exhibit D.

4 This is a written statement by Ms. Sanders. What, what
5 it -- what she told IA investigators with the Sheriff's
6 Department was apparently Mr. -- she was also arrested by
7 Mr. Stephens on Mr. Stephens same shift, which we would
8 believe would be somewhat like a 7:00PM to 7:00AM shift or
9 6:00PM to 6:00AM shift, third shift, and Mr. -- Deputy
10 Stephens had made inappropriate comments to her but she did
11 state there was no inappropriate coercion. There was no
12 assault. There was no overt offers eliciting sexual favors.
13 There's no evidence that the sheriff knew or had
14 constructive knowledge of Tracy Stephens creating an
15 unreasonable or undue risk of harm to the public or the
16 plaintiff by the existence of this situation with Ms.
17 Sanders.

18 Once again, he had interaction with Ms. Sanders
19 sometime on May 14th. Midnight struck and then he
20 transported, on the early morning hours of May 15th, the
21 plaintiff to the detention center, and it was sometime on
22 May 16th that Ms. Sanders provided this statement in
23 Exhibit D at which point she speaks out to internal affairs
24 and tells that he said inappropriate things to her.

25 The second individual that the plaintiff -- he's not

1 identified him, but what he did is he identified an expert
2 witness that describes this -- these circumstances based on
3 this event. He identifies an expert witness, James Flowers,
4 who is a former SLED agent. Despite, you know,
5 interestingly, despite his bias perhaps associated with
6 being the sheriff's political opponent and maybe never
7 having run an agency or supervisory experience, he formed an
8 opinion based on one event, one event from two months
9 before, and that was March of 2013.

10 In this event, two months before the events giving rise
11 to the suit, March 5th of 2013, Mr. Stephens wife contacts
12 the Internal Affairs Department at the Richland County
13 Sheriff's Department. Mrs. Stephens tells IA investigators
14 that Mr. Stephens and her teenage son were involved in a
15 verbal exchange that became heated. Mrs. -- Mr. Stephens
16 wife, who is also the teenager's mom, told IA investigators
17 that her teenager was obstinate, that he was disrespectful
18 to Mr. Stephens. When Tracy Stephens proceeded to grab the
19 teenager by his shirt, he inadvertently struck the son's
20 eye.

21 Now, Exhibit G is the full report in this matter that
22 was generated as a result of the internal affairs
23 investigation. In Exhibit G, there is a highlighted portion
24 in which both the mother and the teenager stated that it was
25 likely, the fact that he popped his son on the eye, was

1 likely accidental, not intentional. He went to grab his
2 shirt and the son was flailing and he tried to grab again,
3 and he, he accidentally hit his eye. Because of this, no
4 disciplinarian action was taken. It is not in dispute that
5 Mr. Stephens was not on-duty. He wasn't on the clock. He
6 was in uniform.

7 The key here is, Your Honor, that the plaintiff takes
8 the position, through his expert, in an effort, again, to
9 overcome summary judgment, that this prior event provided
10 the sheriff with adequate or sufficient notice that Mr.
11 Stephens was capable of harming the plaintiff ultimately as
12 he did. Co-counsel and I have a large amount of research
13 here and we really found a very interesting case on point
14 and this is Doe versus, it says, ATC, Inc, it's 367 S.C.
15 199, it's a Court of Appeals case from 2005, when the Court
16 really wants to understand the effect of what the ultimate
17 harm was and with the requirements are under notice.

18 Now, this Doe versus ATC, again, is interesting.
19 Here's, here's the background information on this or here's
20 the background of facts.

21 In the Doe case, it involved a Medicaid bus driver, an
22 employee of Medicaid, who inappropriately touched a disabled
23 adult female. Apparently he touched her legs. He kissed
24 her. He made persistent sexual comments to her.

25 Now, this employee had a prior incident with another

1 employee in which he made sexually inappropriate comments to
2 her. The Court of Appeals held that, although both
3 incidents were sexual in nature, there lacked, and I believe
4 this is gonna be their key words, a sufficient nexus to the
5 ultimate harm as the prior incident was a far cry from
6 reprehensible persistent pattern of abuse.

7 what they stated in this case, and I read from the
8 printed Page 4 on the second column, our review of negligent
9 hiring and retention cases from other jurisdictions leads us
10 to conclude that such, such cases generally turned on two
11 fundamental elements, knowledge of the employer and
12 foreseeability of harm to third parties. These elements,
13 from a factual prospective, are not necessarily mutually
14 exclusive as a fact bearing on one element may also impact
15 resolution of the other element. From a practical
16 standpoint, this is the key part of it, Your Honor, and
17 we'll continue reading it, these elements are analyzed in
18 terms of the number and nature of prior acts of wrongdoing
19 by the employee and the nexus or similarity between the
20 prior acts and the ultimate harm caused. Such factual
21 considerations, especially questions related to proximate
22 cause inherent in the concept of foreseeability, will
23 ordinarily be determined by the fact finder and not as a
24 matter of law. The Court wraps this part up by holding
25 nevertheless, the Court should dispose of the matter on a

1 dispositive motion when no reasonable fact finder could find
2 the risk foreseeable or the employer's conduct to have
3 fallen below the acceptable standard.

4 What they found in this particular case, and this is
5 towards the end in the fifth printed page, turning to the
6 case at hand, the prior alleged misconduct by Murray against
7 Moss, a co-employee, lacks a sufficient nexus to the sexual
8 assault on Audra. While it is true that both instances may
9 generally be described as sexual in nature, the totality of
10 the prior incident is a far cry from the reprehensible
11 persistent pattern of abuse against Audra.

12 You know, in this March 2013 isolated incident, we're
13 dealing with, and it's undisputed, that Mr. Stephens was
14 parenting a recalcitrant, disrespectful teenage son. He
15 struck him in the eye. The mom viewed this as accidental.
16 The son didn't disagree that it was accidental. But even if
17 it were intentional, anticipating Mr. Hardee's argument that
18 maybe it was intentional, these circumstances must clearly
19 be based on the application of Doe versus ATC. These
20 circumstances were so different and distinct from the events
21 of the plaintiff where he forced her into a sexual, sexually
22 compromising positions, could not have formed a foreseeable
23 risk of harm to her.

24 He cannot point to anything in Mr. Stephens history
25 that he ever engaged with any sort of inappropriate behavior

1 to a female, harassment, assault, abuse, misconduct,
2 discrimination, therefore, there is no sufficient nexus to
3 the ultimate harm.

4 If we were to go to a trial, Your Honor, I am giving
5 Mr. Hardee a preview of my directed verdict motion. This is
6 exactly what I would argue. There is, there is no
7 sufficient nexus to ultimate harm. A proper application of,
8 of this ATC case is this certainly is a far cry from any
9 sorts of reprehensible conduct, and, for those reasons, Your
10 Honor's been were attentive and patient, and we thank you
11 for your indulgence, we would move for summary judgment.

12 THE COURT: Thank you, sir.

13 Mr. Hardee.

14 MR. HARDEE: Hi, Your Honor. Thank you.

15 THE COURT: Yes, sir.

16 MR. HARDEE: Your Honor, the reason Mr. Garfield's
17 summary judgment motion should be denied is that there are
18 facts other than what he said in this, in this, that, that
19 are -- that are correct. There is a dispute. Here's a
20 brief that I have.

21 First of all, he didn't mention that last case about an
22 expert witness, that I have an expert witness, an expert
23 witness who worked for SLED who investigated
24 inner-department complaints and claims against police
25 officers, David Flowers. He did that for years.

1 According to Mr. Flowers, Richland County Sheriff's
2 Department is the only, the only entity in South Carolina
3 that does its own internal investigations. They investigate
4 themselves. So what he would have you believe in this case
5 that, if an officer gets in trouble, Sheriff Lott can then
6 determine well, I'm gonna file a warrant against this client
7 and guess what that means?

8 According to Mr. Garfield, that means he's not liable.
9 So he makes all the decisions about whether he's liable or
10 not because he's the one that investigates and makes the
11 criminal decisions.

12 Now, why is that important in this case?

13 If you look at the investigative report which was
14 attached to both of our briefs, from mine it's a written
15 page and it's after the heading of that, according to the
16 son, he was in uniform when he grabbed his son. That's what
17 the son said and this is an investigator report by their
18 investigator, the Richland County Sheriff's Department,
19 who's investigating this as a criminal act. That's because
20 a little boy has a black eye. Matter of fact, you might
21 recently have seen in the news where Lexington County just
22 arrested a Richland County deputy because, because a doctor
23 said the boy had a bruise on him and they fired or they
24 suspended the deputy.

25 In this case, they were investigating this as a

1 criminal act cause a boy has a really black eye and he has
2 bruises on him. As you know, they have to investigate it.
3 So they are. The little boy says that he is in uniform.
4 The little boy says he won't get out of the car. So Tracy
5 Stephens yanks him and pulls him out of the car, pushes him,
6 and hits him in the eye.

7 Now, this is where it's interesting. When the
8 investigator's talking to the little boy, the little boy's
9 scared and he says that. He wants to know what's gonna
10 happen, is Tracy gonna know this. But at the very bottom of
11 the page, here's what the investigator tells the little boy.
12 He says that, that it was the magistrate that -- it will be
13 an assistant solicitor or a magistrate who would decide
14 whether or not they should press -- prosecute Tracy Stephens
15 and they were right. The problem is who should of decided
16 whether or not to prosecute Tracy Stephens.

17 However you turn on the next page and you know what it
18 says?

19 Investigator or officer saw Sheriff Lott, the defendant
20 in this case, at a luncheon and Sheriff Lott said oh, I ran
21 into Tracy Stephens attorney, Representative Todd
22 Rutherford, who told him oh, I have a doctor who's gonna say
23 that this was high blood pressure or something and that's
24 the end of the case. The case was dismissed. This was
25 about two months prior to this incident taking place.

1 And although Mr. Garfield may describe what happened to
2 Ms. Farr as an act of sexual gratification, it's really an
3 act of violence. Okay. Making her do these sexual things,
4 it's an act of violence. That's not sexual and it's against
5 a person who is weaker and smaller than him, and that's the
6 pattern that we see and that's when he shouldn't have been
7 working, according to my expert. I have an expert on that.
8 I know they don't agree with my expert but this is a summary
9 judgment motion.

10 My expert, if you look on the memo, this is attached to
11 the memo towards the end, he concludes that Tracy Stephens
12 should not have even been working that night. So it doesn't
13 matter what should of happened. He shouldn't have been on
14 the job and then he would of never done anything to Ms.
15 Farr.

16 Micah Sanders, who the same night as Valeria Farr, same
17 thing happened to her happened as happened to Valeria. The
18 only difference is that she was a stronger person than that
19 and she said no, I'm not gonna do all these things. But
20 it's the same pattern of an angry man who can't control his
21 anger and he can't control his violent tendencies who is
22 praying on younger people.

23 There's another incident which I've attached to this
24 that was on April 15th, which is less than a month prior
25 to this, where another person complained about Tracy

1 Stephens saying that he was rude and angry, angry to him
2 while they were -- he was searching his home, which was
3 investigated by the Sheriff's Department.

4 So the Sheriff's Department knows that this guy is out
5 there, knows people are complaining, investigating him for a
6 criminal action where he has to hire an attorney and, and
7 lawyer up, and nothing happens. They put him back out on
8 the street and allow him to take a police car, which he had,
9 a uniform that they offered him, which he had, and a gun
10 that they provided him, which he had to take this small
11 woman to the detention center by himself.

12 Okay. It's interesting because Tracy Stephens says
13 that there was a camera in the car, but we've never gotten
14 the camera footage of what happened in that car. It has not
15 been provided to us and that's the subject to a motion to
16 compel later on. But what happened was, they know from GPS
17 and from, and from my client, he stopped three times, put
18 his hand on his gun, threatened her by doing that, menacing
19 to her, and made her perform sexual acts for him.

20 Okay. I don't consider that an act of, an act of
21 sexual -- that's an act of violence. He's been violent to
22 this woman. Okay. Pointing his gun, making her do things
23 that are hard, that's terrible what he did. And they can
24 try to run from it and they can try to disown him, but
25 they're the ones that hired him and they're the ones that

1 knew that he had committed a criminal act prior to this
2 where they didn't fire him, they didn't even suspend him,
3 they didn't even train him. They didn't do anything. As
4 soon as he -- as soon as Todd Rutherford said yeah, I'm
5 representing him, it just -- they said the end of it, even
6 though they told the little boy oh, we're gonna let a
7 magistrate or a solicitor decide whether or not we should
8 pursue this.

9 My expert witness says that this that -- that that was
10 done terribly, that investigation was done terribly, that he
11 shouldn't have been on the street and he shouldn't have been
12 capable of doing to Valeria Farr what he did.

13 Now let's look about what he's talking about the --
14 about whether or not he's an agent of theirs. He is driving
15 this woman back to the detention center. That's -- that's
16 what's in the scope of his employment, right?

17 That's what his job is.

18 He's in a car, deputy's car. He's in uniform. He's
19 been paid. He is on the clock. They are waiting for him
20 back there. He ends up giving her a breathalyzer later on.
21 He is performing his duties. He did it. So -- in a way
22 that harmed her but he is actually performing his duties.
23 If he -- you look at the arrest warrant, you know what it
24 says?

25 It says acting under color of State Law he did all

1 these things.

2 Now---

3 THE COURT: Well---

4 MR. HARDEE: Yes, ma'am.

5 THE COURT: I do believe acting under color of law and
6 acting within the course and scope of your employment are
7 two different things.

8 MR. HARDEE: I understand and I'm prepared to answer
9 that.

10 I took Tracy Stephens deposition, which was attached at
11 the very last of my interrogatories, and I asked him, here's
12 what I asked him.

13 I said when you were at the Sheriff's Department, was
14 there a culture created where people were joking about
15 sexual situations with people in the car or, you know,
16 people you were transacting with and all?

17 I asked him that.

18 He said I don't know cause he didn't remember hardly
19 anything.

20 Later on I asked him, when you did this to Valeria
21 Farr, did you do this so you can go and brag to your
22 deputies and all your co-workers of what you have done?

23 And you know what he said then?

24 He pled the Fifth. He pled the Fifth.

25 So I think those two inferences is that there was a

1 environment created under Sheriff Lott where these deputies
2 were thinking this is funny, thinking that this is a, an
3 environment where they can go and joke to their fellow
4 employees, and, you know, I get the negative interest since
5 he pled the Fifth. And if that's the case, then, then
6 Sheriff Lott is encouraging this behavior by, by not doing
7 anything to stop it.

8 Certainly at a summary judgment stage, you know if
9 that's the environment that he's creating that where people
10 are joking or like we've heard lately "locker room talk" and
11 he's -- can go and brag about doing stuff like this and
12 nothing ever happens to him, then I think Sheriff Lott
13 should be responsible if people go out there and overstep
14 their powers cause he's not stopping it.

15 You can infer from those two statements, one, that he
16 doesn't remember whether or not there was a, a hostile
17 environment where people were joking about stuff while you
18 worked there, and then later on saying well, is this why you
19 did it, so you could go back and joke around with all your
20 buddies, and he said I plead the Fifth. That's what he
21 said.

22 Surely those two things are enough evidence between
23 expert witness who talks about the negligent retention and
24 that are enough to get to a jury. I don't know what else
25 they would have. I mean I have three instances that he's

1 done this to other people, okay, all within about a two
2 month period. One was a criminal investigation, which
3 was -- seriously got dropped. Nothing ever happened to it.
4 Even though he had lawyered up and took his rights not to
5 incriminate himself, all of a sudden disappeared, he's back
6 on the street by himself allowing him to take young women by
7 himself in a car back to the department. Then we have
8 Officer Stephens who takes the Fifth when I asked him if the
9 reason that he did all this so he could go joke with all of
10 his buddies and, and, if that was okay, he said no, I plead
11 the Fifth.

12 If you look at -- you know I also attached statements
13 from that investigation from the officers at the detention
14 center who testified what happened when they brought her
15 there. You know, like I said, if you look, he gave her the
16 breathalyzer after all this stuff. He's the one who gave
17 her the breathalyzer. He's within the scope of his
18 employment when he's driving her around.

19 I mean who else is gonna drive her around?

20 And if he does something bad, then they're saying well,
21 we don't cover it because you, because my -- you're not
22 suppose to do anything bad cause you work for me. So you're
23 only suppose to do what I'm suppose to do. He did not drive
24 off to somebody's house and go in and assault somebody. He
25 did not go into the liquor store and go assault somebody.

1 while he's in the scope of his employment, while he was
2 working for his employer, he, he -- I'm sure he's mad at her
3 cause she ran. This was a thing where they had to chase her
4 around for hours. For him to act this way, how he's doing
5 all that stuff, certainly is enough that a jury can, can
6 infer, especially when he says that he, you know, that this
7 is something that he maybe did so he could joke to all of
8 his buddies because he takes the Fifth, so I get the
9 inference, so that's why he did it, that there was an
10 environment created that the Richland County Sheriff's
11 Department, for this kind of behavior was tolerated, which I
12 mean -- to me that means encouraged because it's then
13 tolerated. He didn't put a stop to it and we know for a
14 fact that Stephens committed what, what we feel was a clear
15 criminal domestic violence case.

16 A young teenage boy who had a black -- obviously
17 there's a picture of that you'll see. Had bruises and it
18 happened just prior to this. And I have an expert witness
19 who says he shouldn't have been even on the -- he shouldn't
20 be on the force at this time. So that's a proximate cause.

21 THE COURT: Is it your position that the act of a
22 sexual assault is somehow in furtherance of the sheriff's
23 business?

24 MR. HARDEE: Taking her back to the, to the place is in
25 furtherance of his business.

1 THE COURT: You can do something within the course and
2 scope of your employment, stop, do something on your own,
3 and then resume your employer's business?

4 MR. HARDEE: Yes, ma'am.

5 THE COURT: Is that not what occurred here?

6 MR. HARDEE: Well, Your Honor, in that case then, if
7 he's driving and then he decides to text and drive, which is
8 against the law, then he's not liable anymore. He's not
9 texting or having anything to do with the sheriff and
10 because he was texting, that's not the sheriff's problem.
11 It doesn't matter if he's driving a car, driving an inmate
12 back. If he's texting and he's negligent and he gets into a
13 wreck, then the sheriff is absolved because that's not in
14 furtherance of my business. You shouldn't of been texting.
15 You should only be driving a car. Not my fault.

16 This is not a detour. This is within the scope of his
17 employment of what -- he has a prisoner and he's
18 intimidating her with his gun which is given to him by the
19 Sheriff's Department. So I think that's -- so I don't think
20 this is a detour. I think you can infer that. I mean I
21 damn sure question just straightforward -- of course, a
22 sexual assault is not -- that act is not in furtherance of
23 the business. I mean it's obvious and I have to concede
24 that.

25 But I don't think that's enough, at a summary judgment

1 level, to just throw out this case as far as the assault
2 goes and certainly the negligent case shouldn't be thrown
3 out since I have an expert witness who says he shouldn't be
4 on the force anyway at that time and shouldn't of been
5 allowed to be put in this position and Tracy -- and Stephens
6 says himself that this was the kind of culture that was
7 created by the Sheriff's Department.

8 THE COURT: What about the case law that talks about a
9 departure from the course and scope of your employment when
10 that employee acts as his own master for the time being, et
11 cetera, et cetera?

12 MR. HARDEE: Well---

13 THE COURT: Particularly with respect to sexual
14 assaults.

15 MR. HARDEE: Well, again, he's driving her back in that
16 doing that. That means anything that he does, other than
17 just properly driving within the speed limit and doing
18 nothing, would be the only thing that would be in
19 furtherance of his boss' business. That's not -- and you
20 notice these cases. They're all coverage cases for
21 insurance companies. They're, they're employment/employee
22 cases.

23 You know, I don't see a definitive case saying that oh,
24 yeah, sheriff's deputy who shoots somebody in the line of
25 duty. How about that, if you shoot somebody?

1 well, we're not -- you're not suppose to shoot somebody
2 wrongfully. You're only suppose to shoot them rightfully.
3 So, if you're wrong, we don't cover you, and if you're
4 right, well then we don't get sued.

5 THE COURT: Let me ask you this.

6 MR. HARDEE: Yes.

7 THE COURT: Do you have any case law that contradicts
8 what Mr. Garfield has presented?

9 MR. HARDEE: I don't have any case law that says that a
10 deputy sexually assaults somebody is a, is a -- one way or
11 the other but I don't think he does either.

12 THE COURT: Okay.

13 MR. GARFIELD: Briefly, Your Honor.

14 THE COURT: Yes, sir.

15 MR. GARFIELD: Just in a few clean-up points first.

16 If I indicated that at the time of this March 2013
17 event in which Mr. Stephens was disciplining his, his son
18 was not in uniform, and if I'm incorrect, then I stand
19 corrected. I will, I will readily admit that the words on
20 that page are very, are very small and I needed my readers
21 to get through it. But I think it is undisputed that this
22 happened in front of his residence and it dealt with him
23 disciplining a son and was not necessarily called out in
24 responding to a domestic or unrelated event. That's the
25 first point.

1 Another clean-up point, Your Honor, and he referenced
2 his deposition of Mr. Stephens and Mr. Stephens pled the
3 Fifth or took the Fifth in response to one of the questions,
4 and he said that that had, in effect, Mr. Hardee represents
5 that has an effect of an adverse inference. From what I
6 understand, Your Honor, an adverse inference can be held in
7 District Court in a Federal Court matter that somebody
8 pleads the Fifth. For instance, they say was the light red
9 and they plead the Fifth and the adverse inference is that
10 it was green. There is no similar counterpart in State
11 Court. He can argue that point, but not as a matter of law,
12 that that adverse inference would hold that there would be a
13 rebuttable presumption for which to overcome summary
14 judgment.

15 The next point is really the distinction and I'm kind
16 of plowing back into areas that Your Honor inquired about,
17 but I think these are important distinctions between the
18 color of State Law, the course of employment, and the scope
19 of employment. As Your Honor is aware, Section 1983 cases
20 deal with the color of State Law. Certainly that -- Your
21 Honor's very well aware of that. But we will stipulate that
22 Mr. Stephens was acting in the course of his employment, the
23 course of his employment.

24 He was in a patrol vehicle, in a county vehicle. He
25 was in uniform. He was making a lawful arrest. He was

1 transporting the arrestee within the course of his
2 employment. He was on the clock within the course of his
3 employment.

4 But that distinction is very important for which, and I
5 believe this is Page 8 of our brief, in which we provide
6 more sound bites on Frazier versus Badger that I referred to
7 earlier, and also cases Froneberger versus Smith and Case
8 versus Ebert in which the Court state, Page 8, if scope of
9 employment is a broader term than scope of official duties,
10 the term used in the governmental immunity statute, it
11 follows that acts not within the scope of employment are not
12 within the scope of official duties. Respondeat superior
13 applies in situations where the employee conduct is within
14 the scope of his official duties where the servant is not
15 serving the master's business purpose, the relation is
16 suspended no matter the length of the time.

17 I'll just go on for completeness, Your Honor. Courts
18 have generally recognized that respondeat superior holds a
19 master liable to a third party for injuries caused by the
20 tort of his servant committed within the scope of the
21 servant's employment. However, if the servant steps outside
22 from the master's business for some wholly disconnected
23 purpose, the master/servant relationship is temporarily
24 suspended no matter how short the time.

25 So based on, Your Honor, black letter clearly

1 established law that it -- we are all here to admit and
2 sympathize, and even empathize, and Mr. Hardee is right, it
3 was a sexual act. It was a violent act. It was, it was
4 horrific. It was unlawful and he's being prosecuted. But
5 the law is clear that what he did was not in furtherance of
6 the master's business and it was for some other wholly
7 disconnected purpose.

8 One last case I would like to just provide Your Honor
9 for the record, apologize for all the trees I've cut down in
10 arguing my motion, this is Brockington versus PeeDee Mental
11 Health Center. It's a Court of Appeals case from 1993, 315
12 S.C. 214. And the last printed page really just kind of
13 sums it all up. Don't really get into the facts, but I
14 think that the language is gonna be understood.

15 The Court of Appeals stated the only reasonable
16 inference to be drawn from the evidence is that the
17 defendants exercised reasonable care to control their
18 employee while acting outside the scope of his employment so
19 as to prevent him from intentionally harming others. One --
20 once they knew or should have known of the necessity, of the
21 necessity to control him, immediately upon receding
22 allegation of Davis' sexual misconduct, they isolated Davis
23 from their client and launched an investigation. The
24 investigation led to Davis' determination from employment as
25 well as his prosecution, conviction, and sentence for sexual

1 offenses.

2 The key here, Your Honor, is he brings up three points.
3 One, he does not counter anything about Subsection 17 about
4 actual malice or intent to harm.

5 With respect to negligent supervision, he brings three
6 events. One that he's never identified during the course of
7 discovery. In fact, if you look at Exhibits E and F, when
8 we asked him pointblank on two different occasions could you
9 please tell us what the actual or constructive notice was
10 that the sheriff knew or should have known that Mr. Stephens
11 was this hot button, you know, that he was capable of doing
12 the same kind of ultimate harm, all he stated was Micah
13 Sanders. Well, if we do want to consider the three events,
14 one was him overstepping the bounds of a search warrant.
15 One was him disciplining his son. And the other was Micah
16 Sanders that did not get brought to their attention
17 beforehand.

18 Just like in Brockington, Your Honor, what happened
19 here is that the Sheriff's Department swiftly investigated
20 him, administratively and criminally, and it led to his
21 termination, his prosecution, and his conviction or, excuse
22 me, prosecution and the charge. Conviction is still out
23 there potentially. So they acted in accordance of, again,
24 what clearly is established law has been set even in this
25 case for more that 20 years.

1 I think that is an important point and he has not
2 established where there is a nexus to the harm, the ultimate
3 harm, and I just beg the Court's indulgence.

4 (Pause.)

5 MR. GARFIELD: And this may be more of an issue of fact
6 when if -- if and when it ever comes in and he, he testifies
7 at trial in this case but there was just two or three points
8 to this affidavit of James Flowers I think he's provided for
9 the Court.

10 No where in this does Mr. Flowers acknowledge or
11 recognize that the, the factual background with respect to
12 the son. There's nothing in here where the mother says that
13 it was an accidental act. That would really be an important
14 point which we could all agree, from a mens rea standpoint,
15 that if somebody hits somebody accidentally or not
16 intentionally, I don't know, when Mr. Flowers ultimately
17 states that he should of been arrested at that point. For
18 him to leave that fact out I think is fairly significant.

19 And also when he states, towards the end, Tracy
20 Stephens should have been terminated from employment and
21 charged, had he been terminated and charged he would not
22 have had the opportunity to commit criminal sexual conduct
23 on Valeria Farr, with all due respect to my friend, Jim
24 Flowers, you know, that's really in contravention with what
25 prevailing law states. It says he's below the standard of

1 care in retaining him. Therefore, culpable in any actions
2 taken after this incident.

3 Perhaps from a police protocol standpoint, perhaps from
4 a police policy and procedure guidelines standpoint, but
5 certainly not to establish any sort of negligent retention,
6 training, and supervision.

7 And then finally in this, like I mentioned earlier,
8 that he's an expert in law enforcement. Maybe police
9 procedures. Certainly not necessarily any sort of negligent
10 retention or negligent supervision. Again, not enough to
11 create a genuine issue of material fact and I appreciate it,
12 Your Honor.

13 Thank you.

14 THE COURT: Thank you.

15 MR. HARDEE: Your Honor, his last arguments were just
16 to the weight of that affidavit. You know, he's an expert
17 witness. He -- just because Richland County wants to be the
18 law enforcement agency in this state that doesn't send out
19 their criminal investigations to third parties, they can't
20 go behind that and say oh, well, you're not ahead of the
21 department. No, most of the departments would send those
22 cases to someone like Jim Flowers when he worked there and
23 he would do the investigation himself rather than the
24 department investigating their own people.

25 He is clearly stated in his affidavit that there's

1 plenty of evidence, and if you read the statement, you don't
2 have to listen to him, what he says about the wife. This
3 is, is a domestic abuse situation where it is a mandatory
4 reporting. Like I said, just recently a doctor found a
5 bruise on a little boy. They arrested a Richland County
6 deputy in Lexington County and they immediately got rid of
7 him because there was a bruise that the doctor found.

8 In this case we know that he pulled a boy out of a car,
9 a young adolescent. We know he bruised him. There's a
10 picture of it and we know he hit him in the eye. There's a
11 lot more cases any day being tried in this courthouse that
12 are a lot less evidence than that. Jim Flowers said he
13 should of been arrested and, therefore, he wouldn't have
14 been on the street. Not that he would of -- because he
15 might go hurt another little boy, but he wouldn't be on the
16 street. And what he's talking to is that he has an anger
17 management problem and he has a violence problem and that's
18 what he did to Valeria Farr. That's what he did to her.

19 Now, my argument that I was trying to think of a word,
20 and he reminded me, thank goodness. My argument about the
21 respondeat superior about whether or not he was in the scope
22 of his employment. This says it has to be wholly
23 disconnected. That's what I was trying to get to about he
24 didn't go off and do something on his own volition.

25 My argument is, and whether or not it states it there

1 or not, it's not wholly disconnected. He is in the car. He
2 is doing something for the sheriff. He is taking someone
3 back to the thing and he acted inappropriately while he was
4 doing that. It is not "wholly disconnected" is the word the
5 Court says. It's not just that it is disconnected but it is
6 wholly disconnected and I -- my argument that it is not and
7 you know the facts, but that's my -- that's what I was
8 trying to get to earlier, that word.

9 Our argument is it's not wholly disconnected. But I
10 certainly, you know -- and another thing, I didn't want to
11 bring this up, was cause he brought it up, he made a point
12 saying well, I only used Micah Sanders as a connection.
13 Your Honor, I waited months and months and months and months
14 and months for discovery in this case. I finally got an
15 order to compel. I still waited months. I finally got the
16 evidence that I needed to, to go this far and I still didn't
17 get everything.

18 Just like this week, I received 800 more pages of
19 discovery in this case. So I -- it's kind of disingenuous
20 for him to come and say oh, well, we didn't list all these
21 other instances prior to this. I didn't know about them. I
22 knew about them now. I knew about then when Jim Flowers,
23 you know, looked at the information. And, again, he can
24 argue about Jim Flowers, his qualifications. He can argue
25 that he didn't -- that the mother said it was an accident.

1 The boy was -- that's fine. That's for a jury to do. For
2 summary judgment, that's plenty to have an expert witness
3 saying he was negligently retained.

4 THE COURT: All right. Y'all have given me a lot to
5 read and I'm going read it.

6 MR. HARDEE: Okay.

7 THE COURT: I would like -- Mr. Garfield, I would like
8 for you to submit a proposed order. I'll give you 20 days
9 to do it.

10 MR. GARFIELD: Yes, ma'am.

11 THE COURT: Mr. Hardee, I don't believe it's necessary
12 for you to do one cause---

13 MR. HARDEE: Right.

14 THE COURT: ---if I'm going to---

15 MR. HARDEE: You can say deny.

16 THE COURT: ---to deny -- exactly.

17 MR. HARDEE: Yes, ma'am.

18 THE COURT: I can do that on a Form 4.

19 MR. HARDEE: Right.

20 THE COURT: I'll give you 20 days, Mr. Garfield.

21 MR. GARFIELD: Yes, ma'am.

22 THE COURT: Also, just housekeeping wise, I don't know
23 if you intended to file this memorandum or is -- if it's
24 just for the Court.

25 MR. GARFIELD: I did intend to file it.

1 Are you -- you can give the---

2 THE COURT: Well, I notice the copy that you gave me is
3 your nice copy that you probably wanted to give to the
4 Clerk's Office with the original signature on it.

5 MR. GARFIELD: I have another copy. I usually like to
6 give a nice copy to the judge, but that's---

7 THE COURT: It just looked like it was for the Clerk of
8 Court. So---

9 MR. GARFIELD: Here we go. I can give you another.

10 THE COURT: The exhibits---

11 MR. GARFIELD: Thank you.

12 THE COURT: On the motion itself or the memo itself---

13 MR. GARFIELD: Yes, ma'am, thank you.

14 THE COURT: So I'll trade this with you.

15 MR. HARDEE: Yeah, and mine might be the same thing,
16 but it doesn't really matter.

17 THE COURT: Okay. Did you give me your original as
18 well?

19 MR. HARDEE: I think I did. I meant to.

20 THE COURT: You did.

21 MR. HARDEE: Yeah, usually---

22 THE COURT: All right.

23 MR. GARFIELD: Thank you very much.

24 MR. HARDEE: Thank you, Your Honor.

25 THE COURT: Thank you.

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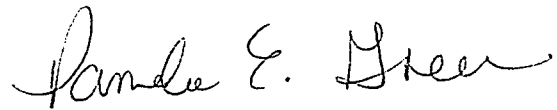
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Richland County, South Carolina, on the 11th day of October, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

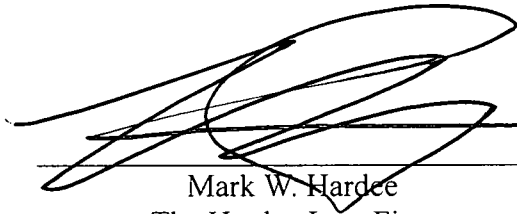
December 18th, 2016



PAMELA E. GREEN, Court Reporter

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read 'Mark W. Hardee', is written over a horizontal line.

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