

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynaysha Horton,.....Appellant,

v.

The City of Columbia Police Department,.....Respondent.

RECORD ON APPEAL

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TABLE OF CONTENTS

Order of March 28, 2012	1
Order of September 29, 2011 with Judgment cover page.....	3
Order of August 26, 2011	14
Amended Complaint	17
Answer	30
Transcript of Record, Docket No. 2010-CP-3299 (June 30, 2011)	39
Deposition of Peter Konrad Currie	108
Deposition of Tynyasha U. Horton.....	143
Agent Albert Smith statement dated July 26, 2010	210
Warrants K-613277 for Burglary 2 nd and K-613278 for Petit Larceny	211
Defendant's Response to Plaintiff's First Set of Interrogatories and Request for Production To Defendant	213
Affidavit of Peter Currie dated April 29, 2011	254
Defendant's Motion for Summary Judgment	259
Defendant's Memorandum in Support of its Motion For Summary Judgment and in Opposition to Plaintiff's Motion For Summary Judgment dated June 30, 2011	269
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment..	282
Plaintiff's Motion to Reconsider dated September 5, 2011, showing filing date stamp	290
Memorandum in Support of Plaintiff's Motion to Reconsider, showing filing date stamp	293
Defendant's Memorandum in Opposition to Plaintiff's Motion To Reconsider dated February 27, 2012	303
Notice of Appeal with Proof of Service and attachments.....	313
Appellant's Designation of Matter to be included in the Record on Appeal dated July 20, 2012.....	322

Respondent's Designation of Matter to be included in the Record on Appeal dated August 16, 2012.....	323

Tynyasha Horton

City Of Columbia Police Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCF; ☐ Rule 41(a), SCRCF (Nonsuit);
☐ Rule 43(k), SCRCF (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCF; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled:
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 March 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Dylan W Goff

Robert G. Cooper

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-3299

ORDER

RICHLAND COUNTY
FILED
2012 MAR 29 AM 10:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

Defendant.

AND IT IS SO ORDERED.

March 28, 2012
Columbia, South Carolina

SCANNED

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Form 4

JAMES E. SMITH, JR., P.A.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4003299

Tynyasha Horton

vs.

City Of Columbia Police Department

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 4 October 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Dylan W Goff

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert G. Cooper

ATTORNEY(S) FOR THE DEFENDANT(S)

Janette W. McBride

Clerk of Court

SCRPC APP-24/FORM 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,)

C/A NO.: 2010-CP-40-3299

Plaintiff,)

vs.)

ORDER

City of Columbia Police Department,)

Defendant.)

This matter came before the Court upon the motion for summary judgment the Defendant City of Columbia Police Department ("City").¹ A hearing was held on June 30, 2011, at which the Plaintiff was represented by Dylan W. Goff and E. Scott Winburn and the City was represented by Robert G. Cooper.

RICHLAND COUNTY
FILED
2011 SEP 29 PM 3:12
JEANETTE V. ESCOBIDE
C.C.P.

BACKGROUND

The following are the facts taken in the light most favorable to the Plaintiff.

On September 9, 2009, a cinder block was thrown through the glass door to break into the Roly Poly restaurant in Columbia, South Carolina. Crime Scene Officer Pete Currie of the Columbia Police Department lifted a partial latent fingerprint from the door where the glass had been pushed up to gain entry. Officer Currie ran the print through the Automatic Fingerprint Identification System ("AFIS") of the South Carolina Law Enforcement Division ("SLED"). AFIS returned twenty possible matches, with the fingerprint of the Plaintiff identified as the most probable match. Officer Currie then conducted a review and independently determined that the Plaintiff's print matched the latent print taken from the crime scene. Pursuant to standard operating procedures at the City, Officer Currie showed the latent fingerprint to two other qualified crime scene officers and they verified that it matched the fingerprint of the Plaintiff.

Investigator Roberta Tyler of CPD was assigned to investigate this crime. Officer Currie informed her that he had matched the fingerprint of the robber and identified the Plaintiff as the

¹ The Plaintiff had also filed a motion for summary judgment but withdrew it at the hearing on June 30, 2011.

person who broke into the restaurant. Investigator Tyler sought and received authorization from an Assistant Solicitor to seek warrants. On September 17, 2009, she appeared before a ministerial recorder² of the City of Columbia and related the facts involved in the robbery investigation. The ministerial recorder found probable cause to believe that the Plaintiff committed the crime and issued warrants for Burglary 2nd and Petit Larceny.

Investigator Tyler contacted the Plaintiff's probation officer in Bennettsville, South Carolina, where the Plaintiff resides, and informed him that she had warrants for the arrest of the Plaintiff. The probation officer assisted in having her turn herself in to Marlboro County law enforcement officers on September 17, 2009. CPD brought the Plaintiff to Columbia and then took her to the detention center on September 18, 2009.

On September 21, 2009, Officer Currie became aware that the Plaintiff was incarcerated and took fresh fingerprints from her as was his custom. It still appeared to him that her fingerprints matched that of the person who committed the robbery. However, because of her protests that she could not have committed the crime, he took the fingerprints to SLED for review. The SLED analyst indicated that the fingerprints were very close but that he could not confirm a match for certain. Given the lack of confirmation from the SLED analyst, the charges were dismissed and the Plaintiff was driven home by police officers that same day.

The Plaintiff then brought this action for false arrest, false imprisonment, malicious prosecution, negligence and assault and battery. The City filed a motion for summary judgment on all claims.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. The party moving for summary judgment bears the initial burden of pointing to the absence of a genuine issue of material fact. Richardson v. State Record Co., Inc., 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). The burden then shifts to the non-moving party to respond with specific facts to show that there is a triable issue of fact. City of Columbia v. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). The Court must view the facts

² Ministerial recorders are municipal officers with the power to issue arrest warrants. S.C. Code Ann. § 14-25-115.

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and inferences therefrom in the light most favorable to the non-moving party. Strother v. Lexington County Recreation Commission, 332 S.C. 54, 504 S.E.2d 117 (1998).

DISCUSSION

After considering the oral argument of the parties and the written materials submitted, the City's motion for summary judgment should be granted for the reasons below.

A. False Arrest and False Imprisonment

To prevail on a claim for false arrest or false imprisonment³, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (1995). The City contends that the arrest was lawful because it was made pursuant to a facially valid warrant and because it was based on probable cause as a matter of law. The City is entitled to summary judgment on both grounds.

(1) Warrants

The essence of the tort of false imprisonment is depriving a person of his liberty without lawful justification. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). Where one is properly arrested by lawful authority, an action for false imprisonment cannot be maintained against the party causing the arrest. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). If a lawful arrest has been improvidently procured, without probable cause, the plaintiff's remedy lies in an action for malicious prosecution. Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987); Watkins v. Mobil Oil Corp., 281 S.C. 79, 313 S.E.2d 641 (Ct. App. 1984); Bushardt v. United Inv. Co., 121 S.C. 324, 113 S.E. 637 (1922); Barfield v. Coker, 73 S.C. 181, 53 S.E. 170 (1906). The Plaintiff in this case was arrested pursuant to warrants that were regular on their face; issued by a neutral, detached ministerial recorder. Therefore, the Defendant is entitled to summary judgment on the false arrest and false imprisonment causes of action. Law v. South Carolina Department of Corrections, *supra* (warrant supplemented by oral testimony bars false imprisonment claim); Watkins v. Mobil Oil Corp., *supra*; Dorn v. Town of Prosperity, 375 Fed.Appx. 284, 2010 WL 997175 (4th Cir. 2010); Wilkins v. Harley, 2011 WL 379747 (D.S.C. 2011); Hubbard & Felix, The South Carolina Law

³ False arrest and false imprisonment are not separate torts. False arrest is a form of false imprisonment that accrues when the person is unlawfully arrested. A false arrest is one way to commit false imprisonment. Since an arrest involves a restraint, it always involves imprisonment. 32 Am.Jur.2d, False Imprisonment §2.

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of Torts 410 (2d ed. 1997) (if arrest is based on a proper warrant, no action for false imprisonment shall succeed).

The Plaintiff contends that the warrants were invalid because the police investigator withheld exculpatory evidence when she applied for them. Specifically, she contends that Investigator Tyler should have told the ministerial recorder that Plaintiff's probation officer had doubts that the Plaintiff could have committed the crime because she did not have transportation or money for gas to get to Columbia and because she had recently had a child.

The preclusive effect of the warrants is not negated by the fact that they were based on erroneous information. A facially valid warrant can only be attacked if the party first makes "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." Franks v. Delaware, 438 U.S. 154, 155-56 (1978); Miller v. Prince George's County, 475 F.3d 621, 627 (4th Cir. 2007); Ferrara v. Hunt, 2010 WL 5479655 (D.S.C. 2010). The showing must be more than conclusory and must be accompanied by a detailed offer of proof. Franks, 438 U.S. at 171. With regard to alleged omissions in the affidavit, a plaintiff must establish that the officer failed to inform the magistrate of facts the officer knew would negate a finding of probable cause. Miller, 475 F.3d at 627. However, allegations of negligence or honest mistake are insufficient. Id. at 627-28. If a Franks hearing is required and an affiant's material perjury or recklessness is established by a preponderance of the evidence, the warrant must be voided. Franks, 438 U.S. at 156. Whether a party has made a sufficient showing for a Franks hearing to be held, and whether a warrant should be declared void, are issues of law to be decided by the Court.

The Plaintiff has not presented any evidence that would entitle her to a Franks hearing. The factual basis for Plaintiff's claim is contained in a statement from her probation officer dated July 26, 2010. That statement was not served on defense counsel two days before the hearing and was not in affidavit form as required by Rule 56, SCRPC, and therefore cannot be considered. The unsworn statement was in letter form but without an addressee. It was not attached to Plaintiff's motion and was first presented to the Court and defense counsel at the hearing. Counsel for the City objected to the statement when it was submitted. Further, even if the statement were properly before the Court, the failure to relate its contents to the ministerial recorder does not involve a material omission. The statement does not say that the probation officer contended that it was impossible or even improbable that the Plaintiff committed the

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robbery. Instead, it only states that he informed Investigator Tyler that the Plaintiff was the mother of a newborn baby and she recently had issues with transportation. In light of the apparent positive match of Plaintiff's fingerprint with that of the robber, these alleged omissions fall far short of the Franks requirements.

There is no evidence in this case that Investigator Tyler knowingly or recklessly provided false information or omitted material information to the ministerial recorder to obtain the warrants. On the contrary, it is clear that she presented the information in good faith based upon facts related to her by Officer Currie. Absent such proof, the arrest warrants bar Plaintiff's claims for false arrest and false imprisonment and the City is entitled to summary judgment on those causes of action.

(2) Probable Cause

An essential element in claims for false arrest and false imprisonment is the lack of probable cause for the arrest. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). The Plaintiff has the burden of demonstrating the lack of probable cause. Id. Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. Id. Probable cause is determined based on the facts and circumstances known to the arresting officer at the time of the arrest. Id. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion: Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006).

Here, Officer Currie conducted a thorough investigation that developed facts appearing to establish the guilt of the Plaintiff. An Assistant Solicitor authorized Investigator Tyler to seek warrants. A ministerial recorder then found probable cause and issued warrants against the Plaintiff. These facts establish probable cause as a matter of law.

In addition, probable cause is established as a matter of law because the police officers reasonably believed that they had correctly identified the Plaintiff as the robber. Officer Currie is a well-trained, seasoned veteran in fingerprint analysis. He obtained a fingerprint from the crime scene that he believed was from the person who committed the break-in. He ran the print through the AFIS system and the Plaintiff's fingerprint was found to be the most probable match out of all of the fingerprints in that database. Officer Currie then conducted an extensive

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comparison of the latent print from the crime scene and the print of the Plaintiff that was on file with SLED and determined that they matched. He had two additional crime scene analysts review the prints and both agreed that they were a match. Officer Currie followed his training and the professional standards applicable to fingerprint analysis and believed in good faith that the fingerprints matched and constituted probable cause for the arrest of the Plaintiff. Investigator Tyler acted upon that information to obtain arrest warrants against the Plaintiff. She justifiably relied upon the positive and unequivocal identification of the Plaintiff as a result of the fingerprint analysis. Under those circumstances, both Investigator Tyler and Officer Currie reasonably believed that the fingerprint evidence was accurate and that the Plaintiff had committed the crimes.

For the reasons set out above, the police officers had probable cause to arrest the Plaintiff and the City is entitled to summary judgment on the false arrest and false imprisonment claims.

B. Malicious Prosecution

To maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. McBride v. School District of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including lack of probable cause. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). The burden is on the plaintiff to show that the prosecuting person or entity lacked probable cause to pursue a criminal action against him. Id. Probable cause means the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered. Id. In determining the existence of probable cause, the facts must be regarded from the point of view of the party prosecuting. The question is not what the actual facts were, but what he or she honestly believed them to be. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Id.

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The Plaintiff in this case has failed to show a lack of probable cause for pursuit of the charges against her. For the reasons set out above in the discussion of the false arrest and false imprisonment claims, the evidence in this case requires the conclusion that Investigator Tyler had probable cause as a matter of law to arrest the Plaintiff for burglary and petit larceny. The City is therefore entitled to summary judgment on the malicious prosecution claim.

C. Assault and Battery

The Plaintiff asserts claims for assault and battery stemming solely from the fact that she was placed under arrest. There is no allegation that the police officers used excessive force. An assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant. Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995). A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree. Id.

A police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. Roberts v. City of Forest Acres, 902 F.Supp. 662, 671-72 (D.S.C. 1995) (applying South Carolina law). This principle applies even where the police officer mistakenly arrests the wrong person. 6 Am.Jur.2d, Assault and Battery §105. The arrest in this case was based upon facially valid arrest warrants. Any touching that took place thereafter was lawful and cannot constitute an assault or battery and the City is entitled to summary judgment on that cause of action.

D. Negligence and Gross Negligence

The Plaintiff also asserts a claim for negligence or gross negligence in failing to fingerprint the Plaintiff when she was taken into custody in Bennettsville, before she was transported to Columbia for detention. Plaintiff also alleges that the City failed to properly train its employees to administer the taking of fingerprints and to investigate a burglary and failed to implement policies to insure that officers were properly trained to handle such situations.

These allegations fail to state facts sufficient to constitute a cause of action. A plaintiff asserting a tort claim for wrongful arrest must bring the claim as either false arrest or malicious prosecution. In either case, she must prove the absence of probable cause as an element of the action. The courts of this state have not adopted an alternative tort theory for wrongful arrest with a negligence standard for liability. Other courts that have considered this issue have also rejected claims of this nature. See, Guntlow v. Barbera, 76 A.D.3d 760, 907 N.Y.S.2d 86

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(N.Y.A.D. 2010) (claim for negligent investigation does not state cause of action separate from false arrest and malicious prosecution); Laymon v. Dept. of Natural Resources, 99 Wash.App. 518, 994 P.2d 232 (2007) (no claim for negligent investigation against police).

Even if such a cause of action existed, there is no evidence in this case that a City employee was negligent. The Plaintiff indicated at the hearing that she relies upon the fact that a misidentification took place to meet this burden. However, negligence cannot be established by the fact that an event occurred. Reilland v. Southland Equipment Service, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998); Lewis v. Norfolk Southern Railroad, 2010 WL 2851131 (D.S.C. 2010) (applying South Carolina law). The Plaintiff did not present expert testimony or any other evidence establishing the applicable standard of care for fingerprint analysis and showing that the standard was breached. Kemmerlin v. Wingate, 274 S.C. 62, 261 S.E.2d 50 (1979) (Plaintiff's burden to prove standard of care for professional negligence claim, usually by expert testimony). A jury would be left to speculate as to whether any act of negligence has taken place based upon the evidence submitted by the Plaintiff. In contrast, the steps taken by Officer Currie to attempt to properly identify the robber are set out in detail in his affidavit. Officer Currie investigated the scene of the robbery, lifted a fingerprint from the scene, and ran the print through a law enforcement database that identified Plaintiff as the most probable match. He then independently compared the latent fingerprint from the crime scene to Plaintiff's print in the law enforcement database and concluded that they matched. He then showed the two prints to two other crime scene analysts and they verified the match. There is no evidence in the record that suggests that Officer Currie deviated from the appropriate standard of care for a crime scene analyst in this instance.

The Plaintiff has failed to present any evidence that would indicate that the failure to take her fingerprints while in Bennettsville is the appropriate practice for police and that the failure to take that step constitutes negligence. On the contrary, once probable cause to arrest exists, the Court is unaware of any obligation on the part of the police to take further steps prior to arrest or detention. Similarly, the Plaintiff suggests that it was negligent to fail to take her fingerprints immediately once she arrived in Columbia. However, she did not present any evidence or authority to establish that police have such a duty. In this case, the Plaintiff was transported to Columbia and arrived on Friday afternoon or evening. Officer Currie was not working at the time that she arrived but took her fingerprints on the following Monday. The mistake was

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discovered that day and the Plaintiff was released and taken home shortly thereafter. There is no evidence of negligence in the arrest or of unreasonable delay in the release of the Plaintiff.

Similarly, Plaintiff's allegations of negligence in training have no evidentiary support. The Plaintiff has not presented any evidence of training deficiency in this case. She suggests that more training must be needed since she was misidentified. This is no more than speculation that ignores the fact that properly trained people sometimes make mistakes. In contrast, the City has demonstrated that Officer Currie has received extensive training in taking and analyzing fingerprints. This includes a one week course of study called "Basic Fingerprints" at the South Carolina Criminal Justice Academy; a two-week advanced fingerprint course taught by the FBI at the Criminal Justice Academy; certification in the Automatic Fingerprint Identification System ("AFIS"); as well as training from other organizations and while on the job. Officer Currie indicates that he has been fully trained and that there was no different or additional training that he could have received that would have changed the outcome in this case. There is no evidence that would create a factual issue as to whether Officer Currie has been sufficiently trained.

Based upon the foregoing, the Plaintiff has failed to demonstrate that there are genuine issues of material fact to be presented to a jury on the negligence claim and summary judgment must be granted to the City.

E. Tort Claim Act Defenses

The City also maintains that it is entitled to summary judgment based upon the provisions of the South Carolina Tort Claims Act. A tort claim against a municipality or municipal employee is governed by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq., which is the exclusive remedy for any tort committed by an employee of a governmental entity. S.C. Code Ann. § 15-78-70(a). The provisions of the Tort Claims Act must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-20(f); Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993). The Tort Claims Act waives immunity for the sovereign, subject to a number of exemptions from liability which are set out in S.C. Code Ann. § 15-78-60. The City contends that it is entitled to summary judgment based upon those exemptions.

S.C. Code Ann. § 15-78-60(5) precludes liability by a governmental entity for a loss resulting from the exercise of discretion or judgment by a governmental employee, or the performance or failure to perform any act or service which is in the discretion or judgment of the employee. Discretionary immunity is contingent on proof that the governmental entity or

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employee, faced with alternatives, actually weighed competing considerations and made a conscious choice. Further, the entity must establish, in weighing the competing considerations and alternatives, its employees utilized accepted professional standards appropriate to resolve the issue. Strange v. S.C. Dept. of Hwys. & Pub. Transp., 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense. Niver v. S.C. Dept. of Hwys. & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App. 1990). A disagreement as to whether the discretion was properly exercised does not preclude discretionary immunity. The exercise of discretion includes the right to be wrong. Giannini v. S.C. Dept. of Transp., 378 S.C. 573, 664 S.E.2d 450 (2008).

In this case, the comparison of fingerprints and determination whether they match clearly involves judgment and discretion. Officer Currie exercised his professional judgment based upon his training and experience. His affidavit establishes that he was familiar with the proper procedures for obtaining fingerprint samples and matching them to fingerprints from the "AFIS" database. It establishes further that he conducted his investigation in accordance with those standards. The Plaintiff has not presented any evidence to the contrary. The City is also entitled to summary judgment on the claims for false arrest, false imprisonment, malicious prosecution and negligence based upon this provision of the South Carolina Tort Claims Act.⁴

NOW, THEREFORE, IT IS ORDERED that Defendant's motion for summary judgment is granted and the Plaintiff's action is dismissed with prejudice.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Fifth Judicial Circuit

Columbia, South Carolina
September 29, 2011

⁴ The City also argues that Plaintiff's claims are barred by other provisions of the Tort Claims Act, specifically S.C. Code Ann. §§ 15-78-60 (4), (17) and (23). However, summary judgment in this case is not based on those exceptions.

and
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Tynaysha Horton

Plaintiff

vs.

JUDGMENT IN A CIVIL CASE

CASE NO: 2010-CP-40-3299

RECEIVED

SEP - 2 2011

JAMES E. SMITH, JR., PA.

Defendant

2011 AUG 30 AM 10:55
 City of Columbia
 RICHLAND COUNTY
 FILED
 JEANETTE W. McBRIDE
 C.P. & G.S.

CHECK ONE:

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☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:

On Defendant's motion for summary judgment, this Court determines the following:

Plaintiff asserts the following causes of action: false imprisonment, false arrest, malicious prosecution, negligence, and assault and battery. In considering the evidence in the light most favorable to the Plaintiff, Defendant's motion for summary judgment must be granted. False arrest and false imprisonment are not separate torts. Under false arrest, plaintiff must prove that the restraint was unlawful. An action cannot be maintained where the plaintiff is arrested by lawful authority. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (Ct. App. 1999); Gist v. Berkeley County Sheriff Dept., 336 S.C. 611, 521 S.E.2d 163. In this case, the arrest was made pursuant to an arrest warrant issued by a ministerial recorder. The fundamental issue in determining lawfulness of the arrest is whether there is probable cause. McBride v. School Dist. Of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) (citing Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006)). Plaintiff claims that there is a question of fact as to whether the arrest warrant was issued on probable cause based on the exculpatory information given to the officer. The existence of probable cause may be decided as a matter of law when the evidence yields but one conclusion. McBride, supra. The warrant affidavit on its face is sufficient to establish probable cause. Probable cause is a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances to believe likewise. The crime scene analyst investigated the scene, lifted a fingerprint from the scene, and ran the print through a law enforcement database that identified Plaintiff as the most probable match. The officer then reviewed the Plaintiff's prints with the one taken from the scene and verified the prints matched. Two additional crime scene analysts

SCANNED

compared the prints and verified the prints matched. The analyst informed an officer of the arrest, that information, the officer prepared the affidavit and obtained the arrest warrant. Probable cause is determined as of the time of arrest, based upon facts and circumstances objectively measured and known to the arresting officer. The officer who sought the arrest warrant obtained the warrant based on the fingerprint analysis. There was probable cause to arrest Plaintiff based on the fingerprint analysis, irrespective of whether the officer was informed by Plaintiff's probation officer that Plaintiff could not have committed the crime because she had problems securing transportation and had children at home.

The same analysis applies to the malicious prosecution claim. Plaintiff must prove a lack of probable cause in a malicious prosecution action. Again, probable cause is determined at the time of the arrest and not what might be revealed in hindsight. The officer sought a warrant based on a good faith objective belief that the person identified committed the offense at the time. The cause of action for malicious prosecution must also fail on summary judgment.

Plaintiff asserts a claim for assault and battery based on her arrest. Plaintiff does not allege that Defendants used excessive force. A battery is the actual infliction of any unlawful, unauthorized violence on the person of another. Jones v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995). A police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. Roberts v. City of Forest Acres, 902 F.Supp. 662, 671-72 (D.S.C. 1995) (applying South Carolina law). Plaintiff's arrest was based on a facially valid arrest warrant. Therefore, Defendants' actions in arresting Plaintiff did not constitute an assault or battery, and the Defendant is entitled to summary judgment on those causes of action.

Plaintiff also asserts a claim for gross negligence in failing to fingerprint Plaintiff when she was taken into custody and before she was transported to Columbia for detention. Plaintiff also alleges Defendants failed to properly train its employees to administer the taking of fingerprints and to properly investigate a burglary and in failing to implement policies to ensure officers were properly trained to handle such situations. Plaintiff has not produced evidence that an employee of Defendant failed to exercise slight care in its investigation or arrest of Plaintiff. According to the Affidavit and deposition of Peter Currie, the analyst who identified Plaintiff's fingerprints as matching those from the scene, he completed multiple courses in fingerprint analysis and was certified in database fingerprint comparison. He received additional training in crime scene investigation. Currie stated that Defendant's practice or procedure is to fingerprint an individual again once they are arrested and placed into custody. Currie followed this procedure and took Plaintiff's fingerprints once she was transported to Columbia. Defendant's motion for summary judgment on the negligence cause of action is granted.

To the extent Plaintiff alleges Defendant is liable based on the misidentification of the fingerprints as hers, Plaintiff's claims are barred by § 15-78-60(5) of the Tort Claims Act. The analyst exercised his professional judgment based upon his training and experience. Summary judgment is not based on exceptions to the Tort Claims Act, specifically Sections 15-78-60(17), (23), and (4). And this Court so holds.

Defendant shall prepare a more formal order that includes facts to support the Court's ruling and additional legal citations consistent with this form order. A copy of the order shall be submitted not later than September 6 in Word format by e-mail with a copy to Plaintiff's counsel for comment.

Dated at Columbia, South Carolina, this 26th day of August, 2011.



PRESIDING JUDGE

This judgment was entered on the 30th day of August, 2011, and a copy mailed first class this 30th day of August, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

CRCP APP-24/FORM 4

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

(Please Print)

Submitted By: Dylan W. Goff

Address: James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, S.C. 29201

SC Bar #: 78416

Telephone #: (803) 933-9800

Fax #: (803) 933-9801

Other:

E-mail: dylan@jamesmithpa.com

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)

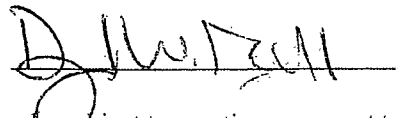
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption 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) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☒ 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) ☐ 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) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ 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) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)			

Submitting Party Signature:



Date:

27 May 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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 and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases 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. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. 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 has 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) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) IN THE FIFTH JUDICIAL CIRCUIT

TYNYASHA HORTON)

Plaintiff,)

vs.)

CITY OF COLUMBIA POLICE)
DEPARTMENT)

Defendant.)

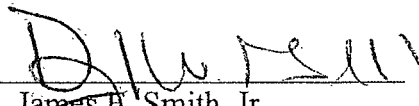
Civil Action No. 2010-CP-40-3299

FIRST AMENDED SUMMONS

2010 MAY 28 PM 12:39
JAMES E. SMITH, JR., P.A.
COLUMBIA, S.C.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said First Amended Complaint upon the subscribers at their offices, 1422 Laurel Street, Columbia, South Carolina, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the First Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.

JAMES E. SMITH, JR., P.A.

By: 

James E. Smith, Jr.

Dylan W. Goff

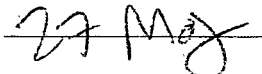
1422 Laurel Street

Columbia, South Carolina

803-933-9800

Attorney for Plaintiff

Columbia, South Carolina

 27 May, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

TYNYASHA HORTON,)
Plaintiff,)

Civil Action No. 2010-CP-40-3299

vs.)

CITY OF COLUMBIA POLICE)
DEPARTMENT)
Defendant.)

FIRST AMENDED COMPLAINT

(Jury Trial Requested)

2018 MAY 28 PM 12:39
JEN
CLERK OF COURT

The Plaintiff, Tynyasha Horton, hereby asserts the following Complaint against the Defendant, City of Columbia Police Department and avers as follows:

PARTIES

1. The Plaintiff, Tynyasha Horton, is a citizen of the State of South Carolina, and a resident of the Town of Bennettsville in the County of Marlboro.
2. Upon information and belief, Defendant, City of Columbia Police Department, is an Agency of the State of South Carolina as defined by S.C. Code Ann. ' 15-78-30(a) (Supp. 1996).
3. At all times the employees or agents of the City of Columbia Police Department were acting as agents, servants officers or employees of the City of Columbia.

JURISDICTION AND VENUE

4. The venue and jurisdiction of both parties and subject matter of this action, are properly before this Court, as this action arises under the South Carolina Tort Claims Act, including but not limited to the provisions of S.C. Code Ann. " 15-78-40 (Supp. 1996), 15-78-50 (Supp. 1996), 15-78-100 (Supp. 1996), 15-17-30 (Supp. 1996).

GENERAL ALLEGATIONS

5. Plaintiff, Tynyasha Horton, resides in the town of Bennettsville which is located in the State of South Carolina, County of Marlboro.

6. On September 9, 2009, a burglary and breaking and entering were reported at 1248 Lady Street, Columbia, S.C., to the City of Columbia Police Department.

7. The Complainant of the incident report stated that an unknown suspect used a cinderblock brick to break out the glass door and gain access to the location. Once inside, the suspect is alleged to have opened a cash register, which was empty, located in back of the business. Complainant also stated that nothing is missing from the incident location. The Reporting Officer states that MPO Currie processed the scene.

8. On or about September 18, 2009, Plaintiff, Ms. Tanaysha Horton was arrested for petit larceny and second degree burglary related with the break in at 1248 Lady Street, Columbia, South Carolina, which occurred on or about September 9, 2009.

9. Arrest Warrants K-613277 and K-613278 were issued by the City of Columbia Municipal Court on September 17, 2009 based on investigator Robert Tyler's report that Ms. Horton's fingerprints matched those taken at the scene of the crime.

10. Ms. Horton resides at 1214 Valley Dale Road, Bennettsville, South Carolina, does not own a car and has not been to Columbia for over ten years.

11. Warrants were issued for Ms. Horton's arrest and she was arrested by the Town of Bennettsville Police and later transferred to the custody of the City of Columbia Police Department.

12. Ms. Horton was detained for four days and was released on or about September 21, 2009, due to her fingerprints not matching the fingerprints taken from the crime scene.

13. Mrs. Horton denied any involvement at the time of arrest, cooperated fully with any requests to further the investigation and repeatedly asked to be finger printed at the time of her arrest.

14. Mrs. Horton was not finger printed until September 21, 2009 at which time it was determined that her prints did not match the prints found at the scene and she was released. Ms. Horton spent four days in jail due to clerical mistakes and gross negligence on the part of Defendants.

15. Mrs. Horton was scheduled to interview for a much needed job in her hometown of Bennettsville and was not able to attend the interview as she was wrongfully detained for this crime.

16. Ms. Horton is a single mother of three children and was separated from those children causing great mental anguish and suffering.

17. Defendant's actions have caused great embarrassment to Plaintiff for herself and her family due to her name and record of her arrest being printed in the Marlboro Herald-Advocate. Further, Ms. Horton was forced to miss a scheduled job interview.

18. Ms. Horton is currently undergoing therapy for her psychological injuries and the extent of permanent injury is not yet known.

19. The damages suffered by Plaintiff, as set forth in greater detail herein, were directly and proximately caused by Defendant's negligent and/or grossly negligent acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE)

20. Paragraphs 1 through 19 are incorporated by reference as if set forth verbatim.

21. Defendant, particularly given its status as having special knowledge and training in crime scene investigation, should have fingerprinted the Plaintiff when she was taken into custody.

22. Defendant, particularly given its status as having special knowledge and training in fingerprinting should have fingerprinted the Plaintiff before transporting the Plaintiff to Columbia, South Carolina from Bennettsville, South Carolina.

23. Defendant is charged with a duty of protecting Plaintiff's civil rights and are strictly prohibited from violating same.

24. The Defendant owed a duty of care to the Plaintiff to properly and prudently review the totality of the circumstances surrounding the facts that gave rise to her arrest.

25. The Defendant by and through its actions breached its duty to the Plaintiff through the negligent, grossly negligent, and/or willful, wanton, and reckless conduct in various particulars including, but not limited to some or all of the following:

1. By gross negligence in or outright failure to administer fingerprint analysis;
2. By acting without regard to the protection of the Plaintiff civil rights, by pursuing an arrest without regards to facts inconsistent with Defendant's determined view of the situation;
3. By not properly training City of Columbia Police officers to know how to administer the taking of fingerprints and administering fingerprint analysis;
4. By not properly training City of Columbia Police officers to know how to investigate a possible burglary/breaking and entering situation;
5. In allowing Plaintiff to be arrested without adequately verifying whether or not there was sufficient evidence or probable cause to arrest;
6. Defendants were negligent in not have policies to ensure that officers were properly trained to deal with such situations;
7. In such other manners as may be shown during the litigation or trial of this matter.

27. As a direct and proximate result of Defendant's negligent and/or grossly negligent acts alleged herein, Plaintiff was caused to incur severe and grievous mental and emotional suffering, fright, anguish, shock, nervousness, anxiety, embarrassment and pain and suffering.

28. The injuries and damages suffered by Plaintiff, as set forth in greater detail herein, were

directly and proximately caused by Defendant's negligent and/or grossly negligent acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(MALICIOUS PROSECUTION)

29. Paragraphs 1. through 28 are incorporated by reference as if set forth verbatim.

30. Defendant's criminal charges asserted against Plaintiff were and are false and malicious and were made without probable cause.

31. All charges against Plaintiff have been dismissed.

32. Plaintiff, prior to being arrested, was in the town of Bennettsville and has made no trips to Columbia, South Carolina in the past ten years.

33. Without provocation and without probable cause, a warrant was issued for Plaintiff's arrest, wherein she was searched, handcuffed, transported to Alvin Glenn Detention Center and jailed.

34. Plaintiff was forced to endure being jailed for approximately four (4) days.

35. The criminal proceedings instituted by the Defendants were terminated in the favor of the Plaintiff. Defendant acted with malice in instituting the proceedings without first verifying Plaintiff's story. Indeed, where there existed independent corroborating evidence of Plaintiffs' story and supporting comments from one of Defendant's own officers, Defendant ignored the facts and proceeded to arrest, search, handcuff and jail Plaintiff.

36. Apparently, Defendant was not interested in the potential and obvious innocence of Plaintiff and ignored all facts which were inconsistent with the arrest and charges they were bound and determined to assert.

37. Defendant maliciously caused the criminal complaint to be issued against Plaintiff in this

matter.

38. The arrest of Plaintiff was wholly without probable cause, and in causing such arrest, Defendant acted maliciously and with the intent to injure Plaintiff.

39. Defendant acted maliciously and without probable cause in investigating the arrest of Plaintiff and with the intent to injure Plaintiff's good name and reputation; by reason thereof Plaintiff was caused to incur severe and grievous mental and emotional suffering, fright, anguish, shock, nervousness, anxiety, embarrassment and pain and suffering.

40. The injuries and damages suffered by Plaintiff, as set forth in greater detail herein, were directly and proximately caused by Defendant's negligent and/or grossly negligent acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(FALSE ARREST)

41. Paragraphs 1 through 40 are incorporated by reference as if set forth verbatim.

42. As alleged herein, Defendant's agents or employees, acting in the scope of their agency and without sufficient probable cause, wrongfully arrested Plaintiff on the criminal charge of Burglary/Breaking and Entering.

43. As a result of the arrest, Plaintiff was searched and handcuffed in front of public, friends and family members.

44. Plaintiff was in her home town of Bennettsville, South Carolina when a warrant was issued by the City of Columbia Police Department for her arrest.

45. The arrest of the Plaintiff was wrongful and as such, Defendant is liable for Plaintiff's injuries.

46. The injuries and damages suffered by Plaintiff, as set forth in greater detail herein, were directly and proximately caused by Defendant's negligent and/or grossly negligent acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(FALSE IMPRISONMENT)

47. Paragraphs 1 through 46 are incorporated by reference as if set forth verbatim.

48. The acts of Defendant described herein above were done negligently, willfully, maliciously, outrageously, deliberately, and/or purposefully and resulted in the unlawful restraint of the Plaintiffs, specifically, that Plaintiffs were jailed without any legal cause to do.

49. Defendant through its actions did wrongfully and unlawfully cause the Plaintiff to be restrained and their freedom taken.

50. As a direct and proximate result of Defendant's negligent and/or grossly negligent acts alleged herein, Plaintiffs were caused to incur severe and grievous mental and emotional suffering, fright, anguish, shock, nervousness, anxiety, embarrassment and pain and suffering.

51. The injuries and damages suffered by Plaintiff, as set forth in greater detail herein, were directly and proximately caused by Defendant's negligent and/or grossly negligent acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION
(ASSAULT)

52. Paragraphs 1 through 51 are incorporated by reference as if set forth verbatim.

53. The conduct and/or actions of Defendant caused Plaintiff to be put in a position that placed her in a reasonable apprehension of harmful or offensive touching, specifically Defendants actions in

threatening Plaintiff if they did not cooperate.

54. As a direct and proximate result of Defendants negligent and/or grossly negligent acts alleged herein, Plaintiff was caused to incur severe and grievous mental and emotional suffering, fright, anguish, shock, nervousness, anxiety, embarrassment and pain and suffering. Plaintiff continues to be fearful, anxious, nervous and distraught.

55. The injuries and damages suffered by Plaintiff, as set forth in greater detail herein, were directly and proximately caused by Defendant's negligent and/or grossly negligently acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(BATTERY)

56. Paragraphs 1 through 55 are incorporated by reference as if set forth verbatim.

57. The acts of Defendant described herein above were done negligently, willfully, maliciously, outrageously, deliberately, and/or purposefully which caused the Plaintiff to have unlawful and unauthorized violence committed upon her, specifically that Defendant negligently and grossly negligent acts and omissions resulted in Plaintiff being unlawfully touched, restrained, handcuffed and jailed.

58. Said acts constituted an unlawful touching of Plaintiff and was done with the intent of bringing about a harmful and offensive contact that was not consented to by Plaintiff and was otherwise not privileged.

59. The conduct and/or actions of Defendant caused Plaintiff to be put in a position that placed her in a reasonable apprehension of harmful or offensive touching, specifically that Defendant's actions placed Plaintiff in the position of being arrested and jailed unlawfully.

60. As a direct and proximate result of Defendant's negligent and/or grossly negligent acts alleged herein, Plaintiff was caused to incur severe and grievous mental and emotional suffering, fright, anguish, shock, nervousness, anxiety, embarrassment and pain and suffering.

61. The injuries and damages suffered by Plaintiffs, as set forth in greater detail herein, were directly and proximately caused by Defendant's negligent and/or grossly negligent acts. As a result, Plaintiff is entitled to damages from Defendant in an amount to be determined by the trier of fact.

DAMAGES

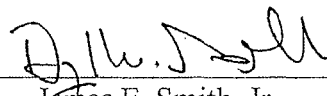
62. Paragraphs 1 through 61 are incorporated by reference as if set forth verbatim.

63. As a direct and proximate cause of the aforesaid acts and omissions on the part of Defendant, the Plaintiff has been injured and damaged and has been deprived rights, privileges and immunities afforded to the citizens of the State of South Carolina and the United States of America, has been subjected to violent, outrageous, atrocious and utterly intolerable conduct, has been denied due process and equal protection of the laws, has endured and continues to endure extreme mental anguish and emotional distress, has been deprived of their ability to earn income and has been deprived of their enjoyment of life and has been deprived of their ability to earn income and has been deprived of their enjoyment of life, thereby entitling Plaintiffs to recover actual compensatory and special damages from the Defendant.

WHEREFORE, Plaintiff prays for an award from this Court from each Defendant as to each Cause of Action in an amount sufficient to compensate Plaintiffs for their injuries, losses and damages, past, present and future, as well as an additional punitive award in an amount sufficient to impress upon the Defendant the seriousness of their conduct and to deter such similar conduct in the future, together with the costs of this action, and such further relief as the Court deems just and appropriate.

RESPECTFULLY SUBMITTED

JAMES E. SMITH, JR., P.A.

By: 
James E. Smith, Jr.
Dylan W. Goff
1422 Laurel Street
Columbia, S.C. 29201
803-933-9800

Attorney for Plaintiff

Columbia, South Carolina

25 May, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,)
)
Plaintiff,)
)
vs.)
)
City of Columbia Police Department,)
)
Defendant..)
_____)

C/A NO.: 2010-CP-40-3299

ANSWER

The Defendant City of Columbia Police Department ("CPD") answers the First Amended Complaint ("Complaint") by alleging that:

FOR A FIRST DEFENSE

1. Every allegation of the Complaint is denied unless hereinafter specifically admitted.
2. Paragraph 1 is admitted on information and belief.
3. Answering Paragraph 2, this Defendant admits only that it is a department of the City of Columbia ("City") and that the City is a political subdivision of the State of South Carolina.
4. Paragraph 3 is insufficiently clear to permit this Defendant to form a belief as to the truth or falsity of its allegations and it therefore denies the same and denies strict proof thereof. The allegation that CPD employees were agents or servants of the City is irrelevant and immaterial and should be stricken.
5. The allegations of Paragraph 4 regarding jurisdiction and venue are admitted. As to the allegations concerning provisions of the South Carolina Tort Claims Act, the Defendant

admits that the Plaintiff purports to bring an action pursuant to those provisions but denies that she is entitled to the relief requested.

6. Paragraph 5 is admitted upon information and belief.

7. Answering Paragraph 6, the date alleged is denied and the remaining allegations are admitted.

8. Answering Paragraph 7, the Defendant craves reference to the incident report for its content and denies any allegation inconsistent with that report.

9. Answering Paragraph 8, this Defendant denies the date of arrest. It lacks sufficient information to form a belief as to the truth or falsity of the allegation concerning the date of the burglary and petit larceny and therefore denies the same and demands strict proof thereof. The remaining allegations of said paragraph are admitted.

10. Answering Paragraph 9, the Defendant admits that the warrants cited were issued by a City ministerial recorder based upon an affidavit executed by Investigator R. Tyler of CPD. The Defendant craves reference to the affidavit itself for its content and denies any allegations inconsistent with that statement.

11. The Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 10 and therefore denies the same and demands strict proof thereof.

12. Answering Paragraph 11, the Defendant lacks sufficient information to form a belief as to the identity of the arresting agency and therefore denies the same and demands strict proof thereof. The remaining allegations are admitted upon information and belief.

13. Answering Paragraph 12, the Defendant admits the date of release and the reason for it. It lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations and therefore denies the same and demands strict proof thereof.

14. Answering Paragraph 13, the Defendant admits that the Plaintiff denied involvement in the break-in and cooperated with CPD but lacks sufficient information to form a belief as to the remaining allegations of said paragraph and therefore denies the same and demands strict proof thereof.

15. The first sentence of Paragraph 14 is admitted on information and belief insofar as it pertains to fingerprints taken by CPD. The second sentence of said paragraph is denied.

16. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraphs 15, 16, 17, and 18 and therefore denies the same and demands strict proof thereof.

17. Paragraph 19 is denied.

18. Answering Paragraph 20, this Defendant realleges the allegations of Paragraphs 1 through 17 herein as fully as if repeated verbatim.

19. Paragraphs 21 and 22 are denied.

20. Answering Paragraph 23, the Defendant denies that the allegations are relevant or material to the cause of action. The allegations are also denied as pled.

21. Paragraph 24 is denied as pled. Further, if any such duty exists, it is a duty to the public at large and is not actionable by the Plaintiff.

22. Paragraphs 25, 27, and 28 are denied. Paragraph 26 was omitted and does not require a response.

23. Answering Paragraph 29, the Defendant realleges the allegations of Paragraphs 1 through 22 herein as fully as if repeated verbatim.

24. Paragraph 30 is denied.

25. Paragraph 31 is admitted.

26. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 32 and therefore denies the same and demands strict proof thereof.

27. Paragraph 33 is denied.

28. Answering Paragraph 34, the Defendant admits that the Plaintiff was incarcerated but denies the length of time alleged.

29. The first sentence of Paragraph 35 is admitted. The Defendant also admits that the Plaintiff was arrested, searched, handcuffed and incarcerated. The remaining allegations of said paragraph are denied.

30. Paragraphs 36, 37, 38, 39 and 40 are denied. All allegations of negligent or grossly negligent conduct are irrelevant and immaterial to this cause of action and should be stricken.

31. Answering Paragraph 41, the Defendant realleges the allegations of Paragraphs 1 through 30 herein as fully as if repeated verbatim.

32. Paragraph 42 is denied. Further, the allegation as to Defendant's agents or servants is irrelevant and immaterial and should be stricken.

33. Answering Paragraph 43, the Defendant admits that the Plaintiff was searched and handcuffed. It lacks sufficient information to form a belief as to the truth or falsity of the

remaining allegations of that paragraph and therefore denies the same and demands strict proof thereof.

34. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 44 and therefore denies the same and demands strict proof thereof.

35. Paragraphs 45 and 46 are denied. Further, the allegations of negligence or gross negligence are irrelevant and immaterial and should be stricken.

36. Answering Paragraph 47, the Defendant realleges the allegations of Paragraphs 1 through 35 herein as fully as if repeated verbatim.

37. Paragraphs 48, 49, 50 and 51 are denied.

38. Answering Paragraph 52, the Defendant realleges the allegations of Paragraphs 1 through 37 herein as fully as if repeated verbatim.

39. Paragraphs 53, 54 and 55 are denied. Further, the allegations of negligence or gross negligence in those paragraphs are irrelevant and immaterial and should be stricken.

40. Answering Paragraph 56, the Defendant realleges the allegations of Paragraphs 1 through 39 herein as fully as if repeated verbatim.

41. Paragraphs 57, 58, 59, 60 and 61 are denied.

42. Answering Paragraph 62, the Defendant realleges the allegations of Paragraphs 1 through 41 herein as fully as if repeated verbatim.

43. Paragraph 63 is denied as pled. Further, the allegations concerning the deprivation of rights, privileges and immunities afforded to citizens of this state and the United States, due to violent, outrageous, atrocious and utterly intolerable conduct, and to denial of due process and equal protection of the laws are irrelevant and immaterial and should be stricken.

FOR A SECOND DEFENSE

44. Plaintiff's Complaint fails to state facts sufficient to constitute any cause of action.

FOR A THIRD DEFENSE

45. This action is governed by the South Carolina Tort Claims Act (§ 15-78-10 et seq. of the Code of Laws of South Carolina) which provides the exclusive civil remedy for torts committed by a governmental employee.

46. This action is barred as to this Defendant by the provisions of the South Carolina Tort Claims Act, including without limitation, S.C. Code Ann. §§ 15-78-20 (b), 15-78-60 (3), (4), (5), (6), (17), (20), (21) and (23), 15-78-70 and 15-78-200, and the doctrine of sovereign immunity.

47. This Defendant pleads the provisions of the Tort Claims Act, including all of the immunities, limitations and defenses granted or preserved by the Act, as a defense to Plaintiff's action.

FOR A FOURTH DEFENSE

48. Plaintiff's recovery, if any, is limited by the provisions of the South Carolina Tort Claims Act, including S.C. Code Ann. § 15-78-120, which limits the amount and nature of recovery.

FOR A FIFTH DEFENSE

49. The South Carolina Tort Claims Act waives immunity only for negligence actions against a municipality and this Defendant is therefore immune from Plaintiff's claims to the extent that the Plaintiff alleges that the conduct of this Defendant's employees was unlawful, malicious, or intentional.

FOR A SIXTH DEFENSE

50. Plaintiff's claims are barred because this Defendant owes no duty to the Plaintiff under the circumstances described in the Complaint.

FOR A SEVENTH DEFENSE

51. To the extent that Plaintiff's action is based upon a failure to properly hire, train or supervise Defendant's police officers, it fails to state facts sufficient to constitute a cause of action since (a) a municipal employer is liable for the negligent conduct of a municipal employee acting within the scope of his employment and a cause of action for negligent hiring, training or supervision is redundant to that primary liability; (b) this Defendant does not have a duty sufficient to create a private cause of action in favor of Plaintiff in those particulars; and (c) the claim is barred by the provisions of the South Carolina Tort Claims Act and the doctrine of sovereign immunity.

FOR AN EIGHTH DEFENSE

52. Further answering and as an alternative defense, this Defendant alleges that the actions of its police officers with respect to the Plaintiff were, at all times, a proper exercise of their authority and/or duty, were authorized by law, were taken or made in good faith, with probable cause, without malice, in the exercise of due care, and were reasonable and justified under the circumstances.

FOR A NINTH DEFENSE

53. The Plaintiff was arrested as required by a facially valid arrest warrant, which was issued after full disclosure of all material facts to the issuing authority. The Defendant pleads that warrant as a complete bar to Plaintiff's action.

FOR A TENTH DEFENSE

54. Further answering and as an alternative defense, this Defendant alleges that any actions of its employees in using force with the Plaintiff were exercised using legal police powers that were authorized by law, were privileged, and were reasonable in the type and level of force used.

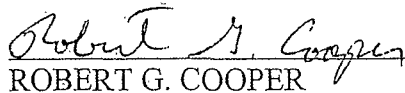
FOR AN ELEVENTH DEFENSE

55. The Plaintiff may not recover punitive damages or attorney's fees against this Defendant.

FOR A TWELFTH DEFENSE

56. This action should be dismissed since the Defendant is solely a department of the City of Columbia and not a legal entity subject to suit.

WHEREFORE, having answered the First Amended Complaint of the Plaintiff, the City of Columbia Police Department prays that the same be dismissed with costs, that the relief sought by the Plaintiff be denied, and for such other and further relief in favor of the Defendant as the Court deems just and proper.



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Attorney for the Defendant
City of Columbia Police Department

Columbia, South Carolina
June 9, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2010-CP-40-3299

Tynyasha Horton,)
Plaintiff,)
vs.)
City of Columbia Police Department,)
Defendant.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the City of Columbia Police Department's **ANSWER** upon Attorney for the Plaintiffs by placing a copy in the United States Mail, first class, sufficient postage pre-paid and return address clearly indicated to him at his address shown below on this 9th day of June, 2010.

Dylan W. Goff, Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, SC 29201


Wendy M. James
Paralegal for the City of Columbia

June 9, 2010
Columbia, South Carolina

1 State of South Carolina) In the Court
2 County of Richland) Of Common Pleas

3
4 Docket No. 2010-CP-40-3299
5

6 Tynaysha Horton,)
7 Plaintiff,)
8 vs.) Transcript of Record
9 City Of Columbia)
10 Police Department,)
11 Defendant.)

12
13 June 30, 2011
14 Columbia, South Carolina
15

16 B E F O R E:

17 The Honorable Alison R. Lee, Judge.
18

19 A P P E A R A N C E S:

20 Dylan Goff, Esquire
21 Scott Winburn, Esquire
22 Attorneys for the Plaintiff

23 Robert Cooper, Esquire
24 Attorney for the Defendant
25

Brenda J. Sigwald, Circuit Court
P.O. Box 206, Jackson, South Carolina 29831

I N D E X

	<u>Page</u>
Motions Hearing.....	3
Certificate of Reporter.....	69

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>

(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

MOTIONS HEARING

1
2 THE COURT: This is Docket No. 2010-CP-40-3299,
3 Tynaysha Horton versus the City of Columbia. The plaintiff
4 is represented by Dylan Goff; the defendant is represented
5 by Robert Cooper. We're here on competing motions for
6 summary judgement, I guess, which properly, I ought to give
7 you a decision right there for competing motion for summary
8 judgement.

9 There were motions filed in April. The defendant's
10 motion was filed in April and the plaintiff's motion was
11 filed in March, and so I guess we'll go with Mr. Goff since
12 his was filed first.

13 MR. GOFF: Thank you, Your Honor. If it please the
14 Court? I yield to my colleague. I think that his motion
15 for summary judgement is going to touch and concern all of
16 the issues that we would bring up and as this matter really
17 hinges on determination of probable cause, I think to save
18 the Court's time I would defer to my colleague.

19 THE COURT: Okay. Mr. Cooper?

20 MR. COOPER: Your Honor, as a preliminary matter,
21 I'm going to hand up a signed copy of my memorandum. I
22 sent you a copy by e-mail yesterday unsigned.

23 THE COURT: Yes, okay.

24 MR. COOPER: Because my staff member who could've
25 scanned it and gotten it to you signed was out and --

1 THE COURT: That's fine, yes.

2 MR. COOPER: I'm challenged.

3 THE COURT: And I also received a memorandum of
4 opposition of -- from Mr. Goff that also was unsigned so --

5 MR. GOFF: Yes, Your Honor. If you'd like, I can
6 hand up a signed copy.

7 THE COURT: Yeah. That'd be great. I'll put the
8 signed copies in this file ---- and I'll keep the unsigned
9 copies.

10 MR. GOFF: And Your Honor, I gave your law clerk
11 the exhibits that were referenced in there. She came in
12 earlier.

13 THE COURT: She -- she handed them to me on the way
14 down the hall.

15 MR. GOFF: Thank you.

16 THE COURT: Great. Okay. So I think I may have
17 everything I need. Opposition report -- yes.

18 MR. COOPER: Your Honor, at the outset, let me just
19 say, one of the matters that was handed up by the counsel
20 for the plaintiff was a letter from Albert Smith, an agent
21 with the Department of Probation and Parole and Pardon
22 Services, dated June -- July 26th, 2010 and I want, at this
23 point, to object to the consideration that it's not in
24 affidavit form, the rules don't permit just handing up
25 statements. We did not depose this witness, so I have not

1 have an opportunity to test any of the matters in there. I
2 plan to do that at trial. I understand -- if there is a
3 trial, but I don't think a letter from someone should be
4 used to circumvent the rule. It requires an affidavit
5 giving me an opportunity to respond.

6 MR. GOFF: Your Honor, he's had this statement
7 since our responses to interrogatories and request
8 production. He's had plenty of time to depose Officer
9 Smith if he so chose. This is a -- an official document
10 drafted in his capacity as an officer of the State and it's
11 on State letterhead and I think that the purpose of a
12 motion for summary judgement is proper before the Court and
13 it's definitely deserving of the discretion it deserves and
14 the weight for what it is.

15 THE COURT: I'll look at the rule. I think it is
16 in the form of -- I think it has to be in affidavit. It
17 has to be either some type of sworn witness or some type of
18 sworn document, but I'll -- I'll note it and I'll just hold
19 on to it and check the rules and see what I figure should
20 be the appropriate way to handle it. And Mr. Cooper,
21 here's an extra copy of that affidavit.

22 MR. COOPER: Your Honor, I'd supplement my
23 objection just briefly. Let me say, I don't think there's
24 anything in that letter that will change the outcome of
25 this hearing today, but I don't think it is proper to

1 consider it. I think it either has to be in affidavit
2 form. If this were an official document -- certified
3 document from the State that was made in the ordinary
4 course of business, of course, that might be different.
5 But this is a letter that was specifically written at the
6 request the plaintiff, and I don't think that qualifies.

7 Moving on, Your Honor, we sent you a copy of our
8 memorandum and I don't want to beat horses that don't need
9 to be beaten. Have you had an opportunity to review at
10 least the facts or do you want me to give a brief
11 presentation?

12 THE COURT: I've reviewed the facts, I've read the
13 affidavit, Curry, and so I may not be completely up on the
14 particular time sequence, but I understand -- I believe I
15 understand what occurred and -- and so to the extent that
16 we need to talk about specific dates in order to -- the
17 only dates that I'm concerned about -- really I'm concerned
18 about what happened from the time she was arrested until
19 she was released, and when the interviews or conversations
20 took place with her. And I'm not so sure that I really
21 recall that either from the affidavit or from the
22 memorandum.

23 And I am concerned with -- or I understand that
24 there are six -- that there are five or six causes of
25 action and considering our -- I've heard similar fact

1 pattern or similar claims in similar natures in other cases
2 involving the City of Columbia. I think I'm kind of
3 familiar with what the law is related -- as it relates to
4 false arrest slash false imprisonment and malicious
5 prosecution.

6 I am particularly interested in the arguments about
7 probable cause and -- and the existence of a facially valid
8 arrest warrant; and in particular, whether it is a
9 requirement in order to obtain an arrest warrant that all
10 the facts have to be provided or -- my understanding of an
11 arrest warrant is that you present information that
12 state's -- or why you have probable cause to believe that a
13 crime has been committed and the crime has been committed
14 by this particular individual.

15 And so it's my understanding that exculpatory
16 evidence is not necessarily presented to a magistrate
17 because that's part of what's factored in into determining
18 that there's probable cause for the police to go to the
19 magistrate for the police to obtain the arrest warrant. So
20 I -- I do have some questions about going behind a facially
21 valid arrest warrant to challenge probable cause, in
22 particular in the context of either the false arrest or --
23 or the malicious prosecution. And I'm -- and I'm
24 interested in hearing the argument about the assault and
25 battery.

1 MR. COOPER: Well, let me start with that. Assault
2 and battery and the negligence claims and the response that
3 the plaintiff made to my motion for summary judgment; they
4 did not respond to my arguments on that, and at least from
5 my old debating days, we would argue that they have
6 abandoned those claims. I just ask them now, do we need to
7 pursue those or are we left with false arrest, false
8 imprisonment, and malicious prosecution?

9 MR. GOFF: Your Honor, I received his memorandum at
10 4 p.m. yesterday and, of course, I worked late yesterday
11 evening preparing my response. No, I didn't respond to his
12 assertions in our cause of action of negligence or and he
13 cited nothing foreign law cases. He didn't cite any
14 domestic cases in support of that contention, but I had to
15 really focus down getting beyond the smoking mirrors that
16 he was asserting to get to the meat of his argument, you
17 know, and the meat of his argument hinges on the existence
18 or nonexistence of probable cause and that's where I focus
19 my response. So I intend to argue that orally today in
20 addition to what I've already stated.

21 MR. COOPER: Okay. We've got that cleared up.

22 With Your Honor's permission, now I'm going to
23 start with those because I think those are probably the low
24 hanging fruit in this case and then address the more
25 substantial questions that you pose regarding the probable

1 cause of the warrant.

2 As Your Honor is aware, it's the State's position
3 that there is no such claim as one for a negligent
4 investigation or any negligence that leads to an arrest;
5 that the traditional torts of false imprisonment, false
6 arrest, and malicious prosecution are mandatory. I'm
7 unaware of any case in which the State of South Carolina
8 has permitted a negligent investigation case. And while
9 Mr. Goff is right on the one hand that the case is cited in
10 my brief on that point are foreign law. That is because
11 there is no domestic law, that the courts are united that
12 there is no such claim. But if you want to say that you
13 were damaged because you were arrested, you have to bring
14 it in the traditional torts since. Your Honor has heard
15 that recently in another case, and that case concluded that
16 my position is correct.

17 With regard to the assault and battery claims, the
18 allegation is simply that there was an assault and a
19 battery because the plaintiff was taken into custody. That
20 they touched her and they put handcuffs on her and they
21 escorted her to jail and into the squad car. There is no
22 allegation either in the complaint or in the testimony or
23 evidence in this case of excessive force. She does not
24 claim that she was physically abused at any point in the
25 process. In fact, she specifically testified she was not.

1 So what we have is a simple question of, can a
2 police officer commit an assault and battery when he or she
3 is simply following the mandate of an arrest warrant. And
4 the law of that is that he cannot. Although the -- there
5 -- I can find a case from South Carolina I cited to a
6 proposition from AMJUR, which says very clearly, Absent
7 excessive force or a claim of an excessive force, a police
8 office is privileged to use the amount of force to effect
9 the arrest. In this case, there is no such claim and that
10 claim should fail as a matter of law.

11 That leaves us with the false arrest, false
12 imprisonment, which I'm just going to, from this point
13 forward refer to it as false imprisonment, they are not
14 separate torts. False arrest is one way to commit a false
15 imprisonment according to the law, but they're not separate
16 torts -- but that's a redundancy in causes of action. So
17 we've got false imprisonment and we've got malicious
18 prosecution.

19 Here there was a warrant as Your Honor is aware.
20 The case law in our state is clear that as soon as you have
21 a warrant, claims for false arrest and false imprisonment
22 are barred. The essence of those torts or that tort is to
23 deprive a person of their liberty without lawful authority.
24 If they're arrested by lawful authority, then you can't
25 bring that cause of action. If there was a warrant, our

1 case law in this state requires that the only cause of
2 action you can bring if it was brought to that probable
3 cause, if it was a mistake, is a claim for malicious
4 prosecution.

5 That point was made in the Law versus Department of
6 Corrections case, a Supreme Court case in 2006. The fourth
7 Circuit Court of Appeals addressed it, did a -- a review of
8 South Carolina law on this point in 2011 in Dorn versus
9 Town of Prosperity and came to the same conclusion.

10 THE COURT: You have a cite say on that? It's in
11 the brief --

12 MR. COOPER: It's in my brief, Your Honor.

13 THE COURT: Okay.

14 MR. COOPER: It's an unpublished opinion that just
15 came out a couple of months ago, but it goes through the
16 historical cases of our state and says there simply is no
17 cause of action for false arrest when there's a warrant.
18 In addition, the alternate South Carolina treatise for tort
19 claims, the Hubbard and Felix Treatise Law of Torts says
20 specifically, if the arrest is based on a warrant, there's
21 no action for false imprisonment.

22 THE COURT: Even if the warrant turns out to be
23 improper?

24 MR. COOPER: Yes ma'am. That's what the case law
25 says, that the warrant was improvidently granted --

1 improvidently being said better next time, sorry. Judge,
2 your only remedy is for malicious prosecution action. You
3 don't get to look behind a warrant except in a very rare
4 circumstance where the officer intentionally mislead the
5 issuing authority and that's under the authority of Franks
6 versus Delaware case, United States Supreme Court in 1978
7 and all the cases that have followed it.

8 But unless the person who takes the warrant and
9 intentionally misleads the issuing authority or acts in
10 reckless disregard for the truth, the warrant is unsalable.

11 THE COURT: So does -- does there have to be a
12 Franks versus Delaware hearing before the prosecution is
13 dismissed or -- in other words, who conducts the Franks
14 versus Delaware trial -- the hearing. Is that the -- is
15 that the civil court in the malicious prosecution action or
16 the jury or is that the function for the criminal court
17 in -- during the course of the criminal proceeding.

18 MR. COOPER: Well, it certainly would be the
19 function of the criminal court if the case had gotten that
20 far. And I think its -- its findings probably would be the
21 law of the case for us here today. But this case,
22 obviously, did not go that far. My understanding is that
23 this would be a matter for the Court to determine for two
24 reasons: One, it's an issue at law; and secondly, the
25 facts on this issue are undisputed. At least in the

1 material sense.

2 In the Franks case, it says specifically that it's
3 a very, very high standard. Before you even get a hearing
4 you have to show -- make up an offer of proof that shows
5 that the person who came to the magistrate, or in this case
6 ministerial recorder, knew they were lying or didn't care.
7 It's not enough, they say, for you to omit something unless
8 that officer knew that omission would absolutely negate
9 probable cause. Let me just clarify the case here.

10 It goes on to say that a simple mistake, no matter
11 how bad will not allow the warrant to be voided because the
12 issue -- and Your Honor's aware of this -- in the cases,
13 they don't talk about a warrant that was correct when we're
14 looking at it after the fact in these false arrest cases,
15 malicious prosecution cases, and some 1983 cases, were not
16 in court unless something went wrong. In these cases, they
17 talk in terms of a facially valid warrant and that's the
18 analysis our appellate courts use.

19 This warrant, on it's face, was absolutely valid.
20 They said that there's been a break in, we've got a
21 positive ID on the fingerprint and that's probable cause,
22 there can't be any question about it.

23 It is our position that it's exclusively a matter
24 for the Court that jury cannot get involved in that. Your
25 Honor would either have to void the warrant or accept it as

1 having a preclusive effect for false arrest and assault and
2 battery.

3 Beyond that, Your Honor, even if the false
4 imprisonment claim could survive that, it and the malicious
5 prosecution causes of action are both barred as a matter of
6 law because there was probable cause as a matter of law.
7 As Your Honor's aware, an essential element in either claim
8 is the lack of probable cause for arrest. It's the
9 plaintiff's burden of proof. And I know you're probably
10 thinking, well, this isn't -- before the jury it's not a
11 question of a burden of proof, but in all of the cases that
12 have been decided in the last decade, it seems like the
13 appellate court says, the plaintiff failed to meet their
14 burden of proof. I mean, they specifically use that
15 language to show the absence of probable cause.

16 As Your Honor's aware, probable cause is what the
17 officer knew at the time of taking the warrant or making
18 the arrest. And probable cause is defined as officer's
19 knowledge that they would need a reasonable person to
20 believe that the person being arrested is guilty of a
21 crime. South Carolina follows a minority rule and that is
22 that questions of probable cause are ordinarily a question
23 of fact for the jury. Contrary to the rule in most states,
24 it's certainly not the rule in federal court, but every
25 time that proposition is cited, the second half of the

1 sentence is, but it may be decided in the matter of law
2 when evidence yields only one conclusion.

3 In the early decisions, Jones versus the City of
4 Columbia, which was established after -- or recited, the
5 case went to the jury. But in the more recent decisions,
6 and I would say probably all the decisions from the last
7 decade, according to each reported opinion has found
8 probable cause as a matter of law. Now this, would include
9 the very recent case of McBride versus Greenville County
10 School District, 2010. In a case I cited earlier, the 2006
11 Supreme Court case of Law versus the Department of
12 Corrections and a court of appeals case in 2005 of Jackson
13 versus the City of Abbeville.

14 In each of these cases, they looked at the facts
15 and tried to determine whether they were sufficient to lead
16 to only one conclusion; and frankly, it didn't take all
17 that much in each case for them to conclude that.

18 In these three cases that I've just mentioned, the
19 factors that impressed the Court enough to rule in each
20 case that the Plaintiff's case was properly dismissed was
21 that they conducted a thorough investigation. Not that
22 they necessarily got it right, but that they tried to.
23 Secondly, that there was a warrant authorization from an
24 assistant Solicitor in one case, that it was presented to
25 somebody to look at and tell the officer, you're on the

1 right track, you can go try to get a warrant; and the fact
2 that a warrant itself was issued.

3 In the Law case, that was essentially the lynch pin
4 of the decision or at least part of the decision. In that
5 case, there was a great debate because the warrant was not
6 facially valid. It had a defect, it didn't have enough
7 information. It was supplemented orally before the
8 magistrate and the Court found that that was sufficient,
9 that distinguished it from the Gist versus Berkley County
10 case and said as a matter of law, the warrant with the
11 supplemental information or of the claim. Now, we have all
12 that here.

13 Your Honor, I've read the affidavit of Pete Curry.
14 This was a painstaking investigation from an experienced,
15 good police officer who in the course of fourteen years of
16 doing CSI type work and literally did thousands of these,
17 reviewed hundreds of thousands of prints but actually did
18 the matching process on thousands and prepared them for
19 court. The only case that his determination of a match has
20 ever been called into question there were facts consistent
21 with guilt.

22 In this case, there was an assistant solicitor, I
23 believe it was Margaret Fent who was presented the
24 information and found it was sufficient to get a warrant,
25 so there was authorization from an assistant solicitor.

1 The ministerial recorder was then presented facts and
2 issued warrants for burglary second and petty larceny.

3 THE COURT: Now, at the time that the warrant was
4 issued, there -- there had not been an interview of -- of
5 Ms. Horton; is that correct?

6 MR. COOPER: That is correct.

7 THE COURT: And so as I -- as I understand the
8 information that -- what the officers -- what the officers
9 had at the time they sought the warrant was fingerprints
10 from the crime scene, a -- for lack of a better way of
11 saying it at this particular point, a match from AFIS,
12 which is the fingerprint system in which the latent
13 fingerprints from the scene were prepared, plus the
14 analysis by the actual officer of the fingerprint who
15 compared the fingerprints specifically and thought there
16 was a match. And -- and based upon at least what I've read
17 from the plaintiff's memo, that there was a conversation
18 with a probation agent in Ms. Horton's home county and --
19 in which the probation agent expressed some concerns and
20 reservations about whether or not she could have been at
21 the site because of what he knew about her personally, but
22 there was no evidence to support that one way or the other.

23 MR. COOPER: That's right. If I could elaborate
24 just on a couple points. As far as the AFIS match, Pete
25 Curry went out to the Roly Poly restaurant and pulled a

1 print from broken glass. Apparently, they threw it at the
2 bottom part of the door, it broke, and then whoever broke
3 in used their hand to push the glass up so that they could
4 crawl through.

5 So he got, not a great print, but as much as he
6 usually has. They did run it through AFIS. Your Honor
7 probably does know this because you hear a lot of these
8 criminal cases, I didn't know this. Unlike on TV, AFIS
9 doesn't make the match. AFIS goes through their database
10 and for the number of points on the fingerprint that you
11 submit that you ask to get to analyze. It tries to find in
12 its database the prints that most -- most resemble and then
13 they rank them. Usually they give you twenty and I think
14 you can go back and get twenty more if you want to, but
15 they give you the twenty prints.

16 In this case, it did that. Ms. Horton's was ranked
17 as the most probable match out of all the ones in the
18 database that SLED has. That is not where it ends though,
19 at least at the Columbia Police Department, and I believe
20 everywhere in this state. That's the beginning point and
21 the CSI officer at that point then begins process of
22 comparing the print from AFIS. Of course, he doesn't have
23 the defendant here. He's using the known print in the AFIS
24 database system and comparing it to his latent print. He
25 testified in his deposition that he did that by extensively

1 because the latent print wasn't the best. It was certainly
2 better than others that he had matched successfully,
3 thought it was possible to do, but he was careful. After
4 extensive review, he determined that they did, in fact,
5 match. Pursuant to our practice at the city, he showed it
6 to two other people who have similar training, who do the
7 same thing on other cases.

8 THE COURT: And that was before the arrest
9 warrant --

10 MR. COOPER: Yes ma'am.

11 THE COURT: -- was obtained.

12 MR. COOPER: And both of those of those people
13 found that it was an absolute match.

14 THE COURT: And that's in his affidavit, right?

15 MR. COOPER: Yes, ma'am, it is.

16 THE COURT: I understood that at some point that he
17 sought corroboration on the defendant, but I just need to
18 read the affidavit.

19 MR. COOPER: He sought the corroboration after the
20 Plaintiff was arrested. I've talked to him and I've talked
21 to the investigator. I don't think there's any hardcore
22 evidence before you. For some reason, he went to SLED and
23 I believe it was because he had been told that the
24 plaintiff came here and is adamant that it's not her and it
25 couldn't have been her. And the reasons it couldn't be her

1 was she didn't have a car, didn't have a driver's license.
2 I mean, there were things that certainly, if you were going
3 to commit a robbery, you might drive without one, but --
4 but she seemed sincere and adamant enough that somebody had
5 concerns, so he went out to SLED just to have another set
6 of eyes outside of the organization.

7 That person said, I can't say that it's a match for
8 sure. I can't certify it. He said, Well if you can't
9 certify it, I'm not going forward with it. He came back --
10 at that point he did roll her fingerprints just to have a
11 fresher pair, better than the ones from the computer and it
12 clearly was not -- was not her. This wasn't a question of
13 just quitting because he couldn't get confirmation. He
14 confirmed for himself after he rolled her fingerprints.
15 What the -- the fingerprint in the AFIS computer system
16 distorted one portion and that was much clearer when they
17 got the fresher prints. Now --

18 THE COURT: And just so that we're clear then, at
19 the time that the arrest warrant was sought, and based upon
20 the information that was contained in the affidavit to
21 support the arrest warrant, it indicates that -- that
22 someone entered the business without -- without consent,
23 during -- during the hours of darkness. The window was
24 shattered, the glass was pushed up the door frame. Once
25 inside, the register drawer was pried open. There were

1 traces of blood at the scene from which I assume they would
2 have collected that evidence but had nothing to compare it
3 to at that particular point.

4 MR. COOPER: That is correct. And also they
5 believed it was a two-person job, so it was not necessarily
6 the same person.

7 THE COURT: And the first aid kit was removed in
8 addition and that fingerprints lifted at -- fingerprints
9 lifted at the point of entry matched the defendant's ink
10 prints on file. And so -- and that was obtained on, it
11 looks like the date of the -- the date of the crime was
12 September the 10th of 2009 --

13 MR. COOPER: According to the incident report, Your
14 Honor, it was sometime between the end of business on
15 September 9th and when the person came in the next morning,
16 September 10th. They're not really certain as to which
17 date.

18 THE COURT: And it's -- and it's signed by the
19 ministerial reporter on September the 17th of 2009, so I
20 presume that that was the date that the application -- the
21 arrest warrant was actually sought.

22 MR. COOPER: Yes, ma'am.

23 THE COURT: Okay. And again, at that particular
24 time, the information that was reasonably available to the
25 police officers or law enforcement it -- and I'm grouping

1 all the investigators, everybody that contacted the scene
2 was that the information contained in this warrant plus a
3 phone call with a probation agent who expressed -- said,
4 You know, I'm not so sure she could have done it. And --
5 and then the information about the fingerprints.

6 MR. COOPER: Yes, ma'am.

7 THE COURT: Okay.

8 MR. COOPER: The affidavit and that warrant is 100
9 percent true with respect to every fact except the mistake
10 about the fingerprints matching. And at the time that it
11 was issued, of course, Investigator Tyler was relying on
12 the expertise of the CSI officer, who was our senior person
13 and who, she knew over nearly fifteen years to have never
14 made a mistake. So when he said, she believed him.

15 Going back to the definition -- well, two facts.
16 One, the warrant should bar the claims as a matter of law,
17 but in addition, the plaintiff for false imprisonment or
18 malicious prosecution has to show the lack of probable
19 cause. Referring back to the definition of probable cause,
20 what a police officer believed the facts to be at the time
21 of the arrest. There is no question that CSI Officer Pete
22 Curry and Investigator Rodney Tyler not only believed that
23 Tynaysha Horton had done this because her fingerprints
24 matched, I believe either one of them would have staked
25 their life on it. This wasn't a percentage thing, you

1 know, she probably did it, she maybe did it. They
2 considered it an absolute lock that she did it.

3 It's unfortunate that turned out to not be true,
4 but that's not a test for probable cause, it's whether when
5 additional information is obtained, you find out
6 differently.

7 THE COURT: Well, let me -- let me ask this then,
8 do you have -- can you challenge that probable cause on the
9 basis that the officers should have done more in the course
10 of their investigation prior to seeking the arrest warrant?

11 MR. COOPER: I think not. I think the case law is
12 clear on that, that it's not a question of continual second
13 guessing of the police officer, that they're the people who
14 investigate a thing when they have -- they believe they
15 have probable cause, you look at what they had at the time.
16 Absence of some sort of bad motive, bad faith, intentional
17 wrongdoing, things of that nature, but we don't go back and
18 say, Okay, this turned out wrong so they could have headed
19 it off three places in the past.

20 I do not believe that is permitted and I believe
21 that's also powered by the provision of the Tort Claims Act
22 that says you can't challenge the matter in which police
23 work is done. I think the sole question on probable cause
24 is based on the facts available to these officers at the
25 time; is there any evidence of corruption or bad faith and

1 there is not. And absence that it is probable cause is a
2 matter of law.

3 THE COURT: Talk to me a little bit about your --
4 your tort claims exceptions.

5 MR. COOPER: Yes, ma'am. I think there are three
6 that impact these and probably are positive,
7 notwithstanding the fact that I think that the case fails
8 in a matter of common law anyway. South Carolina Code
9 Section 15-78-60 sub paragraph 5 is the discretionary
10 immunity section of the Tort Claims Act.

11 When the Tort Claims Act came out, it seemed like
12 that should envelope most things that came before the
13 Court. Over time, additional rules were imposed. The
14 provision itself provides that the city in this case is not
15 liable for anything that results from one of its employees
16 exercising judgement or discretion. Over time, our
17 appellate courts have proposed additional requirements, one
18 that they actually -- that the person actually made a
19 decision and that sort of came out of the public
20 transportation cases, the design cases that somebody drives
21 off the road and is hurt, the highway department has to
22 show that they actually thought about this and decided not
23 to put up a barrier.

24 They also added that you've got to show that later
25 that the person claiming the discretionary immunity has to

1 establish that when they made the choice, when they thought
2 about, they thought about it in terms of the accepted
3 professional standards for that industry. So if, in the
4 highway department case, which sort of ran with that
5 section of that period of time, if they thought about it
6 but didn't follow the general engineering accepted
7 practices, they still didn't have the immunity. And so for
8 a period of time, discretionary immunity was an
9 all-inclusive defense and then it looked like it dried up
10 and became rarely used.

11 I think we had an indication that that has changed
12 back in 2008 in the case of Giannini versus South Carolina
13 Department of Transportation, South Carolina Supreme Court
14 case cited in my brief on page ten. That was another
15 highway department case. In that case, the majority
16 decided the case entirely on the subsection of the Tort
17 Claims Act dealing with design immunity.

18 Chief Justice Toal concurred an opinion of descent
19 written by Justice Pleicones that said, Hold on a second,
20 we agree with you perhaps on the design immunity, but the
21 parties have argued and you have completely ignored the
22 discretionary immunity. And in this case, they found that
23 the people at the department of transportation, now that is
24 the descent, had considered alternatives, had followed
25 accepted standards. They just got a bad result.

1 Justice Pleicones wrote, In fact, the majority did,
2 I think a footnote, quote this, but the exercise of
3 discretion includes the right to be wrong. In that case, I
4 believe, at least those two justices flag the fact that
5 they are now ready to embrace discretionary immunity again
6 in the appropriate case and this is such a case. In this
7 case, the comparison of two fingerprints obviously requires
8 professional judgement and discretion and skill and Officer
9 Curry did that. He did it -- he was properly trained
10 according to his affidavit. In fact, he said, there's not
11 anymore training I could have had. I compared two
12 fingerprints and if I got it wrong, I got it wrong, but it
13 wasn't for lack of training.

14 He testified that he was familiar with the proper
15 procedures. He'd been trained at the Criminal Justice
16 Academy, he was SLED qualified, he had trained with the
17 other PI. He said he conducted his investigation in
18 accordance with the standards that he was taught by those
19 organizations which are the only organizations that matter
20 for this.

21 This is a case where there was discretion used by a
22 professional who is properly trained and as a matter of
23 fact probably the best person you've ever had. He did make
24 a choice, a conscious choice, in finding it was a match
25 instead of failure to match and he followed the procedures

1 of the FBI and South Carolina Criminal Justice Academy.

2 That should be discretionary immunity as a matter of law.

3 The other two provisions that I think also bar
4 these claims, one is Section 15-78-60 subparagraph 17,
5 which bars liability for a loss resulting from actual
6 malice or intent to harm. All plaintiff's losses in this
7 case stem entirely from her arrest and she alleges in her
8 complaint, paragraph thirty-eight, that the defendant acted
9 maliciously and with intent to injure her in causing that
10 arrest. So this is the plaintiff's own position that this
11 was an action taken with intent to injure based on their
12 allegations are out of court on these claims.

13 The final tort claims act defense in section
14 15-78-60 subparagraph twenty-three, which provides that a
15 governmental entity is not liable for a loss resulting from
16 institution or prosecution of any judicial or
17 administrative proceeding. That in essence is virtually
18 verbatim the first element of a claim for malicious
19 prosecution. The language is strikingly similar; it's hard
20 to imagine that the legislature when they put that in
21 didn't intend for it to -- to bar the claim for malicious
22 prosecution, but likely this is virtually identical.

23 THE COURT: Well, tell me -- tell me a basis
24 then -- how the city could ever be sued for malicious
25 prosecution.

1 MR. COOPER: It couldn't.

2 THE COURT: So you're -- you're basically taking
3 the position that any time they institute any -- some type
4 of judicial or criminal proceeding that they can never sued
5 about it.

6 MR. COOPER: I am. And I'm not trying to take a
7 hard position or an extreme position. I think a little bit
8 of history explains this better. As Your Honor is aware,
9 sovereign immunity was the result of Batson v McCall.
10 There were two torts that a city could be sued for. That
11 is a wreck or falling down on the sidewalk on the street.
12 Those are the only two torts that existed. One had a
13 \$10,000 cap and the other had a \$15,000 cap. So, when the
14 McCall decision was issued by the Supreme Court, it was
15 a -- it was a brave new world. All of a sudden other torts
16 were possible unless there was an exemption in the Tort
17 Claims Act. Our Tort Claims Act is modeled after the
18 uniform act like everybody else.

19 And I am firmly convinced -- I'm not just taking an
20 extreme position to you. When it says in subparagraph
21 twenty-three, you're not liable from -- for the institution
22 or prosecution of judicial proceeding then in the first
23 element of malicious prosecution is the institutional
24 continuation of original judicial proceedings. That's not
25 a coincidence.

1 THE COURT: And so --

2 MR. COOPER: And I've researched this over the
3 years because I've tried to find authority. Our courts
4 never addressed it. You know, what I hear sometimes when I
5 argue this is well --

6 THE COURT: So what you're saying -- you're saying
7 basically the remedy is not against the city, the remedy is
8 against the officer who instituted the action. And to
9 demonstrate either that he was exceeding his scope and
10 authority as a police officer or that he did it
11 specifically -- he or she did it with malice.

12 MR. COOPER: One or two things -- Yes, either that
13 or it ends up being a situation where there just is no
14 remedy as there are many torts for which the government is
15 not liable. Now, I've cited it in my brief and I know Your
16 Honor has seen this. I've only been able to find two
17 courts that have addressed this. I know our court has not
18 yet, but the courts of the State of Virginia have, on
19 multiple occasions found specifically that this provision
20 of the Tort Claims Act, an identical provision, bars a
21 malicious prosecution claim.

22 And the courts of Indiana have interpreted in
23 essentially identical language in their Tort Claims Act to
24 have the same effect. So the only two courts I've been
25 able to find that have addressed this have both agreed with

1 the opinion that I have answered to the Court today. If
2 that language means what it says that the first element of
3 malicious prosecution is knocked out by this provision of
4 the Tort Claims Act.

5 Unless Your Honor has any questions, that's what
6 I've got.

7 THE COURT: Thank you.

8 MR. COOPER: Thank you.

9 THE COURT: Mr. Goff?

10 MR. GOFF: Thank you, Your Honor. May it please
11 the Court?

12 THE COURT: Let me, before you get started, let me
13 tell you the areas you probably need to focus on. I would
14 like to hear your argument, I'm not saying I won't -- I
15 won't listen to it, I won't consider it. I'm inclined to
16 believe that there's not a claim for the negligence in
17 failure to conduct a proper investigation. And I'm not so
18 sure that there's a claim for assault and battery. I mean,
19 certainly -- I think you've -- I'll be happy to hear the
20 argument. My mind has been changed before and sometimes I
21 go back and forth. I would like to hear those arguments,
22 but I'm really more concerned about the other issues,
23 particularly about the probable cause and how you get
24 around the information that's known to the officer at the
25 time that they applied for the warrant.

1 MR. GOFF: All right.

2 THE COURT: I'll let you go with that.

3 MR. GOFF: Yes, ma'am. Thank you. And also I'd
4 like to address the assault and battery, Your Honor, by
5 getting back to the central question. The central question
6 is, was this a lawful arrest. Was there probable cause for
7 arrest? Is assault and battery -- unlawful assault and
8 battery is unlawful touching. They didn't actually hurt
9 her -- you know, they had to touch her to put finger -- to
10 put handcuffs on her, physically restrained her.

11 So surely those elements of the tort matter. The
12 only elements in question are do they have lawful
13 authority. And I submit if they're acting without probable
14 cause, they did not have lawful authority. So --

15 THE COURT: So basically, you're telling me that
16 almost all, with the exception of negligence, almost all of
17 your claims are going to hinge on the probable cause issue.

18 MR. GOFF: Yes, ma'am.

19 Your Honor, we all know the definition of when
20 summary judgement's proper.

21 THE COURT: Yeah, you don't need to go through
22 that.

23 MR. GOFF: I wasn't going to. But I was going to
24 say, you know, that there are -- there are multiple issues
25 of material fact here disputed. You know, much of the

1 defense arguments as far as the motion revolve around his
2 position in the existence of a facially valid warrant. The
3 issue on probable cause precludes our actions about our
4 law. But the existence of probable cause, the general rule
5 in this state, is it's a matter of fact. It's a matter of
6 fact for the jury to consider.

7 And he's correct when he sites Gilmer v City of
8 Columbia when, you know, that addendum after that sentence
9 that it may -- it may be decided as a matter of law --

10 THE COURT: So you're telling me that even when
11 there's a valid, what appears to be a facially valid arrest
12 warrant, that it is still a jury function to determine
13 probable cause.

14 MR. GOFF: Your Honor, I'm saying, when a -- when a
15 plaintiff attacks the warrant as we have done here,
16 alleging that probable cause did not exist for the issuance
17 of a warrant that we have raised the factual question as to
18 the existence of probable -- of probable cause, that we're
19 entitled to be heard by a jury. The -- the city can't
20 simply get around every suit for these causes of action and
21 say, Well, we have a warrant that is valid on it's face,
22 but a warrant isn't issued on probable cause, there's a
23 jury question.

24 THE COURT: Well, and -- and for me, it's -- the
25 issue is -- you know, that issue has more or less been

1 argued and decided because in order to get an arrest
2 warrant, you have to have probable cause. And so, if a
3 trained person, whether it's a ministerial court or whether
4 it's a magistrate or whether it's a judge, makes a decision
5 based upon information that is presented to them that there
6 is probable cause to arrest then that issue of probable
7 cause -- and issuance of an arrest warrant that -- to me
8 the issue of probable cause has been decided. There's
9 nothing -- there's nothing further for the jury to
10 consider.

11 Now I understand, you know, there were -- that what
12 you're -- basically what has to occur at this particular
13 point is whether there's enough facts to -- to challenge
14 that that ministerial orders decision, which to me seems to
15 be a legal question at the first. I mean, if there are lot
16 of facts that are disputed, but if there are no facts in
17 dispute, then they're doesn't seem to anything that has to
18 go forward, so I -- I guess that's kind of where we are.

19 MR. GOFF: Well, Your Honor, he cites the Law
20 case -- he cites the Law versus The South Carolina
21 Department of Corrections case and, you know, I'm sure he
22 didn't intend to do this, but he mistakes that a facially
23 valid warrant is an absolute bar or a conclusive bar to
24 these claims. It doesn't say that. It says that it's
25 prima facia evidence is the existence of probable cause.

1 Prima facia -- it establishes the rebuttal presumption of
2 probable cause and that's all. Plaintiff seeks to rebut
3 that presumption of probable cause and I think that creates
4 where plaintiff has, as in this case raised factual issues,
5 articulable, factual issues that come to the existence of
6 probable cause in their own warrant. I think it creates a
7 jury question.

8 And again, it goes back to the general rule in this
9 state is that the existence of probable cause is a matter
10 of fact the jury determines. And only -- only in those
11 cases where the facts can lead to but one conclusion, is it
12 a matter of law.

13 THE COURT: And then determining probable cause,
14 you still would agree that it has to be reviewed from the
15 standpoint of what the -- the person who's seeking the
16 warrant, the applicant, what is known to that person at the
17 time that they seek the -- the warrant; is that correct?

18 MR. GOFF: Yes, ma'am, unless --

19 THE COURT: Not in what the light of hindsight
20 would reveal or what would have been revealed as they talk
21 to the plaintiff or -- but the information that was
22 available at the time that the warrant was sought.

23 MR. GOFF: Well, unless, as is the case here, and
24 I'm reading from the United States versus Copley, 899 Fed
25 2nd, 297, and that's cited in Miller, which is cited in my

1 brief, Miller versus Prince George. The United States
2 versus Copley, the material facts with intent to make or
3 reckless disregard or whether they made the affidavit
4 misleading. Reckless disregard of whether the omission of
5 those facts made the affidavit misleading.

6 And it goes on to define reckless disregard as,
7 Reckless disregard can be established by evidence and
8 officer acted with a high degree of awareness of a
9 statement's probable falsity. When viewing all the
10 evidence the applicant must entertain serious doubts as to
11 the truth of the statements or have reasons to doubt the
12 accuracy of the information he reported. With respect to
13 omissions, reckless disregard can be established by
14 evidence of the police officer quote, failed to inform the
15 judicial officer of the facts he knew was negating probable
16 cause.

17 THE COURT: Okay. And what do you claim those
18 facts are? The facts that the officer would know.

19 MR. GOFF: Your Honor, on the fifteenth -- and I
20 apologize I'm getting a -- I feel like I'm in front of an
21 appellate court hearing.

22 THE COURT: I'm sorry. I just -- you know --

23 MR. GOFF: That's fine.

24 THE COURT: Let's do it this way. I've heard
25 similar cases --

1 MR. GOFF: Yes, ma'am.

2 THE COURT: -- and I know that when I've left and
3 gone back and tried to review, I never asked enough
4 questions.

5 MR. GOFF: Yes, ma'am.

6 THE COURT: So this time, I'm kind of determined to
7 ask all the questions I need to know so that when I read
8 the cases I can -- I can call to mind the arguments that
9 are made and I can -- and I can review them in light of
10 that so I know what the parties' positions are. And -- and
11 I'll give you -- I'll still give you the chance to finish
12 up --

13 MR. GOFF: Okay.

14 THE COURT: -- whatever else.

15 MR. GOFF: Yeah, that's fine. As long as you bear
16 with me --

17 THE COURT: Yeah.

18 MR. GOFF: -- for seeming discombobulated.

19 THE COURT: That's all right. That's all right.

20 MR. GOFF: And so your question was --

21 THE COURT: What -- what were the facts that were
22 known to the officer that -- that would have made him aware
23 or give him a high degree of awareness that the information
24 was not correct and he did not provide him information,
25 or --

1 MR. GOFF: I think those facts are the facts of the
2 15th -- the 15th of September. Two full days before
3 Officer Tyler sought this arrest warrant, two days, she
4 spoke to Agent Smith from Bennettsville. Agent Smith told
5 him, I've got serious doubts about her --

6 MR. COOPER: Your Honor, I'm sorry, but I'm going
7 to have to object to this.

8 THE COURT: And -- and I understand --

9 MR. COOPER: There's no affidavit, there's no
10 statement of this position.

11 THE COURT: I understand your objection and --

12 MR. GOFF: Your Honor, I --

13 THE COURT: And I will -- I'd like to hear what it
14 is and then --

15 MR. COOPER: That's fine.

16 THE COURT: If based upon my review of the rules,
17 I'm capable of determining whether or not if I should fully
18 consider it or not.

19 MR. COOPER: Yes ma'am. I apologize for
20 interrupting but I wanted to protect the record.

21 THE COURT: I understand.

22 MR. GOFF: And, Your Honor, I just want to cite the
23 Rule 56(f), When affidavits are unavailable -- should it
24 appear that affidavits supporting opposing the motion, as
25 we are here, the economic reasons stated present by the

1 affidavit presented -- for reasons stated present by
2 affidavit of facts essentially justifies opposition. The
3 Court may refuse an application for judgement or may order
4 continuance for an affidavit to be obtained, deposition be
5 taken, or discovery to be had, or make -- or make such
6 order as is just.

7 But, again, Your Honor, he's had this affidavit for
8 months and months and months and he's failed to take a
9 deposition -- excuse me. He's had this statement for
10 months and months and months and he's failed to take the
11 deposition of Agent Smith. So again, those facts were
12 known to Officer Kyle on the 15th, that for whatever
13 reason, she didn't include -- the very cursory statement.
14 I mean, you outlined the language from the arrest warrant.
15 The only actual factual thing linking my client to these
16 charges is the fingerprints.

17 THE COURT: The fingerprints.

18 MR. GOFF: The rest is just rogue. Matter of fact,
19 it's different font. It's just got a tag in there on the
20 end, Oh yeah, by the way we matched the fingerprints, but
21 it turns out they didn't.

22 THE COURT: Yeah.

23 MR. GOFF: I don't want to get into all of that.
24 But the facts -- the facts that she had on the 15th, were
25 the plaintiff lived in Bennettsville, South Carolina, that

1 she was a single mother, she was unemployed, she didn't
2 have a car. She had ongoing issues with transportation;
3 she couldn't even get across Bennettsville to see her
4 probation officer. And she sure didn't have money to pay
5 for gas to get to Columbia, or a car to get to Columbia.
6 She can't get across Bennettsville, I don't know how you
7 get to Columbia.

8 I don't know how you get to Columbia with an
9 eight-month-old child and two other children under the age
10 of ten. She had met with her parole -- probation officer
11 the day of the burglary and then she had volunteered --
12 volunteered DNA and fingerprint evidence. When her parole
13 officer what was going on she said, please take my -- take
14 my blood, take my fingerprints, I didn't do this.

15 THE COURT: And when -- when did that occur?

16 MR. GOFF: That occurred on the 17th.

17 THE COURT: So that was the last time the
18 warrant --

19 MR. GOFF: That was the last statement, yes ma'am.

20 THE COURT: So the warrant was issued on the 17th.

21 MR. GOFF: Yes ma'am. And that occurred when --
22 when she was arrested.

23 THE COURT: Okay. So --

24 MR. GOFF: But again --

25 THE COURT: So at least at that particular point,

1 the fact that she -- the fact that she may be willing to
2 provide samples does not necessarily factor into whether or
3 not there was probable cause to arrest her.

4 MR. GOFF: That's correct. The final -- the final
5 point does not factor into the determination of probable
6 cause. I think it does factor into the probable -- to the
7 question of whether or not there was unreasonable delay.
8 The unlawful arrest with an unreasonable delay, false
9 imprisonment exists where there may be a lawful arrest in
10 which there was intentional delay by unreasonable time in
11 which to issue it, if that's the case, Your Honor.

12 THE COURT: Okay. So why was the delay an
13 unreasonable time?

14 MR. GOFF: She was held for seventy-eight hours,
15 Your Honor.

16 THE COURT: Well --

17 MR. GOFF: All they had to do was take their
18 fingerprints. They could have taken their fingerprints in
19 Bennettsville, South Carolina.

20 THE COURT: But the -- once they take her
21 fingerprints, they're not going to release her. Although I
22 understand that in this particular case, from what I've
23 read, that after they took the second set of fingerprints
24 and they looked at them again, they did in fact decide
25 to -- to release her that day.

1 But in the interim -- Okay. First day she's
2 arrested, she's in Bennettsville. She gets transported to
3 Columbia, that's the next day.

4 MR. GOFF: Yes ma'am.

5 THE COURT: That's the 18th. So between the 19th
6 and 20th, at some particular point, she talks to law
7 enforcement officers. And I --

8 MR. GOFF: Yes, ma'am.

9 THE COURT: So -- and I would assume that they had
10 to take time to corroborate her story and go back and look
11 into the information again. Am I right?

12 MR. GOFF: Well, it's her deposition testimony,
13 Your Honor, that they told her, Look, we know you're guilty
14 and I don't want to fool with you, I don't want to
15 fingerprint you right now, I've got a game to go to. I
16 have a game to go to. You're not going to -- You're going
17 to sit here in this cell until Monday, when somebody comes
18 back and we'll deal with you.

19 But Your Honor, going back to -- you know, the
20 plaintiff has competently challenged the validity of the
21 warrant and the existence of probable cause. We've raise a
22 number of factual issues that are all included in the
23 exhibits provided to the Court. In Pete Curry's affidavit,
24 he states that he took the fingerprints to SLED, quote, Out
25 of an abundance of caution. After the plaintiff relayed

1 the facts to him, it would have negated her ability to
2 create -- to commit the crime. But he still believed for a
3 fact her prints were a match.

4 Okay. In his deposition testimony, page 28, line
5 12, when he's asked to compare the latent fingerprint at
6 the scene to the plaintiff's print, it says, the print's
7 totally different. It doesn't add up. The print is
8 completely different, it doesn't add up. Later on in his
9 deposition on page 30 he says, It's department's procedure
10 to fingerprint the individual in custody, confirm the match
11 as soon as possible. So it's the department's procedure to
12 fingerprint the individual in custody to confirm the match
13 as soon as possible.

14 But in his statement we were told that only reason
15 he did it is because she related stuff to him that called
16 into question his judgement, so he sent in SLED just out of
17 an abundance of caution. And defendant's responses to our
18 interrogatories, No. 11 we were told that arresting agency
19 does not ordinarily take fingerprints after a person has
20 been pulled into a detention facility. So again, there's a
21 factual dispute and I think that cuts to probable cause.

22 But going back to paragraph 10 of Mr. Curry's
23 affidavit, out of an abundance of caution after the
24 plaintiff related facts again that would have negated her
25 ability to commit a crime he submitted those fingerprints

1 to SLED. When asked in his deposition on page 31, line 15,
2 Have you ever spoken to the plaintiff. Mr. Curry responded
3 he said, Hey, how are you, when he fingerprinted her. He
4 mentions nothing, nothing, not a word about any
5 conversation he had that he mentions in the affidavit, not
6 one word.

7 THE COURT: Well, was he the one that did -- I'm
8 sorry.

9 MR. GOFF: Your Honor, I know, that's a fact of the
10 question. There's differences in his affidavit and his
11 deposition testimony.

12 THE COURT: Oh, okay. But -- okay, you're talking
13 about the affidavit that he's provided in conjunction with
14 this motion.

15 MR. GOFF: Yes, ma'am.

16 THE COURT: Okay.

17 MR. GOFÉ: Yes, ma'am. Further he states that he
18 simply apologized for his mistake, for what had happened.
19 So when asked what conversation he says, Hey, how are you
20 doing, when he's taking her fingerprints. And then later
21 on, depending on whose version of the facts you believe,
22 much later or just a few minutes, he says, Oh, my gosh, I'm
23 sorry for what happened.

24 THE COURT: Well, that would have been at some
25 other later point after he took her fingerprints and had an

1 opportunity to compare them again.

2 MR. GOFF: Yes ma'am. But I'm simply pointing to
3 the fact that there are a lot of factual discrepancies
4 between his affidavit, between his deposition testimony,
5 and between --

6 THE COURT: Well, now, what he did after -- after
7 she was released or after he confirmed that there was a
8 mistake wouldn't really be wrong, would it?

9 MR. GOFF: I think it cuts to why he -- you know,
10 why'd he go back and rethink it. If he was so sure of this
11 match, that he did such a great job, like Mr. Cooper says,
12 he showed it to two other people and he was competent and
13 he was well trained. You know, he did an, I think he said,
14 an exhausted investigation. If he was so sure about it,
15 why did he send it back to SLED. Was it department policy
16 to send back to SLED as he stated in his deposition
17 testimony and -- or was it because he had doubts as it
18 stated in his affidavit and defendant's answers to
19 interrogatories.

20 I think it's very important because, you know,
21 Officer Curry is no longer employed by the City of Columbia
22 Police Department. Officer Curry said to me in the
23 deposition, you can't make a mistake like this and stay in
24 this line of work. So I think it's very, very important.
25 I think that's completely probable cause given the fact

1 that the -- the only thing probable cause in this case is
2 based on is his matched fingerprints because Officer Tyler
3 refused or omitted to provide any other evidence to the --
4 to the issue of the matter. And I think that goes, again,
5 to the language in the United States versus Copley.

6 THE COURT: But even if -- wouldn't you -- wouldn't
7 you have to show some malice on his part in order to -- to
8 say that just because -- an analysis is based upon the
9 information that he had available to him at the time was
10 incorrect. That -- that would have thrown out the probable
11 cause issues. I mean --

12 MR. GOFF: When you said he --

13 THE COURT: I'm talking about Curry. I mean, if
14 Curry -- if Curry has looked at the information that he had
15 available to him and made a determination, a good faith
16 determination and reported not to -- to the ID -- for the
17 search warrant. Wouldn't you have to show that there was
18 some malice that -- that he had information available at
19 the time that he talked to the affiant before the search
20 warrant was issued that he was incorrect and he knew that
21 he was incorrect and that he disregarded it and -- or had
22 some other type of ill will, some other motive for giving
23 false information to a police officer who was seeking an
24 arrest warrant.

25 MR. GOFF: Well, first of all, Officer Curry

1 provided information to Officer Tyler. Officer Tyler went
2 to the ministerial recorder and sought the warrant.

3 THE COURT: Right. So --

4 MR. GOFF: So we're talking about Officer Tyler
5 here because she's the one that had all the information.

6 THE COURT: So -- but what I'm saying is if -- if
7 the primary information, even based upon what you're saying
8 that the primary information in the arrest warrant is the
9 fact that the fingerprints matched; and you know, if you
10 have information and -- and right now, probably good faith.
11 So you're going to have to tell me something that's not in
12 good faith about that. And it's --

13 MR. GOFF: Well --

14 THE COURT: -- it's good faith information based
15 upon the information about what the time that the search
16 warrant was obtained that there is a match -- that there is
17 a fingerprint match. Can you tell me that that's not
18 probable cause to arrest somebody? You've got --

19 MR. GOFF: Your Honor --

20 THE COURT: You've got fingerprints from a crime
21 scene in -- in which there appear -- there appears to be
22 good-faith analysis. There appears to be a match and it
23 has identified this particular person. And so you go --
24 you go to the -- you know, that information is used to go
25 to the magistrate or the ministerial recorder to obtain the

1 arrest warrant. Despite the fact that there may have been
2 a conversation with the probation agent that said, well I
3 don't think she could have done it.

4 I mean if you're faced with that -- there still
5 appears to be probable cause because there appears that
6 there's at least some direct evidence that -- that connects
7 this person -- regardless of what he believed, they could
8 have done it, that there's -- that there is direct evidence
9 that appears to connect them to the crime scene under the
10 circumstances. And would that be a rise for probable cause
11 and then through even further investigation, you're claims
12 are either upheld or you realize that there's somebody
13 else -- there's another explanation. I mean, how is -- how
14 is that --

15 MR. GOFF: Your Honor, that's not the test.
16 Malice, in these circumstances isn't a central element of
17 the crime. It's not a common law malice --

18 THE COURT: No. I'm talking about malice in
19 continuing to prosecute the case knowing that there's
20 information. So what I'm trying -- I guess what I'm --
21 trying to find out is, is there -- would there have been
22 malice on the part of Curry to have intentionally
23 misrepresented information to Tyler, who's going to seek
24 the arrest warrant. Or what malice or what ill intentions
25 against your particular client would have been manifested

1 in a manner in which they sought --

2 MR. GOFF: Well, you know --

3 THE COURT: Or are you claiming that that's all
4 occurs after the arrest warrant's obtained?

5 MR. GOFF: No, ma'am. I -- I don't believe that
6 Officer Curry acted in malice. I believe Officer Curry
7 messed up. Maybe he was too old, maybe he didn't know what
8 he was doing, maybe he was ready to go to the game, I don't
9 know. But I believe that all the information that Officer
10 Curry had was his fingerprints matched and his -- in his
11 opinion the fingerprints matched.

12 Now, he provided that information to Officer Tyler
13 and this is where it all comes together because Officer
14 Tyler not only knows that Officer Curry says the
15 fingerprints matched, but remember Officer Tyler spoke to
16 Agent Smith. So Officer Tyler knows, Hey he Pete Curry
17 thinks the fingerprints match. But Officer Tyler --
18 Officer Tyler also knows, she lives in Bennettsville, she
19 has an infant and two other kids under ten. She doesn't
20 have a car. She can't even get across town and get to her
21 probation officer. Sometimes he has to go meet her at the
22 house.

23 She doesn't have a job, gas is -- she has all these
24 facts and out now again, it goes back to the United States
25 versus Copley and the malice they talk about there, that

1 she knew or should have known that these facts would negate
2 probable cause and she failed to inform the judicial
3 officer of these facts. And that's -- that's the Fourth
4 Circuit case, but there is also --

5 THE COURT: So what you're saying is at best, that
6 information should have been provided to the ministerial
7 recorder so the ministerial recorder could have made the
8 decision as to whether not the --

9 MR. GOFF: Absolutely.

10 THE COURT: -- the fingerprints from -- the --

11 MR. GOFF: Absolutely, Your Honor, because State --
12 State versus Hill is a South Carolina case, 254 South
13 Carolina 76, I think -- I think Mr. Cooper cites that in
14 his brief.

15 In the State versus Cooper (sic) goes into great
16 detail about -- you know, if you think about it, as a
17 practical matter, why have a magistrate issue warrants.
18 It's a constitutional requirement that -- that it has to be
19 a neutral and detached magistrate, that they have to make
20 an independent weighing of the facts to find probable
21 cause. And everybody here in this room that it doesn't
22 take much. I can go today and swear out a warrant that
23 Scott here shot my wife and have a warrant issued. It
24 doesn't take much, but it does take a independent weighing
25 of the facts.

1 And the magistrate can't independently weigh facts
2 if the officer has facts like these, that they knew -- they
3 had negated probable cause and they don't share them.
4 Otherwise -- when there's such important facts even
5 mentioned in the affidavit, the affidavit does not disclose
6 anything which the issuing officer could consider arriving
7 to the determination of whether there's probable cause.

8 THE COURT: You need to slow down so the court
9 reporter can --

10 MR. GOFF: Sorry. I think I have --

11 THE COURT: That was State versus Hill.

12 MR. GOFF: State versus Hill, yes ma'am.

13 THE COURT: 1964, in Horry?

14 MR. GOFF: Yes ma'am.

15 THE COURT: All right.

16 MR. GOFF: So no -- no such important fact is even
17 mentioned in the affidavit. The affidavit therefore did
18 not disclose anything with which the issuing officer could
19 consider arriving at a determination of whether there was
20 probable cause with the issuing of a warrant. In effect,
21 this left the determination of probable cause to the
22 judgement and discretion of the officer rather than to the
23 issuing officer.

24 Under these circumstances, we think clearly the
25 affidavit was totally insufficient and the warrant issued

1 thereupon is faulty.

2 THE COURT: Now, is that -- is that a legal
3 question or is that a -- a question of law or is that a
4 question of fact?

5 MR. GOFF: Your Honor, I think that the Law case is
6 clear, you know, it's cited many, many times that -- in
7 this State -- when we file minority positions in this
8 state, probable cause is a question that except in those
9 very rare circumstances where there can -- where there's no
10 question. There's absolutely no question and the judge can
11 only rule one way, then it may -- it may be decided as a
12 matter of law.

13 But again, even the Law case, which my point cites.
14 When he cites the Law case for his position, which, you're
15 talking about summary judgement, the Law case, that a
16 judgement notwithstanding the verdict. So even the Law
17 case, plaintiff's counsel had the opportunity to present
18 facts to a competent jury and have a jury decide. Now, the
19 Court goes back and says, Hey, you failed to hear a central
20 element of his cause of action, but he had the opportunity.
21 And that's all we're asking for. I'm asking for the
22 opportunity.

23 I think we presented sufficient facts to attack the
24 existence of probable cause, to attack the validity of the
25 warrant and it's a -- it's a factual question --

1 THE COURT: Okay, so --

2 MR. GOFF: -- which should go properly before a
3 jury.

4 THE COURT: Tell me about you're -- then tell me
5 about the tort claims exceptions. That would be -- how do
6 you get passed those?

7 MR. GOFF: Bear with me one moment.

8 THE COURT: I'm sorry. Did you finish your
9 argument on probable cause? I think I -- I think I
10 understand your position on that, but --

11 MR. GOFF: I just -- I just want to sum up, Your
12 Honor.

13 THE COURT: Okay.

14 MR. GOFF: The arrest warrant is facially valid on
15 it's face. It merely establishes a rebuttal presumption of
16 the existence of probable cause. It's not an absolute bar
17 that Mr. Cooper would have the Court believe. It's a
18 rebuttal presumption. I think rebuttal presumption just
19 speaks in and of itself as a jury question. And the
20 Supreme Court of this state has held that when an affidavit
21 does not disclose anything in which the issuing officer can
22 consider in arriving at a determination of whether there's
23 probable cause, it, in fact, leaves the determination of
24 probable cause to the police officer and the warrant's
25 invalid.

1 And a facially valid warrant is also valid if the
2 plaintiff shows that there's admitted -- when the affidavit
3 of material facts with the intent to make, or reckless
4 disregard of whether they made an affidavit misleading.

5 And I -- I think that --

6 THE COURT: And so are you claiming that the -- the
7 intent that Tyler had the intent to mislead?

8 MR. GOFF: Your Honor, I don't know that she either
9 had the intent to mislead or that she was reckless in her
10 disregard as to whether or not those facts would negate
11 probable cause. It's just as in the Copley case, Your
12 Honor.

13 And I think that if you go back and you read Ms.
14 Horton's deposition. I think it's down to the factual
15 question about what malice Officer Tyler may have had.
16 There were exchanges about someone coming from the town of
17 Bennettsville up here to the capital city and that she was
18 going to jail for a long time and her mama -- mama was a
19 big mouth. And I don't want your mama to call me anymore.
20 What's she coming up here doing, so I think there's plenty
21 of evidence that can support a finding of actual intent,
22 actual malice. But, you know, I -- I don't know at this
23 point whether it was actual malice or whether it was just
24 reckless disregard, but I think there's a factual
25 question.

1 You know, Your Honor, as far as -- as far as the
2 tort claims for, you know, this is an ancient cause of
3 action. I -- I think that -- excuse me. I think that the
4 opposing counsel has -- has pointed to Virginia and Indiana
5 for the possibility that they may have, through passage of
6 similar Torts Claims Act abolishes causes of action. I'm
7 not even sure he established that, but because Indiana as
8 far as the cause of action, to Virginia as far as cause of
9 action, doesn't exist in State of South Carolina has it --
10 I would ask the Court to take judicial notice that there's
11 been numerous cases that all went to the appellate courts,
12 supreme courts, only cause of action since the passing of
13 the Tort Claims Act.

14 So, of course, he calls his client barred. But I
15 think if they were barred, maybe the Supreme Court of South
16 Carolina would have caught it or maybe the Court of Appeals
17 would have caught it. Or even -- even the law case he
18 cites; that's a 2006 case, 2006 case. Gist versus Berkley
19 County Sheriff's Department, 336 South Carolina 611.
20 That's a 1999 case and that, you know -- I can stand here
21 and read you the cites from the pile of cases out here that
22 have all been argued and gone up to the appellate level
23 since the passage of the Tort Claims Act.

24 But I think that this claim on his motion for
25 summary judgement, you should just take judicial notice

1 that Tort Claims Act had to bar these cases. That these
2 cases are brought every day in this state. And --

3 Any questions, Your Honor?

4 THE COURT: The only thing we haven't talked about,
5 if you'll just briefly mention about your negligence claim
6 and why you think that's -- that's invalid.

7 MR. GOFF: Your Honor, I think it survives because
8 this is summary judgement. This is summary judgement and
9 he hasn't cited one single domestic case that this cause of
10 action can't go forward in the State of South Carolina. He
11 has to bear the proof.

12 THE COURT: Well, I think -- I don't think that
13 there is a -- that there is a claim -- that you can make a
14 claim that the police agency was negligent in failing to
15 investigate.

16 MR. GOFF: Your Honor, their claim that they
17 failed -- that they were negligent in training or
18 supervision of personnel.

19 THE COURT: In what respects? Tell me what the
20 allegation -- I must not --

21 MR. GOFF: Well, the gist of the allegation is,
22 Your Honor, that they had someone who, you know, I'm sure
23 he's a good man and I'm sure he's provided many years of
24 good service to the city. I don't want to denigrate that,
25 but, you know, he retired after this. And he sat there in

1 that room, in the deposition, I asked him the question, why
2 did he retire. He said, You can't make mistakes like this
3 and stay in this business.

4 So perhaps someone should have been updating his
5 training. Perhaps someone should have been overseeing his
6 work. Obviously, he made a very, very serious mistake. He
7 made a mistake that hauled a woman, a single mother from
8 Bennettsville, South Carolina to sit here in jail for four
9 days. Her kids had never been away from her --

10 THE COURT: Yeah. But you -- you've got to do more
11 than speculate that they should have trained him more, that
12 they should have supervised him. I mean, you've got --
13 you've got to point to some -- some evidence that you
14 should -- he wasn't properly trained or that he wasn't
15 adequately supervised or that he didn't specifically follow
16 the procedures.

17 I mean, I understand that you've got -- that you've
18 got his deposition saying that, you know, part of what --
19 part of what you pointed out is the fact that he says, you
20 know, when you take fingerprints, you can't just rely on
21 what's in SLED. You've got to take the fingerprints
22 personally so that you can be able to testify that I
23 personally pulled these up and I did that. And when he did
24 that and he reviewed them and had a fresh set of prints,
25 you know, he found the mistake.

1 So, I mean, you've got to tell me where -- where
2 they deviated from the standard or where -- where the
3 training failed, was lacking, and at this particular point,
4 we haven't heard -- I haven't heard any information about
5 that, so...

6 MR. GOFF: Yeah. Well, Your Honor, I think that's
7 the point, he didn't bother to look at her prints when he
8 pulled them up, you know. And when he was asked in the
9 deposition, there's no way these things matched, I don't
10 understand this, they don't -- they don't match. When he's
11 looking at it in his -- in his deposition from the same --
12 the same prints. But, Your Honor, it's almost a res
13 ipsa --

14 THE COURT: Well, you can't raise res ipsa in South
15 Carolina, you know that.

16 MR. GOFF: Your Honor, if -- there's a factual
17 question about what their policy -- what their procedure
18 is. Our people fingerprint them when you bring them here
19 to Columbia, as soon as their booked in. But you only do
20 it when you find some other evidence that tends to negate
21 your feelings that their fingerprints matched.

22 You know, what are their policies and procedures?
23 Were those policies and procedures followed. I don't know
24 what their policies and procedures are because I've gotten
25 three conflicting answers from defendants. So to even

1 establish a question about whether or not their policies
2 and procedures were followed, which would answer the
3 question about whether or not he was properly supervised,
4 I've got to know what their policies and procedures are and
5 I've gotten three conflicting issues. I think it's a
6 question of fact on that.

7 But -- but even -- even taking -- even reversing
8 the standard and taking things in light most favorable to
9 him, she sat there for four days before somebody bothered
10 taking them. Four days away from her children, in a cell
11 with someone who had murdered her infant, and all it would
12 take was for somebody to come down and take her
13 fingerprints and look at them, to care enough to look at
14 her fingerprints. Now, if that's not negligence, I don't
15 know what is, Your Honor. I really don't.

16 THE COURT: So it's not really negligence in -- in
17 the policies and procedures, it's negligence in what -- in
18 your view that she sat there too long and -- so the
19 question is what they did between the 18th and the 21st.

20 MR. GOFF: Yes, it is, Your Honor, but it -- it
21 could also be negligence in policies and procedures. I
22 think that I would have an issue as far as sovereign
23 immunity covering the question their policies and
24 procedures, but I think that I don't have an issue if they
25 have written policies and procedure or if they have

1 policies and procedures and they failed to follow those.

2 But again, I don't know what their policies and procedures
3 are because I've gotten three different answers.

4 Your Honor, I'd just like to close with a -- with a
5 quote that's from oddly enough, Jones versus City of
6 Columbia, talking about probable cause. To determine
7 whether or not there was probable cause in arrest, it must
8 be based on factual and practical considerations of
9 everyday life on which reasonable prudent and cautious
10 people act. Practical considerations of everyday life.
11 Maybe somebody doesn't have a car and has three infants,
12 lives in Bennettsville can drive all the way to Columbia,
13 break into Roly Poly, and steal a first aid kit.

14 THE COURT: I don't have any additional questions.

15 MR. GOFF: Thank you, Your Honor.

16 MR. COOPER: Your Honor, since I went first, may I
17 go last?

18 THE COURT: Yes, sir.

19 MR. COOPER: Just a couple matters.

20 MR. GOFF: Your Honor, I'd like to reserve the
21 right to address anything that he raises.

22 THE COURT: Well, we'll see. You've been at it for
23 a while, I think I've heard almost everything in your
24 rebuttal that you could possibly argue. But I'll give you
25 the brief opportunity to rebuttal.

1 MR. GOFF: Thank you.

2 MR. COOPER: Okay. I heard the emphasis on the
3 word, brief.

4 THE COURT: I'm sorry?

5 MR. COOPER: I heard the emphasis on the word
6 brief.

7 THE COURT: Yes, very.

8 MR. COOPER: Your Honor, Mr. Goff discussed the Law
9 case in context of the warrant's preclusive effect to a
10 claim for false imprisonment. And he indicated that I
11 misstated what it says. And -- and I just -- I'd ask the
12 Court to look because I believe he misunderstands it.
13 Where it talks about the fact that a warrant only gives
14 prima facia facially rebuttal evidence, if you'll look at
15 the case, that's talking about an indictment, not a
16 warrant.

17 In the Law case, in the section where the Court
18 found that false imprisonment should not have gone to the
19 jury, they rely on the fact that there was a warrant that
20 was facially valid when you took the warrant, what it said,
21 plus the oral testimony and that that cut off the claim.
22 The indictment was part of their evidence for getting rid
23 of the malicious prosecution. The false imprisonment
24 failed simply because there was a warrant. Mr. Goff just
25 misread that part.

1 Now as far as whether the warrant is susceptible to
2 a Franks or a -- they referred to Copley, which is simply
3 Fourth circuit version of Franks that follows it. In order
4 to show that the warrant is defective, they have to show
5 that there is a high degree of doubt, that the officer
6 either lied or knew that this information they were given
7 was so defective that it would probably negate probable
8 cause if the omissions were not made. What in the world do
9 we have here that arises to that? If you take every thing
10 that Mr. Goff gave you, the best part of his case on that
11 issue was that the plaintiff would have had to have gotten
12 a ride and get somebody to watch her kids. That simply
13 doesn't rise to the level of a Copley or a Franks
14 violation.

15 There was no obligation to tell the ministerial
16 recorder that the plaintiff in this case, who at that time,
17 everyone believed with certainty had been here because her
18 fingerprint was here, that she had small kids and somebody
19 would have had to give her a ride. There's just no
20 evidence -- in answer to Your Honor's question to Mr. Goff,
21 it is a question of law. You would have to determine based
22 on the record that Investigator Tyler violated her duties
23 as a police officer, mislead the ministerial recorder, and
24 therefore, as a matter of law, the warrant is voided, that
25 the validity of the warrant is never a jury question.

1 Now, Mr. Goff also wanted to talk -- things move
2 around here, but he wants to talk about the fact that even
3 if there was probable cause, there was an unreasonable
4 delay in letting her go. I just want to make sure we're
5 clear on the facts. She was taken into custody by her
6 probation officer in the evening on Thursday, or late
7 afternoon. Columbia Police Department didn't get her until
8 midday Friday. When we got back to Columbia, it's Friday,
9 late afternoon.

10 Investigator Tyler went and got her. Pete Curry
11 was not working then, wasn't working the weekend. First
12 time he encountered her was on Monday. Now, they talked
13 about would have, should have, could have taken more
14 fingerprints. We don't know what the policy is. Part of
15 that's just a misunderstanding of reading these things.
16 There is no requirement of law that you -- after you've
17 established probable cause that you ever take another
18 fingerprint card. What's going on here is when they're
19 booked in, the detention center does take fingerprints,
20 that is part of their policy.

21 Why -- the reason Pete Curry, when he is on duty,
22 then goes and gets another card is because there's so much
23 turn over in the detention center that when it comes time
24 to go to trial, it's usually a criminal trial. The chain
25 of custody is then broken for the fingerprints that were

1 taken at the detention center. He wants to have a fresh
2 set so that he can say, I pulled them. These are the
3 prints of the person and I've compared them as well as the
4 AFIS print.

5 None of that gives the plaintiff any rights. She
6 didn't have the right to have her prints taken again.
7 Probable cause had been established. If this case had
8 gone -- if she'd stayed in jail and if it'd gone to trial
9 and she were exonerated there would still be no claim.
10 Also, this notion of unreasonable delay finds its root in
11 the law only in false imprisonment cases. It's not a
12 negligence cause of action. There is -- I think a single
13 false imprisonment case that suggests that it can result if
14 people have unreasonable delay.

15 Well, here, there was no unreasonable delay. Took
16 the prints, even though they weren't required, and as soon
17 as we took them, we turned her loose, and in fact drove her
18 back home. But also, false imprisonment is not a vehicle
19 that they can piggyback here because false imprisonment is
20 completely wiped out because of the warrant. So any notion
21 of unreasonable delay only attaches to a cause of action
22 that can't exist in this case.

23 Finally, as far as negligence, not only is there no
24 such claim as negligent investigation, any claim of
25 negligent training would just be redundant liability for

1 the city. I mean, we're liable if Pete Curry was
2 negligent, but you can't have negligence here. Beyond that
3 though is pure speculation as Your Honor observed.
4 Plaintiff's counsel says, Well, he's not trained well
5 enough, or We want to show that to the jury. Well today's
6 the day that you show that, that there's a factual dispute
7 and they don't have any evidence of that.

8 There's nothing on the record to indicate that he
9 wasn't completely well trained. In fact, you will see in
10 his affidavit, he completed the training at the Criminal
11 Justice Academy certified by SLED, took additional training
12 that most people these days don't have at the FBI. He's
13 done it for fourteen years and up until this point, he
14 never made a mistake.

15 Now this case will not turn on this fact, but I
16 want to correct something. Mr. Goff, twice, has sort of
17 taken a shot at Pete Curry saying, Oh, this ended his
18 career, he retired because of this. We went through this
19 in the motion to compel, as well. He's either
20 intentionally not understanding or he's just not saying it
21 right. Pete Curry had let people know that he was going to
22 retire at the time he did a year before he did. This
23 unfortunately happened several months -- but the retirement
24 was in play. This did not end his career.

25 Although it's a practical matter, he would have had

1 to assume other duties. But he didn't quit his job because
2 of this. And it's a little unfair to suggest that he did
3 or should have. Pete Curry's a good man, he made a
4 mistake, but there is no cause of action in this case that
5 survives. That's our decision.

6 THE COURT: Very briefly.

7 MR. GOFF: Your Honor, I promise, I'll be real
8 brief.

9 THE COURT: Very brief. Because I don't think
10 there's anything -- I mean, you know, all you'll do is just
11 rehash what I've already heard.

12 MR. GOFF: No, I promise you I won't.

13 THE COURT: Okay.

14 MR. GOFF: I won't rehash a single thing you've
15 heard already.

16 THE COURT: Okay.

17 MR. GOFF: I heard a whole lot of facts from Mr.
18 Cooper, a whole lot of facts. A whole lot of facts that
19 were disputed. And that stops this discussion right here.
20 This case is not proper for this Court in terms of
21 judgement. There are obviously material facts in dispute
22 and it should go to the jury.

23 And the only thing I have to say, Your Honor, Mr.
24 Cooper's theory in the case, there would never be a cause
25 of action, malicious prosecution, wrongful arrest, wrongful

1 imprisonment, any of these causes of action. They just
2 have a blanket of immunity. They could have locked her up
3 for a hundred years, she'd still be sitting there today and
4 they refuse to fingerprint her, she's got no cause of
5 action. I think we all have enough common sense in this
6 room to know that that's not the case, that can't be the
7 case.

8 Thank you, Your Honor.

9 THE COURT: Well, what I have that has been
10 provided to me is the affidavit of Pete Curry. I have the
11 deposition of Pete Curry. I have the deposition of
12 Tynaysha Horton. I have the one page of the response to
13 interrogatories, page 10. I have a letter from Albert
14 Smith from the Department of Probation, Department of
15 Parole, Department of Services. And I -- the only reason I
16 have the arrest warrant is because it was attached to some
17 exhibits that were produced in conjunction with the motion
18 to compel. And -- and so I have that. And that's --
19 that's the only thing -- that's the only thing I have
20 pulled out of there.

21 I have not read all of those other information
22 parts. I just have looked for the arrest warrant and -- so
23 unless there's something else I'm supposed to consider, you
24 all need to tell me what else I need to consider.

25 MR. GOFF: Your Honor, I would object to the

1 consideration of the arrest warrant. It's putting --
2 counsel hasn't properly presented it. It should rest on
3 his motion.

4 MR. COOPER: Either way, Your Honor, I don't care.
5 It's referenced in Pete Curry's affidavit that there was a
6 warrant. That is an undisputed fact, whether you have it
7 before you, I don't care.

8 The other thing I -- I think it's implicit, but
9 given the plaintiff's position that this case has all kinds
10 of disputed facts, I assume he is abandoning his motion for
11 summary judgement conceding that he's not entitled to it.

12 MR. GOFF: Your Honor, I don't know how I made a
13 motion for summary judgement argument without being stopped
14 from my argument today. There's plenty of factual
15 disputes, so I do withdraw the motion. And in reference to
16 Mr. Smith's statement, I would just call the Court's
17 attention again to Rule 56(f) to have under consideration.

18 THE COURT: Okay. All right. I'll get to read
19 cases I've already read again with new eyes. So I
20 appreciate it. And just for the record, just to make sure
21 that it properly reflects that Scott Winburn is present
22 with Dylan Goff, representing the plaintiff.

23 MR. GOFF: Thank you, Your Honor.

24 MR. COOPER: Your Honor, can I ask you about one
25 other matter unrelated to this case?

1 (WHEREUPON there was discussion regarding another
2 case.)

3

4 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

Certificate of Reporter

2 County of Aiken)

3
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5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 30th day of June 2011.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 68 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 21st day of June, 2012.

19
20
21
22 Brenda J. Sigwald

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE
FIFTH JUDICIAL CIRCUIT

TYNAYSHA HORTON,) 2010-CP-40-3299
PLAINTIFF,)
VS.) DEPOSITION
THE CITY OF COLUMBIA) OF
POLICE DPARTMENT,)
DEFENDANT.)
PETER KONRAD CURRIE

DEPOSITION OF PETER KONRAD CURRIE, TAKEN BEFORE
JAMES SCOTT, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 10:20 A.M., FRIDAY,
FEBRUARY 18th, AT THE LAW OFFICES OF THE CITY ATTORNEY FOR
THE CITY OF COLUMBIA, 1401 MAIN STREET, COLUMBIA, SOUTH
CAROLINA.

COPY #020811

REPORTED BY JAMES SCOTT



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REPORTED BY:

JAMES SCOTT

INDEX

EXAMINATION BY MR. COOPER	3
CERTIFICATE	33

EXHIBITS

<u>PLAINTIFF'S EXHIBIT #1</u> , Copy of a document entitled "Latent Search Verification," Person ID SC01620149 (1 page)	32

<u>PLAINTIFF'S EXHIBIT #1</u> , Color Xerox copy of a document entitled "Charted AFIS Fingerprint," Person ID SC01620149 (1 page)	32

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1 THE READING AND SIGNING OF THIS DEPOSITION IS
2 WAIVED BY THE DEPONENT AND COUNSEL FOR THE
3 RESPECTIVE PARTIES.

4 WHEREUPON,

5 PETER KONRAD CURRIE, BEING DULY SWORN AND
6 CAUTIONED TO SPEAK THE TRUTH, THE WHOLE
7 TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED
8 AND DEPOSED AS FOLLOWS:

9 EXAMINATION

10 BY MR. GOFF:

11 Q Good morning, Officer Currie. My name is
12 Dylan Goff. I represent the plaintiff, Ms.
13 Tynaysha Horton. I appreciate your coming in. I
14 understand that you're retired now.

15 A Yes, sir.

16 Q Thank you for your time. I do appreciate
17 your coming in. Have you ever had your
18 deposition taken before?

19 A No, sir.

20 Q It's just a chance for us to ask you some
21 questions. Everything is being recorded by our
22 court reporter, so it's important that you give
23 verbal answers. It may be clear as day to us
24 here in the room; but, if you nod or shake your
25 head, later on, when we're looking at the record,

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1 it becomes very confusing, and also the same with
2 "uh-huh" or "uh-uh," so please just "yes" or
3 "no." I understand that it's difficult, and
4 you'll catch yourself doing it sometimes midway
5 through the deposition, and I might say, "Is that
6 a 'yes'?" I'm not trying to get on your case;
7 it's for the record.

8 A Okay.

9 Q If you don't understand something or if the
10 question isn't clear, please ask me and I'll try
11 to rephrase it in a different way. Are you
12 taking any medications today?

13 A Yes, sir. I take some Prednisone for
14 arthritis and I take Vytorin for cholesterol.

15 Q But nothing that would impede you from giving
16 testimony?

17 A No, sir.

18 Q If you need to take a break or if you feel
19 any discomfort or anything like that, or if you
20 need any water or anything like that, please ask
21 me and we'll go off the record and take a break.
22 Would you state your full name for the record,
23 please, sir?

24 A My name is Peter Konrad Currie.

25 Q What's your date of birth?

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- 1 A 11/15/1946.
- 2 Q Where are you from, Mr. Currie?
- 3 A I'm from Germany; I was born in Germany.
- 4 Q Were your parents in the service?
- 5 A I was adopted, but my father -- my stepfather
- 6 was in the service, the military.
- 7 Q Where in Germany were you born?
- 8 A I was born in a small town called Offingen,
- 9 O-F-F-I-N-G-E-N.
- 10 Q Where is that?
- 11 A It's close to -- right in in Bavaria.
- 12 Q Very nice. It's a beautiful place. I've
- 13 been there a few times.
- 14 A Yes, it is.
- 15 Q I loved it. Do you have a Social Security
- 16 number?
- 17 A Yes, sir.
- 18 Q What is it?
- 19 A It's 446-48-5469.
- 20 Q Where do you live?
- 21 A I live at 448 Eastover Road. That's in
- 22 Eastover, South Carolina, 29044.
- 23 Q What county is that in?
- 24 A Richland.
- 25 Q Who else lives there with you?

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- 1 A My wife.
- 2 Q What's her name?
- 3 A Marie.
- 4 Q Marie Currie?
- 5 A Right.
- 6 Q Do you have any children?
- 7 A Yes.
- 8 Q What are their ages?
- 9 A I've got one that's forty-two and another one
- 10 that's forty-three.
- 11 Q Where do they live?
- 12 A They're daughters. I have one that lives in
- 13 Phoenix, Arizona, and the other one is here in
- 14 Columbia.
- 15 Q And the one that lives here in Columbia, what
- 16 is his name -- her name?
- 17 A Her name is Wendy Holcombe.
- 18 Q Does she have any children?
- 19 A Yes, she does.
- 20 Q And how old are they?
- 21 A Two daughters, and one is twenty-one and I
- 22 think the other one is seventeen.
- 23 Q And what are their names?
- 24 A You lost me, there. Kirsten and Tori.
- 25 Q Kirsten and Tori Holcombe?

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1 A Right.

2 Q And that's H-O-L --

3 A H-O-L-C-O-M-B-E.

4 Q Do you have any brothers or sisters who live
5 in Richland County?

6 A No, not in Richland County.

7 Q Does your wife have any brothers or sisters?

8 A Yes, she does.

9 Q What are their names, who live here in
10 Richland County?

11 A Pat Riley lives in Richland County.
12 Actually, he's the only one that lives in
13 Richland County.

14 Q What did you do to get ready for your
15 deposition today, Mr. Currie?

16 A Got up, took a shower, put my clothes on, got
17 in my vehicle, came here and hoped to find a
18 parking place.

19 Q Well, we did, too. Did you review any
20 documents?

21 A Yes, I did.

22 Q Did you bring those with you today?

23 A I reviewed documents that Mr. Cooper has.

24 Q What documents are those?

25 A On the case that we are about to discuss.

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1 Q And you met with Mr. Cooper, I assume.

2 A Yes, I did.

3 Q Did you meet with anybody else?

4 A No.

5 Q Where did you go to high school?

6 A I graduated from Dentsville High School in
7 Columbia, South Carolina, Richland County.

8 Q In what year?

9 A 1965.

10 Q Did you go to college?

11 A No. I have taken courses through the
12 Criminal Justice Academy, which are considered
13 college courses.

14 Q Other than the courses through the Criminal
15 Justice Academy, did you go to any other post
16 high school education, trade school or anything
17 like that?

18 A No, sir.

19 Q Let's start with your hiring as a police
20 officer. Walk me through your professional
21 education courses, if you would.

22 A On February 12th, 1990, I was hired by the
23 Columbia Police Department as a civilian, to work
24 in the crime scene unit. Back then, the whole
25 crime scene unit was civilian; they were not

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1 police. After -- to the best of my recollection,
2 after three years, Chief Austin requested us to
3 turn over to police officers. At that point, I,
4 of course went through the Academy and all, and
5 we all became police officers. I stayed in the
6 lab for approximately seven years during that
7 time. After the seven years, I worked on the
8 street as a street officer for six years, then I
9 was requested -- and, of course, also my decision
10 -- I went back into the crime lab for a little
11 more than seven years. I've got a little over 20
12 years with the Columbia Police Department.

13 Q When did you retire from the Columbia Police
14 Department?

15 A February 20th of last year, 2010.

16 Q And how long do you have to work for the
17 Columbia Police Department before you can retire?

18 A Well, I retired for age. Retirement years is
19 25 years; but, if you're above the age of fifty-
20 five, of course, you can retire anytime after
21 five years, when you are vested.

22 Q And how long does it take to get vested?

23 A Five years.

24 Q Before 1990, what did you do?

25 A I spent about a year and a half working for

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1 the Richland County Detention Center and, prior
2 to that, I was a VW/Porsche/Audi mechanic working
3 at a dealership. I spent almost 20 years doing
4 that.

5 Q What dealership was that?

6 A I worked back at Gibbes Volkswagen then, and
7 Nix VW/Porsche/Audi.

8 Q And you said the Department of Corrections
9 after?

10 A No. Richland County Detention Center.

11 Q What did you do at the Detention Center?

12 A I was a security officer, or correctional
13 officer.

14 Q How did you come to leave that position?

15 Q I had several friends that worked with the
16 Columbia Police Department and I enjoyed -- they
17 thought I would enjoy doing that type of work,
18 and they told me, "Why don't you come up here and
19 apply, and we'll see if we can get you on."

20 Q When you say "that type of work," what type
21 of work?

22 A Doing police work.

23 Q But, when you went in, in 1990, you were a
24 civilian?

25 A Right, because they had an opening with the

1 crime scene unit.

2 Q What sort of training did you have to undergo
3 to be hired as a civilian, to work in the crime
4 scene unit?

5 A Well, you didn't have to have any training
6 back then. They required a high school education
7 and, of course, you had to be cleared, NCIC, and
8 no criminal record. Your driving record had to
9 be decent, and that's pretty much what you had to
10 have. My training came in after I was hired.

11 Q So it was on-the-job training, or --

12 A Yes, sir.

13 Q What sort of topics were covered in on-the-
14 job training? Walk me through how that works.

15 A Well, not all -- most of it is on-the-job
16 training. Of course, I took courses; I took
17 courses out at the South Carolina Criminal
18 Justice Academy and numerous other places. I
19 went through what is called basic fingerprint,
20 FBI advanced fingerprint, ID tech school. There
21 was photography, basic and advanced. I went
22 through bomb school. I'm trying to recall.
23 There were numerous courses that I took: basic
24 investigations; certified AFIS, which is the
25 Automatic Fingerprint Identification System;

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1 certified marijuana analyst; and, of course, I
2 attended many seminars, you know, a day or two
3 for this, that and the other.

4 Q And this was all through the Criminal Justice
5 Academy?

6 A Right.

7 Q Did you ever receive any kind of licensure or
8 certification?

9 A Any what?

10 Q Like a license or a certification.

11 A Oh. Yes, sir. I've got certification.

12 Q In what; what was your certification?

13 A In everything that I mentioned.

14 Q So you would go to a course for fingerprints?

15 A Basic fingerprint was one week and, when you
16 complete it, you get a certificate that you have
17 completed it, passed the test, whatever. FBI
18 advanced was a two-week course, which the FBI
19 came here to the Academy to teach, among other
20 courses, but everything -- you're certified in
21 that.

22 Q So the FBI or whoever was teaching the course
23 would issue a certificate that you had completed
24 the course?

25 A Correct.

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1 Q Was that required for your job position?

2 A No, it was not required, but it was something
3 that you needed. I was requested to go, and
4 there was no way you would turn that down. It
5 was continuing education.

6 Q So it was an informal requirement?

7 A Right.

8 Q How long was that certification good for?

9 A Lifetime.

10 Q It's a lifetime certification?

11 A Right.

12 Q Are you a member of any professional
13 associations?

14 A I was a member of the IAI, the International
15 Association for Identification, which the
16 Department paid for, which consists -- which
17 mainly is fingerprints.

18 Q Are you a member of any fraternal
19 organizations, like the Masons or anything?

20 A No.

21 Q Do you attend church?

22 A Yes, sir.

23 Q What church do you go to?

24 A I go to Northeast Presbyterian Church, here
25 in Columbia.

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1 Q Have you ever written any articles in your
2 field?

3 A No, sir.

4 Q How many cases would you say you have been
5 involved in, in your 21 years with the Columbia
6 Police Department?

7 A I have no idea.

8 Mr. COOPER: Can you be more specific? Are
9 you talking about fingerprint cases, or cases
10 that he made on the street, as a police
11 officer?

12 Mr. GOFF: I'll retract the question and say
13 fingerprint cases.

14 A I have no idea, sir. I couldn't even try to
15 guess. On an average, we would go on two, maybe
16 three calls each shift that we worked, and we
17 worked five days, off two, five days, off two,
18 five days, off two, so whatever that would add up
19 to over a period of 14 years that I worked in the
20 lab.

21 Q Walk me through a case, if you would, when
22 you were working in the lab.

23 A Again, we worked everything from a hangnail
24 to a murder. You're talking about a fingerprint
25 case, or --

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1 Q I'm talking about a fingerprint case.

2 A You would be called by the people on the
3 street, the officers on the street. You would
4 respond to the call. The officers and the victim
5 would walk you through a scene to see what had
6 been touched, moved, disturbed, then it was left
7 up to you as to whether it was a feasible item to
8 be processed for fingerprints. Some items you
9 can process at the scene, and some items that
10 have to be processed chemically, of course, those
11 you would take back to the lab. You would
12 process the items and then, depending on your
13 results, you could go further.

14 Q When you say some items can be processed in
15 the field and some have to be processed in the
16 lab, are we talking about fingerprints?

17 A Right.

18 Q What would determine whether one could be
19 processed in the field or needed to be processed
20 in the lab?

21 A If you have an item that has a decent, smooth
22 surface on it made of, say, glass, plastic,
23 whatever, you could dust -- pretty much dust is
24 mainly what we use, fingerprints and dust -- you
25 would dust the item, photograph and dust the

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1 item, generally, and you would lift your print
2 right there on the scene.

3 When you're talking about, say, paper, paper
4 has to be processed in a chemical by the name of
5 Ninhydrin, and that is something you would not
6 carry with you; that would have to be done in the
7 lab. The paper would have to be sprayed. It
8 would be processed, dried in a fuming chamber.
9 We also have a cyanocrylic fuming chamber for
10 certain plastic items that may have -- that may
11 be somewhat porous. It would have to be
12 processed in a fuming chamber with -- as a matter
13 of fact, it's called Superglue, the
14 cyanoacrylate. It would have to be fumed. After
15 you fume it, it would leave the print on there
16 and then you would dust it and then you would
17 lift it from there.

18 Q So, after you lift a print, what happens with
19 it?

20 A After you lift a print, if you have a suspect
21 or an arrest was possibly made at the scene,
22 whatever, of course, you get the fingerprints of
23 the individual and then you compare the latent
24 print that you lifted against that individual.

25 The first seven years that I spent in the

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1 lab, AFIS, the Automatic Fingerprint
2 Identification System, was not available until
3 later on. The last seven years at the Columbia
4 Police Department, we had our own AFIS hooked in
5 with SLED. After you lifted the print, if you
6 have no suspect or anything like that, you would
7 put that fingerprint into AFIS to try to come up
8 with a possible suspect.

9 Q And AFIS is a computer program?

10 A Yes, sir.

11 Q Is there an automatically-generated match so
12 that you would scan the fingerprint in and AFIS
13 would generate a match?

14 A AFIS does not make a match. AFIS gives you
15 possible suspects. I put a print into AFIS,
16 which AFIS -- the main computer is at SLED. Then
17 their computer would process the print off the
18 minutiae which are in the print. It would send
19 me back -- I think 25 is the most we could get
20 back. Normally, it was set on 20. It would send
21 me back 20 possibles.

22 As a matter of fact, they would be judged --
23 they would be graded. The higher the grade is,
24 the more possible the match may be, but you have
25 to compare each print that comes up on the

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1 computer against the latent that you lifted. You
2 have to physically make the match yourself
3 because there are a lot of times there is no much
4 at all in what you get back from SLED.

5 Q So you would run this print into AFIS and
6 AFIS would generate a list of 20 or so possible
7 matches?

8 A Right.

9 Q What percentage, or is there a percentage?

10 A There is a percentage. Right. It varies; it
11 varies, depending on how good the print is, how
12 many characteristics that you put into the
13 machine. In other words, at the Columbia Police
14 Department, we're required to have at least 10.
15 You have to have at least 10 characteristics to
16 do any good. If you go below that, the computer
17 -- your percentage is so low that it's not worth
18 doing. If I have 15 characteristics, compared to
19 20 characteristics -- of course, there is a
20 bigger chance with 20 characteristics than there
21 is with 15.

22 Q When you're talking about "characteristics,"
23 you're talking about matching points on the
24 fingerprint?

25 A Points on the fingerprint. Right.

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1 Q What is considered an absolute, positive
2 match, how many matching points?

3 A There is none, not in the United States.

4 Q So what would be, what you might say, a
5 "beyond a reasonable doubt" match?

6 A Beyond -- as I stated, we had to have at
7 least 10 points to be able to go to court with a
8 print.

9 Q So, if there were 10 matching points on the
10 fingerprint --

11 A We're good to go.

12 Q And the machine would say, "There are 10
13 matching points," then someone in the office
14 would verify that?

15 A Correct.

16 Q Out of the 20 matches it would generate,
17 would each one of these 20 matches have 10
18 matching points?

19 A Well, whatever you -- you're talking about
20 the print I get back from SLED?

21 Q Say, if you enter a fingerprint into AFIS and
22 it comes back with a list of 20, how many points
23 would need to match for a fingerprint to make the
24 list of 20?

25 A I don't quite understand what you're trying

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1 to say. I send a fingerprint there. SLED sends
2 me back the complete -- it's very seldom that
3 you're going to lift a whole print. Generally,
4 it's going to be a partial print. SLED sends me
5 back 20 possibles of the complete fingerprint,
6 and that complete fingerprint can have anywhere
7 from 15, 30, 40, it could have 50 points or
8 characteristics in it.

9 Q What I'm asking is, in order for it to make
10 the list, in order for you to get on the 20 list,
11 how many points on that fingerprint would have to
12 match the print you lifted?

13 A Oh. All of them. Whatever characteristics I
14 put in on the latent print, every one of those
15 would have to match against the known print.

16 Q So, if you have 10 points on your latent
17 print --

18 A Right.

19 Q -- you'd have to match 10 to make the list of
20 20?

21 A Yes, sir.

22 Q Fair enough. Is there a degree of accuracy
23 or a degree of -- we'll just say "degree of
24 accuracy" -- for an AFIS match. When you see a
25 statistic, you say, "This is accurate within" --

1 A No, sir. It either is or is not.

2 Q But a human is asked to review it to make
3 sure the machine matched them correctly?

4 A The machine does not match it. You match it
5 yourself.

6 Q But the machine matches the 10 points, or it
7 doesn't make the list?

8 A No, sir. No, sir.

9 Q I'm not sure I understand how the process
10 works.

11 A You must not. Let me go into a little more
12 detail, then.

13 I take a latent print that's lifted from the
14 scene and I put that on the screen. I pick the
15 characteristics and mark them on that latent
16 print. When I get finished with that -- and
17 that's what's called the minutiae -- the computer
18 at SLED does not recognize a fingerprint; it
19 recognizes the minutiae, where these points are,
20 and it scans for another print where the same
21 identical minutiae fit, and that is what it sends
22 back to me.

23 Q And if it matches 10, that's good enough to
24 go into court?

25 A Yes, sir.

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1 Q But it would generate a list of 20 people?

2 A Right, because you'll have some that are
3 close. It will send you some that are exact. It
4 will send you some that are close. Also, when
5 you lift the latent print, if somebody moves
6 their finger just a little bit, it may be
7 distorted and the point -- it's going to be very
8 close, but it may not be identically on the same
9 spot, but then you also consider what type of
10 print it is, which we can look at and see, and
11 whatever is in between.

12 Q Is there a department policy for checking a
13 match; I mean, is there oversight?

14 A It is verified. Yes, sir.

15 Q How does that work?

16 A We have at least one individual to verify the
17 print.

18 Q The AFIS print?

19 A The match.

20 Q So AFIS would generate the list. One
21 individual would say, "Yeah, it's a match," and
22 then another individual will verify it?

23 A I will have the latent print and I will have
24 the known print. That is printed out on a piece
25 of paper and then the individual that checks it

1 for me and verifies it for me, he will look at
2 that, but not only that. You also look at the
3 latent print and the individual's fingerprint
4 card, which we can get a fingerprint card off of
5 AFIS also, which comes from SLED.

6 Q So you would say, "Yes, this is a match"?

7 A "This is a match. Would you look at this for
8 me and verify it for me?"

9 Q Let's talk about this specific incident. Did
10 you visit the crime scene?

11 A Yes, I did.

12 Q When did you arrive at the scene; do you
13 remember?

14 A It was on September 10th, sometime in the
15 morning.

16 Q Do you know what the approximate time of the
17 break-in was?

18 A No, sir. I believe the time -- it was a
19 business, so it was between -- on the 9th, 6:45,
20 until the 10th, 7/10, when it was found. That's
21 when it was found, broken into, so somewhere
22 between there.

23 Q Do you know who lifted the print from the
24 scene?

25 A I did.

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1 Q Where did you lift the print from?

2 A The print was on the front door; had several
3 pieces of glass in it. It was on the very bottom
4 glass, where it was broken out, where they had to
5 push the glass in to enter.

6 Q Do you know what other evidence was gathered
7 from that crime scene?

8 A I collected some fluid, what appeared to be
9 blood, from the cash register.

10 Q Was anyone else ever arrested in this matter?

11 A Not that I know of.

12 Q And you ran that print that you lifted from
13 the scene through AFIS?

14 A Yes, sir.

15 Q And you got back a list?

16 A Yes, sir.

17 Q How many matches were on that list? Was this
18 a 20 list?

19 A There's no matches on the list. All it sends
20 you is a plain print, a known print, and you have
21 to try to match your latent against what they
22 send you.

23 Q How many prints did they send you?

24 A I believe it was 20. Let me show you, right
25 here. Of course, it doesn't show all of them.

1 Here we go.

2 Mr. GOFF: Can we mark this as #1?

3 Mr. COOPER: Let's get a copy of it before we
4 mark it.

5 Mr. GOFF: Okay.

6 Mr. COOPER: But a copy of that will be
7 marked as #1.

8 A As I explained to you before, here is a
9 latent print. Of course, this being a copy, it's
10 not showing, you know, very well. These are the
11 fingerprints that I get back. As a matter of
12 fact, it only shows 15; but, when you scroll up,
13 it will go to 20. It will tell you -- the number
14 one print, it will have the highest score. This
15 one here had a 3140, and it will tell you what
16 finger it is. So this is the first print that I
17 pulled up, next to my known print, to see if
18 there is a match there. The computer doesn't
19 tell me anything.

20 Of course, I also look at more of them, but
21 this is the only one from what I did; this is the
22 only one that came close, at the time, just for a
23 first look at it. This is the only one that
24 could possibly have matched. Then, I say, "Well,
25 this looks like it might be it," then I pull up

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1 another screen that puts these two together again
2 and I chart them out, where each characteristic
3 is, from one over to the other.

4 Q You mentioned a score -- I think you called
5 it a "score" -- of 3140.

6 A Yes, sir.

7 Q Where does that number come from?

8 A That is a number that SLED puts in there to
9 compare to the number of points that I sent to
10 them, and compared to how it overlays the
11 minutiae against a known print; and, of course,
12 the better it is, the higher your score is.

13 Q What's the highest possible score?

14 A I have no idea, sir. I have gotten scores up
15 to, I would say, over 5,000.

16 Q What does that number represent?

17 A The number -- what it represents is -- the
18 higher your score is, the better your chance is
19 that it could be the print that you're looking
20 for.

21 Q So, if I were to make a very nice fingerprint
22 on a piece of glass and then make a real nice
23 fingerprint on another piece of glass and send it
24 in, obviously, both of them are my fingerprints.
25 What score would SLED give it?

1 A If I had the whole fingerprint -- which, like
2 I said, I may get 30 or 40 characteristic points
3 out of it --

4 Q Let's just assume it's perfect, as clear as
5 you can get.

6 A It doesn't make any difference, because
7 you've still got to have the characteristics,
8 because AFIS does not recognize what kind of
9 fingerprint it is. It goes by the minutiae. So,
10 if you have a lot of characteristics in your
11 fingers -- I guess I've seen as low as 12 or 15
12 in some fingerprints. Some people just don't
13 have that many characteristics. Say yours have
14 30 and I put all 30 of those into the machine, I
15 would get between five and 6,000 points. This is
16 -- 3140 is, I'd say, a low average.

17 Q What do you mean, "low average"?

18 A Well, you can go down to -- I've seen these
19 go down to 12 and 1,400, so you're talking about
20 in-between. You know, if you get one, 12 or
21 1,400 and your high end would be around 6,000 --
22 no, I've never seen more than that. 3140 is
23 about in-between, about average.

24 Q So, if you were to get a 12 or 1,400, is
25 there a scenario under which you would classify

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1 that as a match or a possible much?

2 A Yeah, if it matches. I have had them match
3 at very low. That is just what the computer
4 prints out.

5 Q I see rank number two here, to the right of
6 the one that's highlighted. That's also a 3140?

7 A Right.

8 Q Is there any reason that you found -- or did
9 you find that one to be less likely?

10 A No. Due to even the shape of the print --

11 Q I'm sorry. I'm talking about this one.

12 A This one right here? Due to the shape of the
13 print, it does not fall in there. It's the same
14 type of print; it's a whorl. What we're talking
15 about is a whorl. It is a whorl, but the core of
16 the print, right here, you can see yourself, it
17 is completely different than this one here, but
18 you can't see that one very well, but you can see
19 it better right here. It doesn't add up.

20 Q So the number 3140 didn't really mean
21 anything?

22 A Well, they do, but they do not -- again,
23 there's nothing there to tell you that you've got
24 a match. That is why you physically have to
25 look.

1 Q Did you ever speak to Ms. Horton's probation
2 officer?

3 A No.

4 Q Do you know what the Department's policy is
5 for holding someone on a fingerprint; how long
6 can they be held?

7 A Well, I don't know exactly what -- let me see
8 if I can explain. I make a match. I do a report
9 on that match. With that -- and I give that to
10 the investigator. The investigator contacts the
11 solicitor. The solicitor gives an okay on the
12 arrest warrant and the individual is arrested.

13 Q I guess what I'm asking is, is there a policy
14 -- if someone is arrested on a fingerprint, does
15 the Department have a policy that they be re-
16 printed to verify, after they are arrested?

17 Mr. COOPER: I'm going to object to the form
18 of the question, and let me clarify this. I
19 don't think it's a point of controversy, but
20 you're using the word "policy" and, under our
21 form of government, only the City Council can
22 make it policy, so we usually refer to
23 "procedures" that the police department --
24 it's either a "procedure" or a "practice."

25 Mr. GOFF: Okay.

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1 THE EXAMINATION BY MR. GOFF CONTINUES.

2 Q So the practice or the procedure, not policy,
3 of the Department?

4 A It is more or less left up to the individual.
5 As far as our procedure, if possible, when the
6 individual is arrested, we want to fingerprint
7 them ourselves. That way, although I have got
8 their fingerprints from SLED, I can say in court,
9 "I personally fingerprinted this young lady right
10 here. I personally fingerprinted her. I know
11 those are her fingerprints," and then I again re-
12 examine and go back to look at this match.

13 Q By your procedure, how long after they are
14 arrested and placed into custody do you
15 fingerprint them yourself?

16 A As soon as we can; but, you know, if they're
17 arrested at midnight -- we don't work midnights,
18 except for major cases -- it would be pretty much
19 done the next day, as soon as the individual can
20 be transported back to our investigative
21 department for us to fingerprint them.

22 Q Can you think of any instances where someone
23 spent two days in custody before you re-
24 fingerprinted them?

25 A I have no idea, sir. I don't know.

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1 Q How about three days; would that surprise
2 you?

3 A As soon as possible.

4 Q Would it surprise you if someone had spent,
5 say, four days in jail before they were re-
6 fingerprinted?

7 A I really don't know. Like I said, there are
8 occasions when an individual is arrested that
9 they bring them to our office, before they ever
10 go to jail, and we fingerprint them, but there is
11 no time limit. There is no policy on that.
12 There is no time limit, because their
13 fingerprints are not going to change from one day
14 to the next.

15 Q Bear with me for a moment. Did you ever have
16 any conversations with Ms. Horton?

17 A Well, no. I talked -- well, I fingerprinted
18 her and it was just, "Hey, how are you," and
19 then, when she was released, she came back to our
20 office and I talked to her at that time. We
21 talked, I guess, 15 or 20 minutes, something like
22 that.

23 Q What did you all talk about?

24 A I sincerely -- and I hope she knows this -- I
25 apologized for what happened, and that was pretty

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1 much -- you know, and Ms. Horton said that was
2 all she wanted, and she did say at that time,
3 "I'm not going to sue anybody. I just want an
4 apology." I think I even gave her a hug.

5 Q Why did you apologize?

6 A For her inconvenience; for her inconvenience.

7 Q Have you ever had any similar circumstances
8 happen in your 21 years?

9 A Never. A couple of months before I retired.
10 Never.

11 Mr. GOFF: That's all I have. I appreciate
12 your time. I do want to put in the exhibits.

13 MARKED AS PLAINTIFF'S EXHIBIT #1,
14 DEPOSITION OF PETER KONRAD CURRIE, TAKEN
15 2/18/2011. Copy of a document entitled
16 "Latent Search Verification," Person ID
17 SC01620149 (1 page).

18 MARKED AS PLAINTIFF'S EXHIBIT #2, Color
19 Xerox copy of a document entitled
20 "Charted AFIS Fingerprint," Person ID:
21 SC01620149 (1 page).

22 FURTHER DEPONENT SAITH NOT.

23 [SIGNING WAIVED.]

24 [WHEREUPON, THE DEPOSITION WAS

25 CONCLUDED AT 10:59 A.M.]

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) CERTIFICATE

BE IT KNOWN THAT I, JAMES SCOTT, TOOK THE FOREGOING
DEPOSITION OF PETER KONRAD CURRIE AND HEREBY ATTEST:

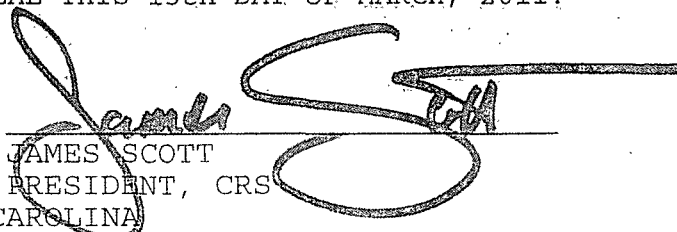
THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA-AT-LARGE AND THAT BY VIRTUE THEREOF WAS
DULY AUTHORIZED TO ADMINISTER AN OATH;

THAT THE WITNESS WAS BY ME FIRST DULY SWORN TO TESTIFY THE
TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, CONCERNING
THE MATTER IN CONTROVERSY AFORESAID;

THE FOREGOING TRANSCRIPT OF 32 TYPEWRITTEN PAGES
REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE
TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST
OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE
PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR
COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE
OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 15th DAY OF MARCH, 2011.


JAMES SCOTT
PRESIDENT, CRS

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES APRIL 24th, 2013.

*- If this signature is not rendered in blue ink accompanied by an embossed seal, this document is an
uncertified and unauthorized copy.

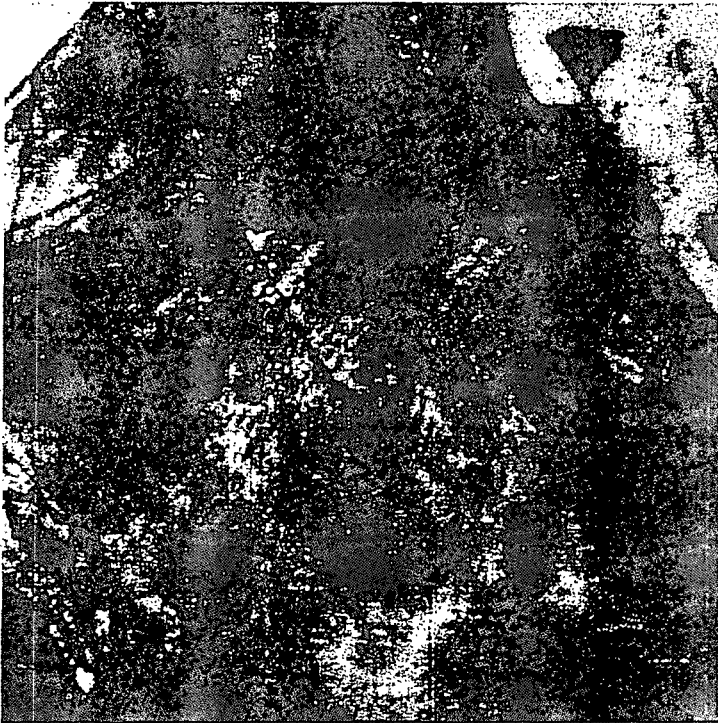
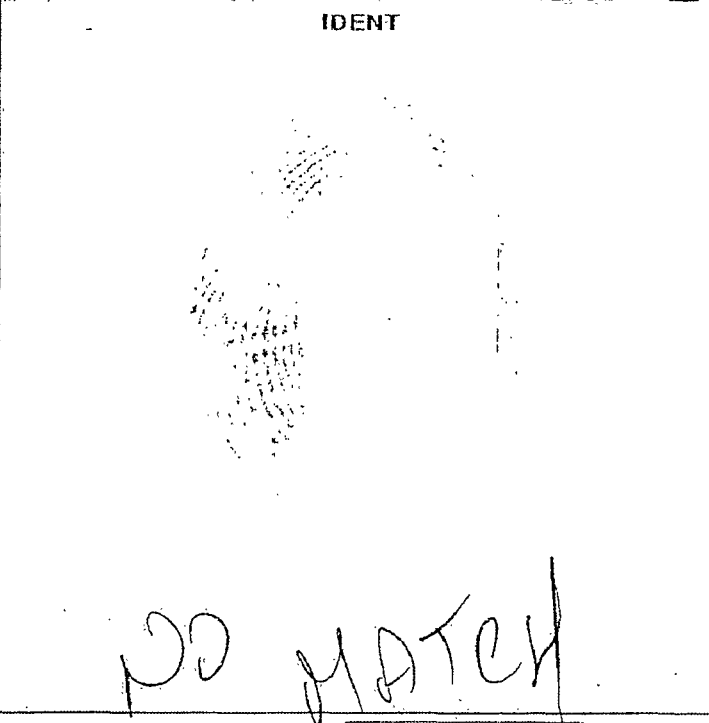
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Web Browser

Latent Search Verification

User: 9664 12:13:37 PM

Latent vs. Tenprint Verification

IDENT

NO MATCH

Search Id: C5092263921100000

Person Id: SC01620149

990000029530

Finger: 7

Result: IDENT

No. Idents: 1

No. Resp.: 18

Current Resp.: 1

Latent Print No.: 1

Previous Respondent: ▲

Next Respondent: ▼

Display Match Report

Chart this Case

Rank	Id	Score	Id	Score
2	10D100534578	3140	9	3070
3	10X004100005	3130	10	3065
4	40D200007188	3090	7	3070
5	SC01016406	3075	7	3070
6	SC00761200	3070	3	3070
7	500300037229	3070	7	3070
8	231600149336	3070	6	3070
9	422100090919	3065	10	3065
10	36C300011643	3065	9	3065
11	980000398996	3055	7	3055
12	SC00404188	3050	7	3050
13	SC00464291	3050	6	3050
14	SC01325376	3050	7	3050
15	990000458530	3050	8	3050
16	SC00989266	3035	12	3035

Id: 990000029530

Rank: 1

Score: 3140

Id: 10D100534578

Rank: 2

Score: 3140

Id: 10X004100005

Rank: 3

Score: 3130

Id: 40D200007188

Rank: 4

Score: 3090

Id: SC01016406

Rank: 5

Score: 3075

PLAINTIFF'S EXHIBIT 1

Currie

Cancel

Save and Exit

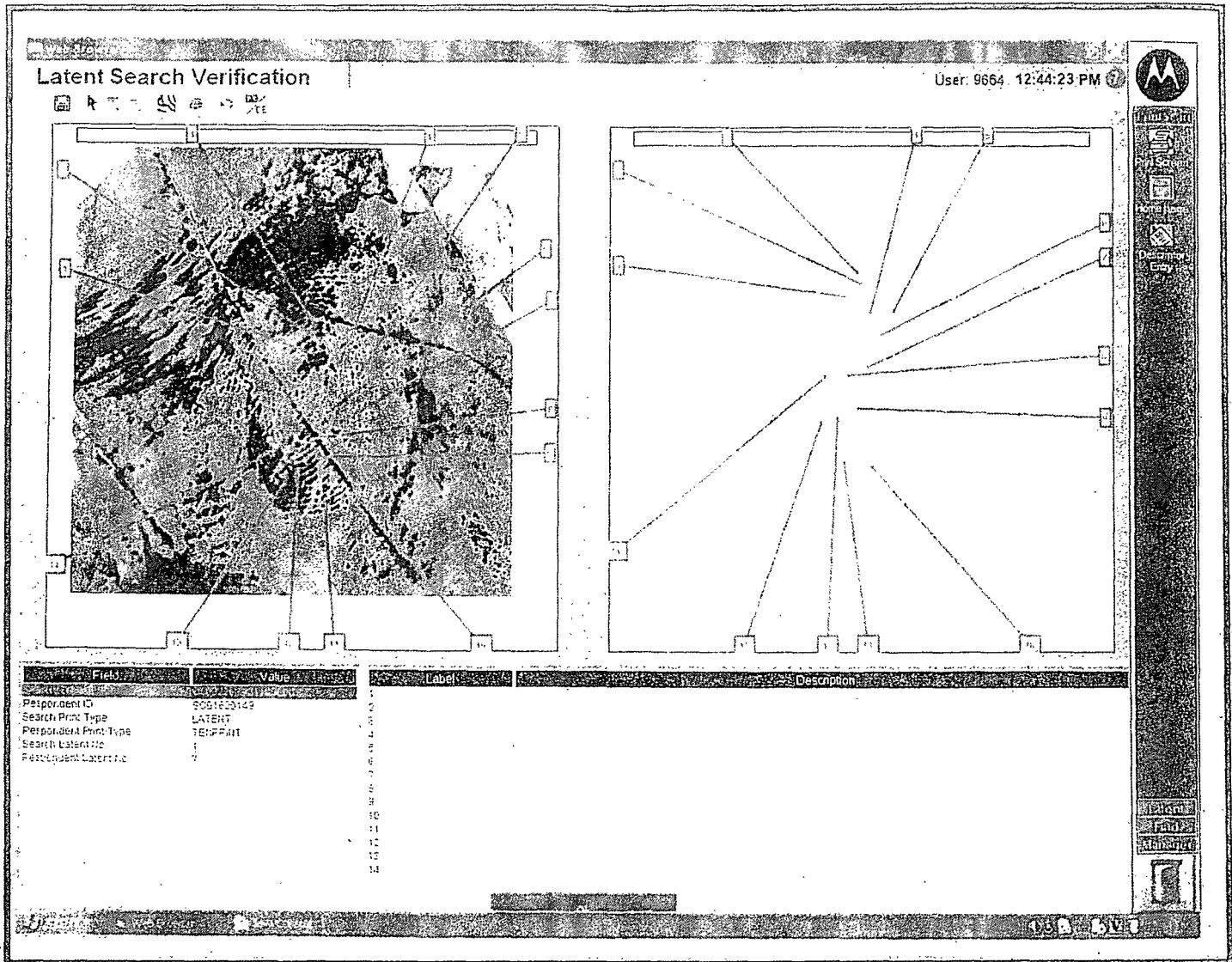
Save and Next

Web Browser

Java Console

12:13 PM

Charted AFIS fingerprint.



PLAINTIFF'S
EXHIBIT 2
CURRIC
2/18/2011 JS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
 TYNAYSHA HORTON,	)	 2010-CP-40-3299
	)	
PLAINTIFF,	)	
	)	
VS.	)	DEPOSITION
	)	
THE CITY OF COLUMBIA	)	OF
POLICE DEPARTMENT,	)	
	)	TYNAYSHA U. HORTON
DEFENDANT.	)	
	)	

DEPOSITION OF TYNAYSHA U. HORTON, TAKEN BEFORE
JAMES SCOTT, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 11:06 A.M., FRIDAY,
FEBRUARY 18th, AT THE LAW OFFICES OF THE CITY ATTORNEY FOR
THE CITY OF COLUMBIA, 1401 MAIN STREET, COLUMBIA, SOUTH
CAROLINA.

COPY #020811

REPORTED BY JAMES SCOTT



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APPEARANCES

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FOR THE DEFENDANT:

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CONSTANCE HOLLOWAY,
ESQUIRE
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FLOOR (29201)
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(803) 737-4242

REPORTED BY:

JAMES SCOTT

INDEX

EXAMINATION BY MR. COOPER -----	3
CERTIFICATE -----	67

EXHIBITS

THERE ARE NO EXHIBITS APPENDED TO THIS DEPOSITION.

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1 THE READING AND SIGNING OF THIS DEPOSITION IS
2 WAIVED BY THE DEPONENT AND COUNSEL FOR THE
3 RESPECTIVE PARTIES.

4 WHEREUPON,

5 TYNAYSHA U. HORTON, BEING DULY SWORN AND
6 CAUTIONED TO SPEAK THE TRUTH, THE WHOLE
7 TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED
8 AND DEPOSED AS FOLLOWS:

9 EXAMINATION

10 BY MR. COOPER :

11 Q Ms. Horton, we met earlier. My name is Bob
12 Cooper. I represent the City in this case. You
13 heard, in the previous deposition, your lawyer
14 describe some of the rules of taking a
15 deposition, but I just want to go over them with
16 you, since you are now the one.

17 The purpose of a deposition is to find out
18 what you know about the event that was described
19 in your complaint that was filed with the court.
20 The purpose is not for me to trick you or to
21 mislead you or to get you to say something that's
22 not true. What I want to know is what you know.
23 So, if you think, at any point, that I've
24 addressed a question badly, which is a distinct
25 possibility, ask me to clarify. If you don't

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1 understand what I've asked or if I've used a word
2 poorly or something that you just don't know what
3 I'm asking you, I'm going to ask you to stop me
4 right there and make me clarify it. Is that fair
5 enough?

6 A Yes, sir.

7 Q And if you don't do that, then I'm going to
8 assume that you understand what I'm asking. Fair
9 enough, again?

10 A Yes, sir.

11 Q The court reporter to your right is taking
12 down everything that's being said, so we need
13 verbal responses. If your response is "yes" or
14 "no," you need to say that, as supposed to a nod
15 or a shake of the head. Also, as you can
16 imagine, the terms "uh-huh" and "uh-uh" translate
17 very badly. So, if you do one of those -- it's
18 human nature and we all do it -- usually, I'll
19 stop you and ask you if it was a "yes" or "no."
20 I'm not being flippant with you, when I do that;
21 I'm just trying to make sure that it's clear
22 later, when we read it, what you were saying,
23 okay?

24 A Yes, sir.

25 Q This is not intended to be an endurance

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1 contest. If you need a break at any point, all
2 you have to do is ask, all right?

3 A Yes, sir.

4 Q If you would, state your full name for the
5 record.

6 A Tynaysha Unique Horton.

7 Q And what's your date of birth?

8 A 4/11/86.

9 Q Are you married?

10 A No, sir; divorced.

11 Q Divorced from whom?

12 A Quincy Leon Kane.

13 Q And when were you divorced?

14 A November 2010. I'm not sure of the actual
15 date.

16 Q That's fine. Do you have any kids?

17 A Yes, sir.

18 Q How many?

19 A Three.

20 Q Let's start with the oldest one. If you
21 would, tell me that child's name and sex and
22 birthdate.

23 A Quinderius Semaj Cedeno. He's a boy. His
24 birthday is March 25th, 2003. Tyquincyia Alice
25 Kane, which is my daughter; she's a girl. Her

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1 birthday is February 14th, 2005. I have Ronshaa
2 Shasta Malachi. He's a boy; he's my son. His
3 birthday is February 23rd, 2009.

4 Q Was Quincy Kane the father of all three
5 children?

6 A Quincy is the father of Tyquincyia Alice
7 Kane.

8 Q Your oldest child, who was the father of that
9 child?

10 A Jan Cedena.

11 Q And you all were not married?

12 A No, sir.

13 Q And your youngest child, who is the father?

14 A Ronshaa Malachi.

15 Q And you all have not been married?

16 A No, sir.

17 Q So one marriage, one divorce?

18 A Yes, sir.

19 Q Where do you live?

20 A Bennettsville, South Carolina.

21 Q What specific address?

22 A 432 State Street.

23 Q How long have you lived there?

24 A June 7th, 2007; that's when I moved there.

25 Q Who lives there with you?

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1 A Me and my three kids, and Ronshaa Malachi now
2 lives there.

3 Q Has he lived there the whole time that you've
4 lived there?

5 A No, sir. My husband used to come and stay
6 with me some.

7 Q But, after the divorce, Mr. Malachi now
8 comes?

9 A Yes. We're like -- we're a couple. Yes,
10 sir.

11 Q And what is 432 State Street; is it a house
12 or an apartment or a duplex, or what?

13 A It's a house.

14 Q Do you own it or lease it?

15 A I rent.

16 Q Are you the only person on the lease, as the
17 tenant?

18 A No, sir. Me, my three kids and Ronshaa
19 Malachi.

20 Q Before you lived there, where did you live?

21 A We lived at 1214 Valley Dale Road -- it's --
22 I don't remember -- with my husband.

23 Q Was that also a rental house?

24 A It was a trailer that we were sending
25 payments off from Greentree, but they weren't in

1 our name; they were in his brother's name.

2 Q Have you ever lived at or, if not, do you
3 recognize the address of 400 East Market Street,
4 Apartment 1B?

5 A Yes, sir. My mom.

6 Q That's where your mom lives?

7 A Yes, sir; but she moved. She switched
8 apartments, but she still lives in the building,
9 though.

10 Q Do you have contact with your mom?

11 A Yes, sir.

12 Q Regular contact?

13 A Every day.

14 Q Good. I've got a daughter. I know she
15 appreciates that. What's the highest you've gone
16 in school?

17 A High school. I went to the eleventh grade,
18 but I paid \$95.00 for a program called Christian
19 Correspondence Cornerstone, and I have -- it's an
20 accredited diploma which you get at home, and I
21 have that, that I've done at home.

22 Q You say you went to eleventh grade. Did you
23 complete the eleventh grade of high school in the
24 public school system?

25 A I stopped in the eleventh grade, at the high

1 school, in the middle. I was pregnant with my
2 son.

3 Q So you completed tenth grade?

4 A Yes, sir.

5 Q Have you gotten a GED, at this point?

6 A Yes, sir. It's a GED, which is supposed to
7 be an accredited diploma, general education
8 diploma, and it's from Christian Correspondence
9 Cornerstone.

10 Q But that qualifies as a GED in this State, so
11 you could use that as the jumping-off point to go
12 to a college or a technical school?

13 A Yes, sir. It's accredited.

14 Q After acquiring that, have you taken any
15 courses, either at tech school or trade school or
16 higher education?

17 A I've take a test in Florence, South Carolina,
18 at this nursing attendant place called
19 Nightingale's. I've taken a test which lasted
20 for like two hours, to qualify for me to do home
21 health for them, and I've done that.

22 Q Did you qualify?

23 A Yes, sir.

24 Q Are you working right now?

25 A No, sir.

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1 Q Why not?

2 A Because when I was arrested from Columbia, my
3 name was put in the Bennettsville paper, the
4 county paper, and I had a job interview that day,
5 but I had got locked up and no one will give me a
6 job since, because -- it's like we live in a
7 small town.

8 Q When was the last time you had a full-time
9 job?

10 A Nightingale's Nursing Attendants; that's the
11 name of the place. The date was, I want to say,
12 around 2009, July, and I did a little bit of work
13 in August of 2009, going to different people's
14 homes, taking care of them.

15 Q What happened that you didn't continue to be
16 employed by them?

17 A I got locked up. Afterwards, I was going to
18 have another patient, but the lady told me I
19 couldn't come back and work for them until my
20 record was clear. I tried to explain to her that
21 it was a mistake, and she wanted evidence. I
22 kept calling -- well, I didn't call you all's
23 Police Department; I asked my lawyer for
24 evidence, like saying it was a mistake. I don't
25 have anything saying it was a mistake.

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1 Q Well, if I understood you correctly, you only
2 did a little bit of work in August and you
3 weren't arrested until mid-September. So, for
4 the four to six weeks in between, why weren't you
5 working?

6 A I'll explain it to you. I've worked since I
7 was 17 years old. I've worked, but I'm saying
8 like I probably -- I worked like every day Monday
9 through Friday, but it wasn't like full-time; it
10 was like part-time, but she found me some full-
11 time clients that I could go and sit with them
12 from in the mornings from probably like 8:30
13 until 3:30, then come home and go back probably
14 around seven and give them supper and give them a
15 bath and put them to bed.

16 So, in August, I did work Monday through
17 Friday. I worked from probably like eight
18 through two; but, in September, I got arrested,
19 which was around September 19th, if I'm correct
20 -- which I'm not absolutely sure -- but she had
21 full-time work for me, and I was supposed to go
22 that day; but, when I went there to check in with
23 my probation officer, he was like, "I've got to
24 arrest you because I have two warrants for you."

25 Q And the name of the place where you were

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1 working was Nightingale Nursing?

2 A Attendants.

3 Q And that's located where?

4 A Florence, South Carolina.

5 Q And you started working for them when?

6 A In 2008.

7 Q Where did you work before that?

8 A Marathon.

9 Q Marathon what?

10 A It's a gas station.

11 Q Was that full-time employment?

12 A Yes, sir.

13 Q You worked there from when to when?

14 A I would go in at six and get off at three.

15 One day, I would go in at six -- well, one week,

16 I would go in from six a.m. until three p.m. The

17 next week, I would go in from three p.m. until

18 eleven p.m.

19 Q When did you stop working at Marathon?

20 A Around -- okay, I had my baby -- I stopped

21 working at Marathon around November 2008, I

22 think. I'm not exactly sure, but I had my baby

23 in February of 2009, and --

24 Q Let's go at this another way. Was there a
25 period of time that you did not work, in between

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1 working at Marathon and beginning to work at
2 Nightingale Nursing?

3 A Yes, sir. When I had my baby on February
4 23rd, 2009, I was out of work for six weeks. My
5 baby was sick, and like I had to stay home for
6 four more weeks with him and, as soon as he got
7 better, I went right back to work.

8 Q Was that when you started working at
9 Nightingale?

10 A Yes, sir.

11 Q When did you begin working at Marathon?

12 A Like 2007, I think, April of 2007.

13 Q I think I've seen the Marathon signs on gas
14 stations.

15 A Yes, sir.

16 Q Where is this specific one located?

17 A 15 401 Bypass.

18 Q 15 401?

19 A Yes, sir. Bennettsville, South Carolina.

20 Q Is it still in existence?

21 A Yes, sir.

22 Q Is the same fellow still running it?

23 A Yes, sir.

24 Q Did you have full-time employment before
25 working at Marathon?

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1 A Yes, sir. I was -- I worked at Piggly
2 Wiggly, and I stopped working at Piggly Wiggly --
3 I don't exactly remember like what month or what
4 year, but I worked at Piggly Wiggly for a couple
5 of months. I worked at this place called
6 SOPAKCO, but my daughter, she has diabetes, which
7 is hypoglycemia, and she got sick and I stopped
8 working there.

9 Q What did you do at Piggly Wiggly?

10 A I worked in the deli and I went from the deli
11 to being a -- doing the cash register, being a
12 cashier.

13 Q And that was back in 2006, 2007?

14 A That was in 2005, I worked at Piggly Wiggly.
15 2006, I worked at SOPAKCO.

16 Q What is SOPAKCO?

17 A It's a plant, where we made food for the
18 Army.

19 Q Can you spell that?

20 A S-O-P-A-C-K-O.

21 Q And is that located in Bennettsville?

22 A Yes, sir.

23 Q Is it still running?

24 A Yes, sir.

25 Q What did you do for them?

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1 A I worked on a line. I think it's called a
2 cannery.

3 Q At Marathon, what did you do for them?

4 A Cashier.

5 Q Do you have any relatives that live in
6 Richland County?

7 A No, sir.

8 Q Let's talk a little bit about the event
9 that's described in your complaint. When were
10 you first aware that you were a suspect for the
11 break-in at the Roly-Poly here in Columbia?

12 A You're asking me when was I aware that like
13 the incident happened at all?

14 Q Uh-huh. When was your first contact, when
15 you knew that something that might involve you
16 was taking place?

17 A When I went to my probation office. I would
18 check in like -- I was checking in once a month,
19 but I had money to go pay, so I went up there --
20 I'm not sure what day it was -- and I was about
21 to leave. I got up and I was like, "See you
22 later," and he was like, "No. You've got to put
23 your hands behind your back."

24 I was like, "Why? What happened?"

25 He was like, "Columbia just sent two warrants

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1 for you, for burglary and petty larceny."

2 Q Do you know what day that was that you were
3 there?

4 A I'm thinking September 19th. I'm not exactly
5 sure. I'm not sure.

6 Q Was there a time that you were scheduled to
7 go to your probation office anyway?

8 A Yes, sir.

9 Q So you go about once a month, but is there a
10 date each month that they expect to see you, or
11 is it within a range?

12 A It's a certain date.

13 Q And you say you were there to pay some money.
14 Was that to the probation office, or you were
15 paying bills downtown?

16 A No, sir; to the probation office.

17 Q Was that a fee you had to pay because you
18 were on probation?

19 A Yes, sir.

20 Q So, when you went in that day, it was just
21 your regularly scheduled check-in date, and you
22 didn't know that anything was going on?

23 A No, sir.

24 Q The first you knew about it, if I understood
25 you correctly, was that, after you did your

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1 check-in and did what you normally do, you
2 thought it was time to go, and he told you, no,
3 that he had some warrants for you?

4 A Yes, sir.

5 Q And the "he," that's a fellow named Albert
6 Smith, your probation officer?

7 A Yes, sir.

8 Q Has he always been your probation officer?

9 A Yes, sir.

10 Q Did he show you the warrants?

11 A Yes, sir. He also said, "I told them that
12 they could come here to my office to fingerprint
13 you, because I told them that doesn't sound like
14 you," and Officer Robbie Tyler, she told him she
15 knew it was me because they had my DNA, and the
16 warrant said that they had my DNA and my
17 fingerprints.

18 Q So he arrested you, or was there somebody
19 from a sheriff's office or a police department
20 there to actually do the arrest?

21 A He said he had to put me in handcuffs and
22 take me to the detention center because they sent
23 him the warrants to arrest me. He put me in
24 handcuffs, and him and -- I think her name is
25 Monty English, I think she's a probation officer,

1 also -- took me to the detention center and they
2 booked me in.

3 Q I gather, from the way you've described it,
4 you weren't hurt during the arrest process. They
5 didn't hurt you, handcuffing you or anything like
6 that; they were trying to cooperate with you?

7 A Yes, sir; but it did hurt me mentally, and
8 physically it bothered me because my baby was
9 there and he cried and he screamed.

10 Q If you were going to a probation officer,
11 there must have been a conviction at some point
12 that put you on probation. What was that?

13 A Possession with intent to distribute powder
14 cocaine.

15 Q We'll come back to that. Let's talk about
16 the event here. There was a statement that your
17 attorney has furnished us from your probation
18 officer, Mr. Smith, describing the events that
19 occurred that day. It says in there that he told
20 the representative from the City of Columbia that
21 you had been having recent problems with
22 transportation. Do you know what he's talking
23 about?

24 A Yes, sir. I didn't have a car.

25 Q When he said that, it was recent. What had

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1 changed?

2 A I don't know what you mean by "recent." What
3 he was trying to explain was -- to them, was, "I
4 don't think it was this girl. She has a problem
5 getting to my office." I live right in
6 Bennettsville where he is and I have three kids,
7 and I couldn't like walk there. I would try to,
8 you know, get rides and pay people to take me to
9 his office.

10 Q At that time, you didn't have a car?

11 A No, sir.

12 Q Have you ever had a car?

13 A Yes, sir.

14 Q What happened to it?

15 A My boyfriend's mama took it.

16 Q Which boyfriend?

17 A Ronshaa.

18 Q How did she take your car?

19 A I was paying payments at Williams Auto, and
20 they got into a car accident, her and her
21 boyfriend. He said I owed \$1,500.00 on the car.
22 I had a Durango, a Dodge Durango. He said, "Let
23 me pay your Durango off, and you can pay me
24 \$200.00 a month."

25 They paid my Durango off on June 4th, 2009.

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1 Four days later, they asked could they use it. I
2 had to go pick my baby up some diapers.
3 Ronshaa's mom got upset and said, "Well, it's our
4 car anyway," because I switched it to their name,
5 so I paid them the cash and they took it from me.

6 Q I see. Your boyfriend that you live with
7 now, his name is Mr. Malachi?

8 A Yes, sir.

9 Q Does he have a vehicle?

10 A No, sir.

11 Q So, when your probation officer, Mr. Smith,
12 says he told Investigator Tyler that you'd had
13 recent problems with transportation, you're not
14 sure what the "recent" aspect is?

15 A I guess he was saying because I was on
16 probation since the year before, in October and,
17 in June, starting in June, my car was gone.

18 Q June of 2009?

19 A Yes, sir. That's probably what he's talking
20 about.

21 Q So that is fairly recent, in September.

22 A Yes, sir.

23 Q About what time of day was it that you
24 reported to your probation officer?

25 A Probably about twelve, or maybe one, because

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1 I was mopping, cleaning up the house, and I said
2 I wanted to go down there before the kids got
3 home from school. I wanted to go pay my money
4 and get back home before they got there.

5 Q I gather, from what you just said, that there
6 is no set time on the day that you're supposed to
7 report; just sometime that day?

8 A Yes, sir.

9 Q When you did get arrested, what arrangements
10 did you make for the kids?

11 A I didn't. I couldn't make anything. They
12 just took me away from my kids right then. The
13 only thing he let me do was call my mom and say,
14 "Mama, you've got to come and get the baby."
15 When my baby started crying, I was so upset that
16 I couldn't really -- I couldn't really even -- I
17 didn't even think about it. I was just thinking
18 about -- I was asking, "Why are you all doing
19 this to me?" He was like it wasn't him. I
20 didn't get to make any arrangements for my kids.

21 Q What did happen to your kids?

22 A My mom kept them.

23 Q Does your mom keep your kids periodically
24 when you need help?

25 A No, sir. I don't ever let anybody keep my

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1 kids.

2 Q So this was unusual, for her to have her
3 grandkids?

4 A Yes, sir.

5 Q Now, you were taken to -- well, your
6 probation officer took you to the detention
7 center, Marlboro Detention Center; is that right?

8 A Yes, sir.

9 Q And you stayed there overnight?

10 A Yes, sir.

11 Q Did anything remarkable happen there, other
12 than the fact that you got arrested?

13 A A lady -- I can't think of her name, an
14 African-American lady -- when I got there, she
15 was like -- and I was crying -- "What are you
16 crying for? There ain't no need to cry. They've
17 got right here on the paper what you did, girl.
18 They showed me, and you want to cry?"

19 I just got treated horribly. She was saying
20 that I didn't cry when I broke into whatever
21 place got broken into.

22 Q Was this an official of the detention center,
23 or somebody in the cell with you?

24 A No, sir. She was a correctional officer with
25 a green suit. "You might as well stop crying,"

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1 and I probably -- and I'm not going to lie -- I
2 believe I rolled my eyes at her, and she was
3 like, "Oh, I'm glad you rolled your eyes, because
4 I'm going to make your night a living" -- you
5 know -- "you've got to deal with me, because this
6 is my house tonight. You're in my house. You
7 don't come up here with no attitude."

8 I was explaining to her that I didn't have an
9 attitude, but I was upset. They were mean. I
10 guess that's their job, but she was mean.

11 Q Other than having what you thought was not an
12 appropriate attitude toward you, did anything bad
13 happen; they didn't hurt you or anything, did
14 they?

15 A No. I just kept crying so bad and I asked,
16 "Can I come out?" At the time, I couldn't
17 breathe. I felt closed up. They wouldn't answer
18 me on the intercom.

19 Q The next day, at some point, somebody from
20 the Columbia Police Department came and picked
21 you up; is that right?

22 A Yes, sir.

23 Q About what time of day did they pick you up?

24 A Around two or three. Around two or three.

25 Q Did they come in a marked police car?

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1 A No, sir.

2 Q Do you recall who it was that picked you up?

3 A Yes, sir.

4 Q Who was that?

5 A Robbie Tyler and -- she said some rookie,
6 some new guy. He was a slim Caucasian guy around
7 his height.

8 Q When you say "his" --

9 A Referring to --

10 Q Your lawyer's law clerk?

11 A Yes, sir. He was in the passenger's side of
12 the car and I was in the back seat.

13 Q Did you have any conversation with
14 Investigator Tyler either at the detention center
15 or in the car on the trip to Columbia?

16 A Yes, sir.

17 Q I know you probably can't tell us every word
18 that was said, but can you give us the gist of
19 what was going on?

20 A She said, "Okay, get your book, rookie. I'm
21 going to show you how it's done."

22 So he took out his pad and he was about to
23 write everything down, I guess, what I was
24 saying, and she said, "Okay, I want to start by"
25 -- "I'm going to try to help you. I'm going to

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1 let you know, off the bat, this is Columbia,
2 South Carolina. This is the capital of South
3 Carolina. You came all the way from your little
4 town to commit a crime here." She was like, "I'm
5 going to let you know, it's going to be up to 15
6 years because you" -- "if you tell me who brought
7 you here" -- "I know you don't have a car. You
8 have three kids. If you tell me who dragged you
9 out of your bed in the middle of the night and
10 brought you here and helped you commit this
11 crime, I'll work a deal out with you."

12 The first thing I said, "I swear to God, on
13 my three kids, I didn't do it."

14 "Oh, I know you're lying. Just shut up.
15 Don't say anything else. You don't got to answer
16 no more questions. Anybody who swears to God on
17 their kids is already lying. We know you did it.
18 AFIS doesn't lie. AFIS picked your fingerprints,
19 so we know you done it. We ran your fingerprints
20 through AFIS. It was a perfect match, so we want
21 you to go ahead and tell us everything about what
22 happened."

23 So she was just talking about a game they had
24 to go through, again -- some big game you all
25 were having in Columbia either that day or the

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1 next day. There's some big game you all have up
2 here. She was like, "I have to go home. I don't
3 have any kids, but I have to go home and get my
4 dog groomed and get the dog into his little
5 outfit for the game," and she had to go feed the
6 dog and get her little nails done, or whatever.
7 She was like, "Are you going to give your DNA?"

8 I was like, "Yes, ma'am."

9 She said, "Well, put down that she's willing
10 to give her DNA, and she's going to let me sign
11 when we get to the Police Department." Before we
12 went to the detention center, we went to the
13 Police Department. She took my DNA.

14 I said, "Can you take my fingerprints so I
15 can go home? I promise, if you take my
16 fingerprints, you'll see it's not me."

17 "Take your fingerprints? We've got to go to
18 the game. You're going to the detention center."

19 Q What day of the week was it when she
20 transported you to Columbia?

21 A Friday.

22 Q So the game was on a Saturday. Probably a
23 college football game?

24 A She said it was the next day.

25 Q She and this other person, they brought you

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1 to the Police Department first; is that right?

2 A Yes, sir.

3 Q At the Police Department, she had a form that
4 you filled out, saying that you would voluntarily
5 give a DNA sample; is that right?

6 A Yes, sir.

7 Q She also had a second form that you signed,
8 indicating that you had been advised of your
9 Miranda rights; is that right?

10 A Yes, sir.

11 Q Other than her not believing you, that you
12 were innocent, as you made this trip, were you
13 mistreated in any way on the trip to Columbia?

14 A Yes, sir.

15 Q Tell me about that.

16 A She told me, "Oh, yeah. Your mama, with her
17 big mouth, she's got one more time to come up to
18 Columbia. I'm walking out the door to come and
19 get you, up to Bennettsville, South Carolina, and
20 she's coming up to me, 'Can you please help me
21 out? I know my daughter didn't do this. Can you
22 please get my daughter over here and fingerprint
23 her? I'll wait for my daughter.'

24 "We don't need your mom. Ain't she supposed
25 to be taking care of your kids, with her big

1 mouth? She's so loud."

2 My mom is a little loud, but I guess she was
3 hurt because I'm her baby. She only had two
4 girls.

5 "With her big mouth, I should have put her in
6 handcuffs."

7 I said, "Well, who's going to take care of my
8 kids, if you lock her up?"

9 "She's so bad, she brought your baby up here.
10 She had your baby in her arms, trying to talk to
11 me, telling me she knows you didn't do it. Yeah,
12 I probably would have let her wait while I took
13 your fingerprints, while I brought you back and
14 took your fingerprints, but no. She was too
15 loud. I don't even like loud people. I wasn't
16 even about to deal with her."

17 I felt like that wasn't even right, and she
18 just kept telling me I was a liar and she knew
19 I'd done it.

20 Q What I'm saying is, other than disbelieving
21 your view of the facts, nobody physically harmed
22 you or anything?

23 A No, sir.

24 Q After you filled out those forms for the
25 Police Department, you were taken over to the

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1 detention center; is that right?

2 A Yes, sir.

3 Q Was it Investigator Tyler who took you there,
4 as well?

5 A Yes, sir.

6 Q When did you first see somebody from the
7 Columbia Police Department after you went to the
8 detention center?

9 A Monday around -- I'd say probably around
10 four, I think. I'm not sure. I think around
11 4:00 in the afternoon on Monday.

12 Q Before that occurred, after you were brought
13 to the detention center, the next day you had a
14 bond-setting. Do you remember that?

15 A Yes, sir.

16 Q The judge heard a little bit about your case
17 and decided what bond to set.

18 A Yes, sir.

19 Q Do you remember what bond was set?

20 A Yes, sir.

21 Q What was it?

22 Q \$20,000.00.

23 Q And you were permitted to put down a certain
24 percentage of that in order to meet bond. Do you
25 remember that?

1 A Yes, sir.

2 Q Between then and Monday, your bond was not
3 posted; is that correct?

4 A My mom paid Larry's, a bail bondsman from
5 Bennettsville, South Carolina, \$2,000.00. He
6 said that he kept coming to Columbia to get me,
7 and he had a friend here. He kept sending him to
8 get me, and they said I had no bond. That's what
9 he said. So, when I got home, they got their
10 money back.

11 Q I would think so. So, other than the bond-
12 setting, you were at the detention center until
13 Monday?

14 A Yes, sir.

15 Q What was your first contact on Monday with
16 somebody from the Police Department?

17 A They called me down and they said that
18 usually -- I was sitting, waiting for them to
19 say, "Tynaysha Horton, get your bed." You know
20 how they say that? They just called my name. I
21 was anxious for them to call my name. I left the
22 bed and everything. They didn't tell me to get
23 my bed. I got up, and they had me sit in this
24 little room, like a little cell -- a little
25 stank, rank cell -- for around about two hours,

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1 and I sat in the cell, I'm thinking, about two
2 hours. It was probably about an hour.

3 I sat in the cell, and a police officer came
4 and got me, and he put me in a van and put
5 shackles on my hands and feet, and they brought
6 me up to the Police Department. We came in
7 around back and we came inside downstairs and we
8 came into the elevator and came upstairs. He
9 said, "Sit right here. I'm going to take these
10 handcuffs off of you and make you a little
11 comfortable."

12 So Officer Currie asked me could he get my
13 fingerprints again. As soon as Officer Currie
14 got my fingerprints -- he had asked me to sit
15 here and he had a paper like that, like the paper
16 you have to your right, to the right of you, with
17 the fingerprints on it, with the prints that had
18 measured out to be me before they arrested me.
19 As soon as he got my actual fingerprints, my ink
20 prints on that paper, he said, "Oh, my God," and
21 they asked me to get up and go out.

22 All the officers that I seen in uniform, the
23 ones that wasn't even a chief -- a little, short
24 African-American guy with a bald head -- they all
25 came in, and I guess they were trying to see how

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1 they were going to apologize, or whatever. They
2 asked me to come in again, and Officer Currie was
3 wiping his eyes. He was crying, and he gave me a
4 hug and he said, "You were right all along."
5 Everybody was saying they were so sorry. He was
6 saying, "You were right," and he said, "20 or 30
7 years of working here," or something like that,
8 "and I never made this mistake in my whole entire
9 life," and he was crying and I was crying.

10 I said, "Oh, God, I want to go home."

11 There was another officer -- he was in a
12 uniform -- he said, "You might as well go ahead
13 and" -- I'm just going to say what he said -- he
14 said, "You might as well go ahead and cut her a
15 check because she's going to sue us," and the
16 chief told him to leave, to get out.

17 Officer Currie said, "Are you going to sue
18 us?"

19 I said, "I just want to go home. Just please
20 get me home."

21 I was crying. I was upset, and he said,
22 "Here's a phone. You can use the phone to call
23 your mom," so I got on the phone and I was
24 calling. I was so happy, and my kids were
25 crying. I was just so happy I was going home.

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1 Q How did you get back to Bennettsville?

2 A The Chief took me in a black Impala to
3 Bishopville, and my mom met him in Bishopville at
4 a Wilco -- I think it was a Wilco gas station.

5 Q The police chief himself took you?

6 A Yes, sir.

7 Q Do you remember his name?

8 A No, sir; but he was the chief -- he was the
9 -- he was over the floor that I was on -- you
10 know, that Officer Currie was on. He was over
11 all of them. He was over everything. Him and a
12 lady from the floor, an African-American lady,
13 rode with us.

14 Q Do you remember making the statement that Mr.
15 Currie testified to earlier today, that all you
16 wanted was an apology and you weren't going to
17 sue anybody?

18 A No.

19 Mr. GOFF: Object to the form.

20 A That's a lie. I never said that. Now, what
21 I did say was -- they were joking. It was a joke
22 to them. I feel like it was a joke to them from
23 the beginning, because they could have taken my
24 fingerprints and let me go home that same day.
25 All he said was -- the guy was like, "Oh, we

1 might as well go ahead and cut her a check for
2 \$20,000.00," and the chief was like, you know,
3 "Get out of here." I guess he was like, "Stop
4 playing." They were laughing, and then the chief
5 was like "I'm sorry about that." They were real
6 nice, and Officer Currie said, "Are you going to
7 sue us?"

8 I was crying. I just said, "I just want to
9 go home. Please, just take me home. Let me go
10 home." I never said what I would do or what I
11 wouldn't do, because I wasn't even thinking about
12 that at the time.

13 Q So you remember that differently than he
14 does?

15 A Yes, sir.

16 Q Now that all that is done, how do you feel
17 about Investigator Tyler; do you feel like she
18 was trying to get the thing right, or do you
19 think she was intentionally trying to harm you?

20 A I think -- I'm not going to say she was
21 intentionally trying to harm me, but I'm going to
22 tell you, she intentionally harmed me and my
23 three kids because I don't feel like a game is
24 more important than someone's life. I feel like
25 -- you know, my mom was there and my mom didn't

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1 care if it took Ms. Tyler eight hours to get me
2 back to the jail. She just wanted them to do my
3 fingerprints and let me come home. I have three
4 kids. Not only did it harm me, it harmed my
5 kids.

6 Q Even if they had taken your fingerprints in
7 Bennettsville, they would have had to have been
8 analyzed in Columbia, wouldn't they?

9 A No. I was in the Columbia Police Department.
10 I was in you all's Police Department. I was in
11 Ms. Tyler's office when she took my DNA in my
12 mouth. She could have taken -- when they got me
13 that Monday, as soon as they take your ink prints
14 -- Mr. Currie sat at a table like you're sitting
15 at, and I was in a chair a little bit behind him.
16 He looked at it right then and examined it. It's
17 just that simple. He didn't know how he made a
18 mistake.

19 Q Do you accept that it was a mistake that Mr.
20 Currie made as opposed to him trying to harm you
21 in some way?

22 A I'm just going to say it like this.
23 Everybody makes mistakes, but it could have been
24 caught sooner if they would have been taken my
25 fingerprints as soon as they got me to Columbia.

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1 If they had time to sit me down and swab my
2 mouth, what's another two or three minutes of her
3 doing my ink prints?

4 Q Do you know if Officer Currie was at the
5 Police Department or worked until the following
6 Monday?

7 A I know she said that the same guy -- that he
8 called and said, "Come here for a second," after
9 he did my ink prints and saw that he made
10 mistakes, and he said, "You see what happened?"
11 -- well, I'm not going into detail exactly what
12 he said -- but he said, "Do you see the mistake
13 that I made? This is not even the same print.
14 Her fingerprints are totally different. Hers are
15 not even shaped like the ones we're looking at,"
16 and the same guy he asked to come in for a second
17 was in there when she took my DNA.

18 Q But it was Mr. Currie who made the
19 determination that your prints didn't match;
20 isn't that right?

21 A Him and another officer. He gets a second
22 opinion, or whatever. Maybe he gets somebody
23 else. Him and that guy were looking at it.

24 Q So you don't know if Officer Currie was on
25 duty Friday or Saturday or Sunday?

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1 A No, sir.

2 Q As a result of this, you have sued the City
3 and maintained that you've had injuries. Did you
4 have any physical injury?

5 A No, sir.

6 Q Your complaint says that you're undergoing
7 treatment for psychological injuries; is that
8 right?

9 A Yes, sir.

10 Q Is that at Tri-County Community Mental Health
11 Center?

12 A Yes, sir.

13 Q And why did you go to Tri-County?

14 A Because I couldn't sleep. One day -- well, I
15 called my mom and I knew -- I mean, it helped --
16 like around the last week in September -- well,
17 the week after I got out, I was actually -- I had
18 already put the kids on the bus. I was actually
19 -- well, we were -- when I was incarcerated at
20 the correctional facility, we would have a time
21 to get up, like they would say, "At 5:00 or 5:30,
22 you have to be on top of your sheets, but you can
23 still lay down. You have to be on top of the
24 bed, but you can get up for a certain length of
25 time;" but, when they say you have to lay down,

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1 you have to lay down.

2 I was in my bed with my baby, and he was
3 sleeping. I wouldn't get up because I'm not even
4 -- I'm laying in my bed in my room, but it's like
5 I'm not in my room, and I just didn't -- I was
6 laying there, waiting for somebody to say -- to
7 come to the door and say, "Get up," and I went --
8 I just -- I was just going -- I was just crying.
9 I was just emotional and I just...

10 Q So you think you contacted Tri-County when?

11 A I know I contacted them like the next week,
12 but it takes a while for them to give you an
13 appointment. Sometimes they give you one the
14 next week or the next month.

15 Q How long was it before you actually saw
16 somebody?

17 A I'm not sure, because I also went to Dr.
18 Patel. I went to him, also, and he gave me
19 something to help me sleep, and then I went to
20 see the counselor.

21 Q I haven't heard about Dr. Patel before. Tell
22 me who he is.

23 A Dr. Pravin Patel.

24 Q Is he in Bennettsville?

25 A Yes, sir.

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1 Q Is he in a group or is he by himself?

2 A By himself.

3 Q What kind of doctor is he?

4 A He's a family doctor.

5 Q Has he been your family doctor?

6 A No, sir.

7 Q This is the first time you had seen him?

8 A Yes, sir.

9 Q Did you have another doctor that you normally
10 went to?

11 A Dr. Cindy Crittendon.

12 Q Why did you not go to her?

13 A Because I only went to her for like women's
14 -- she don't see you for like -- she only sees
15 you like it you're pregnant or if you've got a
16 woman problem.

17 Q But you didn't have a family practice doctor?

18 A No, sir.

19 Q How was it that you decided to use Dr. Patel?

20 A I had family members that go to him.

21 Q What did you describe to him as being the
22 problem?

23 A I went to him because my back had started
24 bothering me. Like when you're in the jail, it's
25 like you're sleeping on a cement block that's

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1 lifted up, and you have like a thin little
2 cushion, and he would give me something for my
3 back.

4 Q Was that pain medicine or muscle relaxers, or
5 do you know?

6 A A muscle relaxer.

7 Q How many times did you go to see him?

8 A I still go up until that.

9 Q For the same symptoms?

10 A The same thing, the same exact -- for my
11 back.

12 Q He's not doing you much good, is he?

13 A I mean, he would give me something called
14 Tramadol, and I take them three times a day, and
15 that's it. He doesn't give me anything strong,
16 because I have three kids, but he gives me
17 something to take the pain out of my back.

18 Q Did he refer you to Tri-County?

19 A No, sir.

20 Q How was it that you settled on going to Tri-
21 County?

22 A My mom.

23 Q Had she been there before?

24 A No, sir.

25 Q Why did she think you needed to go to Tri-

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1 County?

2 A She just said I was different.

3 Q According to the materials that we have been
4 provided from your counsel, the first time you
5 went to Tri-County and they did an assessment was
6 October 21st of 2009.

7 A Yes. Sometimes it takes like a month to get
8 in.

9 Q And it says in the records, where they took
10 notes, that you told them that you came to see
11 them because you had been wrongfully arrested and
12 were having trouble sleeping. Were those the
13 symptoms you were describing?

14 A Yes, sir.

15 Q Now, we had sent some of what we call
16 interrogatories. Those are written questions to
17 your lawyer, to try to find out more about the
18 case before we actually take your deposition, and
19 one of them was whether you had gotten any mental
20 health treatment before going to Tri-County. My
21 understanding of the response was that you had
22 not received mental health treatment prior to
23 that. Do you recall telling your counsel that?

24 A Yes, sir.

25 Q Is that true?

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1 A Yes, sir.

2 Q Well, I ask you because the notes that the
3 doctor at Tri-County Mental Health Center took
4 from you indicate that you'd had mental health
5 treatment before.

6 A No, sir; I haven't. I was 13 years old,
7 thirteen or fourteen, and I was in high school,
8 and a counselor had come out to the school
9 because me and this girl, which was a senior and
10 I was like a junior, she and I had gotten into
11 some things, and I had told her that I would
12 choke her, strangle her and, if you say something
13 like that, that's like threatening someone's
14 life, so they had a counselor come out to us.
15 They would write down what we said, and that's
16 pretty much how that was.

17 Q In the section from the initial assessment
18 that they did with you on October 21st of 2009,
19 your doctor wrote what appears to say that you
20 reported to him that you had been diagnosed as
21 bipolar.

22 A That's what the lady said at school. She
23 said, "Why do you want to choke her?"

24 I said, "Because every time I see the girl"
25 -- it was all over a boy, which is not bipolar,

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1 but that's what the lady said, which there isn't
2 anything wrong with me. I told her I was going
3 to strangle the girl and, after the meeting,
4 after we sat down and talked, I said -- we shook
5 hands and we definitely didn't have a problem
6 when we left, and the lady was like, "It's
7 bipolar disorder;" but, if I make you angry, then
8 you'd probably want to strangle me, but we would
9 talk it out and work it out. Would that mean you
10 have bipolar disorder, also?

11 Q All I'm telling you is what you apparently
12 told your doctor.

13 A I told him what the lady told me.

14 Q Well, he also noted, to the left of that,
15 "TCMHT," which is the initials for Tri-County,
16 which makes it appear that Tri-County had seen
17 you for this bipolar disorder when you were
18 younger. Is that not true?

19 A No. That was at school. I hadn't ever been
20 to Tri-County, but yeah, there was a counselor at
21 school, which the school recommended, and they
22 probably was from Tri-County, which I will make
23 known that you can also go to the hospital,
24 Marlboro County Hospital, and they also have a
25 Tri-County counselor out there that you can talk

1 to, also. You don't initially have to go to Tri-
2 County.

3 Q Do you remember, on November 19th of 2009,
4 meeting with a Dr. James Gillis?

5 A Yes, sir.

6 Q In the notes that he took on that date, for
7 your past psychiatric history, he wrote that you
8 had been seen at Tri-County at age thirteen to
9 fourteen, went to MUSC and were diagnosed as
10 bipolar, and that you had taken medication, D-E-
11 P-A-K-O-T-E, which had helped you. Did he just
12 get all that wrong?

13 A No, he didn't "just get all that wrong," but
14 I didn't go anywhere from Tri-County. Me, my mom
15 -- which is here, but not in this office -- me,
16 her and her boyfriend and a police officer and a
17 Tri-County counselor, which was back in my past
18 and I don't wish to -- it was all about a girl.
19 It didn't have anything to do with bipolar, or
20 whatever, and -- if I had bipolar -- bipolar is a
21 lifelong thing, if you look it up. I don't take
22 any bipolar medication and there isn't anything
23 wrong with me. That's just what they said, you
24 know, if you really just listen to them, because
25 it was all because of what I said I was going to

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1 do to the girl, which doesn't have anything to do
2 with this case.

3 Q That drug that I spelled out, did they
4 prescribe it for you?

5 A I didn't even hear what you spelled out.

6 Q It's D-E-P-A-K-O-T-E.

7 A And that's what?

8 Q It's the drug that they prescribed for your
9 bipolar.

10 A Can you pronounce the drug?

11 Q I don't think I can.

12 A Oh. Well, no. I'm not taking any drug now,
13 and I was a minor child at the time. You would
14 probably have to ask my mom.

15 Q So you don't remember taking a drug?

16 A No, sir.

17 Q Now, when you met with Dr. Gillis on November
18 19th, he prescribed Paxil for you and told you to
19 return in a month; is that right?

20 A Yes, sir.

21 Q Did you go back?

22 A Not in a month, but I went back. I didn't go
23 back in a month because the dosage -- I still had
24 some more.

25 Q How many times have you been back since then?

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1 A Once or twice; but, when I don't go there, I
2 go to Dr. Patel.

3 Q The last record we have from you all is from
4 November 19th, 2009, so we're going to need the
5 rest of those.

6 A Okay.

7 Q Will you sign an authorization for us to get
8 those?

9 A I'll sign an authorization for my lawyer to
10 give them to you.

11 Q Fair enough. Same thing with Dr. Patel?

12 A Yes, sir.

13 Q We have not been furnished a bill for the
14 psychiatric services that you got at Tri-County.
15 Have you had to pay a bill?

16 A No, sir.

17 Q Do you know how much they have assessed, if
18 anything?

19 A No, sir.

20 Q Is it your understanding that there's going
21 to be a bill at some time in the future, or that
22 this is free?

23 A No, it's not free, but I don't know how much
24 it is.

25 Q And they've never sent you a bill?

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1 A No, sir.

2 Q Your attorneys, in answer to the
3 interrogatories we sent to them, indicated that
4 you had lost earnings as a result of being
5 arrested. Do you recall telling them that?

6 A Yes, sir.

7 Q Now, you indicated to us earlier today that
8 you were working at Nightingale Nursing and were
9 about to start working with a new patient, which
10 would be full-time, the day you got arrested; is
11 that right?

12 A Yes, sir.

13 Q In response to our interrogatory to you, your
14 attorney wrote back that you were scheduled to
15 begin working at Tiptoes in Bennettsville on the
16 day that you were arrested.

17 A I had an interview there, also. It's a hair
18 salon. I was going to clean up there.

19 Q So you didn't have a job with them at that
20 time; you had an interview?

21 A Yes, sir; which I was going to start that
22 same -- I was going to go that morning and start
23 that night. The lady said I could, but I told
24 her I had something to do first. I was going to
25 pay my probation officer, and I couldn't go back

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1 to her.

2 Q I'm not clear, here. Did you have the job or
3 did you have an interview to see if you got the
4 job?

5 A The only thing I had to do was go and sign
6 some papers, so she would be able to pay me, so
7 she would be able to claim me on her taxes, or
8 whatever. She closed -- well, she does hair, and
9 I was going to help her wash a little bit of hair
10 and clean up, and they also cook in there, and I
11 was pretty much going to help her do anything I
12 could help her do to take care of my kids and,
13 you know, get a check get paid, or whatever. She
14 closed around ten that night, so she just told
15 me, whenever I was done doing what I had to do to
16 take care of my business, to just come by.

17 Q Now I'm confused. The complaint that you
18 filed didn't say that you had a job; it said that
19 you had An interview for a job.

20 A That's what I just told you. I had an
21 interview, but I was going to start that day.
22 You can contact her, but I can't start now
23 because I don't have anything stating that what
24 Columbia did was a mistake. No one wants -- you
25 know.

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1 Q So she wouldn't let you work there after you
2 got arrested?

3 A Yeah, because she felt like I had broken into
4 something, and she had a business.

5 Q Was that intended to be full-time or part-
6 time work?

7 A What do you call "full-time" hours?

8 Q Well, why don't you tell me? What was it
9 intended to be?

10 A Whenever she needed me, I was going to go,
11 which would be Monday through Thursday. I wasn't
12 going to work on Fridays. The shop is closed on
13 Sundays. I'd say she said I could come in after
14 my kids get on the bus and leave, around 3:30.

15 Q Well, if you did that, would you not be able
16 to do your nursing job?

17 A I can always do my nursing. Nursing is home
18 health. You go and you sit in, but I was waiting
19 for Monica to call me. She said, "We have
20 something full-time for you. We're going to have
21 two patients for you." I was waiting for her to
22 call me. Either way it went, I didn't get
23 anything because my name was in the paper.

24 I didn't contact Nightingale's. I did get a
25 call from them. I did not answer the phone

1 because I'm embarrassed, or I was at the time.

2 Q So you never followed up with them?

3 A No, not ever. You can call her and she'll
4 say the same thing.

5 Q So, for all you know, they called you to
6 offer you some more employment.

7 Mr. GOFF: Object to the form.

8 A Well, I do know that I can't get a job there;
9 I know that because my cousin works there, and it
10 got into the paper. I didn't know she was
11 calling to ask me about my business because, once
12 you start working with them, you all become
13 friends and -- well, I'm not going to say
14 "friends." You know, you all are coworkers and
15 become, you know, good pals. I didn't know she
16 was calling to know my business, but I did know
17 that I was arrested for burglary.

18 Q In the answer to interrogatories, it
19 indicates that you were scheduled to work 30 to
20 40 hours per week at Tiptoes. Now, if you did
21 that, would you have been able to do the nursing
22 job also?

23 A Yes, because I was going to work either --
24 Josephine, I was going to work her -- which is
25 Tiptoes Unisex-- I would be doing her on the

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1 weekdays and Nightingale's on the weekends; but,
2 when Monica called me to tell me that's the only
3 reason I was going to do Tiptoes Unisex --
4 because, at the time, I was doing part-time for
5 Nightingale's -- so, when Monica called me from
6 Nightingale's to tell me that I was going to get
7 full-time, I was going to just stop working at
8 Tiptoes Unisex because I enjoy doing my nursing.

9 Q Tell me about your job at Hanna's Credit
10 Repair.

11 A I went for -- that man -- them people -- I
12 went for, I'm going to say, a week, maybe, or let
13 me say two or three days. I never got a check
14 from him. He said he had an office in
15 Fayetteville, had me to show up the next day. My
16 mom took me, and the office wasn't even open, but
17 I did do some paperwork for him for like two or
18 three days. Mr. Hanna, his name is Gary Hanna.
19 The fourth day I returned, Mr. Gary Hanna's
20 office was closed. I called his cellphone. He
21 said, "Oh, I'm in the office in Fayetteville.
22 Come tomorrow." I came the next day and it still
23 was closed, so...

24 Q Your answer to interrogatories indicates that
25 you were scheduled to begin working there, but

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1 you had already been working there?

2 A No. Probably, when I talked to my lawyer, I
3 wasn't, but I did go in and do some paperwork for
4 him.

5 Q Before or after your arrest?

6 A After -- no, before my arrest. I did some
7 paperwork for him, which I never got paid for,
8 but --

9 Q So you were not going to work for him?

10 A Yes, I was going to work for him. I just
11 told you that he told me to come back, and the
12 office was closed.

13 Q So you were going to keep going back, even
14 though he wasn't paying you?

15 A I have three kids. If you asked me to come
16 to your office and I think you're going to give
17 me a job, I'm going to come.

18 Q According to the answer to interrogatories,
19 you were going to work 30 to 40 hours a week at
20 Tiptoes, 30 hours a week for Mr. Hanna, and then
21 you had your Nightingale's job.

22 A No. What my lawyer was probably trying to --
23 well, if -- he can tell you, whatever job I got
24 for those hours was the job I was going to stick
25 to. That's how it is.

1 Q I got you. So, if you're going to work one
2 job, it's the one with the most hours?

3 A Yes, sir; because I have three kids.
4 Whichever one pays more and I can get more money,
5 that's the one I'm going to work.

6 Q So, on the day of your arrest, you were
7 employed at Nightingale's.

8 A I was.

9 Q You were sort of in between patients, but you
10 were employed there?

11 A I was doing work for John Lynn.

12 Q Who is that?

13 A He was a patient for Nightingale's.

14 Q So you were working for Nightingale's. You
15 expected to start working as soon as you filled
16 out the paperwork for Tiptoes; is that right?

17 A (THERE IS NO AUDIBLE RESPONSE.)

18 Q Is that a "yes"?

19 A Yes. I was doing work for Mr. John Lynn, and
20 I was expecting to get a full-time job for
21 Tiptoes Unisex.

22 Q Starting the day that you got arrested?

23 A Yes, sir.

24 Q Hadn't you had another job that you had begun
25 before you were arrested, at Hanna's Credit

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1 Repair?

2 A I'm not going to say that Hanna's Credit
3 Repair was a job, because I didn't ever get paid
4 for it.

5 Q On the booking sheet at the Alvin S. Glenn
6 Detention Center here in Richland County, they
7 indicate that you told them that you were
8 unemployed. Do you remember telling them that?

9 A I don't know what I told them people. Once I
10 got there, I know I didn't want to be there. I
11 don't even know if I told them my name right,
12 which I probably -- I'm not trying to be funny,
13 but I really don't know. I was just somewhere,
14 and -- I don't know. I'm not going to lie. I
15 really don't know.

16 Q Any reason to not tell them the truth about
17 your job?

18 A How I felt -- I cannot explain to you how I
19 felt, but how I felt, I just -- I don't know.

20 Q The next day, you went to a bond-setting in
21 front of Judge Dennis --

22 A Yes, sir.

23 Q -- and you told him you were unemployed.

24 A I probably did.

25 Q You told him you were unemployed because you

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1 didn't have a car and you couldn't get to work
2 and you were just collecting unemployment. Do
3 you remember that?

4 A I wasn't getting unemployment, but I probably
5 did tell him that. Like I said, I don't remember
6 what I told them people, because I was under so
7 much pressure and -- I don't know what I told
8 them.

9 Q So you might have just gotten it wrong
10 because you were upset?

11 A I was just -- I kept crying and I don't know
12 what I told them.

13 Q Now, we had asked your attorneys, if you were
14 going to make a lost wage claim, to provide us
15 your tax records from the previous years, and
16 your W-2 forms, and they indicated that they
17 would, but that you were gathering those. Have
18 you gotten them together yet?

19 A No, sir; but I will.

20 Q Well, did you prepare them yourself or do you
21 have a tax preparer?

22 A I would have a tax preparer. I wouldn't
23 prepare anything myself, not anything like that.

24 Q Well, who is your tax preparer?

25 A I don't have one, at the time, but I'll let

1 you know, or my attorney will let you know.

2 Q So you don't know who has been preparing your
3 taxes for the last four or five years?

4 A I'm not sure of the company I went to, the
5 name. No, I'm not sure.

6 Q Did you file taxes each year?

7 A Yes, sir.

8 Q State and federal?

9 A Yes, sir; each year, you know, when I worked,
10 but if there wasn't enough money -- I always got
11 the W-2 in the mail. If it wasn't enough, I just
12 didn't file it, but I can get you the W-2s, if
13 you need it.

14 Q I need all of it. Did you have any other
15 damages? You've said you had the psychological
16 damages and you've got lost wages. Anything
17 else?

18 A My kids. It damaged my children also.

19 Q Probably not a claim you can make. Anything
20 else?

21 Mr. GOFF: Object to the form.

22 A I don't see why I couldn't make that claim.

23 Q No point in us arguing about that. The judge
24 will tell us that.

25 A Well, we'll let him tell us that, then.

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1 Q Okay. Any other damages to you?

2 A I can't think, at the time; but, if there is,
3 my lawyer will let you know.

4 Q What's the current status of your driver's
5 license?

6 A I have a beginner's permit, and there is
7 nothing wrong with it at all.

8 Q Now, you've had a license in the past; is
9 that right?

10 A No, sir.

11 Q You've never had a driver's license?

12 A I've never had a driver's license before.

13 Q So the 10-year driving record for "Tynaysha
14 Unique Horton" of 1214 Valley Dale Road in
15 Bennettsville is not you?

16 A Yeah, that's me. That's not a driver's
17 license. I never had a driver's license. You
18 don't go from a driver's license to a permit; you
19 go from a permit to a driver's license, which I
20 have in my pocketbook.

21 Q They've got a lot of things on this report
22 where they've suspended your license on multiple
23 occasions.

24 A Yeah, from not having money to pay for
25 insurance, or whatever, which is not relevant to

1 this case and I wish not to talk about it.

2 Q But you told me just a minute ago that you've
3 never had a driver's license.

4 A They suspended my beginner's permit. I have
5 never had a driver's license in my whole entire
6 life. Anybody who has ever taken the test knows,
7 when you go for your driving -- to drive at all,
8 you get a beginner's permit and then you go back
9 and you take your road test and you get a
10 driver's license. I have never taken the road
11 test. I had a beginner's permit.

12 Q So it's your permit that is suspended?

13 A No. It's not suspended. My permit is fine.
14 I have a car now and I have insurance on it. I
15 have no tickets or anything, so maybe your
16 information needs to be updated.

17 Q Well, your suspension ended in October of
18 '09; is that right?

19 A Yes, sir.

20 Q And that was the suspension for your drug
21 conviction?

22 A Yes, sir -- well, not from my drug
23 convictions, but the one I took for my husband.

24 Q It's yours, now.

25 A Well, that doesn't have anything to do with

1 this case, or you either.

2 Q Whose drugs were they?

3 A My husband, and it wasn't --

4 Q Mr. Kane?

5 A Yes, and Mr. Kane also had been tested with
6 the drugs in his system. I haven't ever done
7 drugs before in my life.

8 Q Well, how were you convicted; were you
9 convicted by a jury or did you plead guilty, or
10 what happened?

11 A Mr. Kane was at work, working at some place
12 called Mohawk Industries. The cops came to my
13 house, thinking, I guess, he was there, which
14 that week I wasn't even talking to him. He was
15 at his mom's house. Me and Ronshaa were sitting
16 on the porch and they -- which is really not even
17 relevant to this case -- and Mr. Kane had, in the
18 top of my closet -- they found a little bag of
19 powder cocaine. He wasn't there. I had to take
20 the charge because it was my home and he wasn't
21 there.

22 Q Not my question, though. My question was,
23 when you were ultimately convicted, was that
24 after a trial or did you plead guilty?

25 A I didn't take a trial. I'm not taking a

1 trial to get years in prison, when I have kids.

2 I took the plea that they gave me.

3 Q So you pled guilty to a judge?

4 A I took the plea that the judge gave me.

5 Q You have to answer my question. Did you
6 plead guilty?

7 A I pled -- I took the plea that the judge gave
8 me, or whatever you may say. If you call it
9 "pleading guilty," then --

10 Q Well, when you do a plea, the first thing
11 they ask you is how you plead, "guilty" or "not
12 guilty."

13 A I said "not guilty," but I still had to take
14 the plea to walk away that day.

15 Q If you said "not guilty" and never said
16 "guilty," then you couldn't have been convicted
17 and you couldn't have taken the plea.

18 Mr. GOFF: Object to the form.

19 A I said "not guilty" plenty of times. Plenty
20 of times, I said "not guilty," explaining to them
21 that it was his.

22 Q Did you ever plead guilty; did you ever say
23 you were guilty?

24 A I just took the plea.

25 Q Ma'am, you're not being responsive.

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1 A I didn't have to do that. I had a lawyer
2 beside me.

3 Q Did your lawyer enter a plea of guilty for
4 you?

5 A Maybe he did. I don't remember.

6 Q Prior to the incident that we're talking
7 about here today, you had been charged with other
8 criminal offenses, had you not?

9 A I haven't ever been charged with nothing
10 else. I had a misdemeanor from my husband with
11 our car that we had in the past, malicious damage
12 to property, and his mom would yell, "You're
13 trespassing," whenever me and him would get into
14 altercations.

15 Q So those are criminal offenses that you were
16 charged with?

17 A Yes, from my husband, I guess.

18 Q In 2005, you were charged with a warrant for
19 trespassing; is that right?

20 A For my husband, so I don't consider -- I
21 don't even wish to talk about that. It has
22 nothing to do with this.

23 Q Ma'am, I'm sorry if it's unpleasant for you,
24 but we're entitled to --

25 A It's not unpleasant. I just feel like it's

1 none of your business.

2 Q Who took out the warrant against you for
3 trespassing?

4 A There was no warrant. His mom had to sign a
5 paper. Me and him had got into an altercation,
6 and she went and sent me a paper in the mail and
7 had it stamped. She didn't want me to come back
8 to her home, but I could come her to home when we
9 were doing fine. So we were at her home, having
10 dinner, and me and him got into it, and she
11 called the cops, and they said I wasn't supposed
12 to be there, so there was never no warrant.

13 Q So they wrote you a ticket?

14 A Yes, sir.

15 Q How did that come out?

16 A It was fine. The judge dropped it because he
17 told her, "They're married," and the cops had
18 seen me over to the home plenty of times. He
19 said, "How could you have this girl here and when
20 they're not doing good, you want to use that,"
21 and they couldn't use it anymore.

22 Q When the police officer wrote you a ticket,
23 did he take you into custody or did he let you
24 go?

25 A He took me to the police department and did

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1 my fingerprints, and I signed a paper and I went
2 home.

3 Q In 2006, there was a charge against you --
4 and it appears this was a warrant -- for
5 malicious injury to property. Who took that out
6 against you?

7 A I was eight months pregnant with my daughter,
8 and my husband was talking to this girl named
9 Crystal Clark. He had our car at the motel.
10 Crystal was driving it. I went --

11 Q Slow down. The question is, who took out the
12 warrant?

13 A Crystal took out the warrant, but it was
14 dropped because my husband went to court and paid
15 -- well, he paid \$275.00, and the judge just told
16 him that, if we come back with something, he was
17 going to be the one getting arrested.

18 Q On that warrant for malicious injury to
19 property, were you arrested?

20 A No, sir; not put into custody.

21 Q Did the police take you down to the police
22 station and take your fingerprints?

23 A Yes, sir.

24 Q But they let you go; they didn't take you to
25 jail?

1 A No, sir. I didn't go to jail. I signed the
2 paper.

3 Q In 2007, that's when there was a charge for
4 possession of cocaine with intent to distribute;
5 is that right?

6 A Yes, sir.

7 Q And you were convicted and got a sentence of
8 five years, which was suspended to two years
9 probation; is that right?

10 A Yes, sir.

11 Q And that's what you were going to the
12 probation officer for?

13 A Yes, sir.

14 Q You were arrested for that, weren't you?

15 A Yes, sir.

16 Q And you went to jail?

17 A Yes, sir.

18 Q How long were you in jail?

19 A I went to jail around 8:30 or 9:00 at night
20 and I got out around 9:00 that morning, around
21 9:00 or 9:30.

22 Q So one night in jail?

23 A Yeah. I went to sleep and woke up and I was
24 out.

25 Q Have you ever been arrested any other times?

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1 A No, sir.

2 Q Ever been to jail any other times?

3 A No, sir; not that I can remember.

4 Q It's the sort of thing you would be likely to
5 remember, isn't it?

6 A No. I've been to the police department for
7 my fingerprints.

8 Q Now, when you went to your probation officer
9 and he said he had a couple of warrants and he
10 had to arrest you, he showed you the warrants,
11 didn't he?

12 A Yes, sir.

13 Q And when you got here to Columbia, did they
14 serve those warrants on you?

15 A No, sir. She just read me my rights.

16 Q Never had the warrants served on you?

17 A I got the warrants when I got to the police
18 department.

19 Q That's what I was asking you. So, when you
20 got to the police department, they gave you the
21 original warrants?

22 A Yes, sir.

23 Q You never got charged with burglary, forced
24 entry into a non-residence?

25 A No, sir; not ever.

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1 Mr. COOPER: I believe that's all I have.
2 Thank you very much.

3 Ms. HORTON: Can I inquire something else
4 before we finish?

5 Mr. COOPER: You can't ask me questions.

6 Ms. HORTON: I just want to say something. I
7 don't want to ask you anything.

8 Mr. COOPER: Okay.

9 Ms. HORTON: I don't have anything to ask
10 you. When they did give me the warrants,
11 when they did pick me up from the County
12 jail, they did ask to take the warrants from
13 me. They did ask to take my card from me.
14 They give you a little card when you're
15 locked up. They said they were going to
16 shred everything because they wanted -- they
17 didn't want me to have any proof of ever
18 being in jail, so they did try to take the
19 warrants back from me so they could shred and
20 try to cover up their mistakes, but I did
21 keep my original warrants with me.

22 FURTHER DEPONENT SAITH NOT .

23 [SIGNING WAIVED.]

24 [WHEREUPON, THE DEPOSITION WAS
25 CONCLUDED AT 12:21 P.M.]

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

BE IT KNOWN THAT I, JAMES SCOTT, TOOK THE FOREGOING
DEPOSITION OF TYNAYSHA U. HORTON AND HEREBY ATTEST:

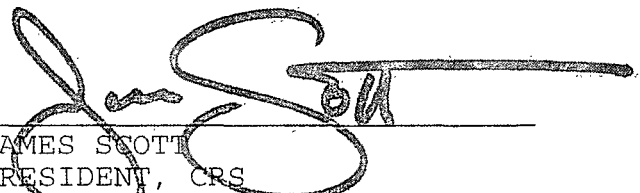
THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA-AT-LARGE AND THAT BY VIRTUE THEREOF WAS
DULY AUTHORIZED TO ADMINISTER AN OATH;

THAT THE WITNESS WAS BY ME FIRST DULY SWORN TO TESTIFY THE
TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, CONCERNING
THE MATTER IN CONTROVERSY AFORESAID;

THE FOREGOING TRANSCRIPT OF 66 TYPEWRITTEN PAGES
REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE
TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST
OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE
PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR
COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE
OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 14th DAY OF MARCH, 2011.



JAMES SCOTT
PRESIDENT, CRS

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES APRIL 24th, 2013.

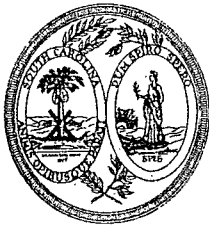
** - If this signature is not rendered in blue ink accompanied by an embossed seal, this document is an
uncertified and unauthorized copy.*

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07-0101
DWG

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

July 26, 2010

On 09/15/2009 I, Agent Albert Smith, received a call from Investigator Robbie Tyler of the Columbia Police Department (803)545-3943. Investigator Tyler states that Tynasha Horton's (State Identification Number 01620149) fingerprint was found at the scene of a Burglary in Columbia. The incident occurred between 9-09-09 around 7:45 p.m. and 9-10-09 around 9:00 a.m.. Investigator Tyler states that a warrant will be issued for her arrest and faxed to our Office no later than 9-16-09. Investigator Tyler requested that our department pick her up on Thursday, so that they can transport her back to Columbia on Friday.

During the conversation I questioned Investigator Tyler about the circumstances surrounding the incident. I informed Investigator Tyler that Mrs. Horton was the mother of a newborn baby and that she has recently had issues with transportation.

On 09/17/2009 at approximately 3:00 p.m., Tynasha reported as instructed to the probation office and was arrested on a city of Columbia Police Department warrants K-613277 for Burglary 2nd and K-613278 Petit Larceny. She was transported to the Marlboro County detention center to await transportation to Columbia.

Officially Submitted,

Albert R. Smith
Agent

RECEIVED

JUL 28 2010

JAMES E. SMITH, JR., PA.

ARREST WARRANT

K613277 K-613277 0926392

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIATHE STATE
against

TINYASHA U HORTON

Address: 1214 VALLEY DALE RD
DENNETTSTVILLE SC 29000Phone: _____ SSN: _____
Sex: F Race: B Height: 5 01 Weight: 130
DL State: _____ DL#: _____
DOB: 04/11/1986 Agency ORI#: SC0400100
Prosecuting Agency: CITY OF COLUMBIA
Prosecuting Officer: TYLER INV. R/ FENT
Offense: BURGLARY 2ND
Offense Code: BER
Code/Ordinance Sec: 16-11-312This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of
COLUMBIA. The accused
is to be arrested and brought before me to be
dealt with according to law._____
Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____

on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIAPersonally appeared before me the affiant _____ INV. R TYLER
being duly sworn deposes and says that defendant TINYASHA U HORTON
did within this county and state on 09/17/2009 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA
in the following particulars: BURGLARY 2ND 16-11-312
DESCRIPTION OF OFFENSE: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:THE DEF WHILE AT 1248 LADY ST, ROLLY POLLY IN THE CITY OF COLA, DID
FORCIBLY & W/OUT CONCENT ENTER THE LISTED BUSINESS W/THE INTENT
COMMIT A CRIME THERE IN DURING THE HRS OF DARKNESS. THE FRONT WINDOW
WAS SHATTERED, BUT REMAINED IN TACT. DEF PUSHED THE GLASS UP FROM THE
BOTTOM OF THE DOOR FRAME, & CLIMBED INTO THE OPENING. ONCE INSIDE THE
DEF PRIED OPEN THE REGISTER DRAWER. THE DEF WAS CUT LEAVING TRACES
BLOOD AT THE SCENE. ONCE INSIDE DEF REMOVED A FIRST AID KIT VALUED
AT LESS THAN \$100.00. FINGER PRINTS LIFTED AT POINT OF ENTRY MATCH
THE DEF INKED PRINTS ON FILE.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIAAffiant's Address: #1 JUSTICE SQUARE
COLUMBIA, SC 29201
Affiant's Telephone: 5453500

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 09/17/2009 defendant TINYASHA U HORTON
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY 2ND 16-11-312

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 09/17/2009

Signature of Issuing Judge
Ministerial Recorder
Judge Code: 410 2009Judge's Address: CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone: _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ARREST WARRANT

K613278 K-613278 0926392

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

THE STATE

against

TINYASHA U HORTON

Address: 1214 VALLEY DALE RD
BENNETTSTVILLE SC 29200Phone: _____ SSN: _____
Sex: F Race: B Height: 5'01" Weight: 130DL State: _____ DL#: _____
DOB: 04/11/1986 Agency ORI#: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: TYLER INV. R/ FENT

Offense: PETIT LARCENY

Offense Code: LAR
Code/Ordinance Sec: 16-13-30

212

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of
 COLUMBIA. The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

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

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, S.C. 29200

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant, INV. R TYLER who
 being duly sworn deposes and says that defendant TINYASHA U HORTON
 did within this county and state on 09/10/2009 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)
 in the following particulars:

DESCRIPTION OF OFFENSE: PETIT LARCENY

16-13-30

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:

THE DEF WHILE AT 1248 LADY ST, ROLLY POLLY IN THE CITY OF COLA, DID
 FORCIBLY & W/OUT CONCENT ENTER THE LISTED BUSINESS W/THE INTENT TO
 COMMIT A CRIME THERE IN DURING THE HRS OF DARKNESS. THE FRONT WIN
 WAS SHATTERED, BUT REMAINED IN TACT. DEF PUSHED THE GLASS UP FROM THE
 BOTTOM OF THE DOOR FRAME, & CLIMBED INTO THE OPENING. ONCE INSIDE THE
 DEF PRIED OPEN THE REGISTER DRAWER. THE DEF WAS CUT LEAVING TRACES (I
 BLOOD AT THE SCENE. ONCE INSIDE DEF REMOVED A FIRST AID KIT VALUED
 AT LESS THAN \$100.00. FINGER PRINTS LIFTED AT POINT OF ENTRY MATCH
 THE DEF INKED PRINTS ON FILE.

Signature of Affiant

Signature of Affiant: [Signature]
 Affiant's Address: #1 JUSTICE SQUARE
 COLUMBIA, SC 29201
 Affiant's Telephone: 5453500

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

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 09/10/2009 defendant TINYASHA U HORTON
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: PETIT LARCENY

16-13-30

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 09/17/2009

Signature of Issuing Judge: [Signature] (L.S.)
 Judge's Address: CITY OF COLUMBIA, SC
 MUNICIPAL COURT, P.O. BOX 644 29202

Signature of Ministerial Recorder: [Signature]
 Judge Code: 4023003

Judge's Telephone: _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,)
)
 Plaintiff,)
)
 vs.)
)
 City of Columbia Police Department,)
)
 Defendant.)
)
)

C/A NO.: 2010-CP-40-3299

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO DEFENDANT**

The Defendant City of Columbia Police Department (“City”) responds to Plaintiff’s First Set of Interrogatories and Requests for Production to Defendant as follows:

GENERAL RESPONSE AND OBJECTIONS

The Defendant reserves the right to supplement responses as necessary.

It objects to the Definitions and Instructions that precede Plaintiff's discovery requests to the extent that they alter the common and ordinary meaning of words used in the discovery requests themselves and to the extent that they seek to impose legal definitions on the requests and/or responses. This Defendant will respond to the discovery requests according to their common and ordinary meaning.

The Defendant objects to these requests to the extent that it seeks information that is subject to a privilege or immunity. The Defendant also objects to all discovery requests that are overly broad, unduly burdensome, irrelevant, and/or are beyond the scope of discovery permitted by the South Carolina Rules of Civil Procedure.

These responses are submitted without waiving, but expressly reserving, its right to question the competency, materiality, relevancy, and admissibility of the evidence or documents.

RESPONSE TO INTERROGATORIES

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.

RESPONSE: (a) Carl S. Brown
#1 Justice Square
Columbia, SC 29201

No written or recorded statement.

Officer Brown is expected to testify as to his general knowledge of the facts involved in this case. Specifically, he responded to a call for a break-in at Roly Poly. He has knowledge of the scene of that crime, a conversation with the manager of that business, and the investigation that followed. He also prepared an Incident Report.

(b) David Hilbish
1248 Lady Street
Columbia, SC 29201

Written statement in the possession of defense counsel.

Mr. Hilbish is an employee of a business that was robbed. He will testify about the nature of the break-in and the police investigation.

(c) Roberta Tyler
c/o defense counsel

No written or recorded statement.

This witness conducted the investigation of the break-in at Roly Poly. She will testify about her role in that investigation, in the processing of evidence, in obtaining authorization to seek a warrant against the Plaintiff, and in determining that the Plaintiff was not the person involved in the break-in. She will testify about her application of her training and City procedures to the events in question and to all issues of liability and damages.

(d) Pete K. Currie
c/o defense counsel

Written statement in the possession of defense counsel.

This witness is expected to testify as to his general knowledge of the facts surrounding this case and to his role in the investigation of the break-in at Roly Poly. Specifically, he will testify about gathering fingerprint evidence from the scene, the search for a suspect from that evidence and the identification of the Plaintiff as the suspect. He will also testify about subsequent efforts made to ensure that the previous conclusion was correct and the subsequent release of the Plaintiff. He is expected to testify about his training, application of City procedures to this situation, and to all issues of liability and damages.

(e) W.C. Rose
#1 Justice Square
Columbia, SC 29201

Unsigned statement in the possession of defense counsel.

This witness is expected to testify as to his general knowledge of the facts surrounding this case and to his role in the investigation of the break-in at Roly Poly. Specifically, he will testify about his knowledge of the fingerprint evidence from the scene, the search for a suspect from that evidence and the identification of the Plaintiff as the suspect. He will also testify about his knowledge of subsequent efforts made to ensure that the previous conclusion was correct and the subsequent release of the Plaintiff. He is expected to testify about his training, application of City procedures to this situation, and to all issues of liability and damages.

(f) Roger Gilland
#1 Justice Square
Columbia, SC 29201

No written or recorded statement.

This witness is expected to testify as to his general knowledge of the facts surrounding this case and to his role in the investigation of the break-in at Roly Poly. Specifically, he will testify about his knowledge of the fingerprint evidence from the scene, the search for a suspect from that evidence and the identification of the Plaintiff as the suspect. He will also testify about his knowledge of subsequent efforts made to ensure that the previous conclusion was correct and the subsequent release of the Plaintiff. He is expected to testify about his training, application of City procedures to this situation, and to all issues of liability and damages.

(g) Margaret Fent
Fifth Circuit Solicitor's Office
1701 Main Street
Columbia, SC 29201

No written or recorded statement.

This witness is expected to testify as to her general knowledge of the facts surrounding this case. Specifically, she authorized Investigator Tyler to seek warrants against the Plaintiff for the break-in at Roly Poly. She will testify as to her role in this matter, the procedures taken, and to other issues of liability and damages.

(h) Albert Smith
PO Box 591
Bennettsville, SC 29512

A written statement has been provided by Plaintiff's counsel.

This witness is Plaintiff's probation officer. He assisted Investigator Tyler in having the Plaintiff taken into custody and in the provision of information about her background. He is expected to testify about those matters and others related in his statement and to other issues of liability and damages.

(i) Unknown employees of Bennettsville Police Department
501 East Main Street
Bennettsville, SC 29512-3257

No written or recorded statement.

Employees of the Bennettsville Police Department are expected to testify as to their general knowledge of the facts surrounding this case. Specifically, they are expected to testify about their involvement in the arrest and detention of the Plaintiff and to other issues of liability and damages.

(j) Unknown employee of South Carolina Law Enforcement
Division
Post Office Box 21398
Columbia, SC 29221-1398

No written or recorded statement.

This witness is expected to testify as to his/her general knowledge of the facts surrounding this case and his/her role in determining that the Plaintiff was not the perpetrator of the crime at the Roly Poly. S/he is expected to testify about the training provided by SLED to police officers who will be engaged in fingerprint analysis. S/he is also expected to testify that the City of Columbia Police Officers involved in the determination that the Plaintiff's fingerprints matched those at the Roly Poly, had all been trained and certified. S/he is expected to testify further about the incidents of mistakes in fingerprint analysis and to other issues of liability and damages.

(k) Dana Turner
811 Washington Street

Columbia, SC 29201

No written or recorded statement.

This witness is the Chief Administrative Judge for the City of Columbia Municipal Court. She is expected to testify that she was approached by representatives of the police department and informed of the misidentification of the fingerprint of the Plaintiff and the steps that were taken to cancel the warrants and have the Plaintiff released from detention. She may be called upon to testify as to all issues involving the Court's involvement in this matter and to other issues of liability and damages.

(l) Steven D. Dennis
811 Washington Street
Columbia, SC 29201

There is a transcribed recording of the bond court proceeding on September 19, 2009 at which the bond for the Plaintiff was set.

This witness is a Municipal Court Judge for the City of Columbia. He set the bond for the Plaintiff in this case and is familiar with that proceeding.

(m) Angela Ladson
811 Washington Street
Columbia, SC 29201

This witness is a Ministerial Recorder and will testify about issuing two warrants against the Plaintiff related to the break-in at Roly Poly. She is expected to testify that proper procedures were followed and that the warrants were based upon probable cause.

(n) Marlboro County Detention Center
253 Throop Street
Bennettsville, SC

No written or recorded statement.

A representative or custodian of records from this facility has knowledge of their records concerning the incarceration of the Plaintiff.

(o) Custodian of records for
Alvin S. Glenn Detention Center
201 John Mark Dial Drive
Columbia, SC 29209

No written or recorded statement.

This witness has knowledge of the records pertaining to Plaintiff's incarceration in that facility.

- (p) Custodian of records for
Columbia Police Department or SLED

No written or recorded statement.

This witness has records pertaining to the Plaintiff's criminal history.

- (q) Custodian of records for
The City of Columbia Municipal Court
811 Washington Street
Columbia, SC 29201

No written or recorded statements.

This witness has copies of records of the Municipal Court pertaining to the Plaintiff's criminal case, including copies of warrants, docket pages, cancellation of warrants, and hearings.

- (r) All witnesses disclosed in discovery responses from the Plaintiff and all witnesses whose names appear in the documents provided by this Defendant in response to Plaintiff's Requests for Production.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case and/or which the party intends to introduce as evidence in the trial or use demonstratively.

RESPONSE:

- (a) Booking photo and data from Alvin S. Glenn Detention Center
- (b) Ten year driving record for the Plaintiff
- (c) Print-out of Plaintiff's criminal history
- (d) NCIC print-out
- (e) Statement from P.K. Currie
- (f) Unsigned statement from W.C. Rose
- (g) Transcript of Plaintiff's bond hearing on September 19, 2009

- (h) Affidavit from Investigator Tyler
- (i) Incident Report and Investigative Report in Case No. 09-0026392
- (j) Booking Report of the Plaintiff dated September 18, 2009
- (k) Arrest Warrants K-613277 and K-613278
- (l) Unsigned typed statement from Investigator Tyler
- (m) Statement from David Hilbish (SSN redacted)
- (n) SLED Laboratory Forensic Services request dated September 21, 2009
- (o) Consent to provide saliva sample signed by Plaintiff
- (p) Columbia Police Department Wanted Person Form for the Plaintiff
- (q) Advice of Rights Form signed by the Plaintiff
- (r) Columbia Police Department form showing victim information and incident type
- (s) Photo line-up
- (t) Latent print
- (u) Charted AFIS fingerprint
- (v) Rolled Ten print card for the Plaintiff dated September 21, 2009
- (w) Sheet with copies of the latent print, AFIS print, and rolled known print
- (x) Latent search verification
- (y) Crime scene unit notes
- (z) Municipal court docket for Plaintiff's bond
- (aa) Bond checklist
- (bb) Bail proceeding Form II
- (cc) Letter from Judge Turner to Margaret Fant (Fent)

- (dd) Documents not shown above but listed in Plaintiff's responses to Defendant's discovery.

3. Set forth the names and addresses of all insurance or bonding companies which have liability insurance or bond coverage relating to the claims, and set forth the number or numbers of the policies involved and the amount or amounts of liability or bond coverage provided in each policy and the claim number of this claim applicable to each policy.

RESPONSE: Not applicable.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case, and for each state in detail:

- (a) His/her qualifications to testify;
- (b) A description of the subject matter on which each such expert is expected to testify;
- (c) A description of the facts on which each such expert is expected to rely in testifying;
- (d) A description of the opinions and conclusions about which each such expert is expected to testify;
- (e) A summary of the grounds for each such opinion and conclusion;
- (f) Whether said expert had conducted any investigation, inspection, examination and/or testing in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, examination and/or testing, the results of same and the dates on which such work was performed;
- (g) Whether or not said expert has generated a written report, and if so, would you without a motion to produce, attach a copy of the report to your responses;
- (h) As to each, list all treatises, books, documents and recognized authorities which such experts plan to utilize or cite in support of their position; and,
- (i) Provide a detailed summary of the expected testimony of each expert witness.

RESPONSE: The Defendant has not obtained an expert witness at this time but reserves the right to do so in the future. Witnesses (d), (e), (f) and (j) will offer expert testimony on fingerprint evaluation in general and as applied to the facts of this case.

2. All documents and/or electronic data relied upon in your answers to Plaintiff's First Set of Interrogatories to Defendants.

RESPONSE: See response to Request 1 above.

3. Any and all statements and documents, including but not limited to reports, analyses, studies, letters, correspondence, ledgers, checks, receipts, invoices, memoranda, records or notations of conversations or conferences or other documentation that may pertain to the subject of this action.

RESPONSE: See response to Request 1 above.

4. Any and all incident reports, investigation reports or other documents and/or electronic data regarding the incident outlined in Plaintiff's Complaint.

RESPONSE: See response to Request 1 above.

5. Any and all statements, whether written or oral, or transcribed, of any individual that relates in any manner to the allegations of the Complaint and/or the defenses of the party addressed, whether said statements have been taken by the party addressed, any and all investigators, adjusters or any individuals acting on behalf of the party addressed.

RESPONSE: See response to Interrogatory 1.

6. All documents that you plan to introduce at trial.

RESPONSE: The Defendant objects to this request. The Defendant does not have that information at this time. Further, the request seeks to obtain privileged information related to trial strategy. Subject to that objection, the Defendant reserves the right to introduce any of the documents that have been identified.

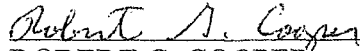
7. The written or recorded statement of any expert retained for purposes of testifying at trial.

RESPONSE: See response to Interrogatory 1.

8. Provide any and all policies on procedures for booking, arrest and detention that outline the processes and procedures used by the City of Columbia Police Department.

RESPONSE: The City does not have written policies or procedures detailing how to book or detain someone. It does have written procedures related to the power of arrest and arrests

with and without warrants but they are not relevant to the issues in this case.



ROBERT G. COOPER

Office of the City Attorney

Post Office Box 667

Columbia, South Carolina 29202

Telephone: (803) 737-4242

Facsimile: (803) 737-4250

Attorney for the Defendant

City of Columbia Police Department

Columbia, South Carolina
December 3 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tynyasha Horton,)
)
Plaintiff,)
)
vs.)
)
City of Columbia Police Department,)
)
Defendant.)
_____)

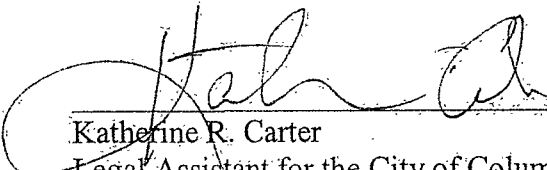
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2010-CP-40-3299

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the Defendant's Response to Plaintiff's First Set of Interrogatories and Requests for Production to Defendant upon the Attorney for the Plaintiff by placing a copy in the United States Mail, first class, sufficient postage pre-paid and return address clearly indicated to him at his address shown below on this 3rd day of December, 2010.

Dylan W. Goff, Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, SC 29201


Katherine R. Carter
Legal Assistant for the City of Columbia

December 3, 2010
Columbia, South Carolina

[Home](#) [Support](#) [Contact Us](#) [Reports](#) [Log Out](#)

-[You are logged in as: jpsmith@columbiasc.net]-

[Secure Services](#)
[Research Offenders](#)[Develop Lineup](#)

11/18/2009 5:22:42 PM

[Research Offender](#)
[Initiate Lineup](#)**Offender is not currently detained**[Return](#)**Demographic**

OffenderID: 588040
Last Name: HORTON
First Name: TYNYASHA
Middle Name: U
SSN: 250-63-0001
Sex: Female
Race: Black
DOB: 04/11/1986
Hair: Black
Eyes: Brown
Weight: 130
Height: 61

Contact Information

Home Phone: (843)479-2738
Home Address: 432 STATE ST
Contact Name: CYNTHIA ROBINSON
Contact Phone: (843)544-5444
Contact Address: 400 E MARKET APT 1B
Occupation: UNEMPLOYED
Employer Name:
Employer Phone:
Employer Address:

Visual**Current Charges Criminal History Image History**

Warrant Code	Bond	BondType	BondCourt	TrialCrt	BookingDt	ReleaseDt	OffenseDescript
K613277	20000.00	SB	CITY	GS	9/18/2009 4:49:00 PM	9/21/2009 4:13:00 PM	Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree
K613278	0		CITY	GS	9/18/2009 4:49:00 PM	9/21/2009 4:13:00 PM	Larceny / Petit Simple Larceny

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



10 YEAR DRIVER RECORD



Customer No: 30045777	Driver License No: 100027854
Name: HORTON, TYNASHA UNIQUE	
Address: 1214 VALLEY DALE RD	
City: BENNETTSTVILLE	State: SC Zip: 295127963
County: MARLBORO	
DOB: 04/11/1986	Sex: F Driver Training: N

Status - DL: SUSPENDED	CDL: DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
BP	D	Renewal	01/29/2007	01/29/2008	06/27/2003	N	N
Prior							
BP	D	Renewal	02/03/2006	02/03/2007	06/27/2003	N	N
BP	D	Renewal	08/01/2005	08/01/2006	06/27/2003	N	N
BP	D	Renewal	09/24/2004	09/24/2005	06/27/2003	N	N
BP	D	Original	06/27/2003	06/27/2004	06/27/2003	N	N

Address Change - Date Changed: 09/24/2004

Address: 400 E MARKET ST APT 6A
City: BENNETTSTVILLE State: SC Zip: 295123152

Address Change - Date Changed: 08/01/2005

Address: 901 W MAIN ST APT B
City: BENNETTSTVILLE State: SC Zip: 295123782

Address Change - Date Changed: 01/29/2007

Address: 112 E MAIN ST UNIT E
City: BENNETTSTVILLE State: SC Zip: 295123132

Point Summary

Total Current Points:	0
Driver Credit:	-0
Adjusted Current Points:	0

10 YEAR DRIVER RECORD

Customer No: 30045777

Driver License No: 100027854

Name: HORTON, TYNASHA UNIQUE

SUSP: 036 - Controlled Substance Violation

Ticket#: 07GS341026

Special Driving Privilege: NONE

Suspension Beg: 10/14/2008

Suspension End: 10/14/2009

Causal: 09/18/2007

Post: 10/24/2008

Reinstatement Requirements Met: INDEFINITE

Reinstatement Fee Paid: N

ACD: A33 Withdrawal Loc Ref:

Withdrawal Reason Ref:

VIOL: 436 - Controlled Substance Violation

Ticket#: 07GS341026

Violation: 09/18/2007 Conviction: 10/14/2008

Recd: 10/20/2008

Post: 10/24/2008

ACD: A33 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: MAG

VIOL: 560 - Failure to Pay Traffic Ticket or Appear

Ticket#: D036991

Violation: 11/20/2007 Conviction: 12/13/2007

Recd: 02/19/2008

Post: 02/19/2008

ACD: D56 Conviction Loc Ref: 587

Conviction Reference:

Conviction State: SC

Court Type: UNK

SUSP: 097 - Failure to Pay Traffic Ticket

Ticket#: D036991

Suspension Beg: 03/10/2008

Suspension End: INDEFINITE

Causal: 11/20/2007

Post: 02/19/2008

Ticket Paid:

Compliance Received:

ACD: D56 Court Name: MARLBORO COUNTY MAGISTRATE COURT

Court Address: 211 N MARLBORO STREET, P

City: BENNETTSTVILLE

State: SC

Zip: 29512

Phone No: 843 479 5620

VIOL: 560 - Failure to Pay Traffic Ticket or Appear

Ticket#: D036992

Violation: 11/20/2007 Conviction: 12/13/2007

Recd: 02/19/2008

Post: 02/19/2008

ACD: D56 Conviction Loc Ref: 509

Conviction Reference:

Conviction State: SC

Court Type: UNK

SUSP: 097 - Failure to Pay Traffic Ticket

Ticket#: D036992

Suspension Beg: 03/10/2008

Suspension End: INDEFINITE

Causal: 11/20/2007

Post: 02/19/2008

Ticket Paid:

Compliance Received:

ACD: D56 Court Name: MARLBORO COUNTY MAGISTRATE COURT

Court Address: 211 N MARLBORO STREET, P

City: BENNETTSTVILLE

State: SC

Zip: 29512

Phone No: 843 479 5620

VIOL: 560 - Failure to Pay Traffic Ticket or Appear

Ticket#: 60611ED

Violation: 10/19/2007 Conviction: 12/05/2007

Recd: 01/29/2008

Post: 01/29/2008

ACD: D56 Conviction Loc Ref: 517

Conviction Reference:

Conviction State: SC

Court Type: UNK

SUSP: 097 - Failure to Pay Traffic Ticket

Ticket#: 60611ED

Suspension Beg: 02/18/2008

Suspension End: INDEFINITE

Causal: 10/19/2007

Post: 01/29/2008

Ticket Paid:

Compliance Received:

ACD: D56 Court Name: CITY OF BENNETTSTVILLE

Court Address: 103 MARKET STREET

City: BENNETTSTVILLE

State: SC

Zip: 29512

Phone No: 843 479 1582

9/15/2009 10:05:47 AM

Document obtained from DMV web site:

www.scdmsonline.com

Page 2 of 3

10 YEAR DRIVER RECORD

Customer No: 30045777

Driver License No: 100027854

Name: HORTON, TYNASHA UNIQUE

VIOL: 560 - Failure to Pay Traffic Ticket or Appear
Violation: 10/19/2007 **Conviction:** 12/05/2007
ACD: D56 **Conviction Loc Ref:** 587
Conviction State: SC

Ticket#: 60610ED
Recd: 01/29/2008 **Post:** 01/29/2008
Conviction Reference:
Court Type: UNK

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 02/18/2008
Causal: 10/19/2007
Ticket Paid:
ACD: D56 **Court Name:** CITY OF BENNETTSVILLE
Court Address: 103 MARKET STREET
City: BENNETTSVILLE
Phone No: 843 479 1582

Ticket#: 60610ED
Suspension End: INDEFINITE
Post: 01/29/2008
Compliance Received:

State: SC

Zip: 29512

SUSP: 042 - Cancellation of Insurance
Special Driving Privilege: NONE
Suspension Beg: 09/05/2007
Causal: 07/27/2007
Reinstatement Requirements Met: INDEFINITE
ACD: D36 **Withdrawal Loc Ref:**

Suspension End: INDEFINITE
Post: 08/07/2007
Reinstatement Fee Paid: N
Withdrawal Reason Ref:

SUSP: 042 - Cancellation of Insurance
Special Driving Privilege: NONE
Suspension Beg: 04/25/2007
Causal: 03/20/2007
Reinstatement Requirements Met: 05/18/2007
ACD: D36 **Withdrawal Loc Ref:**

Suspension End: 05/18/2007
Post: 03/28/2007
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

SC Driver License Surrendered

License Type: BP **Class:** D **Function:** Renewal
Date Surrendered: 10/14/2008
Reason for Return: DL AFFIDAVIT FROM COURT

Posted: 10/22/2008

Issued: 02/03/2006

Returning State: SC

SUSP: 042 - Cancellation of Insurance
Special Driving Privilege: NONE
Suspension Beg: 08/02/2006
Causal: 07/01/2006
Reinstatement Requirements Met: 01/29/2007
ACD: D36 **Withdrawal Loc Ref:**

Suspension End: 01/29/2007
Post: 07/05/2006
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

End of Report



QH 0035AC849A from III

CLMPD440

.QH.0035AC849A.III.20090915 17:56:07

TO: CLMPD440-6296 20090915 17:56:07 0035AC849A

FROM: III-11306138 20090915 17:56:07

7L0117770010DA2QH

SC0400100

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/HORTON,TYNYASHA SEX/F RAC/B DOB/19860411 PUR/C

NAME	FBI NO.	INQUIRY DATE
HORTON,TYNAYSHA	630754HC5	2009/09/15

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
F	B	1986/04/11	501	130	BRO	BLK	N

BIRTH PLACE

UNLISTED CNTRY

FINGERPRINT CLASS

PATTERN CLASS

RS WU WU WU WU LS WU WU WU AU
WU

ALIAS NAMES

HORTON,TYNASHA

HORTON,TYNASHA UNIQUE

SOCIAL SECURITY

250-63-0001

IDENTIFICATION DATA UPDATED 2008/10/14

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

SOUTH CAROLINA - STATE ID/SC01620149

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END



ICHS 003F7948CC from SCCH

CLMPD440

.ICHS.003F7948CC.SCCH.20090915 17:56:04

TO: CLMPD440-6295 20090915 17:56:04 003F7948CC

FROM: SCCH-7948492 20090915 17:56:04

ICHS/QH INQUIRY OF SCLED CCH FILES USING:

ATN-TYLER, R

ORI-SC0400100 PUR-C

NAM-HORTON, TYNASHA

SEX-F RAC-B DOB-19860411

DATE-09/15/2009 TIME-17:56 PAGE-01 OF 01

ORI-SC0400100

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY

THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-HORTON, TYNASHA

SEX-F RACE-B

HEIGHT-501 WEIGHT-130 EYES-BRO HAIR-BLK SKIN- BORN-YY

FPC: HENRY-

NCIC-

SID-SC01620149 FBI-630754HC5

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPIS

DATE RECORD ENTERED--03/21/2005 DATE OF LAST UPDATE--10/14/2008

ALIAS NAMES-HORTON, TYNASHA

HORTON, TYNASHA UNIQUE

BIRTH DATES-04/11/1986

MARKS, ETC-

SOC SEC NUMBERS-250630001

SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY
SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **



QWA 000694BF98 from NC2K

CLMPD440

.QWA.000694BF98.NC2K.20090915 17:57:04

TO: CLMPD440-6298 20090915 17:57:04 000694BF98

FROM: NC2K-9748376 20090915 17:57:04

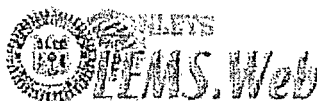
1L0117770010DD2QWA

SC0400100

NO NCIC WANT FBI/630754HC5

NO NCIC WANT SOC/250630001

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.



ICHR 003F7948D1 from SCCH

CLMPD440

. ICHR.003F7948D1.SCCH.20090915 17:57:04

TO: CLMPD440-6297 20090915 17:57:04 003F7948D1
FROM: SCCH-7948497 20090915 17:57:04

ICHR REQUEST FOR RAP SHEET

ORI-SC0400100 FBI-630754HC5 PUR-C

ATN-TYLRER, R

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-09/15/2009 TIME-17:57:01

REQ ORI-SC0400100 COLUMBIA PD

SID-SC01620149 FBI-630754HC5

NAME-HORTON, TYNAYSHA SEX-F RACE-B

HEIGHT-501 WEIGHT-130 EYES-BRO HAIR-BLK SKIN- BORN-YY

FPC- HENRY-

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--03/21/2005 DATE OF LAST UPDATE--10/14/2008

ADDITIONAL IDENTIFIERS	BIRTH		
NAME	DATES	MARKS	SOC SEC MISC NUM
HORTON, TYNASHA	04111986		250630001
HORTON, TYNASHA UNIQUE			

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC

HORTON, TYNAYSHA	02/05/2005	
SC0350100 BENNETTSVILLE PD		
CASE-2005020029		
ATN-990000029530		
WARR-68732CV		
CIT-16-11-610-UNCLASSIFIED		

ARREST CHARGE 01-TRESPASSING
OFFENSE DATE-02/05/2005
PHOTOGRAPH AVAILABLE

HORTON, TYNAYSHA	06/28/2006	
SC0350000 MARLBORO CNTY SO		
CASE-2006060178		
ATN-9900000207648		
WARR-K061697		
CIT-16-11-520 (B) (3) -MISDEMEANOR		

ARREST CHARGE 01-MALICIOUS
INJURY TO PROPERTY
OFFENSE DATE-06/28/2006
PHOTOGRAPH AVAILABLE

HORTON, TYNASHA
SC0350100 BENNETTSVILLE PD
CASE-2007090087
ATN-990000337884
WARR-K098212
CIT-44-53-370 (B) (2) -FELONY

09/18/2007

ARREST CHARGE 01-MANUFT, POSSE
SS OTHER SUB SCH I, II, III
WITD-1ST
OFFENSE DATE-09/18/2007
PHOTOGRAPH AVAILABLE

SC035015G MARLBORO PPP
CASE-SC0350
CIT-44-53-370 (B) (1) -FELONY

10/14/2008 CUSTODY STATUS-PROBATION
START DATE-10/14/2008

COURT CHARGE 01-MDP, DRUGS
SCH I B, C, LSD AND SCH
II, COCAINE-1ST
COURT DISP-CONVICTED; 5 YRS.
SS 2 YRS. PROB.
ATN-35P000500647

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/630754HC5
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18 USC 922 (G)).

** S C CJIS END OF RECORD **



CLMPD440

.QH.0035AC849A.III.20090915 17:56:07

TO: CLMPD440-6296 20090915 17:56:07 0035AC849A

FROM: III-11306138 20090915 17:56:07

7L0117770010DA2QH

SC0400100

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/HORTON, TYNASHA SEX/F RAC/B DOB/19860411 PUR/C

NAME FBI NO. INQUIRY DATE

HORTON, TYNASHA 630754HC5 2009/09/15

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

F B 1986/04/11 501 130 BRO BLK N

BIRTH PLACE

UNLISTED CNTRY

FINGERPRINT CLASS

PATTERN CLASS

RS WU WU WU WU LS WU WU WU AU

WU

ALIAS NAMES

HORTON, TYNASHA

HORTON, TYNASHA UNIQUE

SOCIAL SECURITY

250-63-0001

IDENTIFICATION DATA UPDATED 2008/10/14

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

SOUTH CAROLINA - STATE ID/SC01620149

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END



ICHS 003F7948CC from SCCH

CLMPD440

. ICHS.003F7948CC.SCCH.20090915 17:56:04

TO: CLMPD440-6295 20090915 17:56:04 003F7948CC

FROM: SCCH-7948492 20090915 17:56:04

ICHS/QH INQUIRY OF SCLED CCH FILES USING:

ATN-TYLER, R

ORI-SC0400100 PUR-C

NAM-HORTON, TYNASHA

SEX-F RAC-B DOB-19860411

DATE-09/15/2009 TIME-17:56 PAGE-01 OF 01

ORI-SC0400100

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY

THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-HORTON, TYNASHA SEX-F RACE-B

HEIGHT-501 WEIGHT-130 EYES-BRO HAIR-BLK SKIN- BORN-YY

FPC: HENRY-

NCIC-

SID-SC01620149 FBI-630754HC5

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCFIS

DATE RECORD ENTERED--03/21/2005 DATE OF LAST UPDATE--10/14/2008

ALIAS NAMES-HORTON, TYNASHA

HORTON, TYNASHA UNIQUE

BIRTH DATES-04/11/1986

MARKS, ETC-

SOC SEC NUMBERS-250630001

SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY
SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **

Reference: 020K000095
Msg Key : CM
Date/Time: 20090918 11:50:28
Source : NC2K
020K000095, NC2K, CM, 20090918 11:50:28
TO: CLMPD001-00974735 20090918 11:50:28 0006950607
FROM: NC2K 20090918 11:50:28
1L01187E04B0693CM
SC0400100
CLEAR NIC/W007265505 OCA/090026392

Iw Tyler

Reference: 020J000007
Msg Key : QWA
Date/Time: 20090917131550
Source : NC2K

020J000007. NC2K. QWA. 20090917131550.
TO: CLMPD001-00974355 20090917 13:15:50 00069567EA
FROM: NC2K 20090917 13:15:49
1L01187E04B02F2QWA
SC0400100

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

MKE/WANTED PERSON

KNOWN TO ABUSE DRUGS

2 - LIMITED EXTRADITION SEE MIS FIELD

ORI/SC0400100 NAM/HORTON, TYNASHA SEX/F RAC/B DOB/19860411

HGT/501 WGT/130 EYE/BR0 HAI/BLK FBI/630754MC5

SOC/250630001

OLN/100027854 OLS/SC OLY/2009

OFF/BURGL - FORCED ENTRY-NONRESID

DOW/20090917 OCA/090026392

WNO/K613277

NOA/N

MIS/EXTRADITION SURROUNDING STATES

DNA/N

ORI IS COLUMBIA PD 803 545-3500

NIC/W007265505 DTE/20090917 1313 EDT DLU/20090917 1313 EDT

MKE/WANTED PERSON

2 - LIMITED EXTRADITION SEE MIS FIELD

ORI/CA04000000 NAM/HORTON, ALLISON FRANCES SEX/F RAC/W POB/CA DOB/19860411

HGT/508 WGT/160 EYE/BR0 HAI/BR0

SOC/609824969

OLN/D1193683 OLS/CA OLY/2010

OFF/PROB VIOLATION - SEE MIS

ODC/TRAFFIC OFFENSE

DOW/20090205 OCA/M422952

WNO/M422952

MIS/N0EX

MIS/N0 CITE RELEASE

DNA/N

ORI IS SAN LUIS OBISPO CO SO SAN LUIS OBISPO 805 781-4588

NIC/W785930019 DTE/20090210 1936 EST DLU/20090210 1936 EST

IMMED CONFIRM WARRANT AND EXTRADITION WITH ORI

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT FORM

Date: 09-21-2009 Time: 0643 Place: # 1 Justice Sq

I am P.K. Currie

I am giving this statement concerning Tynashia Horton (case number 09-26392)

To Investigator Tyler Who has identified herself as An investigator.

On 09-09-2009 I responded to a burglary on 1248 Lady St. I lifted a latent print from the location. The same date I entered the partial latent into AFIS. I examined the return prints and decided that I had a positive match against Tynasha Horton. The suspect was arrested and transported to Alvin S Glenn Detention Center. On 09-21-2009 I responded to SLED and requested for Mrs. Hayzella to confirm the fingerprint match. She could not confirm the print. I had Tynasha Horton transported to our Crime Scene Unit to fingerprint her and reexamine the known inked print against the latent and at that time I realized that the latent did not match Tynasha Horton.

Sworn and subscribed to me this
____ day of _____ 2009

/s/ P.K. Currie

/s/ 

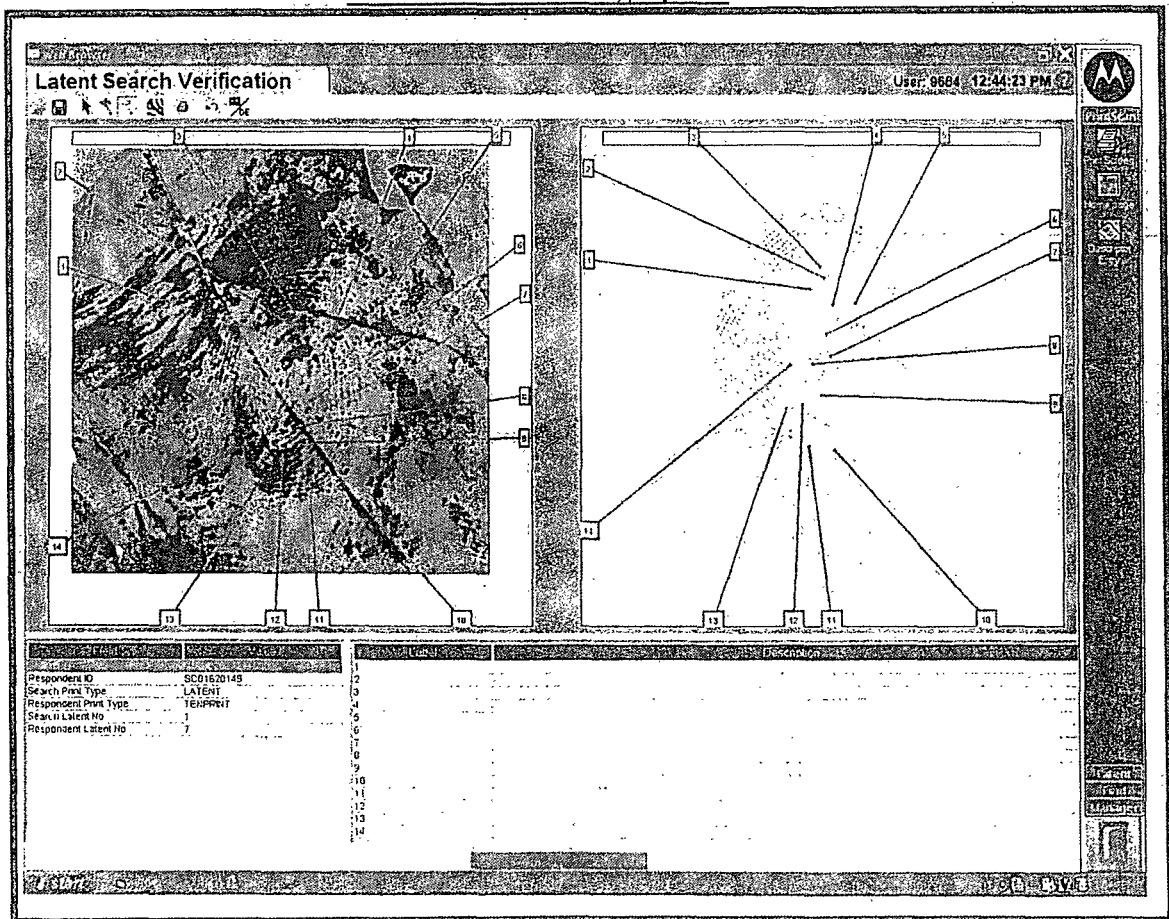
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT FORM

Date: 09-21-2009 Time: 0754 Place: #1 Justice Sq
I am W. C. Rose
I am giving this statement concerning Tynashia Horton
To Investigator Tyler Who has identified herself as An investigator.

On 09-09-2009 P. K. Currie gave me a charted fingerprint from the AFIS computer. The chart had fourteen (14) characteristics mapped out. The characteristics starting at number nine (9) and counting the ridges clockwise for each characteristic matched the inked print on the chart. I counted from nine (9) to fourteen (14) then one (1) to eight (8). Once there was a question from P. K. Currie I counted the ridges again and had the same results except the ridge count between eight (8) and nine (9) is off by one ridge. Which means the print is not a match.

Chartered AFIS fingerprint



Sworn and subscribed to me this
____ day of _____ 2009

/s/ W.C. Rose

/s/ _____

NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

1 LONGER HAVE A CAR SO I DRAW MY UNEMPLOYMENT.

2 THE COURT: ALL RIGHT. YOU'VE GOT SOME TRESPASS AND
3 (INAUDIBLE). THOSE ARE MAGISTRATE LEVEL. THEN I DO HAVE A FAIRLY
4 SERIOUS DRUG CHARGE BACK IN '08, ARRESTED IN '07. SO YOU GOT FIVE YEARS
5 SUSPENDED ON TWO YEARS PROBATION?

6 DEFENDANT HORTON: YES, SIR.

7 THE COURT: AND YOU ARE STILL ON PROBATION?

8 DEFENDANT HORTON: YES, SIR.

9 THE COURT: ALL RIGHT, MA'AM, I'LL SET YOUR BOND AT
10 TWENTY THOUSAND DOLLARS. YOU CAN POST TEN PERCENT.

11

12

13

14 (ADJOURNED)

15

16

17

18

19

20

21

22

23

24

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
)
)

IN THE MUNICIPAL COURT FOR
THE CITY OF COLUMBIA

CITY OF COLUMBIA,

)
)
)

VS.

CERTIFICATE

TYNYASHA HORTON,

)
)
)

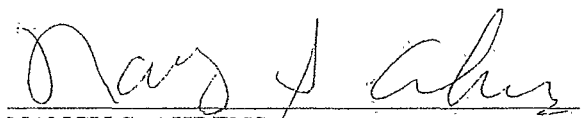
DEFENDANT.

)
)

THIS IS TO CERTIFY THAT THE WITHIN BOND HEARING, CONSISTING OF TWO (2) PAGES, IS A TRUE AND CORRECT TRANSCRIPT OF RECORD FOR THE HEARING ON SEPTEMBER 19, 2009, SAID TRANSCRIPT BEING PREPARED TO THE BEST OF MY ABILITY FROM A TAPE RECORDING PROVIDED TO ME WITHOUT THE BENEFIT OF MY BEING PRESENT AT THE PROCEEDING.

I FURTHER CERTIFY THAT I AM NOT RELATED TO ANY OF THE PARTIES IN THIS MATTER OR THEIR COUNSEL; NOR DO I HAVE ANY INTEREST, FINANCIAL OR OTHERWISE, IN THE OUTCOME OF THE SAME.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL ON THE 15TH DAY OF DECEMBER, 2009.



NANCY S. AHRENS
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 03-09-19

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

ON SEPTEMBER 21, 2009, INVESTIGATOR R. TYLER OF THE CITY OF COLUMBIA, SOUTH CAROLINA POLICE DEPARTMENT BEING DULY SWORN STATES THAT THE DEFENDANT, TINYASHA HORTON, WAS ARRESTED BASED ON A MISIDENTIFICATION ON A FINGERPRINT MATCH GENERATED THROUGH AFIS AND VERIFIED. THE MISTAKE IN READING THE FINGERPRINT WAS MADE BY THE CRIME SCENE INVESTIGATIVE UNIT. DEFENDANT WAS ARRESTED ON THE CHARGES OF BURGLARY 2ND (VIOLENT) AND PETIT LARCENY ON SEPTEMBER 18, 2009. THE DEFENDANT WAS RE-PRINTED ON SEPTEMBER 21, 2009 AND THE FINGERPRINT CARD WAS COMPARED TO THE LATENT PRINT LIFTED FROM THE SCENE. IT WAS DETERMINED THAT THE ORIGINAL IDENTIFICATION WAS A MISTAKE.

Mr R. J. Tyler
AFFILIANT/INVESTIGATOR

SWORN TO BEFORE ME THIS 21st DAY OF SEPTEMBER, 2009.

James Z. Spencer
MINISTERIAL RECORDER

CERTIFIED TRUE COPY

Dana D. Turner
Dana Turner
Municipal Court Administrative Judge

MUNICIPAL COURT COLUMBIA, S.C.

GS Bonds

Dennis

9-19-09 pl

TICKET-NO. WARRANT NO. CASE NO.	DEFENDANT'S NAME CHG-CD / DRIVERS LICENSE NO.	BIRTH, RACE, SEX & STATE	VIOLATION CHARGED & CODE VIOL. DATE OFFICER CHARGING & OFF. NO.	RECEIPT NO. DATE AMOUNT PAID	DAYS SERVED	DISP. CODE	FINE IMPOSED \$ # DAYS	FINE SUSPEND \$ # DAYS	TYPE COURT ORIGINAL COURT DATE BOOKING NO.
01 K613288	Reese, Demarkus BK-No= 095525		pos. stolen veh. Bansch						GSQ \$ 10,000 ¹⁰⁰ BOND P.O. victim - 09/20/09
02 15611EW	Reese, Demarkus BK-No= 095525		Fail stop blue lights & Bansch Shew						
03 K613285	Chandler, Drew BK-No= 095515		Burg and Folding						GSQ \$ 25,000 ¹⁰⁰ BOND
04 K613286	Chandler, Drew BK-No= 095515		Petit larceny Folding						
05 K613277	Horton, Tynyasha BK-No= 095532		Burg and Tyle						GSQ \$ 20,000 ¹⁰⁰ BOND
06 K613278	Horton, Tynyasha BK-No= 095532		Petit larceny Tyle						
07 K613279	Taylor, Dennis BK-No= 095529		pointing & presenting Sumpter						GSQ \$ 10,000 ¹⁰⁰ BOND P.O. victim
08									
09									
10									
11									
12									
13									
14									
15									

CERTIFIED TRUE COPY

Dana D. Turner

Dana Turner
Municipal Court Administrative Judge

Plaster

247

22

ORIGINAL

Tyrone W. Hester Name of Defendant 1613277 1613278 Warrant/Ticket No.

Butte County/Municipality of

Charges: Perjury 2nd Trial Court: Butte

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

☒ BAIL PROCEEDING/ ☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☐ Bond Form II (surety, cash, percentage) ☐ None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
 - ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - ☐ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - ☐ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

☒ Orally ☐ In writing (NOTE: Defendant must be informed of right both orally and in writing.)
- ☐ 4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - ☒ a. Charges against defendant and nature of the charges.
 - ☐ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before Butte located at Butte for indigency screening. Defendant is responsible for a statutory fee of \$ 0 for indigency screening.
- ☐ 6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.

Appearance or
Hearing Date: _____

Dana D. Turner

Judge's Signature

SCCA/507 (Rev. 8/2008)

CERTIFIED TRUE COPY
Dana D. Turner
Dana Turner
Municipal Court Administrative Judge

14613277, K613278

Criminal Charging Document No.

**BAIL PROCEEDING
FORM II**

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE

☒ COURT OF GENERAL SESSIONS
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Tynyasha Horton
NAME OF DEFENDANT

Offense Charged:

Burg Ind, Petit Larceny

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☒ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
- That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

☐ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of _____

- That the defendant shall appear at (check one):

☒ the term of _____ COURT OF GENERAL SESSIONS beginning on 10-26-09
at 9:00 o'clock, AM, at 1701 Main St #3-A
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of _____ ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____
at _____ o'clock, _____ M, at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT _____

- That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE

[Signature]

CERTIFIED TRUE COPY

Dana D. Turner
Dana Turner
Municipal Court Administrative Judge

20,000 10% allowed



CITY OF COLUMBIA
SOUTH CAROLINA

MUNICIPAL COURT / P.O. BOX 644 / COLUMBIA, S.C. 29202 / 803 / 545-3150 FAX 803 / 733-8433

September 22, 2009

Ms. Margaret Fant
Richland County Solicitor's Office
P. O. Box 192
Columbia, South Carolina 29202

Re: Tynyasha Horton.

Dear Ms. Fant:

Enclosed herein please find documentation pertinent to the above referenced Tynyasha Horton. I am sure Investigator Tyler has explained to you that Ms. Horton was arrested on charges of Burglary 2nd and Petit Larceny on or about September 19, 2009. She was held at the Alvin S. Glenn Detention Center on a \$20,000 cash or surety bond until yesterday. Enclosed is an affidavit provided to the Municipal Court by Investigator Tyler along with other pertinent documentation. A discharge was issued for Ms. Horton yesterday and to the best of my knowledge, she has been released. The warrant for her arrest has been withdrawn.

Please take whatever steps you deem appropriate to resolve this matter in the records maintained by the General Sessions Court and your office. Please call me if you have any questions or comments.

Sincerely,

Dana D. Turner
Chief Administrative Judge

CERTIFIED TRUE COPY

Dana Turner
Municipal Court Administrative Judge

CASE NUMBER

0926392

IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C, D, E, F													
CHARGE	CHARGE I.D.	A			B			C					
	CHARGE												
	STATUTE												
	WARRANT NO.												
BOND	BOND AMOUNT												
	BOND TYPE												
	RET/ DATE												
	DISPOSITION												
DISPOSITION		DAYS		AMOUNT		DAYS		AMOUNT		DAYS		AMOUNT	
	SENTENCE												
	TIME SERVED												
	GOOD TIME												
	BALANCE												
	PAID												
	RECEIPT NUMBER												
CHARGE	CHARGE I.D.	D			E			F					
	CHARGE												
	STATUTE												
	WARRANT NO.												
BOND	BOND AMOUNT												
	BOND TYPE												
	RET/ DATE												
	DISPOSITION												
DISPOSITION		DAYS		AMOUNT		DAYS		AMOUNT		DAYS		AMOUNT	
	SENTENCE												
	TIME SERVED												
	GOOD TIME												
	BALANCE												
	PAID												
	RECEIPT NUMBER												
RELEASE DATE	TIME	RELEASING OFFICER				NUMBER	AGENCY RELEASED TO						

Municipal Court Administrative Judge

WARRANT WITHDRAWN

ARREST WARRANT

K613278 K=613278 0926392

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

THE STATE
against

TYNYASHA U HORTON

Address: 1214 VALLEY DALE RD
BENNETTSTVILLE SC 29002

Phone: SSN: 04/11/1986
Sex: F Race: B Height: 5 01 Weight: 130

State: DL#
DOB: 04/11/1986 Agency ORI# SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: TYLER INV. R/ FENT

Offense: PETIT LARCENY

Offense Code: LAR

Code/Ordinance Sec: 16-13-30

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of
COLUMBIA. The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Refused TyNyasha Horton
on 09/10/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P. O. BOX 644
COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant INV. R TYLER who
being duly sworn deposes and says that defendant TYNYASHA U HORTON
did within this county and state on 09/10/2009 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE: PETIT LARCENY 16-13-30

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:

THE DEF WHILE AT 1248 LADY ST, ROLLY POLLY IN THE CITY OF COLA, DID
FORCIBLY & W/OUT CONCENT ENTER THE LISTED BUSINESS W/THE INTENT TO
COMMIT A CRIME THERE IN DURING THE HRS OF DARKNESS. THE FRONT WINDOW
WAS SHATTERED, BUT REMAINED IN TACT. DEF PUSHED THE GLASS UP FROM THE
BOTTOM OF THE DOOR FRAME, & CLIMBED INTO THE OPENING. ONCE INSIDE THE
DEF PRIED OPEN THE REGISTER DRAWER. THE DEF WAS CUT LEAVING TRACES OF
BLOOD AT THE SCENE. ONCE INSIDE DEF REMOVED A FIRST AID KIT VALUED
AT LESS THAN \$100.00. FINGER PRINTS LIFTED AT POINT OF ENTRY MATCHED
THE DEF INKED PRINTS ON FILE.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

Affiant's Address: #1 JUSTICE SQUARE
COLUMBIA, SC 29201

Affiant's Telephone: 5453500

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 09/10/2009 defendant TYNYASHA U HORTON
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: PETIT LARCENY

CERTIFIED TRUE COPY

Dana D. Turner

Dana Turner

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 09/17/2009

[Signature]

Signature of Issuing Judge

Ministerial Recorder

Judge Code: 407-30713

Judge's Address: CITY OF COLUMBIA, SC

MUNICIPAL COURT, P. O. BOX 644 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WARRANT WITHDRAWN

KE13277 K-613277 0926392

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

THE STATE
against

TINYASHA U HORTON

Address: 1214 VALLEY DALE RD
BENNETTSTVILLE SC 29000

Phone: _____ SSN: _____
Sex: F Race: B Height: 5'01" Weight: 130

State: DL# _____
DOB: 04/11/1986 Agency ORI# SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: TYLER INV. R/ FENT

Offense: BURGLARY 2ND

Offense Code: BER
Code/Ordinance Sec: 16-11-312

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of
COLUMBIA. The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant TYNASHA HORTON - Refused
on 04-13-2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P. O. BOX 644
COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

AFFIDAVIT

INV. R TYLER

Personally appeared before me the affiant _____ who
being duly sworn deposes and says that defendant TINYASHA U HORTON
did within this county and state on 09/10/2009 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY 2ND

16-11-312

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:

THE DEF WHILE AT 1248 LADY ST, ROLLY POLLY IN THE CITY OF COLA, DID
FORCIBLY & W/OUT CONCENT ENTER THE LISTED BUSINESS W/THE INTENT TO
COMMIT A CRIME THERE IN DURING THE HRS OF DARKNESS. THE FRONT WINDOW
WAS SHATTERED, BUT REMAINED IN TACT. DEF PUSHED THE GLASS UP FROM THE
BOTTOM OF THE DOOR FRAME, & CLIMBED INTO THE OPENING. ONCE INSIDE THE
DEF PRIED OPEN THE REGISTER DRAWER. THE DEF WAS CUT LEAVING TRACES OF
BLOOD AT THE SCENE. ONCE INSIDE DEF REMOVED A FIRST AID KIT VALUED
AT LESS THAN \$100.00. FINGER PRINTS LIFTED AT POINT OF ENTRY MATCHED
THE DEF INKED PRINTS ON FILE.

Signature of Affiant

R27

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

Affiant's Address

#1 JUSTICE SQUARE

COLUMBIA, SC 29201

Affiant's Telephone

5453500

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 09/10/2009 defendant TINYASHA U HORTON
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY 2ND

CERTIFIED TRUE COPY

16-11-312

Dana D. Turner

Dana Turner
Municipal Court Administrative Judge

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 09/17/2009

Judge's Address

CITY OF COLUMBIA, SC

Judge's Telephone

MUNICIPAL COURT, P. O. BOX 644 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Ministerial Recorder
Judge Code: 400-1203

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,
Plaintiff,

C/A NO.: 2010-CP-40-3299

vs.

AFFIDAVIT OF PETER K. CURRIE

City of Columbia Police Department,
Defendant.

2011 APR 29 PM 3:27
JEROME H. HODGINS
C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, Peter K. Currie, who, being first
duly sworn, deposes and says that:

1. I am over the age of eighteen (18) and otherwise qualified to make a
statement under oath.

2. I make this statement on the basis of personal knowledge except for those
things that are stated upon information and belief. As to those things, I reasonably
believe them to be true.

3. I was hired by the City of Columbia Police Department ("CPD") on
February 12, 1990 and worked there until my retirement on February 20, 2010. I was
hired by CPD to work in the crime scene unit. At that time, the crime scene unit was
operated by civilian employees. Several years later, then-Police Chief Charles Austin
asked the members of that unit to become police officers. I then attended the course of
study at the South Carolina Criminal Justice Academy and was certified as a police
officer. I worked in the crime scene unit for approximately seven (7) years, then worked

as a street officer for six (6) years, and then went back to the crime scene unit for a little more than seven (7) years, until I retired.

4. I received extensive training as a crime scene analyst. I successfully completed a one week course of study called "Basic Fingerprints" at the South Carolina Criminal Justice Academy. I also completed a two-week advanced fingerprint course taught by the FBI at the Criminal Justice Academy. I took courses and received certification in the Automatic Fingerprint Identification System ("AFIS") and was a member of the International Association for Identification, which was primarily related to fingerprint issues. I have also received training from other organizations and while on the job. This training was as extensive as most police departments with which I am familiar and I am informed and believe that I was fully trained and capable of performing fingerprint analysis. I also received formal training in other matters related to processing a crime scene, including basic investigation, basic and advanced photography, and bomb school.

5. On September 9, 2009, I was sent to the scene of the burglary of the Roly Poly restaurant at 1248 Lady Street, Columbia, South Carolina. I lifted a partial latent fingerprint from the glass door that had been broken to gain entry. Based upon the location of that fingerprint and my experience, I believed that the fingerprint was from the person who committed the break-in.

6. That same date, I entered the partial latent print into the AFIS system of the South Carolina Law Enforcement Division ("SLED"). To use this computer program, the requestor marks the characteristics of the latent fingerprint that are to be compared to the computer records. The AFIS system will find those fingerprints within its database.

that most nearly exhibit those characteristics. Ordinarily, AFIS will return twenty (20) fingerprints for the analyst to review and determine whether any of them match. The responses are issued in order from most likely to least likely to match. In this case, the Plaintiff's fingerprints were determined by AFIS to be the most probable match of those fingerprints found.

7. AFIS does not match fingerprints found at crime scenes to fingerprints contained within its computer database. AFIS only finds a number of fingerprints that most nearly have the characteristics marked by the requestor. It is up to the crime scene analyst to look at each of those to determine whether there is a match. In this case, after extensive review, I determined that the fingerprint that I took from the Roly Poly crime scene matched the fingerprint of the Plaintiff.

8. CPD has a procedure in place that requires that all determinations that fingerprints match be verified by another crime scene analyst. In this case, I showed the latent fingerprint to two other crime scene analysts and they verified that it matched the fingerprints of the Plaintiff on file.

9. I informed Investigator Tyler of CPD that the fingerprint at the Roly Poly matched that of the Plaintiff. Based upon that information, Investigator Tyler applied for and obtained arrest warrants against the Plaintiff.

10. On Monday, September 21, 2009, when I came to work, I became aware that the Plaintiff had been picked up and was incarcerated. I understand that she was brought to Columbia on Friday. I do not believe that I was working over that weekend. As is my custom, I took fresh fingerprints from her that day to compare to the fingerprint that was taken from the crime scene. It still appeared to me that they matched. However,

the Plaintiff related facts which, if true, would have negated her ability to commit the crime. Out of an abundance of caution, I took the fingerprints to the experts at SLED for review. I was told that they were very close but the SLED analyst could not confirm the match for certain.

11. This information was related to the Chief Administrative Judge for the City of Columbia Municipal Court and the Plaintiff was released from custody and driven home that same date.

12. I am an experienced fingerprint analyst. For the first seven years that I performed fingerprint analysis, the AFIS computer system was not available and all matches were determined by hand. In the last seven (7) years that I analyzed fingerprints, AFIS was available but the actual match determination still had to be done by hand. I have reviewed literally thousands of possible fingerprint matches and, as far as I know, this is the only one that has ever been called into question.

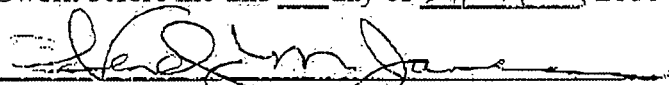
13. All of my actions with respect to the investigation of the crime at the Roly Poly were made in the good faith performance of my duties as a police officer. I did not handle this matter with malice or an intent to injure the Plaintiff but acted in the good faith belief that the fingerprints in question matched and constituted probable cause for her arrest. This determination was made by exercising my professional judgment, based upon my training experience.

14. I am familiar with the proper procedures for obtaining fingerprint samples and matching them to fingerprints from the AFIS database. I conducted my investigation in this case in accordance with those standards and do not believe that I deviated from them or was negligent in any way. I at all times acted in accordance with my training and

those procedures and am informed and believe that I handled this matter properly. Under the circumstances of this case, there is no different or additional training that I could have received that would have changed the outcome.


Peter K. Currie

Sworn before me this 29th day of April, 2011


Notary Public for South Carolina
My Commission Expires: 1/21/2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tynaysha Horton,

vs.

City of Columbia Police Department,

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3299

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Dylan W. Goff, Esquire James E. Smith, Jr., P.A. 1422 Laurel Street Columbia, SC 29201 phone (803) 466-7291		Defendant's Attorney: Robert G. Cooper, Esquire, SC Bar #1389 Office of the City Attorney Post Office Box 667, Columbia, SC 29202 phone (803) 737-4242; fax (803) 737-4250	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ Yes / ☐ No			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form motion / order I hereby move for relief or action by the Court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant _____ Date submitted _____			
SECTION III: Motion Fee ☐ PAID AMOUNT: _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the Court, or, reduced to writing from motion made in open court per Judge's instructions Name of Court Reporter: _____ ☒ Other: Bill to City of Columbia Account			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED ☐ CONTESTED B AMOUNT DUE:			

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynaysha Horton,)
Plaintiff,)
vs.)
City of Columbia Police Department,)
Defendant.)

C/A No.: 2010-CP-40-3299

DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT

2011 APR 29 PM 3:27
CLERK OF COURT
COLUMBIA, SC

TO: DYLAN W. GOFF, ESQUIRE, ATTORNEY FOR PLAINTIFF AND PLAINTIFF ABOVE-NAMED:

PLEASE TAKE NOTICE that the Defendant City of Columbia Police Department, through its undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day following the service hereof or at such other time and place as is convenient to the Court and counsel, for an Order granting the Defendant summary judgment on all claims on the ground that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.

This motion is made pursuant to Rule 56, SCRCPP, and is based upon the following specific grounds:

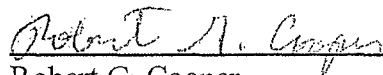
1. Plaintiff's First Amended Complaint does not state facts sufficient to constitute any cause of action against this Defendant;
2. Plaintiff's First Cause of Action for negligent investigation is barred because (a) that is not a cause of action recognized by the courts, (b) the Defendant does not have a

- duty sufficient to provide a private cause of action in favor of Plaintiff, and (c) any such negligence was not the proximate cause of any injury or damage to Plaintiff.
3. Plaintiff's First Cause of Action for negligence fails because there is no evidence that the Defendant's employees were negligent;
 4. To the extent that Plaintiff's First Cause of Action is for negligent training of Defendant's police officers, it fails to state facts sufficient to constitute a cause of action since (a) a municipal employer is liable for the negligent conduct of a municipal employee acting within the scope of his employment and a cause of action for negligent training is redundant to that primary liability, (b) this Defendant does not have a duty sufficient to provide a private cause of action in favor of Plaintiff and (c) there is no evidence that the Defendant's employees were not adequately trained.
 5. Plaintiff's Second Cause of Action for malicious prosecution must fail since there is no evidence that Defendant's employees acted with malice or an intent to harm the Plaintiff as alleged.
 6. Plaintiff's Third and Fourth Causes of Action are barred because the arrest of the Plaintiff was based on probable cause as a matter of law;
 7. Plaintiff's Third and Fourth Causes of Action are barred because the arrest was made pursuant to a facially valid arrest warrant;
 8. Plaintiff's Fifth and Sixth Causes of Action are barred because the arrest was made pursuant to a facially valid arrest warrant and any touching of the Plaintiff by law enforcement officers pursuant to that warrant was privileged;
 9. All causes of action are barred by the provisions of the South Carolina Tort Claims

Act.

This motion is based upon the pleadings filed in this case, the affidavit of Peter K. Currie filed with this motion, depositions taken in this case, discovery responses, any memorandum submitted in support of this motion, rules of court, and any other matter that may be properly presented to the court.

Rule 11, SCRCF, does not impose a duty of consultation prior to filing a motion for summary judgment.



Robert G. Cooper
Office of the City Attorney
PO Box 667
Columbia, SC 29202
(803) 737-4242
Facsimile (803) 737-4250

April 29, 2011
Columbia, South Carolina

Attorney for Defendant
City of Columbia Police Department

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,
Plaintiff,
vs.
City of Columbia Police Department,
Defendant.

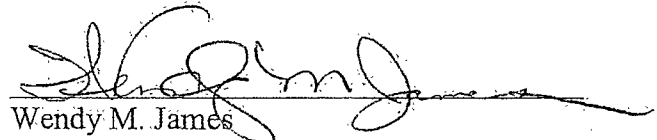
C/A NO.: 2010-CP-40-3299

CERTIFICATE OF SERVICE

2011 APR 29 PM 3:27
JAMES E. SMITH, JR.
C.C.P. & G.S.

The undersigned hereby certifies that she served a copy of the Defendant's Notice of Motion and Motion for Summary Judgment upon the Attorney for the Plaintiff by placing a copy in the United States Mail, first class, sufficient postage pre-paid and return address clearly indicated to him at his address shown below on this 29th day of April, 2011.

Dylan W. Goff, Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, SC 29201


Wendy M. James
Paralegal for the City of Columbia

April 29, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,)
)
Plaintiff,)
)
vs.)
)
City of Columbia Police Department,)
)
Defendant.)
_____)

C/A NO.: 2010-CP-40-3299

AFFIDAVIT OF PETER K. CURRIE

2011 APR 29 PM 3:27
JEROME S. CURRIE
CPD 665

PERSONALLY APPEARED BEFORE ME, Peter K. Currie, who, being first
duly sworn, deposes and says that:

1. I am over the age of eighteen (18) and otherwise qualified to make a
statement under oath.

2. I make this statement on the basis of personal knowledge except for those
things that are stated upon information and belief. As to those things, I reasonably
believe them to be true.

3. I was hired by the City of Columbia Police Department ("CPD") on
February 12, 1990 and worked there until my retirement on February 20, 2010. I was
hired by CPD to work in the crime scene unit. At that time, the crime scene unit was
operated by civilian employees. Several years later, then-Police Chief Charles Austin
asked the members of that unit to become police officers. I then attended the course of
study at the South Carolina Criminal Justice Academy and was certified as a police
officer. I worked in the crime scene unit for approximately seven (7) years, then worked

as a street officer for six (6) years, and then went back to the crime scene unit for a little more than seven (7) years, until I retired.

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that most nearly exhibit those characteristics. Ordinarily, AFIS will return twenty (20) fingerprints for the analyst to review and determine whether any of them match. The responses are issued in order from most likely to least likely to match. In this case, the Plaintiff's fingerprints were determined by AFIS to be the most probable match of those fingerprints found.

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8. CPD has a procedure in place that requires that all determinations that fingerprints match be verified by another crime scene analyst. In this case, I showed the latent fingerprint to two other crime scene analysts and they verified that it matched the fingerprints of the Plaintiff on file.

9. I informed Investigator Tyler of CPD that the fingerprint at the Roly Poly matched that of the Plaintiff. Based upon that information, Investigator Tyler applied for and obtained arrest warrants against the Plaintiff.

10. On Monday, September 21, 2009, when I came to work, I became aware that the Plaintiff had been picked up and was incarcerated. I understand that she was brought to Columbia on Friday. I do not believe that I was working over that weekend. As is my custom, I took fresh fingerprints from her that day to compare to the fingerprint that was taken from the crime scene. It still appeared to me that they matched. However,

the Plaintiff related facts which, if true, would have negated her ability to commit the crime. Out of an abundance of caution, I took the fingerprints to the experts at SLED for review. I was told that they were very close but the SLED analyst could not confirm the match for certain.

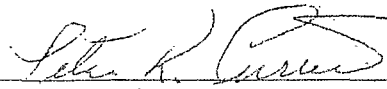
11. This information was related to the Chief Administrative Judge for the City of Columbia Municipal Court and the Plaintiff was released from custody and driven home that same date.

12. I am an experienced fingerprint analyst. For the first seven years that I performed fingerprint analysis, the AFIS computer system was not available and all matches were determined by hand. In the last seven (7) years that I analyzed fingerprints, AFIS was available but the actual match determination still had to be done by hand. I have reviewed literally thousands of possible fingerprint matches and, as far as I know, this is the only one that has ever been called into question.

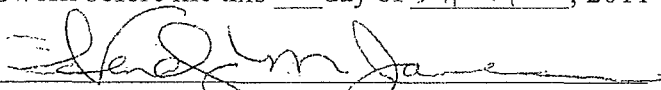
13. All of my actions with respect to the investigation of the crime at the Roly Poly were made in the good faith performance of my duties as a police officer. I did not handle this matter with malice or an intent to injure the Plaintiff but acted in the good faith belief that the fingerprints in question matched and constituted probable cause for her arrest. This determination was made by exercising my professional judgment, based upon my training experience.

14. I am familiar with the proper procedures for obtaining fingerprint samples and matching them to fingerprints from the AFIS database. I conducted my investigation in this case in accordance with those standards and do not believe that I deviated from them or was negligent in any way. I at all times acted in accordance with my training and

those procedures and am informed and believe that I handled this matter properly. Under the circumstances of this case, there is no different or additional training that I could have received that would have changed the outcome.


Peter K. Currie

Sworn before me this 29th day of April, 2011


Notary Public for South Carolina
My Commission Expires: 1/21/2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynaysha Horton,)
)
Plaintiff,)
)
vs.)
)
City of Columbia Police Department,))
)
Defendant.)
)

C/A No.: 2010-CP-40-3299 .

DEFENDANT'S MEMORANDUM
IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

The Defendant City of Columbia Police Department ("CPD") files this memorandum in support of its motion for summary judgment and in opposition to the Plaintiff's motion for summary judgment.

FACTS

On September 9, 2009, a cinder block was thrown through the glass door to break into the Roly Poly restaurant in Columbia, South Carolina. Crime Scene Officer Pete Currie of the Columbia Police Department ("CPD") lifted a partial latent fingerprint from the door where the glass had been pushed up to gain entry. Currie Aff. ¶ 5. Officer Currie ran the print through the Automatic Fingerprint Identification System ("AFIS") of the South Carolina Law Enforcement Division ("SLED"). Id. ¶ 6. AFIS returned twenty possible matches, with the fingerprint of the Plaintiff identified as the most probable match. Id. Officer Currie then conducted an extensive review of that print and determined that it matched the latent print taken from the crime scene. Id. ¶ 7. Pursuant to standard operating procedures at the City, Officer Currie showed the latent fingerprint to two other qualified crime scene officers and they verified that it matched the

fingerprint of the Plaintiff. Id. ¶ 8.

Investigator Roberta Tyler of CPD was assigned to investigate this crime. Officer Currie informed her that he had matched the fingerprint of the robber and identified the Plaintiff as the person who broke into the restaurant. Id. ¶ 9. Investigator Tyler received authorization from an Assistant Solicitor to seek warrants. On September 17, 2009, she appeared before a ministerial recorder¹ of the City of Columbia and made full disclosure of the material facts involved in the robbery investigation. The ministerial recorder found probable cause to believe that the Plaintiff committed the crime and issued warrants for Burglary 2nd and Petit Larceny.

Investigator Tyler contacted the Plaintiff's probation officer in Bennettsville, South Carolina, where the Plaintiff resides, and informed him that she had warrants for the arrest of the Plaintiff. The probation officer assisted in having her turn herself in to Marlboro County law enforcement officers on September 17, 2009. CPD brought the Plaintiff to Columbia and then took her to the detention center on September 18, 2009.

On September 21, 2009, Officer Currie became aware that the Plaintiff was incarcerated and took fresh fingerprints from her as was his custom. Id. ¶ 10. It still appeared to him that her fingerprints matched that of the person who committed the robbery. However, because of her protests that she could not have committed the crime, he took the fingerprints to SLED for review. Id. ¶ 10. The SLED analyst indicated that the fingerprints were very close but that he could not confirm a match for certain. Id.

Given the lack of confirmation from the SLED analyst, the charges were dismissed and the

¹ Ministerial recorders are municipal officers with the power to issue arrest warrants. S.C. Code

Plaintiff was driven home that same day. Id. ¶ 11.

NATURE OF THE CASE

The Plaintiff asserts tort claims for negligence, malicious prosecution, false arrest, false imprisonment, assault and battery.

Both parties have filed motions for summary judgment on all claims. The City submits that its motion should be granted for the reasons set out below.

AUTHORITY

1. **The City is entitled to summary judgment on the negligence claim because it does not state a claim upon which relief can be granted and there is no evidence of negligence.**

- a. **No cause of action stated.**

Plaintiff's claim for the negligent investigation of the robbery fails to state a claim upon which relief can be granted. This theory, representing a back door attempt to avoid the hurdles of the traditional torts of malicious prosecution and false imprisonment, finds no support in the law. Guntlow v. Barbera, 76 A.D.3d 760, 907 N.Y.S.2d 86 (N.Y.A.D. 2010) (claim for negligent investigation does not state cause of action separate from false arrest and malicious prosecution); Brunson v. Affinity Federal Credit Union, 199 N.J. 381, 972 A.2d 1112 (N.J. 2009) ("We are unwilling to follow the Appellate Division's lead, and thus reject the panel's creation of a new cause of action for negligent investigation as a surrogate for a traditional malicious prosecution claim."); Laymon v. Dep't of Natural Resources, 99 Wash.App. 518, 994 P.2d 232 (2007) (no claim for negligent investigation against police); Ex parte State Farm Mut. Auto Ins. Co., 924 So.2d 706 (Ala. 2005) (negligent prosecution is not cognizable tort claim in this state); See also Rodriguez v.

Ritchey, 556 F.2d 1185 (5th Cir. 1977), cert. denied, 434 U.S. 1047 (1978)(no federal common law tort of negligent investigation); Landeros v. City of Tucson, 171 Ariz. 474, 831 P.2d 850 (1992); Johnson v. City of Pacifica, 4 Cal.App.3d 82, 84 Cal.Rptr. 246 (1970); Montgomery Ward Co. v. Pherson, 129 Colo. 502, 272 F.2d 643 (1954); Wimer v. State, 122 Idaho 923, 841 P.2d 453 (1993); and Bromund v. Holt, 24 Wis.2d 336, 129 N.W.2d 149 (1964). As no such cause of action exists, summary judgment is appropriate.

b. No evidence of negligence.

There is no evidence in this case that a City employee was negligent. The Plaintiff apparently intends to rely upon the fact that a misidentification took place to meet this burden. However, negligence cannot be established by the fact that an event occurred. Reilland v. Southland Equipment Service, 330 S.C. 617, 500 S.E.2d 145 (Ct.App. 1998); Lewis v. Norfolk Southern Railroad, 2010 WL 2851131 (D.S.C. 2010) (applying South Carolina Law). The Plaintiff does not present expert testimony establishing the applicable standard of care and that the standard has been breached. Kemmerlin v. Wingate, 274 S.C. 62, 261 S.E.2d 50 (1979) (Plaintiff's burden to prove standard of care for professional negligence claim, usually by expert testimony). The court is therefore left to speculate as to whether any act of negligence has taken place. The painstaking steps taken by Officer Currie to attempt to properly identify the robber are set out in detail in his affidavit. He notes that he conducted his investigation in compliance with the standards that he has been taught and that he does not believe that he was negligent in any way. Currie Aff. ¶ 14.

Similarly, Plaintiff's allegations of negligence in training have no evidentiary support. No proof has been offered to substantiate this assertion. In contrast, the Defendant has demonstrated

that Officer Currie received extensive training in taking and analyzing fingerprints. Id. ¶ 4. Officer Currie indicates that he has been fully trained and was capable of making a correct fingerprint analysis and that there was no different or additional training that he could have received that would have changed the outcome in this case. Id. ¶¶ 4, 14.

2. The City is entitled to summary judgment on the malicious prosecution, false arrest and false imprisonment claims because there was probable cause to arrest as a matter of law.

An essential element in claims for false arrest and malicious prosecution is the lack of probable cause for the arrest. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). The Plaintiff has the burden of demonstrating the lack of probable cause. Id. Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. Id. Probable cause is determined as of the time of arrest, based on facts and circumstances known to the arresting officer. Id. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). Recent decisions of the appellate courts of this state have regularly found probable cause as a matter of law. McBride v. School District of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010); Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006); Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005) (relying inter alia on evidence from an investigation, warrant authorization from an Assistant Solicitor, and the issuance of a warrant).

Many of the factors that the courts relied upon in those cases to define probable cause as a

matter of law are present in this case. Here, Officer Currie conducted a thorough investigation that developed facts consistent with the guilt of the Plaintiff. Currie Aff. An Assistant Solicitor authorized Investigator Tyler to seek warrants after having been fully apprised of the material facts. A ministerial recorder found probable cause and issued warrants against the Plaintiff. Id. ¶ 9.

In addition, probable cause is established as a matter of law because the police officers involved reasonably believed that they had correctly identified the Plaintiff as the robber. Officer Currie is well trained in fingerprint analysis. Currie Aff. ¶ 4. He was a seasoned veteran in the crime scene unit with approximately fourteen years of experience. Id. ¶ 3. He obtained a fingerprint from the crime scene that he believed was from the person who committed the break-in. Id. ¶ 5. He ran the print through the AFIS system and the Plaintiff's fingerprint was found to be the most probable match out of all of the fingerprints in that database. Id. ¶ 6. Officer Currie then conducted an extensive comparison of the latent print from the crime scene and the print of the Plaintiff that was on file with SLED and determined that they matched. Id. ¶ 7. He had two additional crime scene analysts review the prints and both agreed that they were a match. Id. ¶ 8. In fourteen years of fingerprint analysis, involving literally thousands of fingerprint comparisons, the present case is the only one in which Officer Currie's conclusion has been called into question. Id. ¶ 12. Officer Currie followed his training and the professional standards applicable to fingerprint analysis and believed in good faith that the fingerprints matched and constituted probable cause for the arrest of the Plaintiff. Currie Aff. ¶¶ 13, 14. Investigator Tyler acted upon that information to obtain arrest warrants against the Plaintiff. Id. ¶ 9. She justifiably relied upon the positive and unequivocal identification of the Plaintiff as a result of the fingerprint analysis. Under those circumstances, both Investigator Tyler

and Officer Currie truly believed that the fingerprint evidence was accurate and that the Plaintiff had committed the crime. That constitutes probable cause as a matter of law.

3. The City is entitled to summary judgment on the false arrest and false imprisonment claims because the arrest was made pursuant to a facially valid arrest warrant.

The claims for false arrest and false imprisonment must be dismissed because the arrest was made pursuant to a facially valid arrest warrant.²

The essence of the tort of false imprisonment is depriving a person of his liberty without lawful justification. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). Where one is properly arrested by lawful authority, an action for false imprisonment cannot be maintained against the party causing the arrest. If a lawful arrest has been improvidently procured, without probable cause, the plaintiff's remedy lies in an action for malicious prosecution. Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987); Watkins v. Mobil Oil Corp., 281 S.C. 79, 313 S.E.2d 641 (Ct. App. 1984); Bushardt v. United Inv. Co., 121 S.C. 324, 113 S.E. 637 (1922); Barfield v. Coker, 73 S.C. 181, 53 S.E. 170 (1906). Since the Plaintiff in this case was arrested pursuant to a warrant that was regular on its face, the Defendants are entitled to summary judgment on the false arrest cause of action. Law v. South Carolina Department of Corrections, supra (warrant supplemented by oral testimony bars false imprisonment claim); Watkins v. Mobil Oil

² False arrest and false imprisonment are not separate torts. False arrest is a form of false imprisonment that accrues when the person is unlawfully arrested. A false arrest is one way to commit false imprisonment. Since an arrest involves a restraint, it always involves imprisonment. 32 Am.Jur.2d, False Imprisonment §2.

Corp., supra; Dorn v. Town of Prosperity, 375 Fed.Appx. 284, 2010 WL 997175 (4th Cir. 2010); Wilkins v. Harley, 2011 WL 379747 (D.S.C. 2011); Hubbard & Felix, The South Carolina Law of Torts 410 (2d ed. 1997) (if arrest is based on a proper warrant, no action for false imprisonment shall succeed).

The preclusive effect of the warrant is not negated by the fact that it was based upon erroneous information. A facially valid warrant can only be attacked if the party first makes “a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit. Franks v. Delaware, 438 U.S. 154, 155-56 (1978); Miller v. Prince George’s County, 475 F.3d 621, 627 (4th Cir. 2007); Ferrara v. Hunt, 2010 WL 5479655 (D.S.C. 2010). The showing must be more than conclusory and must be accompanied by a detailed offer of proof. Franks at 171. With regard to alleged omissions in the affidavit, a plaintiff must establish that the officer failed to inform the magistrate of facts the officer knew would negate a finding of probable cause. Miller at 627. However, allegations of negligence or honest mistake are insufficient. Id. at 627-28. If a Franks hearing is required and an affiant’s material perjury or recklessness is established by a preponderance of the evidence, the warrant must be voided. Franks at 156.

There is no evidence in this case that Investigator Tyler knowingly or recklessly provided false information to the ministerial recorder to obtain the warrants. On the contrary, it is clear that she presented the information in good faith based upon facts related to her by Officer Currie. Currie Aff. ¶ 9. Absent such proof, the arrest warrant bars Plaintiff’s claims for false arrest and false imprisonment.

4. The City is entitled to summary judgment on the assault and battery

claims because the arrest was made pursuant to a facially valid arrest warrant.

The claims for assault and battery stem solely from the fact that the Plaintiff was placed under arrest. There is no allegation of excessive force. Those claims must be dismissed because the Plaintiff was arrested pursuant to a facially valid arrest warrant.

A police officer is not liable for assault and battery based upon the officer's lawful arrest of a person where there is no use of excessive force, unreasonable contact, or the threat of unreasonable contact by the officer. 6 Am. Jur. 2d, Assault and Battery §105. This principle applies even where the police officer mistakenly arrests the wrong person. Id. The arrest in this case was based upon a facially valid arrest warrant. Any touching that took place thereafter was lawful and may not form a basis for a claim against the City.

5. The City is entitled to summary judgment because the tort claims are barred by the South Carolina Tort Claims Act.

A tort claim against a municipality or municipal employee is governed by the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 et seq., which is the exclusive remedy for any tort committed by an employee of a governmental entity. S.C. Code Ann. §15-78-70(a). The provisions of the Tort Claims Act must be liberally construed in favor of limiting liability. S.C. Code Ann. §15-78-20(f); Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993). The Tort Claims Act waives immunity for the sovereign, subject to a number of exemptions from liability which are set out in S.C. Code Ann. §15-78-60. It is on the basis of these exemptions that the Defendant is entitled to summary judgment.

a. S.C. Code Ann. §15-78-60(5) bars all tort claims.

S.C. Code Ann. §15-78-60(5) precludes liability by a governmental entity for a loss resulting from the exercise of discretion or judgment by a governmental employee, or the performance or failure to perform any act or service which is in the discretion or judgment of the employee. Discretionary immunity is contingent on proof that the governmental entity, faced with alternatives, actually weighed competing considerations and made a conscious choice. Further, the entity must establish, in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue. Strange v. S.C. Dept. of Hwys. & Pub. Transp., 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense. Niver v. S.C. Dept. of Hwys. & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct.App. 1990). Simply because there is disagreement as to whether the discretion was properly exercised does not preclude discretionary immunity. The exercise of discretion includes the right to be wrong. Giannini v. S.C. Dept. of Transp., 378 S.C. 573, 664 S.E.2d 450 (2008).

In this case, the comparison of fingerprints and determining whether they match clearly involves judgment and discretion. Officer Currie exercised his professional judgment based upon his training and experience. Currie Aff. ¶ 13. He was familiar with the proper procedures and conducted his investigation in accordance with those standards. Id. ¶ 14. Plaintiff's claims must therefore be dismissed.

b. S.C. Code Ann. §15-78-60(17) bars all tort claims.

S.C. Code Ann. §15-78-60 (17) precludes governmental liability for a loss resulting from employee conduct which constitutes actual malice or intent to harm. This provision bars all tort

claims in this action.

Plaintiff's loss stems entirely from her arrest. She alleges that the Defendant acted maliciously and with intent to injure the Plaintiff in causing that arrest. (Complaint ¶ 38). That allegation is incorporated by reference in the claims that follow. The Plaintiff confirmed that contention in her response to Interrogatory 14 ("Plaintiff's overall mistreatment during this unfortunate ordeal amounts to malicious conduct."). This action therefore cannot be brought against the City and must be dismissed.

c. S.C. Code Ann. §15-78-60(23) bars the tort claims.

S.C. Code Ann. §15-78-60(23) provides that "[t]he governmental entity is not liable for a loss resulting from ... institution or prosecution of any judicial or administrative proceeding ...". This exemption bars the tort claims in this case since they all stem from the institution and prosecution of a criminal judicial proceeding.

To maintain an action for malicious prosecution, a plaintiff must establish as the first element "the institution or continuation of original judicial proceedings." Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965). That language is strikingly similar to that of §15-78-60(23). It appears clear that the South Carolina legislature intended to exempt local governments from liability for torts stemming from arrests (institution of criminal judicial proceedings).

The State of Virginia has a Tort Claims Act with the identical provision under consideration here. The courts have interpreted that provision to bar malicious prosecution claims. Gedrich v. Fairfax County Dept. of Family Services, 282 F.Supp.2d. 439 (E.D.Va. 2003); Snyder v. City of Alexandria, 870 F.Supp. 672, 691 (E.D.Va. 1994). Cases interpreting a similar provision in the

Indiana Tort Claims Act³ have reached the same conclusion. Gray v. City of Hammond, Indiana, 693 F.Supp.2d 823 (N.D.Ind. 2010); Norris v. Board of Educ. of Greenwood Comm. School Corp., 797 F.Supp. 1452 (S.D.Ind. 1992); Butt v. McEvoy, 669 N.E.2d 1015 (Ind.App. 1996); Edwards v. Vermillion County Hospital, 579 N.E.2d 1347 (Ind.App. 1 Dist. 1991).

The tort of false arrest does not have an element requiring the institution or prosecution of a judicial proceeding. However, where a plaintiff claims that her damages stem from her arrest pursuant to a warrant, this exemption from liability applies. Edwards v. Vermillion County Hospital, *supra*. (the issuance of a warrant constitutes the initiation of a judicial proceeding and bars claims for false arrest and malicious prosecution).

The criminal warrant obtained by Investigator Tyler in this case initiated criminal judicial proceedings against the Plaintiff and the City is therefore exempt from liability.

d. S.C. Code Ann. §15-78-60 (4) bars the negligence claim for failure to have policies or procedures.

S.C. Code Ann. §15-78-60 (4) precludes governmental liability for a loss resulting from the failure to adopt or enforce any provision, ordinance, resolution, rule, regulation or written policies. Therefore, that portion of Plaintiff's negligence claim based upon a failure to adopt policies (Complaint ¶ 25) is barred by this provision.

CONCLUSION

For the reasons set out above, the City of Columbia asks the Court to grant summary judgment in its favor on all claims in this action.

³ The Indiana provision prevents liability from a loss resulting from "the initiation of a judicial or administrative proceeding." Ind. Code §34-4-16.5-3.

_____, 2011
Columbia, South Carolina

Robert G. Cooper
Office of the City Attorney
PO Box 667
Columbia, SC 29202
(803) 737-4242
Facsimile (803) 737-4250

Attorney for Defendant City of Columbia

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) IN THE FIFTH JUDICIAL CIRCUIT

TYNAYSHA U. HORTON,) Civil Action No. 2010-CP-40-3299

Plaintiff,)

vs.)

THE CITY OF COLUMBIA.)

Defendant.)

MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

2011 JUN 30 AM 9:14
JANETTE W. HARRIS
C.C.P. & C.S.

In responding to Defendants' Motion for Summary Judgment the Plaintiff would show the following:

NATURE OF THE CASE

Defendant, The City of Columbia, has moved before this Court seeking Summary Judgment on all claims asserted by Plaintiff on the grounds that there are no issues of material fact and that Defendants are entitled to judgment as a matter of law. Defendant's Motion for Summary Judgment should be denied as set forth herein.

FACTS

Plaintiff commenced this action by the filing of a Summons and Complaint with the Richland County Court of Common Pleas on May 28, 2010. On September 9, 2009, a cinder block was thrown through the glass door to break into the Roly Poly restaurant in Columbia, South Carolina. Officer Peter Currie of the Columbia Police Department lifted a partial latent fingerprint from the door where the glass had been pushed up to gain entry. Affidavit of Currie ¶ 5. Officer Currie ran the print through the Automatic Fingerprint Identification System ("AFIS") of the South Carolina Law Enforcement

Division ("SLED"). Id. at 6. AFIS returned twenty possible matches, with the fingerprint of the Plaintiff identified as the most probable match. Id. Officer Currie then conducted a review of that print and made the determination that it matched the latent print taken from the crime scene. Id. at 7.

Officer Roberta Tyler of CPD was assigned to investigate this crime. Officer Currie informed her that he had matched the fingerprint of the robber and identified the Plaintiff as the person who broke into the restaurant Id. at 9. On September 15, 2009, Officer Tyler called Plaintiff's Probation Officer, Albert Smith, in Bennettsville, South Carolina and informed Agent Smith that CPD was seeking a warrant for Plaintiff's arrest based on fingerprints lifted from a crime scene in Columbia, S.C. Statement of Albert Smith, Exhibit A. Agent Smith informed Officer Tyler of his personal reservations regarding the likelihood that Plaintiff could have committed the crime based upon his personal knowledge of her lack of transportation and the recent birth of her third child. Id. Nevertheless, on September 17, 2009, Officer Tyler appeared before a ministerial recorder of the City of Columbia and made a partial disclosure of relevant facts known to the Department at that time. Officer Tyler did not disclose any information related to her by Agent Smith, or any other possibly exculpatory information. Based upon the incomplete information provided, the ministerial recorder issued warrants for Burglary 2nd and Petit Larceny.

Agent Smith assisted in having Plaintiff surrender herself to Marlboro County law enforcement officers on September 17, 2009. CPD brought the Plaintiff to Columbia and then took her to the detention center on September 18, 2009. Plaintiff was not

fingerprinted at the time of her arrest nor at any time prior to September 21, 2009 despite multiple requests by the plaintiff that officers do so.

On September 21, 2009, Officer Currie took fresh fingerprints from Plaintiff. *Id.* ¶ 10. Plaintiff was released from City of Columbia custody the same day after review of her fingerprints revealed that they were not a match for the latent print lifted from the scene.

ARGUMENT

I. Defendant's Motion for Summary Judgment should be denied as there are genuine issues of material fact in dispute.

Defendants' Motion for Summary Judgment is improper and should be denied as there are genuine issues of material fact in dispute. Summary Judgment is "proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRPC. "When determining if any triable issue of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Summer v. Carpenter*, 328 S.C. 36. There are multiple issues of material fact disputed by the parties to this matter. Indeed, much of Defendants' arguments in support of its Motion revolve around Defendants' position that the existence of a facially valid arrest warrant issued upon probable cause preclude Plaintiffs' actions as a matter of law. However, the existence of probable cause is generally a matter of *fact* to be decided by a jury, not a matter of law. *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 435, 629 SE2d 642, 648 (2006), *See, Jones v. City of Columbia*, 301 S.C. 62, 389 SE2d 662 (1990) (emphasis added). In actions for malicious prosecution, false

imprisonment or unlawful arrest, the existence of probable cause may only be decided as a matter of law when the evidence yields but one conclusion. *Id.* Plaintiff has competently challenged the validity of the warrant and the existence of probable cause for its issuance and has thereby raised factual issues that must be properly determined by a jury. Further genuine issues of material fact are in dispute arising from inconsistency in Defendants' witness statement and pleadings that are proper for jury determination. These include facts asserted by Mr. Currie in his affidavit provided in support of Defendants' Motion for Summary Judgment. In the tenth paragraph of his affidavit, Mr. Currie states that he took Plaintiff's fingerprints to SLED for reevaluation "out of an abundance of caution after Plaintiff related facts that would have negated her ability to have committed the crime" but that he still believed the prints were a match. Affidavit of Currie ¶ 10. This statement directly conflicts with Mr. Currie's statements in his deposition testimony and to Defendants' responses to Plaintiff's Interrogatory 11. During Mr. Currie's deposition, when asked if he had ever spoken with Plaintiff Mr. Currie stated that he had simply asked "hey how are you" when he fingerprinted Plaintiff and that he had apologized to Plaintiff after he discovered his mistake, he mentions nothing about the alleged conversation he discusses in his affidavit which he states gave rise to his desire to retake Plaintiffs' fingerprints. Deposition of Peter Currie pg. 31 lines 15-25 and pg. 32 line 1-6. During his deposition, Mr. Currie also testified that it was the Departments' procedure to finger print the individual in custody and to confirm the match as soon as possible. Deposition of Peter Currie pg. 30 lines 2-21 and Pg. 31 line 3. When asked to compare the latent print from the scene with Plaintiff's print during his deposition, Mr. Currie responded "the print is completely different...it doesn't add up..."

Id. pg. 28 lines 12-25. Further, Defendants, in response to Plaintiff's Interrogatory Eleven stated that "...the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility." Defendant's Responses to Plaintiff's First Interrogatories. Plaintiff's deposition testimony raises further factual disputes material to Plaintiffs' cause of action regarding Mr. Currie's reaction to Plaintiff's fingerprints taken while in custody and Defendants' reason for taking those fingerprints. Deposition of Tynaysha Horton pg 31 line 20, pg. 32 line 2-20, pg. 36 line 4-17.

II. The Defendants are not entitled to summary judgment on Plaintiff's malicious prosecution, false arrest and imprisonment causes of action as the existence of probable cause for the arrest is properly a matter of fact for determination by the jury in this matter and as there is a question of fact as to whether or not Plaintiff was detained beyond a reasonable time in which to make an investigation.

Lack of probable cause is an essential element in claims for malicious prosecution, false arrest and false imprisonment. *Jackson v. City of Abbeville*, 366 S.C. 662, 623 SE2d 656 (Ct. App. 2005). The existence of probable cause is generally a matter of *fact* to be decided by a jury, not a matter of law. *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 435, 629 SE2d 642, 648 (2006), *See, Jones v. City of Columbia*, 301 S.C. 62, 389 SE2d 662 (1990) (emphasis added). In actions for malicious prosecution, false imprisonment or unlawful arrest, the existence of probable cause may only be decided as a matter of law when the evidence yields but one conclusion. *Id.* Probable Cause is "a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 615, 521 SE2d 163, 165 (Ct. App. 1999). The *Gist* Court clearly stated that

facially valid arrests warrants do not shield governmental agencies from liability for these torts where the Plaintiff has shown that the warrant was secured without probable cause. *Id.* at 167, 618. The Supreme Court of this state has held that when an affidavit does not disclose anything which the issuing officer can consider in arriving at a determination of whether there is probable cause for the issuance of a warrant, this, in effect leaves the determination of probable cause to the judgment of the police officer and the warrant issued thereupon is invalid. *State v. Hill*, 254 S.C. 76, 138 SE2d 829 (1964). A facially valid warrant is also invalid if Plaintiff shows that “omitted from the affidavit material facts with the intent to make, or with reckless disregard of whether they thereby made, the affidavit misleading.” *United States v. Colkley*, 899 F2d 297, 300 (4th Cir. 1990), as cited in *Miller v. Prince George’s County*, 475 F.3d 621, 627 (4th Cir. 2007). Defendants assert that Plaintiff’s actions must be dismissed because Plaintiff’s arrest was made pursuant to a “facially valid arrest warrant.” However, an arrest warrant which is “facially valid” or regular on its face merely establishes a rebuttable presumption of the existence of probable cause, an issue of fact for the proper consideration of a jury. In the present case, Plaintiff has challenged the existence of probable cause and the validity of the arrest warrant based upon Officer Tyler’s failure to disclose any information to the issuing authority beyond the alleged matching of the latent fingerprints evidencing a reckless disregard that the affidavit may be misleading to the issuing authority. However, at the time Officer Tyler sought the issuance of the warrant she had spoken with Agent Smith and was aware that Plaintiff lived in almost two hours away in Bennettsville, South Carolina, that she did not own a car and had ongoing issues with securing reliable transportation, that she had been with her parole officer the day after the burglary, that

she had three minor children one of which was a newborn and that she had volunteered to submit to DNA and fingerprint testing. Plaintiff asserts that there is a factual question whether Officer Tyler knew or should have known that providing this information would have negated a finding of probable cause by the magistrate and whether her omission of these facts evidenced a reckless disregard for the possibility that the affidavit upon which the warrant was issued was misleading.

III. The South Carolina Tort Claims Act has not barred Plaintiff's causes of action.

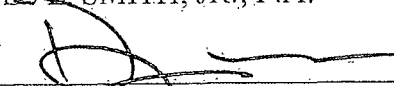
Defendants' assertion that Plaintiff's claims are barred by the South Carolina Tort Claims act are simply inaccurate. Numerous cases involving these causes of action have been brought and tried in this state since the passage of the Tort Claims act. See, *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 629 SE2d 642 (2006), *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 521 SE2d 163 (Ct. App. 1999).

CONCLUSION

Based on the foregoing, the Plaintiff respectfully asks the Court to deny the Defendant's Motion for Summary Judgment as there are actual questions of material facts in dispute in this matter that must properly be consider by a jury.

RESPECTFULLY SUBMITTED:

JAMES E. SMITH, JR., P.A.

By: 

James E. Smith, Jr.

Dylan W. Goff

E. Scott Winburn

1422 Laurel Street

Columbia, South Carolina 29201

(803) 933-9800

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

29 June, 2010 

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYANAYSHA HORTON

Plaintiff,

vs.

CITY OF COLUMBIA

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-3299

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

2011 SEP - 6 PM 3:26
JEANETTE W. MURPHY
P. & G.S.
RICHLAND COUNTY
FILED

Plaintiff's Attorney:

Dylan W. Goff, Bar No. 78416

Address:

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E-mail: dylan@jamesmithpa.com Other:

Defendant's Attorney:

Robert Cooper, Bar No. _____

Address:

PO Box 667, Columbia, SC 29202

Phone: (803) 737-4242 Fax (803) 737-4250

E-mail: rgcooper@columbiasc.net Other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: :30

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted: 6 SEP 2011

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYANASHA HORTON

Plaintiff,

vs.

CITY OF COLUMBIA

Defendant.

) IN THE COURT OF COMMON PLEAS

)

)

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Civil Action No. 2009-CP-403299

**NOTICE OF MOTION AND MOTION
TO RECONSIDER**

RECEIVED
C.C.
CLERK
JAN 16 2010

2011 SEP 5 PM 3:26

FILED

RICHLAND COUNTY

TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the above-named Plaintiff, by and through her undersigned counsel, pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure will move before the Presiding Circuit Judge on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia South Carolina, for reconsideration or, in the alternative, to alter or amend the ruling in the Defendant's Motion for Summary Judgment in the above-captioned matter to accurately reflect the record. This motion is based upon South Carolina statutory and case law, the pleadings filed in this action and such other further affidavits, pleadings and memoranda as the Plaintiff may file prior to the hearing of this matter.

JAMES E. SMITH, JR., P.A.

By:

James E. Smith, Jr.

E. Scott Winburn

Dylan W. Goff

1422 Laurel Street

Columbia, South Carolina 29201

(803) 933-9800

Attorney for the Plaintiff

5 September 2011
Columbia, SC

CERTIFICATE OF SERVICE

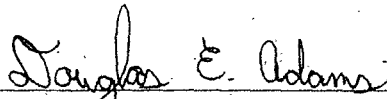
I, the undersigned employee of the law offices of James E. Smith Jr., P.A. attorneys for Plaintiff Tyanaysha Horton, do hereby certify that I have served the opposing counsel this action with a copy of the document(s) hereinbelow specified by First Class U.S. Mail, to the following address:

Documents Served:

Motion to Reconsider

Counsel Served:

**Robert Cooper, Esq.
Office of the City Attorney
PO Box 667
Columbia, SC 29202**



Douglas E. Adams, Legal Assistant to Dylan W. Goff

September 6, 2011

RICHLAND COUNTY
FILED
2011 SEP 6 PM 3:26
JAMES E. SMITH JR. P.A.
P.C. & G.S.

11. Please list any and all policies regarding Defendant's procedures once an individual is arrested and booked, including but not limited to, the number of hours a Defendant may be held prior to being fingerprinted.

RESPONSE: The Defendant objects to this Interrogatory on the ground that it is too vague to permit an informed response. Subject to that objection, the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility.

12. Please list any and all officers, their rank, and experience of crime scene investigations, who investigated the crime scene that led to the arrest of the Plaintiff.

RESPONSE: Pete Currie retired as a Master Patrol Officer. He was AFIS certified, assigned to the CSI Unit in 2005, and had over twenty years of service with the police department.

13. Please state the name, rank and level of experience, including number of years of service and any special training of the officer responsible for collecting fingerprints from the crime scene.

RESPONSE: See response to Interrogatory 12.

14. Please state the name, rank, and level of experience, including number of years of service and any special training of the officer responsible for processing the fingerprints gathered at the crime scene through the AFIS system.

RESPONSE: See response to Interrogatory 12.

15. Please state the name, rank and level of experience, including number of years of service and any special training, of the officer who was responsible for the booking of Plaintiff and processing her fingerprints once Plaintiff was in custody.

RESPONSE: The officer who transports a detainee to a detention facility does not take or process fingerprints.

RESPONSES TO REQUESTS FOR PRODUCTION

1. All documents and/or electronic data referred to or identified in your answers to Plaintiff's First Set of Interrogatories to Defendants.

RESPONSE: Enclosed are the documents listed as items (a) through (h) and (z) through (cc) in the response to Interrogatory 2. The Plaintiff already has copies of the other documents listed in that response.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, identify the witness and set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: See response to Interrogatory 1.

6. Has the party addressed or anyone on its behalf obtained any statement in any form from any of the parties or witnesses or of their agents, servants or employees concerning the events referred to in the pleadings herein and if so indicate who has possession of such statements.

RESPONSE: See response to Interrogatory 1.

7. Have any of the officers involved in Plaintiff's arrest and detention ever been disciplined, cited or counseled in any way for misconduct including but not limited to failure to follow proper procedure?

RESPONSE: The Defendant objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence. It is not clear which officers are the subject of the inquiry. The inquiry is unlimited as to time or subject and it is unclear what a citation or counseling entails. Subject to those objections, Officer Pete Currie received a reprimand in 2002 for missing a court hearing.

8. Have any of the officers involved in Plaintiff's arrest been disciplined, cited, counseled or investigated as a result of Plaintiff's arrest and detention?

RESPONSE: The Defendant objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant and admissible evidence. It is not clear which officers are the subject of the inquiry. Subject to that objection, no officer was disciplined as a result of Plaintiff's arrest.

9. Are any of the officers involved in Plaintiff's arrest no longer employed by Defendant?

RESPONSE: Yes.

10. If the Defendants response to Interrogatory 9 is affirmative, please state the reason for discharge.

RESPONSE: Pete Currie and Roberta Tyler have retired.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

TYNAYSHA U. HORTON,) Civil Action No. 2010-CP-40-3299
)

Plaintiff,)

vs.)

THE CITY OF COLUMBIA.)

Defendant.)
)
)
)

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO
RECONSIDER

NATURE OF THE CASE

Defendant, The City of Columbia, moved before this Court and was granted Summary Judgment on all claims asserted by Plaintiff on the grounds that there are no issues of material fact and that Defendants are entitled to judgment as a matter of law. Plaintiff filed this Motion seeking reconsideration or, in the alternative, to alter or amend the ruling of the Court to accurately reflect the record. A closer analysis of case law cited by the Court and the Defendant reveals that the Court erred in granting Defendant's Motion.

FACTS

Plaintiff commenced this action by the filing of a Summons and Complaint with the Richland County Court of Common Pleas on May 28, 2010. On September 9, 2009, a cinder block was thrown through the glass door to break into the Roly Poly restaurant in Columbia, South Carolina. Officer Peter Currie of the Columbia Police Department lifted a partial latent fingerprint from the door where the glass had been pushed up to gain

entry. Affidavit of Currie ¶ 5. Officer Currie ran the print through the Automatic Fingerprint Identification System ("AFIS") of the South Carolina Law Enforcement Division ("SLED"). Id. at 6. AFIS returned twenty possible matches, with the fingerprint of the Plaintiff identified as the most probable match. Id. Officer Currie then conducted a review of that print and made the determination that it matched the latent print taken from the crime scene. Id. at 7.

Officer Roberta Tyler of CPD was assigned to investigate this crime. Officer Currie informed her that he had matched the fingerprint of the robber and identified the Plaintiff as the person who broke into the restaurant Id. at 9. On September 15, 2009, Officer Tyler called Plaintiff's Probation Officer, Albert Smith, in Bennettsville, South Carolina and informed Agent Smith that CPD was seeking a warrant for Plaintiff's arrest based on fingerprints lifted from a crime scene in Columbia, S.C. Statement of Albert Smith. Agent Smith informed Officer Tyler of his personal reservations regarding the likelihood that Plaintiff could have committed the crime based upon his personal knowledge of her lack of transportation and the recent birth of her third child. Id. Nevertheless, on September 17, 2009, Officer Tyler appeared before a ministerial recorder of the City of Columbia and made a partial disclosure of relevant facts known to the Department at that time. Officer Tyler did not disclose any information related to her by Agent Smith, or any other possibly exculpatory information. Based upon the incomplete information provided, the ministerial recorder issued warrants for Burglary 2nd and Petit Larceny.

Agent Smith assisted in having Plaintiff surrender herself to Marlboro County law enforcement officers on September 17, 2009. CPD brought the Plaintiff to Columbia and

then took her to the detention center on September 18, 2009. Plaintiff was not fingerprinted at the time of her arrest nor at any time prior to September 21, 2009 despite multiple requests by the plaintiff that officers do so.

On September 21, 2009, Officer Currie took fresh fingerprints from Plaintiff. Id. ¶ 10. Plaintiff was released from City of Columbia custody the same day after review of her fingerprints revealed that they were not a match for the latent print lifted from the scene.

ARGUMENT

I. Summary Judgment was not proper as there are genuine issues of material fact in dispute.

Defendants' Motion for Summary Judgment was improper and should have been denied as there are genuine issues of material fact in dispute. Summary Judgment is "proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRPC. "When determining if any triable issue of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Summer v. Carpenter*, 328 S.C. 36. There are multiple issues of material fact disputed by the parties to this matter. Indeed, much of Defendants' arguments in support of its Motion as adopted by the Court in its Order revolve around Defendants' position that the existence of a facially valid arrest warrant issued upon probable cause preclude Plaintiffs' actions as a matter of law. However, the existence of probable cause is generally a matter of fact to be decided by a jury, not a matter of law. *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 435, 629 SE2d 642,

648 (2006), *See, Jones v. City of Columbia*, 301 S.C. 62, 389 SE2d 662 (1990) (emphasis added). In actions for malicious prosecution, false imprisonment or unlawful arrest, the existence of probable cause may only be decided as a matter of law when the evidence yields but one conclusion. *Id.* Plaintiff has competently challenged the validity of the warrant and the existence of probable cause for its issuance and has thereby raised factual issues that must be properly determined by a jury, rendering summary judgment wholly inappropriate. Further genuine issues of material fact are in dispute, including facts recited in the Court's Order, arising from inconsistency in Defendants' witness statement and pleadings that are proper for jury determination. These include facts asserted by Mr. Currie in his affidavit provided in support of Defendants' Motion for Summary Judgment. In the tenth paragraph of his affidavit, Mr. Currie states that he took Plaintiff's fingerprints to SLED for reevaluation "out of an abundance of caution after Plaintiff related facts that would have negated her ability to have committed the crime" but that he still believed the prints were a match. Affidavit of Currie ¶ 10. This statement directly conflicts with Mr. Currie's statements in his deposition testimony and to Defendants' responses to Plaintiff's Interrogatory 11. During Mr. Currie's deposition, when asked if he had ever spoken with Plaintiff Mr. Currie stated that he had simply asked "hey how are you" when he fingerprinted Plaintiff and that he had apologized to Plaintiff after he discovered his mistake, he mentions nothing about the alleged conversation he discusses in his affidavit which he states gave rise to his desire to retake Plaintiff's fingerprints. Deposition of Peter Currie pg. 31 lines 15-25 and pg. 32 line 1-6. During his deposition, Mr. Currie also testified that it was the Departments' procedure to finger print the individual in custody and to confirm the match as soon as possible.

Deposition of Peter Currie pg. 30 lines 2-21 and Pg. 31 line 3. When asked to compare the latent print from the scene with Plaintiff's print during his deposition, Mr. Currie responded "the print is completely different...it doesn't add up..." Id. pg. 28 lines 12-25. Further, Defendants, in response to Plaintiff's Interrogatory Eleven stated that "...the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility." Defendant's Responses to Plaintiff's First Interrogatories. Plaintiff's deposition testimony raises further factual disputes material to Plaintiffs' cause of action regarding Mr. Currie's reaction to Plaintiff's fingerprints taken while in custody and Defendants' reason for taking those fingerprints. Deposition of Tynaysha Horton pg 31 line 20, pg. 32 line 2-20, pg. 36 line 4-17.

II. The existence of probable cause for arrest is a matter of fact for determination by the jury.

Lack of probable cause is an essential element in claims for malicious prosecution, false arrest and false imprisonment. *Jackson v. City of Abbeville*, 366 S.C. 662, 623 SE2d 656 (Ct. App. 2005). The existence of probable cause is generally a matter of *fact* to be decided by a jury, not a matter of law. *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 435, 629 SE2d 642, 648 (2006), *See, Jones v. City of Columbia*, 301 S.C. 62, 389 SE2d 662 (1990) (emphasis added). In actions for malicious prosecution, false imprisonment or unlawful arrest, the existence of probable cause may only be decided as a matter of law when the evidence yields but one conclusion. Id. Probable Cause is "a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." *Gist v. Berkeley County Sheriff's Dep't*,

336 S.C. 611, 615, 521 SE2d 163,165 (Ct. App. 1999). The *Gist* Court clearly stated that facially valid arrests warrants do not shield governmental agencies from liability for these torts where the Plaintiff has shown that the warrant was secured without probable cause. *Id.* at 167, 618. The Supreme Court of this state has held that when an affidavit does not disclose anything which the issuing officer can consider in arriving at a determination of whether there is probable cause for the issuance of a warrant, this, in effect leaves the determination of probable cause to the judgment of the police officer and the warrant issued thereupon is invalid. *State v. Hill*, 254 S.C. 76, 138 SE2d 829 (1964). A facially valid warrant is also invalid if Plaintiff shows that "omitted from the affidavit material facts with the intent to make, or with reckless disregard of whether they thereby made, the affidavit misleading." *United States v. Colkley*, 899 F2d 297, 300 (4th Cir. 1990), as cited in *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007). Defendants asserted and the Court ultimately agreed that Plaintiff's actions must be dismissed because Plaintiff's arrest was made pursuant to a "facially valid arrest warrant." However, an arrest warrant which is "facially valid" or regular on its face merely establishes a rebuttable presumption of the existence of probable cause, an issue of fact for the proper consideration of a jury. In the present case, Plaintiff has challenged the existence of probable cause and the validity of the arrest warrant based upon Officer Tyler's failure to disclose any information to the issuing authority beyond the alleged matching of the latent fingerprints evidencing a reckless disregard that the affidavit may be misleading to the issuing authority. However, at the time Officer Tyler sought the issuance of the warrant she had spoken with Agent Smith and was aware that Plaintiff lived in almost two hours away in Bennettsville, South Carolina, that she did not own a

car and had ongoing issues with securing reliable transportation, that she had been with her parole officer the day after the burglary, that she had three minor children one of which was a newborn and that she had volunteered to submit to DNA and fingerprint testing. All of which would tend to lead a reasonable person to believe it was improbable that she had committed the crime. Plaintiff asserts that there is a factual question whether Officer Tyler knew or should have known that providing this information would have negated a finding of probable cause by the magistrate and whether her omission of these facts evidenced a reckless disregard for the possibility that the affidavit upon which the warrant was issued was misleading.

III. The South Carolina Tort Claims Act has not barred Plaintiff's causes of action.

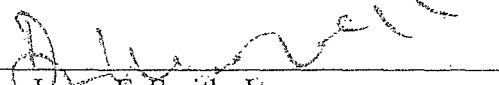
Defendants' assertion and the Court's finding that Plaintiff's claims are barred by the South Carolina Tort Claims act are simply inaccurate. Numerous cases involving these causes of action have been brought and tried in this state since the passage of the Tort Claims act. See, *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 629 SE2d 642 (2006), *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 521 SE2d 163 (Ct. App. 1999).

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests the Court alter, amend, clarify and reconsider its Order granting Defendant's Motion for Summary Judgment. A closer examination of the case law relied upon by the Defendant and this Court leads to one conclusion: The Defendant's motion must be denied. Plaintiff seeks a trial by jury in this matter. Plaintiff asks the Court to deny the Defendant's Motion for Summary Judgment as there are actual questions of material facts in dispute in this matter that must properly be considered by a jury.

RESPECTFULLY SUBMITTED:

JAMES E. SMITH, JR., P.A.

By: 

James E. Smith, Jr.

Dylan W. Goff

E. Scott Winburn

1422 Laurel Street

Columbia, South Carolina 29201

(803) 933-9800

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

20 FEB, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
TYANASHA HORTON	)	Civil Action No. 2010-CP-40-3299
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CITY OF COLUMBIA	)	<u>AFFIDAVIT OF</u>
	)	<u>DOUGLAS ADAMS</u>
Defendant.	)	
	)	

I, Douglas Adams, being duly sworn under oath, declare that I am an adult over the age of 18 years and that I state the following:

1. I worked with James E. Smith, Jr., P.A. from May 2006 to February 17, 2012 as a Legal Assistant to all of the Attorneys in the Firm and also the Office Manager for the Firm.
2. On September 6, 2011, our office filed the Motion to Reconsider with the required \$25.00 filing fee. The correspondence letter states that it was hand delivered to the Court. I do not recall if I hand delivered it or had our runner file the Motion.
3. I did serve opposing counsel with a copy of the Motion to Reconsider by U.S. First Class Mail and the original Certificate of Service is on file with the Clerk of Court.
4. I did not serve the Honorable Alison R. Lee with the stamped copy of the Motion to Reconsider because I was unaware that the Judge required service.
5. I mistakenly believed that because it was a Motion that it would be scheduled as any other motion and that the only service needed was service on opposing counsel.

6. On February 9, 2012, I called Mr. Paul Gunter, the Civil Non Jury Roster Scheduler, to ask about the status of the matter and left a voicemail. I also followed up with Mr. Gunter by sending an e-mail.

7. Mr. Gunter returned my call and spoke to Ms. Kitty Sutton in our office. He informed Ms. Sutton that the Motion to Reconsider should have been served on The Honorable Alison R. Lee.

8. After learning of this rule, I sent an e-mail to Mr. Smith, Mr. Goff, and Ms. Sutton to advise them of what I learned and to apologize for my mistake. I have a copy of my e-mail attached to this affidavit.

FURTHER AFFIANT SAYETH NOT.

Executed on February 16, 2012

Virginia M. White

SWORN to and subscribed before me.

this 16th day of February, 2012

My commission expires: 11/6/2016

Douglas E. Adams
Douglas E. Adams

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tynyasha Horton,)
Plaintiff,)

C/A NO.: 2010-CP-40-3299

vs.

MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION
TO RECONSIDER

City of Columbia Police Department,)
Defendant.)

2012 FEB 28 PM 3:17
JENNETTE M. BRIDE
C.C.P. 805

The Defendant City of Columbia Police Department ("City") files this memorandum in opposition to Plaintiff's motion to reconsider and as a response to her memorandum in support of that motion.

PROCEDURAL HISTORY

The Plaintiff commenced this action on May 19, 2010 and asserted claims for false arrest, false imprisonment, malicious prosecution, negligence and assault and battery.

The City filed a motion for summary judgment on all claims on April 29, 2011. A hearing was held on that motion on June 30, 2011. On August 26, 2011, the Court issued a Form 4 Order finding that the City's motion for summary judgment should be granted as to all claims. It specifically provided that a formal order would follow. The Form 4 Order was filed and mailed to counsel for the parties on August 30, 2011.

On September 6, 2011, the Plaintiff filed a motion to reconsider the decision of the Court.

On September 29, 2011, the Court issued its formal Order granting summary judgment to

the City on all causes of action. The Plaintiff has not filed a motion to reconsider this final Order.

AUTHORITY

Plaintiff's motion is brought pursuant to Rule 59 (e), SCRCP, and asks the Court to reconsider or, in the alternative, to amend or alter the ruling granting the City's motion for summary judgment. It should be denied because the motion itself is defective and because it provides no basis for amending or altering the Order previously issued by this Court.

1. The motion to reconsider is defective and fails to raise any issue for review or to preserve any issue for appeal.

Plaintiff's motion to reconsider is ineffective to raise any issue for review or to preserve any issue for appeal for several reasons. First, the motion was premature since it was addressed to the Form 4 Order before the final Order was issued. A Form 4 Order is a final Order only if the circuit court indicates that nothing else remains to be done after it is signed. Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (Ct. App. 2009), citing Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002). In this case, the Form 4 Order clearly stated that a formal Order would be issued. At the time the motion to reconsider was filed, there was nothing to reconsider. The Court had not issued its final order and retained the authority to make any changes from the Form 4 Order that it deemed appropriate in the final Order. When the final Order was issued, the Plaintiff did not move the Court to reconsider its ruling. Having failed to make a motion to reconsider the final Order, the Plaintiff has waived any issue for review.

Second, the motion is defective because it does not state its grounds. The motion says that it seeks reconsideration or, in the alternative, for the Court to alter or amend its ruling in this matter "to accurately reflect the record." It does not identify those aspects of the record that the Plaintiff contends have been inaccurately related by the Court in its Order. Rule 7(b)(1),

SCRCP, requires that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." By requiring notice to the court and the opposing party of the basis for the motion, the rule advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly. Camp v. Camp, 386 S.C. 571, 689 S.E.2d 634 (2010). Therefore, when a motion is challenged for a lack of particularity, the court should ask whether any party is prejudiced by the lack of particularity or whether the court can comprehend the basis for the motion and deal with it fairly. Camp, supra.

In Camp, an ex-husband was ordered by the Family Court to pay a share of his son's college expenses and to pay attorney fees. He filed a motion for reconsideration which asked the court to reconsider "awarding Plaintiff, William James Camp's college expenses and costs." The Supreme Court found that the requirements of Rule 7(b)(1) should not be applied in an overly technical fashion when neither party is prejudiced and the court is able to deal fairly with the motion. The issue in that case was very narrow and, despite the failure to comply with the particularity requirements of Rule 7(b)(1), the Supreme Court found that the parties and court were able to comprehend the motion. In the present case, however, the issues are not nearly so narrow. This case involves six causes of action and the Order in question contains multiple rulings as to each. The City is prejudiced if the Plaintiff is not required to clearly set out his grounds within the ten days permitted by Rule 59(e) but instead is allowed to expand those grounds five months beyond that deadline. The motion to reconsider should therefore be dismissed for failure to comply with Rule 76(b)(1), SCRCP.

Finally, if Plaintiff's stated grounds are deemed sufficient, she is bound by those grounds. Goddard v. Fairways Dev. General Partnership, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993).

Here, the only ground of the motion is to “accurately reflect the record.” That is not what the Plaintiff has done in her memorandum in support of her motion, however. Instead, rather than asking the Court to correct errors based upon the record, the Plaintiff reiterates the arguments made previously to the Court in the hearing on the motion for summary judgment.¹ The motion should therefore be dismissed.

For the reasons above, the motion for reconsideration does not raise any issue upon which the Plaintiff is entitled to relief and should be dismissed.

2. The Court correctly found that there were no genuine issues of material fact that would preclude the grant of summary judgment to the City.

The Plaintiff argues that the grant of summary judgment to the City was improper because there are genuine issues of material fact in dispute in this case. Memorandum in Support of Plaintiff's Motion to Reconsider, Argument 1. As an example of disputed facts, the Plaintiff notes that she challenges the validity of the arrest warrant and the existence of probable cause for its issuance. To avoid summary judgment, however, the Plaintiff had to point to factual issues in the record rather than simply reiterating allegations. She failed to do so at the summary judgment hearing and does not now point to any facts overlooked by the Court in its Order.

In addition, the Plaintiff attempts to demonstrate a factual issue based upon alleged discrepancies in the affidavit and deposition testimony of Crime Scene Officer Peter Currie and a discovery response made by the City. The Plaintiff alleges that these factual disputes are

¹ In fact, Plaintiff's Memorandum in Support of Plaintiff's Motion to Reconsider is almost a verbatim duplication of her Memorandum in Opposition to Defendant's Motion for Summary Judgment that was submitted at the summary judgment hearing. The only changes are to the Nature of the Case section, to verb tenses and the insertion of occasional references to the Court's final Order. There is no analysis of that Order.

material "regarding Mr. Currie's reaction to Plaintiff's fingerprints taken while in custody and Defendants' reason for taking those fingerprints." Plaintiff's Memorandum pg. 5. A review of those statements reveals that the alleged inconsistencies stem from misunderstandings of the facts and, in any event, none are material to the outcome of this case.

The Plaintiff attempts to demonstrate a factual dispute between Officer Currie's affidavit and his deposition testimony about his conversation with the Plaintiff on Monday, September 21, 2009. In Paragraph 10 of his affidavit, Officer Currie testified that, when he came to work that date, he became aware that the Plaintiff had been picked up and was incarcerated. As was his custom, he took fresh fingerprints from her to compare to the fingerprint that was taken from the crime scene. Id. It appeared to him that they matched. Id. However, because the Plaintiff related facts which, if true, would have negated her ability to commit the crime, he took the fingerprints to experts at SLED for additional review. Id. The Plaintiff contrasts that to Mr. Currie's testimony that, when he fingerprinted her, his conversation consisted of "[h]ey, how are you." Deposition of Peter Currie, pg. 31, lines 15-18. The Plaintiff apparently contends that these two statements are inconsistent.² However, the deposition testimony is clearly very general while the affidavit is more specific. Further, the statement in his affidavit that the Plaintiff related facts that caused him to seek a second opinion from SLED is not necessarily based upon a conversation directly with the Plaintiff but could have been based on facts related to him by Investigator Tyler. There is no evidence of a factual discrepancy here. In any event, there is no

² In her memorandum, the Plaintiff states that Officer Currie "mentions nothing about the alleged conversation he discusses in his affidavit which he states gave rise to his desire to retake Plaintiff's fingerprints (emphasis added). Plaintiff's Memorandum pg. 4. That misconstrues the events. Officer Currie took Plaintiff's fingerprint on September 21, 2009 because it was his practice to do so. Aff. ¶10. He believed that it matched the print taken from the crime scene. Id. The Plaintiff's statements caused him to take the prints to SLED but did not result in him retaking Plaintiff's fingerprints.

dispute that Mr. Currie did go to SLED, that SLED representatives could not confirm a match of the fingerprints, and that the Plaintiff was therefore released from custody later that day. The specifics of the conversation that led Mr. Currie to seek that second opinion simply are not material.

The Plaintiff also alleges that Mr. Currie gave deposition testimony that differs from the City's response to written discovery concerning the City's procedures for taking the fingerprints of a person after they are taken into custody. She cites the City's response to Plaintiff's Interrogatory 11 in which it stated that "...the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility."³ That response is consistent with Officer Currie's testimony that there is no departmental mandate to fingerprint in those circumstances but that it is left up to the individual crime scene officer. Deposition of Peter Currie pg. 30, lines 2-12. It is his practice to take fingerprints of a person after apprehension so he can later testify that he took fresh fingerprints and re-examined them to confirm a match. Id. That is also consistent with his affidavit testimony which states that it is his custom to take fresh fingerprints. Aff. ¶ 10. Regardless, any perceived discrepancy is immaterial since there is no legal requirement that a suspect be fingerprinted after they are brought to a detention center.

Finally, the Plaintiff attempts to demonstrate a factual dispute as to Officer Currie's reaction when he took fresh prints from the Plaintiff after she had been incarcerated. The

³ Interrogatory 11 asked "Please list any and all policies regarding Defendant's procedures once an individual is arrested and booked, including but not limited to, the number of hours a Defendant may be held prior to being fingerprinted. The City responded "The Defendant objects to this Interrogatory on the ground that it is too vague to permit an informed response. Subject to that objection, the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility." This response is based on the fact that detention center personnel handle the fingerprinting of a person who is booked into their facility. It was not directed to the practice of individual police officers.

Plaintiff points to testimony from Officer Currie in comparing a print from AFIS to the latent print that "...it is completely different than this one here....It doesn't add up." Deposition of Peter Currie pg. 28, lines 15-19. Although the argument is not made very specifically, the Plaintiff appears to contrast that to Officer Currie's affidavit testimony, that after taking fresh fingerprints from the Plaintiff, it still appeared to him that they matched the latent print. Currie Aff. ¶10. There is no contradiction. Officer Currie's deposition testimony cited by the Plaintiff does not involve a review of the fresh fingerprints provided by the Plaintiff. Instead, he was looking at a sheet showing the twenty most similar prints provided by AFIS. The fingerprint that he indicated "doesn't add up" was not that of the Plaintiff but was the number 2 print (second most likely match to the latent print). Deposition of Peter Currie page 28, lines 5-19.

The Plaintiff has not demonstrated any disputed material fact that would prevent a grant of summary judgment to the City.

3. The Court correctly determined that the issue of probable cause was a matter of law in this case.

The Plaintiff contends that the issue of probable cause should have been submitted to the jury in this case. Memorandum in Support of Plaintiff's Motion to Reconsider, Arguments 1 & 2. Probable cause may be decided as a matter of law when the evidence yields but one conclusion. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). The Court found that Officer Currie conducted a thorough investigation, an Assistant Solicitor authorized a warrant against the Plaintiff, a ministerial recorder then found probable cause and issued warrants against the Plaintiff and that, taken together, these facts establish probable cause as a matter of law. In addition, the Court found that the police officers' reasonable belief that the

Plaintiff was the robber also established probable cause. The Plaintiff has not cited any authority that has held otherwise on similar facts.

The Plaintiff contends that the Court found that Plaintiff's claims for false arrest, false imprisonment and malicious prosecution must be dismissed because her arrest was made pursuant to a facially valid arrest warrant. She argues, without citation of authority, that such a warrant merely establishes a rebuttable presumption of probable cause but it is still an issue for a jury. The Plaintiff appears to misunderstand the Court's ruling. The Court held that the facially valid warrant in this case barred Plaintiff's claims for false arrest and false imprisonment. The Plaintiff has not cited any authority to the contrary. The Court did not find that a facially valid warrant is a bar to a claim for malicious prosecution but held that it is one of the factors that the Court can consider in determining whether there was probable cause as a matter of law. See, Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). Again, the Plaintiff has not offered any authority to the contrary.

The Plaintiff asserts that a facially valid warrant does not shield a governmental entity from tort liability where the plaintiff has shown that the warrant was secured without probable cause, citing Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct. App. 1999). Gist is clearly distinguishable from the facts at hand. In Gist, the Court of Appeals found that the warrant's affidavit did not state facts sufficient to establish probable cause and that there was a disputed fact as to whether the affidavit was supplemented with adequate testimony to establish probable cause. That issue does not exist in the case at hand. There has been no contention that the affidavit in this case was insufficient to obtain the arrest warrant against the Plaintiff.

The Plaintiff also contends that the arrest warrant is subject to attack because Investigator Tyler did not fully disclose all material facts to the ministerial recorder. A facially valid warrant can only be attacked if the party first makes "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, is included by the affiant in the warrant affidavit." Franks v. Delaware, 438 U.S. 154, 155-156 (1978). The Court properly found that the Plaintiff has not submitted any evidence that would entitle her to a Franks hearing. The Plaintiff relied upon an unsworn letter from her probation officer setting out information that he had provided to Investigator Tyler. The Court properly found that the statement could not be considered because it was not in affidavit form and had not been provided to defense counsel prior to the hearing, as required by Rule 56, SCRPC. The Court found further that, even if the statement had been properly before the Court, it did not relate any material information that Investigator Tyler would have been obligated to provide to the ministerial recorder. The Plaintiff has not provided any factual matter or legal authority that would cast doubt upon those findings.

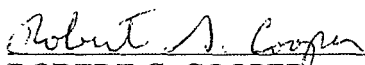
4. The Court correctly found that the claims for false arrest, false imprisonment, malicious prosecution and negligence are barred by the provisions of S.C. Code Ann. §15-78-60(5).

The Plaintiff contends that her claims are not barred by the provisions of the South Carolina Tort Claims Act because other cases involving the same type of claims have been brought and tried in this state since it was enacted. Memorandum in Support of Plaintiff's Motion to Reconsider, Argument 3. However, the Plaintiff has not shown that the issues raised by the City were argued in those cases. Further, the Plaintiff does not even address the Court's finding that the causes of action for false arrest, false imprisonment, malicious prosecution and negligence are barred by the discretionary immunity provision of the Tort Claims Act, S.C. Code

Ann. §15-78-60(5), under the facts of this case. The Plaintiff has simply provided no legal or factual reason for the Court to alter its Order in this case.

CONCLUSION

Plaintiff's motion should be dismissed as untimely and because it fails to comply with the requirements of the South Carolina Rules of Civil Procedure. In the alternative, it should be denied because the Court properly ruled upon the issues raised in the motion.



ROBERT G. COOPER

Office of the City Attorney

Post Office Box 667

Columbia, South Carolina 29202

Telephone: (803) 737-4242

Facsimile: (803) 737-4250

Attorney for the Defendant

City of Columbia Police Department

Columbia, South Carolina

February 27, 2012

JAMES E. SMITH, JR., P.A.
ATTORNEYS AT LAW

JAMES E. SMITH, JR. *†
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DYLAN W. GOFF

1422 LAUREL STREET
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(1969-2000)

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OF COUNSEL:
NINA NELSON SMITH

* ALSO ADMITTED IN NC
† ALSO ADMITTED IN GA

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WEBPAGE:
www.JamesSmithPA.com

April 12, 2012

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Tynaysha Horton v. City of Columbia Police Department
Civil Action Number 2010-CP-40-3299

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent, The Honorable Alison Renee Lee, and the Clerk of Court of Richland County;
- (2) A copy of the Final Order and Decision and Order Denying Motion to Reconsider challenged on appeal;
- (3) A filing fee of \$100.

With kind regards, I am

Sincerely,

James E. Smith, Jr.

cc: Robert Cooper, Esq.
The Honorable Alison Renee Lee
Clerk of Court of Richland County

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APR 12 2012

SC Court of Appeals



Service Disabled Veteran-Owned Small Business

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynyasha Horton,

Appellant,

v.

City of Columbia Police
Department,

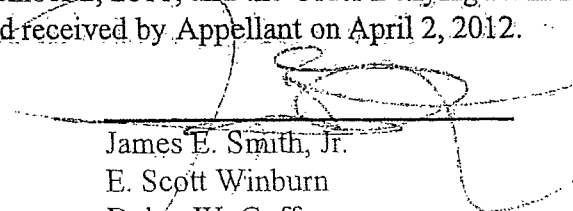
Respondant.

RICHLAND COUNTY
FILED
2012 APR 12 PM 4:48
JEANETTE W. MCBRIDE
C.C.P. & G.S.

NOTICE OF APPEAL

Tynyasha Horton appeals the Order of the Honorable Alison Renee Lee dated August 26, 2011, received by Appellant on September 2, 2011, and the Order Denying Plaintiff's Motion to Reconsider dated March 28, 2012 and received by Appellant on April 2, 2012.

April 12, 2012


James E. Smith, Jr.
E. Scott Winburn
Dylan W. Goff
Law Offices of James E. Smith, Jr.
1422 Laurel Street
Columbia, South Carolina 29201
(803)933-9800
Attorney for Appellant

Other Counsel of Record:
Robert Cooper, Esq.
Office of the City Attorney
City of Columbia
Post Office Box 667

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APR 12 2012

SC Court of Appeals

Columbia, South Carolina 29202
Attorney for Respondent
(803)737-4242

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynyasha Horton,

Appellant,

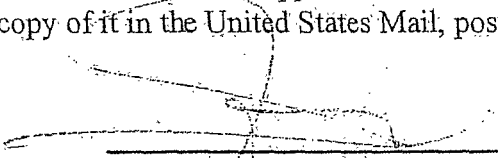
v.

City of Columbia Police
Department,

Respondant.

PROOF OF SERVICE

I certify that I have served the attached Notice of Appeal on the below-named parties, at the addresses given, by depositing a copy of it in the United States Mail, postage prepaid, on this day of April 12, 2012.


James E. Smith, Jr.
E. Scott Winburn
Dylan W. Goff
Law Offices of James E. Smith, Jr.
1422 Laurel Street
Columbia, South Carolina 29201
(803)933-9800
Attorney for Appellant

The Honorable Alison Renee Lee
Richland County Courthouse
PO Box 192
1701 Main Street, Room 324
Columbia, SC 29202-0192

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APR 12 2012

SC Court of Appeals

The Honorable Jeanette W. McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

Robert Cooper, Esq.
Office of the City Attorney
City of Columbia
Post Office Box 667
Columbia, South Carolina 29202

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

Tynaysha Horton

Plaintiff

JUDGMENT IN A CIVIL CASE

CASE NO: 2010-CP-40-3299

RECEIVED

SEP - 2 2011

JAMES E. SMITH, JR., P.A.

vs.

City of Columbia

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

On Defendant's motion for summary judgment, this Court determines the following:

Plaintiff asserts the following causes of action: false imprisonment, false arrest, malicious prosecution, negligence, and assault and battery. In considering the evidence in the light most favorable to the Plaintiff, Defendant's motion for summary judgment must be granted. False arrest and false imprisonment are not separate torts. Under false arrest, plaintiff must prove that the restraint was unlawful. An action cannot be maintained where the plaintiff is arrested by lawful authority. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (Ct. App. 1999); Gist v. Berkeley County Sheriff Dept., 336 S.C. 611, 521 S.E.2d 163. In this case, the arrest was made pursuant to an arrest warrant issued by a ministerial recorder. The fundamental issue in determining lawfulness of the arrest is whether there is probable cause. McBride v. School Dist. Of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) (citing Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006)). Plaintiff claims that there is a question of fact as to whether the arrest warrant was issued on probable cause based on the exculpatory information given to the officer. The existence of probable cause may be decided as a matter of law when the evidence yields but one conclusion. McBride, supra. The warrant affidavit on its face is sufficient to establish probable cause. Probable cause is a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances to believe likewise. The crime scene analyst investigated the scene, lifted a fingerprint from the scene, and ran the print through a law enforcement database that identified Plaintiff as the most probable match. The officer then reviewed the Plaintiff's prints with the one taken from the scene and verified the prints matched. Two additional crime scene analysts

SCANNED

compared the prints and verified the prints matched. The analyst informed an officer of the finding, that information, the officer prepared the affidavit and obtained the arrest warrant. Probable cause is determined as of the time of arrest, based upon facts and circumstances objectively measured and known to the arresting officer. The officer who sought the arrest warrant obtained the warrant based on the fingerprint analysis. There was probable cause to arrest Plaintiff based on the fingerprint analysis, irrespective of whether the officer was informed by Plaintiff's probation officer that Plaintiff could not have committed the crime because she had problems securing transportation and had children at home.

The same analysis applies to the malicious prosecution claim. Plaintiff must prove a lack of probable cause in a malicious prosecution action. Again, probable cause is determined at the time of the arrest and not what might be revealed in hindsight. The officer sought a warrant based on a good faith objective belief that the person identified committed the offense at the time. The cause of action for malicious prosecution must also fail on summary judgment.

Plaintiff asserts a claim for assault and battery based on her arrest. Plaintiff does not allege that Defendants used excessive force. A battery is the actual infliction of any unlawful, unauthorized violence on the person of another. Jones v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995). A police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. Roberts v. City of Forest Acres, 902 F.Supp. 662, 671-72 (D.S.C. 1995) (applying South Carolina law). Plaintiff's arrest was based on a facially valid arrest warrant. Therefore, Defendants' actions in arresting Plaintiff did not constitute an assault or battery, and the Defendant is entitled to summary judgment on those causes of action.

Plaintiff also asserts a claim for gross negligence in failing to fingerprint Plaintiff when she was taken into custody and before she was transported to Columbia for detention. Plaintiff also alleges Defendants failed to properly train its employees to administer the taking of fingerprints and to properly investigate a burglary and in failing to implement policies to ensure officers were properly trained to handle such situations. Plaintiff has not produced evidence that an employee of Defendant failed to exercise slight care in its investigation or arrest of Plaintiff. According to the Affidavit and deposition of Peter Currie, the analyst who identified Plaintiff's fingerprints as matching those from the scene, he completed multiple courses in fingerprint analysis and was certified in database fingerprint comparison. He received additional training in crime scene investigation. Currie stated that Defendant's practice or procedure is to fingerprint an individual again once they are arrested and placed into custody. Currie followed this procedure and took Plaintiff's fingerprints once she was transported to Columbia. Defendant's motion for summary judgment on the negligence cause of action is granted.

To the extent Plaintiff alleges Defendant is liable based on the misidentification of the fingerprints as hers, Plaintiff's claims are barred by § 15-78-60(5) of the Tort Claims Act. The analyst exercised his professional judgment based upon his training and experience. Summary judgment is not based on exceptions to the Tort Claims Act, specifically Sections 15-78-60(17), (23), and (4). And this Court so holds.

Defendant shall prepare a more formal order that includes facts to support the Court's ruling and additional legal citations consistent with this form order. A copy of the order shall be submitted not later than September 6 in Word format by e-mail with a copy to Plaintiff's counsel for comment.

Dated at Columbia, South Carolina, this 26th day of August, 2011.


PRESIDING JUDGE

This judgment was entered on the 30th day of August, 2011, and a copy mailed first class this 30th day of August, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Tynyasha Horton

City Of Columbia Police Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 March 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Dylan W Goff

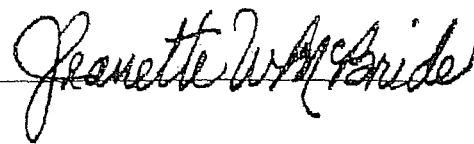
Robert G. Cooper

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-3299

ORDER

RIGHLAND COUNTY
FILED
2012 MAR 29 AM 10:27
JEANETTE W. McBRID
C.C.P. & G.S.

Defendant.

AND IT IS SO ORDERED.

March 28, 2012
Columbia, South Carolina

SCANNED

The State of South Carolina
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL
CIRCUIT

The Honorable Alison R. Lee, Circuit Judge

Docket No. 2010-CP-40-3299

Tynasha Horton

Appellant,

v.

The City of Columbia

Respondent.

APPELLANT'S
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

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JUL 20 2012

SC Court of Appeals

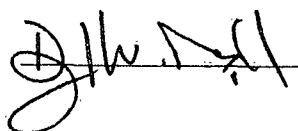
Appellant proposes the following matter be included in the record on appeal and counsel certifies that this designation contains no matter that is irrelevant to this appeal:

1. Order, Docket No. 2010-CP-40-3299 (September 29, 2011).
2. Deposition of Tynaysha U. Horton (February 18, 2011).
3. Deposition of Peter Konrad Currie (February 18, 2011).
4. Transcript of Record, Docket No. 2010-CP-3299 (June 30, 2011).
5. Statement of Officer Albert Smith (July 26, 2010).
6. State of South Carolina Arrest Warrant K-613278.
7. Affidavit of Peter Konrad Currie.
8. Defendant's Responses to Plaintiff's Interrogatories and Requests for Production.
9. Notice of Appeal.

Certification:

I, **Dylan W. Goff**, as counsel of Record for Appellant, do hereby certify that this Designation contains no matter which is irrelevant to the appeal.

20 July 2012



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

RECEIVED
AUG 16 2012
SC Court of Appeals

Tynyasha Horton.....Appellant,

v.

City of Columbia Police Department.....Respondent.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

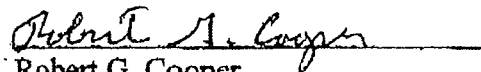
Respondent proposes the following be included in the Record on Appeal:

1. Order of March 28, 2012;
2. Order of September 29, 2011, with Judgment cover page;
3. Order of August 26, 2011;
4. Amended Complaint;
5. Answer;
6. Transcript of June 30, 2011 hearing, pp. 4-6; 39-40; and 52;
7. Currie Deposition, pp. 24-25; and 28-31;
8. Horton Deposition, pp. 15-17; 23-24; 26; and 28-29;
9. Agent Albert Smith statement dated July 26, 2010;
10. Warrants K-613277 for Burglary 2nd and K-613278 for Petit Larceny;
11. Defendant's Response to Plaintiff's First Set of Interrogatories and Request for Production to Defendant, p. 10;
12. Affidavit of Peter Currie dated April 29, 2011;
13. Defendant's Motion for Summary Judgment;
14. Defendant's Memorandum in Support of its Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment dated June 30, 2011;

15. Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment;
16. Horton's Motion to Reconsider dated September 5, 2011, showing filing date stamp;
17. Memorandum in Support of Plaintiff's Motion to Reconsider, showing filing date stamp;
18. Defendant's Memorandum in Opposition to Plaintiff's Motion to Reconsider dated February 27, 2012;
19. Notice of Appeal with proof of service and attachments; and,
20. Appellant's Designation of Matter to be Included in the Record on Appeal dated July 20, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 16, 2012


Robert G. Cooper
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
803) 737-4242

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

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OCT 16 2012

SC Court of Appeals

Case No. 2010-CP-40-3299

The City of Columbia,.....Respondent,

v.

Tynaysha U. Horton,.....Appellant.

PROOF OF SERVICE

I, Laura Diaz, do hereby certify that I have this date served the attached Record on Appeal upon The City of Columbia by depositing a copy of it in the United States Mail, postage prepaid, on October 16, 2012, addressed to their attorney of record, Robert G. Cooper, Post Office Box 667, Columbia, SC 29202.

October 16, 2012



Laura Diaz, Legal Assistant
JAMES E. SMITH, JR., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
(803) 933-9800
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynyasha Horton,

Appellant,

v.

City of Columbia Police
Department,

Respondant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal complies with
Rule 210 (g), SCACR.

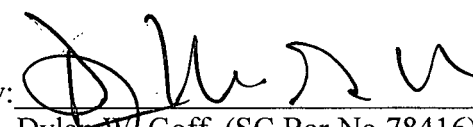
RESPECTFULLY SUBMITTED,

JAMES E. SMITH, JR., P.A.

RECEIVED

OCT 17 2012

SC Court of Appeals

By: 

Dylan W. Goff (SC Bar No. 78416)

Dylan@JamesSmithPA.com

1422 Laurel Street

Columbia, South Carolina 29201

(803) 933-9800

ATTORNEYS FOR APPELLANT

Tynyasha Horton

October 16, 2012
Columbia, South Carolina