

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

C. Victor Pyle, Jr., Circuit Court Judge
Edward W. Miller, Circuit Court Judge

Case No. 2005-CP-23-06048

RECEIVED
MAR 26 2013
SC Court of Appeals

Sherrie Mann McBride,

Appellant

v.

School District of Greenville County,

Respondent

RECORD ON APPEAL
Volume I

Katherine Carruth Goode
229 South Congress Street
Winnsboro, South Carolina 29180
Telephone: 808-799-4440

Attorney for Appellant

N. Heyward Clarkson, III
John D. Harjehausen
Clarkson, Walsh, Terrell & Coulter, P.A.
1164 Woodruff Road
P.O. Box 6728
Greenville, South Carolina 29606
Telephone: 864-232-4400

Attorneys for Respondent

INDEX

Index	i

Volume I:

Order dated December 12, 2006	1
Order dated September 14, 2007	11
Order dated November 1, 2007	12
Order dated June 1, 2011	13
Order dated June 8, 2011	14
Order dated April 5, 2012	16
Order dated June 26, 2012	17
Opinion of Court of Appeals in <i>McBride v. School District of Greenville County</i> , 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010)	19
Second Amended Notice of Appeal	36
Complaint	43
Answer	55
Defendant's Motion to Amend Answer	66
Plaintiff's Memorandum in Opposition to Defendant's Motion to Amend Answer	68
Amended Answer	72
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment	83
Transcript of Hearing held June 1, 2011	93
Excerpts from Transcript of Trial held June 7-8, 2011	121
Opening statement by Ms. McBride	124
Opening statement by Mr. Clarkson	126

Witness testimony:

Joshua F _____	
Direct.....	129
Cross	171
Re-Direct.....	189
 Kathleen Hills	
Direct.....	192
Cross	198
Re-Direct.....	199
 Daniel Oslager	
Direct.....	200
Cross	217
Re-Direct.....	226
 Leslie Lambert	
Direct.....	233
Cross	239
Re-Direct.....	247
 Tina Hart	
Direct.....	257
 Sharon Wilson	
Direct.....	260
Cross	271
Re-Direct.....	272
 William F. Roach, Jr.	
Direct.....	275
Cross	294
Re-Direct.....	299
 Linda Diane Cochran	
Direct.....	304
Cross	315
 Lynn Foxx	
Direct.....	316
Cross	340
Re-Direct.....	343

Nancy Mann	
Direct (not recorded, as noted by court reporter).....	344
Cross	344
Sherrie McBride	
Direct.....	345
Cross	351
William Roach	
Direct.....	361
Cross	363
Shea Smith	
Direct.....	367
Cross	372
Howard Steinberg	
Direct.....	381
Cross	384
John David Rowell	
Direct.....	388
Cross	394
Joshua F _____	
Direct.....	397
Linda Cochran	
Direct.....	400
Argument of Directed Verdict Motion	402
Ruling of the Court	406
Transcript of Hearing held June 18, 2012.....	409
Excerpt from Transcript of Trial held October 30-November 1, 2007.....	450
Witness Testimony	
Nancy Mann	
Direct.....	451
Cross	461
Exhibit from Hearing held June 18, 2012:	
Plaintiff's Exhibit 1	462

Volume II:

Exhibits from Trial held June 7-8, 2011:

Plaintiff's Exhibit 5	467
Defendant's Exhibit 1	469
Defendant's Exhibit 2	470
Defendant's Exhibit 3	472
Defendant's Exhibit 4	474
Defendant's Exhibit 5	863
Defendant's Exhibit 6	864
Defendant's Exhibit 8	866
Defendant's Exhibit 9	868
Defendant's Exhibit 10	891
Defendant's Exhibit 11	893
Defendant's Exhibit 12	894
Defendant's Exhibit 13	895
Defendant's Exhibit 14	904
Defendant's Exhibit 15	905
Defendant's Exhibit 16	907

Defendant's Memorandum Re: Reconstruction of the Record of the Testimony of Nancy Mann	908

Plaintiff's Memorandum in Response to Defendant's Memorandum Regarding Reconstruction of Testimony, with attachment	912

Certificate of Counsel	919

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. NO.: 2005-CP-23-6048

Sherrie Mann McBride,)

Plaintiff,)

vs.)

The School District of Greenville)
County and William Roach,)

Defendants.)

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

ENTERED COMPUTER

This matter came for hearing before the Court on the Defendant's Motion for Summary Judgment during the Non-Jury Term of the Greenville County Court of Common Pleas on November 8, 2006. For the reasons set forth below, the Court grants summary judgment to the School District of Greenville County (the "School District") on Plaintiff's claims for breach of contract, wrongful termination, negligence, negligence per se, and gross negligence. The Court grants Defendant William Roach ("Roach") summary judgment on all causes of action.

I. Background/Facts

Plaintiff Sherrie Mann McBride ("McBride") worked as a special education teacher for the School District at Berea High School ("BHS") from August 9, 2000 until September 26, 2003. Roach began working as the Principal of BHS around May of 2003 and still holds that position. In September of 2003, Roach learned of activity that caused him to recommend the McBride's termination. The School District informed McBride of her termination in writing by letter dated September 26, 2003.

The School District had contracted with McBride to work during the 2003-04 scholastic year as a second year annual contract teacher. The contract provided that "[t]his contract may be

terminated by written agreement of both parties or in accordance with South Carolina law and Employer's policies and regulations as applicable to the contract status indicated above." The contract stated that McBride's contract status was "Annual 2." The contract also provided that the "[e]mployee will not receive compensation for any day not worked because of a reduction in the number of days of service."

The School District informed McBride of the immediate suspension of her employment by a letter dated September 26, 2003, from the former Superintendent of the School District, William E. Harner. The letter explained that McBride was being terminated because she:

gave a student your passwords that allowed him to access both Novell and your district email, gave this same student a school-owned CD with the State's new grading system on it, repeatedly removed or allowed this student to be absent from another teacher's class, allowed this student to drive your car, and inappropriately interfered with the student's relationship with his parents.

The letter also explained that the South Carolina Employment and Dismissal Act did not apply to her, based on her contract status as an annual contract teacher. Finally, the letter explained that McBride had the right to appeal her termination first to the Superintendent or his designee and then to the School Board.

McBride requested her first appeal hearing to be postponed because she had criminal charges pending against her for contributing to the delinquency of a minor and enticing an enrolled child from attendance in school, arising out of the incident described in the termination letter where she allegedly allowed a student to drive her car. The School District agreed with her request to postpone the hearing. The last criminal charge against McBride was dismissed on August 30, 2004. She requested a hearing by letter dated August 29, 2005, and Pat Mitchell, the School District's Human Resources Director, heard her appeal on September 8, 2005. Mr. Mitchell heard the matter as the Superintendent's designee and upheld the decision to terminate McBride.

6-2

written Informal Hearing Summary, finding that each of the stated reasons for her termination was based upon the more credible evidence presented at the hearing.

McBride filed this action on September 23, 2005. Presumably, McBride filed this action prior to the School Board hearing on her appeal to satisfy the two-year statute of limitations mandated by the Tort Claims Act. In the Complaint, McBride alleged causes of action against the School District and Roach for breach of contract, wrongful discharge, defamation of character, abuse of process, false imprisonment, malicious prosecution, intentional infliction of emotional distress and outrage, negligence, negligence per se, and gross negligence.

McBride's appeal to the School Board was heard on November 7, 2005. The hearing lasted from nine in the morning until five thirty in the evening. At the hearing, Roach, McBride, John Doe, Elizabeth Ann F██████, Kim Fanning, and Mary Smith testified as witnesses. At the conclusion of the hearing, the members of the School Board present for the vote unanimously decided to uphold the termination of McBride's employment.

McBride did not file a notice of appeal of the School Board's decision to uphold her termination. McBride also has not moved to file an amended complaint to appeal the School Board's decision. Almost one year has passed since the School Board hearing upholding McBride's termination.

II. Law/Analysis

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.C.P 56(e). In this case, McBride alleges causes of action for breach of contract, wrongful discharge, defamation of character, abuse of process, false imprisonment, malicious

GE 43

prosecution, intentional infliction of emotional distress and outrage, negligence, negligence per se, and gross negligence. Based upon the law and evidence, the Court finds that McBride should only proceed to trial against the School District on her claims for defamation of character, abuse of process, false imprisonment, malicious prosecution, and intentional infliction of emotional distress.

A. Breach of Contract Claims

The Court finds that Defendants are entitled to judgment as a matter of law on the claims for breach of contract and wrongful termination because McBride is not entitled to the protections of the Teacher Employment and Dismissal Act as an annual contract teacher, and her sole remedy for the termination of her contract was an appeal to the Board of Trustees for the School District. Second, the Defendants are entitled to judgment as a matter of law because she failed to appeal the decision to uphold her termination by the Board of Trustees for the School District, as required by S.C. Code Ann. § 59-25-480. Finally, Roach cannot be liable to McBride for breach of contract or wrongful discharge because he was not her employer.

1. McBride's sole remedy was her appeal to the School Board.

The Court finds that McBride does not have the legal right to judicial review of her termination because her final remedy was the appeal to the School Board and, therefore, grants summary judgment on her claims for breach of contract and wrongful termination. Only continuing contract teachers have the right to appeal an employment action to the Circuit Court, under the Teacher's Employment and Dismissal Act (the "Act"). See S.C. Code Ann. § 59-26-4(J) (providing that "Continuing contract teachers shall have full procedural rights that currently exist under law relating to employment and dismissal.") and S.C. Code Ann. § 59-25-480 (providing for appeals of teacher employment decisions).

However, McBride was an annual contract teacher, based upon the contract she admitted to in her deposition and her three years of service. Under S.C.Code Ann. § 59-26-40(H), "during the annual contract period the employment dismissal provisions of Article 3, Chapter 19 and Article 5, Chapter 25 of this title do not apply." Article 3, Chapter 19 contains the provisions that allow an appeal to the Circuit Court from adverse decisions of a school board. See S.C.Code Ann. § 59-19-560. Article 5, Chapter 25 is the Teacher's Employment and Dismissal Act and provides for appeals to the Circuit Court of adverse employment decisions by school boards. See S.C.Code Ann. § 59-25-480. Therefore, S.C.Code Ann. § 59-26-40(H) completely forecloses any right to be heard in the Circuit Court on the termination of an annual contract teacher. As the statute clearly states, after providing for a two-level appeals process for annual contract teachers, "The decision of the board is final." S.C.Code Ann. § 59-26-40(H) (outlining an appeal first to the district's superintendent and then to the board for an employment decision affecting an annual contract teacher). In this case, McBride had the two levels of appeal—before the Superintendent and the School Board—mandated by the Code. Therefore, McBride has received all of the appellate review to which she is entitled under the plain language of the Code.

The South Carolina Code applicable at the time of McBride's hiring and termination created four different classifications of full time teachers: induction contract teachers, provisional contract teachers, annual contract teachers, and continuing contract teachers. See S.C.Code Ann. § 59-26-40. Progression through the different classifications of teachers is governed by S.C.Code Ann. § 59-26-40. Of these four classifications, only continuing contract teachers are guaranteed the right to appeal under the Act.¹ While the Code specifically prohibits the application of the Act to the first three classifications, the Code specifically grants continuing contract teachers protection under

¹ Induction contract teachers are exempted by S.C.Code Ann. § 59-26-40(C). Provisional contract teachers are exempted by S.C.Code Ann. § 59-26-40(C). Annual contract teachers are exempted by S.C.Code Ann. § 59-26-40(H), which provide for an entirely separate appeal and review process.

GRS

the Act. See S.C.Code Ann. § 59-26-40(J) (stating that "[c]ontinuing contract teachers shall have full procedural rights that currently exist under law relating to employment and dismissal.").

The different procedures set out in the Code imply a legislative scheme which rewards the longest-serving continuing contract teacher with an appeal to the Circuit Court. It would take a newly-employed teacher at least two years of work to reach the continuing contract level. For the induction and provisional teacher, the Code does not allow any procedure to vindicate wrongful termination. For the annual contract teacher, a specific two-level appeal is set out by S.C.Code Ann. § 59-26-40(H), but an appeal to the Circuit Court is not permitted. Only the continuing contract teacher is entitled to Circuit Court review by the Code. The Code has clearly announced a preference to allow the publicly-elected school boards of this State to speak first and finally on employment matters for newly-employed teachers.

McBride's argument that she is entitled to file suit in Circuit Court for breach of contract and wrongful termination would create the absurd result that an annual contract teacher, with less seniority, would have the right to broader review of her allegations than that of a continuing contract teacher. Under prior case law, an appeal from a school board employment decision under the Act is heard under the more deferential substantial evidence standard of review. See Laws v. Richland County School Dist. No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). Substantial evidence, "is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Id. Presumably, such an appeal would be before the Court without a jury. However, McBride would receive de novo review of the school board's decision if she is allowed to proceed

to a jury trial on her contract claims. To allow McBride's claims to have de novo review and a jury trial would defeat the Code's clear intent.

2. McBride failed to appeal the School Board's decision.

Alternatively, assuming that the Employment and Dismissal Act does apply to McBride, as she appears to contend it does, the Court finds that she has failed to file her appeal within the time required by the Code. An appeal of a general decision of a school board must be filed within 10 days, S.C.Code Ann. § 59-19-560, and an appeal of an employment decision of a school board must be filed within 30 days, S.C.Code Ann. § 59-25-480. A notice of appeal must be filed with the school board, and the Court's review is based upon the record before the school board. *Id.* In this case, the School Board ruled on November 7, 2005. Almost a year has passed, and McBride has not filed an appeal or filed a motion to amend to allege claim appealing the School Board's decision upholding her termination. Therefore, the Court finds that the School Board's decision is final as to McBride's claims for breach of contract and wrongful termination.

3. Roach is not a party to the contract.

In the alternative, the Court grants summary judgment on the breach of contract and wrongful termination claims against Roach. In her deposition, McBride admitted the authenticity of the contract which was in effect at the time of her termination. (Pl.'s Dep. Ex. 4.) The subject contract is signed by McBride and Superintendent Harner, the School District's representative. As the principal of the school to which McBride was assigned, Roach neither signed nor was required to sign the contract. Quite simply, Roach is not a party to the contract and has no liability under it.

B. Tort Claims

1. Roach is not liable as an individual defendant.

GR 47

The Court grants Roach summary judgment on all of the tort causes of action because the Tort Claims Act protects a governmental employee from individual liability for torts allegedly committed in the course of his employment. The Act provides, "[n]otwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C.Code Ann. § 15-78-200. Section 15-78-70(a) provides in part that "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." S.C.Code Ann. § 15-78-70(a). Subsection (b) declares: "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C.Code Ann. § 15-78-70(b).

In a recent case where employees of the South Carolina Commission for the blind sought recovery for outrage, invasion of privacy, and civil conspiracy against board members for their actions in a board meeting, the Court of Appeals affirmed an order granting a motion to dismiss the individual board members, holding, "[t]he statutory dialectic reveals that a governmental employee acting within the scope of official duty is exempt from personal liability." Flateau v. Harrelson, 355 S.C. 197, 206, 584 S.E.2d 413, 417 (Ct.App.2003).

At all times relevant to this case, Roach was the Principal of BHS and acted within the course of his employment with the School District. No evidence has been presented by McBride that Roach acted outside of the scope of his employment with the School District. Therefore, the claims for wrongful discharge, defamation of character, abuse of process, false imprisonment,

372-8

malicious prosecution, intentional infliction of emotional distress and outrage, negligence, negligence per se, and gross negligence against Roach are dismissed..

2. Defendants owed McBride no legal duty.

Defendants owed McBride no duty on which a negligence action may be based, so McBride's claims for negligence, negligence per se, and gross negligence are dismissed. In a case where a terminated police officer sued his former employer, the Court of Appeals set out the elements for a negligence claim:

To prove his negligence claim, Gause must show: (1) the MBPD owed him a duty to do or not to do any of the things alleged; (2) the MBPD breached this duty; (3) Gause was injured, and; (4) the MBPD's breach of duty proximately caused this injury. A negligence claim is insufficient if one of these elements is absent.
Id.

Gause v. Doe, 317 S.C. 39, 42, 451 S.E.2d 408, 409 (Ct.App.1994). The court held that "Gause fails to meet the first element of a negligence claim because his complaint does not allege he was anything other than an at-will employee." *Id.*

In Kennedy v. Columbia Lumber and Manufacturing Co., Inc., the court analyzed the origin of legal duty and the "economic loss rule," stating:

The framework we adopt focuses on activity, not consequence. If a builder performs construction in such a way that he violates a contractual duty only, then his liability is only contractual. If he acts in a way as to violate a legal duty, however, his liability is both in contract and in tort.

299 S.C. 335, 345-46, 384 S.E.2d 730, 736-37 (1989). The court took this logic further in Tomlin:

L. Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc., stating,

"[a] breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie. A breach of duty

GT 9

arising independently of any contract duties between the parties, may support a tort action.

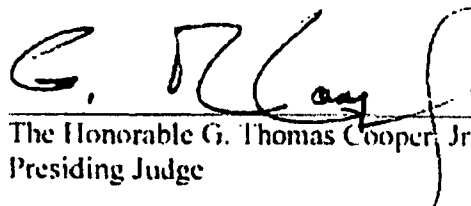
320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995). Kennedy and Griffin indicate that a duty to support a negligence action may arise from applicable statute, industry standards, situations representing serious risk of physical harm, and special relationships.

In this case, there is no standard or duty that Plaintiff has pointed to that applies to Defendants. The activities that McBride points to as causing her damages arise out of a breach of duty owed under a contract or the commission of intentional torts. There is no duty arising under the common law, the Code, or any other standard relating to the actions for which McBride claims negligence liability on the part of the School District. Therefore, McBride's claims for negligence, negligence per se, and gross negligence are dismissed.

III. Conclusion

The Court grants summary judgment for McBride's claims for breach of contract and wrongful discharge against both Defendants. The Court grants Roach summary judgment on all of the tort claims. Finally, the Court grants the School District and Roach summary judgment on McBride's claims for negligence, negligence per se, or gross negligence. Therefore, this case shall proceed to trial on McBride's claims against the School District for defamation of character, abuse of process, false imprisonment, malicious prosecution, and intentional infliction of emotional distress.

IT IS SO ORDERED.


The Honorable G. Thomas Cooper, Jr.
Presiding Judge

Columbia, South Carolina
December 12, 2006

Sherrie Mann McBride vs. School District Of Greenville County**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 at a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: 323
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:☐ See attached order;☐ Statement of Judgment by the Court:

- (1) Defendant's Motion for Summary Judgment as to the Cause of Action for Intentional Infliction of Emotional Distress has been **GRANTED**
- (2) Defendant's Motion for Summary Judgment as to the remaining Causes of Action is **DENIED**

Dated at Greenville, South Carolina, this 14 day of September, 2007.

Court Reporter: _____

ED (W. Miller)
PRESIDING JUDGE - EDWARD W. MILLERThis judgment was entered on the 14 day of sept, 2007, and a copy mailed first class this 14 day of sept, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

David Lloyd Thomas Moore Taylor & Thomas, PA 23 Wade Hampton Blvd. Greenville, SC 29609

N. Heyward Clarkson III Clarkson Walsh Rheney & Turner P
P.O. Box 6728 Greenville, SC 29606**ATTORNEY(S) FOR THE PLAINTIFF(S)****ATTORNEY(S) FOR THE DEFENDANT(S)**

COUNTY OF GREENVILLE

CASE NO.: 2-5 CP-23 06048

IN THE COURT OF COMMON PLEAS

Sherrie Mann McBrideSealed District of Greenville County**RECEIVED**

NOV 26 2007

PLAINTIFF(S)

SC Court of Appeals
DEFENDANT(S)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 at a decision rendered.

☐ ACTION DISMISSED (CHECK REASON):☐ Rule 12(b), SCRPC; ☐ Rule 31(a),

SCRPC (Vol. Nonsuit);

☐ Rule 43(k), SCRPC (Settled);☐ Other: (2)☐ ACTION STRICKEN (CHECK REASON):☐ Rule 40(j) SCRPC;☐ Bankruptcy;☐ Finding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;☐ Other: 501105

IT IS ORDERED AND ADJUDGED:

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

After the close of evidence at trial, Defendant's motion for a directed verdict is granted.

Dated at Greenville, South Carolina, this

1st

day of

November

, 2007.

Court Reporter:

Mary Sprague[Signature]
PRESIDING JUDGEThis judgment was entered on the 1 day of 11, 2007, and a copy mailed first class this 1 day of 11, 2007 to attorneys of record or to parties (when appearing pro se) as follows:David Lloyd ThomasMoore, Taylor & Thomas, PA.23 Wade Hampton Blvd.Greenville, SC 29609

ATTORNEY(S) FOR THE PLAINTIFF(S)

N. Heyward Clarkson, IIIClarkson Wahl Rheng & Turner, PA.P.O. Box 6728Greenville, SC 29606

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2005CP2306048

Sherrie Mann McBride vs. School District Of Greenville County

ENTERED COMPUTER

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:

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court

Defendant's Motions for Summary Judgment are DENIED. Defendant's Motion to Amend the Answer is GRANTED, Motion for Continuance is DENIED.

IT IS SO ORDERED.

Dated at Greenville, South Carolina, this June 1, 2011.

Court Reporter:

PRESIDING JUDGE - EDWARD W. MILLER

This judgment was entered on the 1st day of June, 2011, and a copy mailed first class this 2nd day of June, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

David Lloyd Thomas Moore Taylor & Thomas, PA 23 Wade Hampton Bld. Greenville, SC 29609
Sherrie Mann McBride P.O. Box 4561 Greenville, SC. 29608
Sherrie Mann McBride P O Box 4561 Greenville, SC 29608

ATTORNEY(S) FOR THE PLAINTIFF(S)

N. Heyward Clarkson III Clarkson Walsh Rheney & Turner
PA P.O. Box 6728 Greenville, SC 29606
Kevin Lindsay Terrell Clarkson Walsh Rheney & Terrell, PA
P.O. Box 6728 Greenville, SC 29607
Sean Ashley Scoppmire Clarkson Walsh Rheney & Turner,
PA P.O. Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2005CP2306048

2011 JUN -8 P 2:02

Sherrie Mann McBride vs. School District Of Greenville County

ED. CLERK OF COURT
JUN 8 2011

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:
Directed Verdict in favor of Defendant. grounds stated on the record.

Dated at Greenville, South Carolina, this .

Court Reporter: April Herron

C. Victor Pyle Jr.
PRESIDING JUDGE - C. Victor Pyle Jr.

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

Sherrie Mann McBride P.O. Box 4561 Greenville,
SC 29608

N. Heyward Clarkson III Clarkson Walsh Rheney
& Turner PA P.O. Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

The South Carolina Court of Appeals

Sherrie Mann McBride,

Appellant,

v.

School District of Greenville County,

Respondent.

The Honorable C. Victor Pyle Jr.
The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2005-CP-23-06048
2005-CP-23-06048

ORDER

Appellant has filed a motion to hold this appeal in abeyance and a motion to remand for reconstruction of the record. Respondent filed a motion to dismiss. After careful consideration, Respondent's motion to dismiss is denied. Appellant's motion to remand for reconstruction of the record with respect to the testimony of Nancy Mann is granted. This appeal shall be held in abeyance, and Appellant shall provide this Court with status updates every thirty days.

IT IS SO ORDERED.

Columbia, South Carolina

cc: Katherine Carruth Goode, Esquire
N. Heyward Clarkson III, Esquire



FILED

gc 4/5/12

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Plaintiff,

Sherrie Mann McBride,

Vs.

School District of Greenville County,

Defendant.)

IN THE COURT OF COMMON PLEAS

2005-CP-23-06048

ORDER

This matter was first tried by Judge Larry Patterson upon multiple causes of action, including abuse of process and defamation. She was represented by attorney David Thomas. Dissatisfied with Judge Patterson's ruling, she appealed. The Court reversed and remanded for trial the causes of action for abuse of process and defamation. These causes of action were tried before me in June, 2011. She appeared *Pro se*. I directed a verdict in favor of the Defendant on both causes of action. She again appealed.

Due to a failure of the Court Reporter's equipment during the trial, portions of the testimony of Nancy Mann, the Plaintiff's mother, was not recorded. She petitioned the Court of Appeals to remand the matter to me to reconstruct her testimony. Since she had died three weeks after the trial, she was not available to testify and, therefore, unable to assist in reconstructing her testimony. A hearing for that purpose was held before me on June 18, 2012.

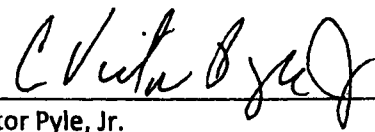
Testimony was presented by both parties as to what they recalled she said during the trial, and, as expected, there was disagreement. Over the objection of the Defendant, I admitted Plaintiff's proposed reconstructed testimony of Mrs. Mann, which I decline to adopt. I did not retain my notes of the trial and I do not remember the exact testimony presented. Having reviewed my reasons for granting the directed verdict, I find that Plaintiff is in error in her recollection of her mother's testimony in the 2011 trial before me. I find that the best evidence of Nancy Mann's testimony is her testimony at the first trial of the case.

I further find that the issues of prejudice and whether the reconstructed record provides for "meaningful appellate review", are issues for the Court of Appeals. It is, therefore,

ORDERED, that the reconstructed testimony of Nancy Mann be that presented by her during the first trial in 2007.



June 26, 2012



C. Victor Pyle, Jr.
Presiding Judge
Thirteenth Judicial Circuit

#2

H

Court of Appeals of South Carolina.
 Sherrie Mann MCBRIDE, Appellant,
 v.
 SCHOOL DISTRICT OF GREENVILLE
 COUNTY, Respondent.

No. 4718.
 Heard April 15, 2010.
 Decided Aug. 4, 2010.

Background: Teacher brought action against school district, asserting causes of action for breach of contract, wrongful discharge, defamation of character, abuse of process, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligence, negligence per se, and gross negligence. The Circuit Court, Greenville County, Larry R. Patterson, J., granted a directed verdict for the district on teacher's causes of action for defamation of character, abuse of process, false imprisonment, and malicious prosecution, and teacher appealed.

Holdings: The Court of Appeals, Geathers, J., held that:

- (1) school principal's defamatory allegation that teacher stole school property was actionable per se;
- (2) cause of action for abuse of process was not barred by Tort Claims Act; and
- (3) teacher failed to establish malicious prosecution claim.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Libel and Slander 237 ⚡1

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k1 k. Nature and elements of defamation

in general. Most Cited Cases

Tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message about the plaintiff.

[2] Libel and Slander 237 ⚡1

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k1 k. Nature and elements of defamation in general. Most Cited Cases

To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

[3] Libel and Slander 237 ⚡6(1)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k6 Actionable Words in General

237k6(1) k. In general. Most Cited Cases

The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

[4] Libel and Slander 237 ⚡6(1)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k6 Actionable Words in General

237k6(1) k. In general. Most Cited Cases

Statement is classified as defamatory per se when the meaning or message is obvious on its face, and defamatory per quod when the defamatory meaning is not clear unless the hearer knows facts

or circumstances not contained in the statement.

[5] Libel and Slander 237 ⚡22

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k20 Certainty

237k22 k. Matter imputed. Most Cited Cases

Even a mere defamatory insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain.

[6] Libel and Slander 237 ⚡6(1)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k6 Actionable Words in General

237k6(1) k. In general. Most Cited Cases

When the statement is defamatory per quod, the plaintiff must introduce extrinsic facts to prove the defamatory meaning.

[7] Libel and Slander 237 ⚡123(2)

237 Libel and Slander

237IV Actions

237IV(E) Trial, Judgment, and Review

237k123 Questions for Jury

237k123(2) k. Construction of defamatory language in general. Most Cited Cases

Determination of whether or not a defamatory statement is actionable per se is a matter of law for the court to resolve.

[8] Libel and Slander 237 ⚡33

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k31 Injury from Defamation

237k33 k. Presumption as to damage; special damages. Most Cited Cases

Libel and Slander 237 ⚡101(1)

237 Libel and Slander

237IV Actions

237IV(C) Evidence

237k101 Presumptions and Burden of Proof

237k101(1) k. In general. Most Cited

Cases

When the defamatory statement is classified as actionable per se, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages.

[9] Libel and Slander 237 ⚡100(2)

237 Libel and Slander

237IV Actions

237IV(B) Parties, Preliminary Proceedings, and Pleading

237k100 Issues, Proof, and Variance

237k100(2) k. Special damages. Most Cited Cases

Libel and Slander 237 ⚡100(7)

237 Libel and Slander

237IV Actions

237IV(B) Parties, Preliminary Proceedings, and Pleading

237k100 Issues, Proof, and Variance

237k100(7) k. Matters to be proved. Most Cited Cases

When the defamatory statement is not actionable per se, the plaintiff must plead and prove both common law malice and special damages.

[10] Libel and Slander 237 ⚡4

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k3 Malice

237k4 k. In general. Most Cited Cases

Common law malice, which is required to be shown when defamatory statement is not actionable per se, means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly,

i.e., with conscious indifference of the plaintiff's rights.

[11] Libel and Slander 237 ⚔7(2)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k7 Words Imputing Crime and Immorality

237k7(2) k. Nature of crime and punishment. Most Cited Cases

Libel and Slander 237 ⚔7(16)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k7 Words Imputing Crime and Immorality

237k7(16) k. Want of chastity or sexual crimes in general. Most Cited Cases

Libel and Slander 237 ⚔7(17)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k7 Words Imputing Crime and Immorality

237k7(17) k. Adultery. Most Cited Cases

Libel and Slander 237 ⚔8

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k8 k. Words imputing contagious or venereal disease. Most Cited Cases

Libel and Slander 237 ⚔9(1)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k9 Words Tending to Injure in Profession or Business

237k9(1) k. In general. Most Cited Cases

Slander is actionable per se when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.

[12] Libel and Slander 237 ⚔7(13)

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k7 Words Imputing Crime and Immorality

237k7(13) k. Larceny. Most Cited Cases

Libel and Slander 237 ⚔33

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k3I Injury from Defamation

237k33 k. Presumption as to damage; special damages. Most Cited Cases

Libel and Slander 237 ⚔101(1)

237 Libel and Slander

237IV Actions

237IV(C) Evidence

237k10I Presumptions and Burden of Proof

237k101(1) k. In general. Most Cited Cases

School principal's defamatory statement that teacher stole school property after she was dismissed was actionable per se because it accused teacher of committing a crime involving moral turpitude, and thus, common law malice and general damages were presumed.

[13] Libel and Slander 237 ⚔123(1)

237 Libel and Slander

237IV Actions

237IV(E) Trial, Judgment, and Review

237k123 Questions for Jury

237k123(1) k. In general. Most Cited

Cases

Issue as to whether school principal defamed teacher when principal alleged that teacher stole school property after she was dismissed was for jury; teacher presented evidence that the statement was false when a teacher's aide testified that, after teacher was dismissed, she took only the items she had purchased with her own funds, and principal made the statement to a teacher's aide as she was showing principal some items teacher had used in her classroom.

[14] Libel and Slander 237 ⚡23.1

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k23 Publication

237k23.1 k. In general. Most Cited Cases

Employee's statement to another employee is a "publication," for defamation purposes, when the privilege of the employees' common interest is abused.

[15] Libel and Slander 237 ⚡45(2)

237 Libel and Slander

237II Privileged Communications, and Malice Therein

237k40 Qualified Privilege

237k45 Common Interest in Subject-Matter

237k45(2) k. Common business interest. Most Cited Cases

Libel and Slander 237 ⚡50

237 Libel and Slander

237II Privileged Communications, and Malice Therein

237k50 k. Good faith in exercise of privilege or right. Most Cited Cases

Defamatory communications between employ-

ees of an organization are qualifiedly privileged only if made in good faith and in the usual course of business.

[16] Libel and Slander 237 ⚡93

237 Libel and Slander

237IV Actions

237IV(B) Parties, Preliminary Proceedings, and Pleading

237k90 Plea or Answer

237k93 k. Privilege. Most Cited Cases

Qualified privilege must be raised as an affirmative defense in defamation action.

[17] Libel and Slander 237 ⚡93

237 Libel and Slander

237IV Actions

237IV(B) Parties, Preliminary Proceedings, and Pleading

237k90 Plea or Answer

237k93 k. Privilege. Most Cited Cases

Since school district did not include qualified privilege as an affirmative defense in its answer, district could not assert this privilege in defamation action brought by former teacher.

[18] Libel and Slander 237 ⚡85

237 Libel and Slander

237IV Actions

237IV(B) Parties, Preliminary Proceedings, and Pleading

237k79 Declaration, Complaint, or Petition

237k85 k. Setting out defamatory matter. Most Cited Cases

Former teacher's allegations that school district superintendent made public comments about teacher, her arrest for contributing to delinquency of minor, and her alleged misconduct and that one of the local news accounts attributed comments to unnamed teachers from the district were vague references to local newscasts concerning teacher's arrest and were not specific enough to evaluate for pur-

poses of teacher's defamation claims.

[19] Libel and Slander 237 ⚡30

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k30 k. Falsity. Most Cited Cases

School superintendent's comment stating his intention to recommend that teacher be terminated was true, and therefore, it was not defamatory; the element of defamation that the statement be "false and defamatory" was missing.

[20] Libel and Slander 237 ⚡30

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k30 k. Falsity. Most Cited Cases

The conduct of school resource officer and school principal in procuring warrants for teacher's arrest for contributing to the delinquency of a minor did not constitute actionable defamation; teacher's own statement, combined with the statements from some of student's teachers and guidance counselors, provided sufficient probable cause for the charges against teacher.

[21] Process 313 ⚡188

313 Process

313IV Abuse of Process

313IV(A) In General

313k187 Persons Liable; Immunity

313k188 k. In general. Most Cited

Because of its elements, cause of action for abuse of process was not barred by section of the Tort Claims Act, providing that governmental entity is not liable for a loss resulting from employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude; cause of action for abuse of process contained neither an element of intent to harm, nor actual

malice. Code 1976, § 15-78-60(17).

[22] Process 313 ⚡179

313 Process

313IV Abuse of Process

313IV(A) In General

313k179 k. Malice or intent. Most Cited Cases

A cause of action for abuse of process contains neither an element of intent to harm, nor actual malice.

[23] Process 313 ⚡177

313 Process

313IV Abuse of Process

313IV(A) In General

313k177 k. Misuse of process. Most Cited Cases

Process 313 ⚡178

313 Process

313IV Abuse of Process

313IV(A) In General

313k178 k. Improper, ulterior, collateral, or unlawful purpose. Most Cited Cases

Process 313 ⚡180

313 Process

313IV Abuse of Process

313IV(A) In General

313k180 k. Overt act. Most Cited Cases

Tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding.

[24] Process 313 ⚡212

313 Process

313IV Abuse of Process

313IV(B) Actions and Proceedings

313k212 k. Trial in general. Most Cited Cases

Issues as to whether school principal desired to silence teacher and to ultimately obtain her dismissal from high school and whether school resource officer pressured student to implicate teacher in illegal activity were for jury in abuse of process action brought against school district by teacher, who was arrested for contributing to the delinquency of a minor.

[25] Malicious Prosecution 249 ⚔ 0.5

249 Malicious Prosecution

249I Nature and Commencement of Prosecution

249k0.5 k. Nature and elements of malicious prosecution in general. Most Cited Cases

Elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.

[26] Malicious Prosecution 249 ⚔ 27

249 Malicious Prosecution

249III Malice

249k27 k. Nature and elements. Most Cited Cases

In context of malicious prosecution action, malice is the deliberate intentional doing of a wrongful act without just cause or excuse; it does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition.

[27] Malicious Prosecution 249 ⚔ 27

249 Malicious Prosecution

249III Malice

249k27 k. Nature and elements. Most Cited Cases

Malice, for purposes of malicious prosecution claim, may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person.

[28] Malicious Prosecution 249 ⚔ 29

249 Malicious Prosecution

249III Malice

249k29 k. Implied malice in general. Most Cited Cases

Malice, for purposes of malicious prosecution claim, may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person, and malice also may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person.

[29] Malicious Prosecution 249 ⚔ 32

249 Malicious Prosecution

249III Malice

249k32 k. Inference from want of probable cause. Most Cited Cases

In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.

[30] Malicious Prosecution 249 ⚔ 28

249 Malicious Prosecution

249III Malice

249k28 k. Express malice. Most Cited Cases

Because of its elements, cause of action for malicious prosecution was not barred by section of the Tort Claims Act, providing that governmental entity is not liable for a loss resulting from employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude; one need not show actual malice in order to successfully maintain an action for malicious prosecution.

[31] Malicious Prosecution 249 ⚔ 28

249 Malicious Prosecution

249III Malice

249k28 k. Express malice. Most Cited Cases

One need not show actual malice in order to successfully maintain an action for malicious pro-

secution.

[32] Malicious Prosecution 249 ⚔️18(5)

249 Malicious Prosecution
249II Want of Probable Cause
249k17 Criminal Prosecutions
249k18 Grounds in General
249k18(5) k. Personal knowledge and statements of others. Most Cited Cases

Malicious Prosecution 249 ⚔️24(7)

249 Malicious Prosecution
249II Want of Probable Cause
249k17 Criminal Prosecutions
249k24 Inference from Result of Prosecution

249k24(7) k. Finding of grand jury.
Most Cited Cases

Teacher failed to show a lack of probable cause for pursuit of the charge of contributing to the delinquency of a minor, and as such, she failed to establish malicious prosecution claim; grand jury's true bill of the indictment against teacher for contributing to the delinquency of a minor was prima facie evidence of probable cause as to that charge, and the information in several witness statements supported a finding that the sheriff's department had probable cause to pursue both the charge for contributing to the delinquency of a minor and the charge for enticing an enrolled child from attendance in school.

[33] False Imprisonment 168 ⚔️2

168 False Imprisonment
168I Civil Liability
168I(A) Acts Constituting False Imprisonment and Liability Therefor
168k1 Nature and Elements of False Imprisonment

168k2 k. In general. Most Cited Cases
Essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification.

[34] False Imprisonment 168 ⚔️2

168 False Imprisonment
168I Civil Liability
168I(A) Acts Constituting False Imprisonment and Liability Therefor
168k1 Nature and Elements of False Imprisonment

168k2 k. In general. Most Cited Cases
To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.

[35] Arrest 35 ⚔️63.4(1)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(1) k. Grounds for warrantless arrest in general. Most Cited Cases

Arrest 35 ⚔️63.4(2)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(2) k. What constitutes such cause in general. Most Cited Cases

Fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest, and probable cause is defined as a good faith belief that a person is guilty of a crime.

[36] False Imprisonment 168 ⚔️7(1)

168 False Imprisonment
168I Civil Liability
168I(A) Acts Constituting False Imprisonment and Liability Therefor
168k1 Nature and Elements of False Imprisonment

168k7 Illegality of Arrest

168k7(1) k. In general. Most Cited Cases

Teacher failed to show a lack of probable cause for her arrest for contributing to the delinquency of a minor, and as such, she failed to establish false imprisonment claim; the information in several witness statements supported a finding that the sheriff's department had probable cause to arrest teacher for the offenses of contributing to the delinquency of a minor and enticing an enrolled child from attendance in school, and an assistant solicitor believed there was probable cause to take the charges to a magistrate for the issuance of an arrest warrant.

****848** Katherine Carruth Goode, of Winnsboro and David Lloyd Thomas of Greenville, for Appellant.

N. Heyward Clarkson, III, Sean A. Scoopmire and John D. Harjehausen, of Greenville, for Respondent.

GEATHERS, J.

***553** Appellant Sherrie Mann McBride (McBride) brought this action against Respondent School District of Greenville County (the District), asserting causes of action for breach of contract, wrongful discharge, defamation of character, abuse of process, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligence, negligence per se, and gross negligence. McBride challenges the circuit court's order granting a directed verdict for the District on her causes of action for defamation of character, abuse of process, false imprisonment, and malicious prosecution. We affirm in part, reverse in part, and remand for a new trial.

FACTS/PROCEDURAL HISTORY

The facts in the light most favorable to McBride are as follows. McBride began her teaching career in August 2000 as a special education teacher at Berea High School in Greenville County. Near the end of the 2001-2002 school year, she also served as a teacher for a home-bound student, John

Doe (Doe), ^{FN1} for approximately six weeks. Doe, whom McBride and others understood to be homosexual, was home-bound because he had been having anxiety attacks whenever he attended classes on campus. His anxiety attacks stemmed from the emotional trauma he experienced from being sexually abused by a teacher while attending Greenville Technical Charter High School. Between the time he attended this school and the time he began attending Berea High School, he attempted suicide and was committed to the state mental hospital. During the time McBride served as Doe's home-bound teacher, they developed an emotional bond.

FN1. The former student's named has been changed to protect his identity.

Doe resumed class attendance for the 2002-2003 school year, but he was not in any of McBride's classes. Nevertheless, ***554** he visited McBride on an increasingly frequent basis. At this time, he was still experiencing ****849** anxiety and began cutting himself. On one occasion he showed McBride cuts extending the length of his arms, and she consulted another teacher for guidance on how to handle the situation.

After this incident, according to McBride, the school guidance counselor and Doe's teachers worked out an arrangement allowing Doe to stay in McBride's classroom during one of his morning classes and one of his afternoon classes, provided he obtain his assignments at the beginning of class time and return his work to his teachers at the end of class time. During his time in McBride's classroom, when he was not working on his assignments, he helped McBride with lesson planning, grading papers, setting up computer equipment, and performing other tasks related to McBride's classes.

At the beginning of the 2003-2004 school year, Doe continued to stay in McBride's classroom during some of his classes. He frequently complained of being abused by his parents and expressed a desire to run away from home. He began storing clothing in a file drawer in McBride's classroom

and requested advice about becoming emancipated from his parents. McBride did not give him any advice about becoming emancipated, but Doe consulted the school resource officer, Deputy Daniel Oslager, on the topic. Deputy Oslager was an employee of the Greenville County Sheriff's Department.

In mid-September, McBride took Doe with her on an errand after school to buy educational supplies and allowed him to drive her car. Doe's mother had given him permission to accompany McBride, but she became angry when McBride brought him home after his 7 p.m. curfew. Several days later, McBride allowed Doe to drive her car after school hours on what she thought would be a very short trip to a grocery store near the school. Although Doe only had a learner's permit to drive, McBride thought he had a license with full driving privileges. Doe drove McBride's car to pick up his friend, Chris Boehmke (Chris), at his house and to take him back to the school.

Later that afternoon, McBride gave Doe and Chris a ride to Chris' house. She was under the impression that Chris was merely having a sleepover at his house because she knew that *555 Doe had been going home with Chris on Fridays on a regular basis. However, Doe had decided to run away from home that weekend. He planned on staying at Chris' house on Friday night, then traveling to Marietta, Georgia to live with his aunt.

When McBride arrived at Chris' house, she went inside and spoke with his mother, Linda Boehmke. Mrs. Boehmke became upset when Doe mentioned that he wanted to run away from home. McBride told Mrs. Boehmke that Doe "says stuff like that all the time" and that she did not think that Doe's aunt was going to come to Greenville to take him home with her. McBride also told Mrs. Boehmke to telephone her if she had any concerns later that night and that McBride could then contact Deputy Oslager.

Later that night, Doe's mother went to the Boehmkes' house looking for Doe. Mrs. Boehmke

was concerned about Doe's allegations of being abused by his parents, so she told his mother that he was not there. Doe's mother also telephoned McBride and left a voice mail message asking if she knew where Doe was. McBride did not check her voice mail messages until the next day, and she failed to return the call.

The next day, McBride found Doe sitting on her door step. He told her that he was trying to run away from home but that Mrs. Boehmke had made him leave her house. McBride allowed Doe to enter her home, but she telephoned Deputy Oslager to report that Doe was trying to run away from home. Deputy Oslager advised McBride to call the sheriff's office. McBride did so, and an officer later arrived at her house to pick up Doe. The officer later returned Doe to his parents.

A few days later, McBride noticed that her car was missing from the school parking lot. As she was standing there, Deputy Oslager arrived and asked McBride what was going on. When she told him that her car had been stolen, he began taking notes. She then realized that Doe might have been the one who took her car. She advised Oslager of this possibility but said that she did not want to press charges. Oslager insisted that either Doe would be charged with an offense **850 for taking the car or McBride would be charged for allowing him to drive it. McBride then reluctantly allowed Oslager to charge Doe with taking the car. A few minutes later, Doe drove McBride's vehicle into the parking lot. Oslager removed*556 Doe from the car and arrested him. When Doe's mother arrived at the scene, she demanded that McBride stay away from her son.

The school principal, William Roach (Roach) questioned Doe, after which Oslager took him to the law enforcement center for further questioning. During questioning, Doe told Oslager that McBride had allowed him to drive her car on previous occasions, that she had written passes for him to get out of classes, and that she had given him passwords to access various school computer systems. Oslager

telephoned Roach several times to consult with him about these statements. Doe also told Oslager that McBride knew he was running away from home when she took him to Chris Boehmke's house. Oslager communicated this information to his supervisor, Sergeant Shea Smith, who began an investigation into McBride's conduct.

Sergeant Smith assigned Deputy Leslie Lambert to be the lead investigator. Oslager assisted Lambert in taking statements from teachers, including McBride herself, and other school staff members. Deputy Lambert presented the information gathered from the investigation to the solicitor's office. Deputy Solicitor Betty Strom and assistant solicitor Howard Steinberg agreed that the charges of contributing to the delinquency of a minor and enticing an enrolled child from school attendance should be taken to a magistrate for a determination of probable cause to arrest McBride. A magistrate issued corresponding arrest warrants, and assistant solicitor John Rowell signed an indictment charging McBride with contributing to the delinquency of a minor.^{FN2} The grand jury true billed this indictment, and Deputy Oslager later arrested McBride.

FN2. There is nothing in the record indicating that the solicitor's office presented an indictment to the grand jury for the charge of enticing an enrolled child from attendance in school. The likely reason is that the charge was for a first offense, and S.C.Code Ann. § 16-17-510 (2003) requires a first or second offense to be tried exclusively in magistrate's court. Further, S.C. Const. art. I, § 11 and S.C.Code Ann. § 17-19-10 (2003) exempt charges prosecuted in magistrate's court from the requirement that an indictment be presented to a grand jury before a criminal charge is prosecuted.

*557 Oslager took McBride to the law enforcement center, where she was booked and fingerprinted. She was later released on bond, and the crimin-

al charges were ultimately dropped. However, the District's superintendent recommended to the Board of Trustees that McBride be terminated. The Board voted to accept the recommendation.

Several local television stations reported McBride's arrest and quoted sheriff's office investigators regarding allegations that she allowed Doe to drive her car, helped him run away from home, and signed him out of class. The newscasts described McBride's relationship with Doe as "bizarre" and implied that students could not be safe with McBride. One of the stories quoted the superintendent as saying that he was going to recommend McBride for termination. Another story quoted unidentified teachers as saying "There is a lot of gray area" in drawing the line in a relationship with a student.

After McBride was dismissed from Berea High School, the District's equipment that had been allotted to her classroom was transferred to her colleagues' classrooms. One of her colleagues heard Roach accuse McBride of stealing this equipment when he stated "She cleaned us out."

McBride filed this action against the District and Roach, asserting causes of action for breach of contract, wrongful discharge, defamation of character, abuse of process, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligence, negligence per se, and gross negligence. Both Roach and the District filed motions for summary judgment. The circuit court granted summary judgment to Roach on all of the causes of action and granted summary judgment to the District on McBride's causes of action for breach of contract, wrongful discharge, negligence, negligence per se, and gross negligence. The District later filed a second summary judgment**851 motion, and the circuit granted the motion as to McBride's cause of action for intentional infliction of emotional distress.

At trial, the circuit court granted a directed verdict for the District on the remaining causes of ac-

tion (defamation of character, abuse of process, false imprisonment, and malicious prosecution). In explaining his ruling, the presiding judge cited the South Carolina Tort Claims Act, *558S.C.Code Ann. §§ 15-78-10 to -220 (2005 & Supp.2009) (the Tort Claims Act or the Act) as a bar to McBride's claims for abuse of process and malicious prosecution. ^{FN3} The judge also ruled that there was no evidence of any defamatory statement made by the District and that the prosecution was solely instituted by the sheriff's office. This appeal followed.

FN3. See S.C.Code Ann. § 15-78-60(17) (2005) ("The governmental entity is not liable for a loss resulting from ... employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude[.]").

ISSUE ON APPEAL

Did the circuit court err in directing a verdict for the District on McBride's causes of action for defamation of character, abuse of process, false imprisonment, and malicious prosecution?

STANDARD OF REVIEW

In ruling on a directed verdict motion, the trial court must view the evidence and the inferences reasonably drawn from the evidence in the light most favorable to the party opposing the motion. *Parrish v. Allison*, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct.App.2007). "The trial court must deny the motion[] when the evidence yields more than one inference or an inference is in doubt." *Id.* "When the evidence yields only one inference, a directed verdict in favor of the moving party is proper." *Id.* "However, if the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should be denied." *Id.*

When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. The issue

must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. Yet, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury.

Id. at 319-20, 656 S.E.2d at 388 (citations omitted) (emphasis added).

*559 LAW/ANALYSIS

McBride contends that the circuit court erred in directing a verdict for the District on her claims for defamation of character, abuse of process, false imprisonment, and malicious prosecution. We agree that the circuit court improperly directed a verdict for the District on the defamation and abuse of process causes of action. However, the circuit court correctly directed a verdict for the remaining causes of action.

I. Defamation

McBride argues that a jury issue existed as to the publication of "false and defamatory statements by the ... District's employees." McBride points to the following instances of statements or conduct she claims are defamatory and are attributable to employees of the District: (1) Roach's allegation that McBride stole school property after she was dismissed ("She cleaned us out"); (2) the District superintendent, William Harner, "made public comments about Ms. McBride, her arrest, and her [alleged] misconduct[.];" (3) "one of the accounts attributed comments to unnamed teachers from the School District[.];" and (4) Roach and Oslager coerced false statements from Doe in their efforts to fabricate charges against McBride. As to the fourth item, McBride argues that the conduct of Roach and Oslager "in orchestrating Ms. McBride's arrest, for the District's own purposes and in an effort to discredit and dismiss her, fits squarely within the category of actionable defamation accomplished by actions or conduct." ^{FN4} We agree as to **852 item 1 but disagree as to the remaining items.

FN4. See *Murray v. Holnam, Inc.*, 344 S.C. 129, 138, 542 S.E.2d 743, 748

(Ct.App.2001) ("Slander is a spoken defamation, while libel is a written defamation or one accomplished by actions or conduct.") (emphasis added).

[1][2][3] The tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third *560 party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). "The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.*

[4][5][6] Defamatory communications may be in the form of libel or slander. *Holtzscheiter*, 332 S.C. at 508, 506 S.E.2d at 501. A statement is classified as defamatory *per se* when the meaning or message is obvious on its face, and defamatory *per quod* when the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement. *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). Even "[a] mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain." *Murray*, 344 S.C. at 139, 542 S.E.2d at 748. However, when the statement is defamatory *per quod*, "the plaintiff must introduce extrinsic facts to prove the defamatory meaning." *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664.

[7][8][9][10][11] Additionally, a statement may be actionable *per se* or not actionable *per se*. *Id.* "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to

resolve." *Id.* When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. *Id.* When the statement is not actionable *per se*, "the plaintiff must plead and prove both common law malice and special damages." *Id.* "Common law malice means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff's rights." *Id.* at 466, 629 S.E.2d at 665. "Slander is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or *561 profession." *Goodwin v. Kennedy*, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23 (Ct.App.2001).

Concerning damages, our supreme court has instructed:

General damages include injury to reputation, mental suffering, hurt feelings, emotional distress, and similar types of injuries which are not capable of definite money valuation. Special damages are tangible losses or injuries to the plaintiff's property, business, occupation, or profession in which it is possible to identify a specific amount of money as damages.

Erickson, 368 S.C. at 465 n. 6, 629 S.E.2d at 664 n. 6.

[12][13] As to the first item that McBride claims is defamatory, we believe Roach's allegation that McBride stole school property should go to the jury. McBride presented evidence that the statement was false when a teacher's aide testified that after McBride was dismissed, she took only the items she had purchased with her own funds. Further, the statement was actionable *per se* because it accused McBride of committing a crime involving moral turpitude. See *Bell v. Bank of Abbeville*, 208 S.C. 490, 496, 38 S.E.2d 641, 644 (1946) (holding that

an allegation charging the plaintiff with larceny or breach of trust, crimes involving moral turpitude, was actionable *per se* and did not require an allegation of special damages). Thus, common**853 law malice and general damages are presumed. See *Ericksen*, 368 S.C. at 465, 629 S.E.2d at 664. Moreover, there is no question that Roach was responsible for making the statement himself.

[14][15] Additionally, Roach made the statement to a teacher's aide as she was showing Roach some items McBride had used in her classroom. ^{FNS} Both Roach and the teacher's aide were District employees. Therefore, one might conclude that Roach's statement was not published to a "third party," *562 as is required to prove defamation. However, in South Carolina, an employee's statement to another employee is a "publication" when the privilege of the employees' common interest is abused. *Bell*, 208 S.C. at 493-94, 38 S.E.2d at 643. In *Bell*, our supreme court explained the privilege as follows:

FNS. The circuit court ruled that the testimony of the teacher's aide regarding Roach's statement constituted inadmissible hearsay. However, the court did not strike this testimony. Therefore, it is a legitimate part of the record. See *Scott v. Novich*, 300 S.C. 334, 337, 387 S.E.2d 704, 706 (Ct.App.1989) (holding that because counsel made no motion to strike the offending testimony from the record, the trial court did not err in admitting the testimony after sustaining counsel's objection on the ground of irrelevancy).

When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. *The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it*

is addressed.

Id. at 493-94, 38 S.E.2d at 643 (emphasis added). In sum, communications between employees of an organization are qualifiedly privileged only if made in good faith and in the usual course of business. *Murray*, 344 S.C. at 140-41, 542 S.E.2d at 749.

During oral arguments, the District relied on our Supreme Court's opinion in *Watson v. Wannamaker* for the proposition that a defendant's statement to his secretary does not constitute sufficient publication for purposes of a defamation claim. 216 S.C. 295, 296-99, 57 S.E.2d 477, 477-78 (1950). However, *Watson* is distinguishable from the present case. In *Watson*, the defendant made the statements in question for the purpose of including them in a letter he was dictating to his secretary. 216 S.C. at 296-97, 57 S.E.2d at 477.

[16][17] In any event, even if the privilege has not been abused, qualified privilege must be raised as an affirmative defense. See *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999) (classifying qualified privilege as an affirmative defense). Here, the District did not include this defense in its answer; therefore, it may not assert this privilege.

[18][19] Turning to items 2 and 3, these are vague references to the local newscasts concerning McBride's arrest and are not specific enough to evaluate. In any event, the only statement in the local newscasts that was attributable to a District employee and specifically named McBride was the quotation from the superintendent stating his intention to *563 recommend that McBride be terminated. This statement was a true statement. Therefore, the element of defamation that the statement be "false and defamatory" is missing. See *Fleming*, 350 S.C. at 494, 567 S.E.2d at 860 (requiring a showing that the statement in question is false and defamatory in order to prove defamation).

[20] Item 4 rests on the assumption that the charges against McBride were, in fact, based on

false information. However, assuming, arguendo, that Doe gave false information in his statements, those statements were not the only ones on which investigators relied in seeking warrants for McBride's arrest. McBride's own statement, combined with the statements from some of Doe's teachers, guidance counselors, Chris Boehmke, and Mrs. Boehmke, provide sufficient probable cause for the charges against McBride.^{FN6} See **854 S.C.Code Ann. § 16-17-490 (2003) (defining the offense of contributing to the delinquency of a minor); S.C.Code Ann. § 16-17-510 (2003) (prohibiting the enticement of a child enrolled in elementary or secondary school away from required school attendance). Therefore, it cannot be said that the conduct of Roach and Oslager in procuring warrants for McBride's arrest constituted actionable defamation.

FN6. See *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2006) (defining probable cause to make an arrest as "a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.").

In sum, although there was insufficient evidence of the elements of defamation as to items 2, 3, and 4, McBride presented sufficient evidence to support her defamation claim as to item 1-Roach's allegation that she stole school property. Therefore, the circuit court erred in directing a verdict for the District on this cause of action.

II. Abuse of Process

A. Immunity

[21] McBride asserts that the circuit court erred in concluding that a cause of action for abuse of process is barred by the Tort Claims Act, specifically S.C.Code Ann. § 15-78-60(17) (2005), which states: "The governmental entity is not liable for a loss resulting from ... employee conduct outside

*564 the scope of his official duties or which constitutes actual *fraud*, actual *malice*, *intent to harm*, or a crime involving moral turpitude[.]" (emphases added).^{FN7} We agree.

FN7. Although the District cited in its answer several additional exceptions to the waiver of immunity under section 15-78-60, counsel raised only subsection 17 in its directed verdict motion and thus the circuit court addressed only that exception.

[22][23] The circuit court specifically concluded that it was "almost impossible" to bring abuse of process and malicious prosecution claims against the state and its political subdivisions "because ... of the elements of the crime [sic] under the South Carolina [T]ort [C]laims [A]ct." However, a cause of action for abuse of process "contains neither an element of intent to harm, nor actual malice." *Swicegood v. Lott*, 379 S.C. 346, 352, 665 S.E.2d 211, 214 (Ct.App.2008). "The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *Id.* at 351-52, 665 S.E.2d at 213.

Based on the foregoing, a cause of action for abuse of process is not barred by section 15-78-60(17) because of its elements. The elements of the tort of malicious prosecution will be discussed later in this opinion.

B. Merits of claim

[24] McBride maintains that the circuit court should not have directed a verdict for the District on her abuse of process claim.^{FN8} She argues that there was sufficient evidence of the District's involvement, through Roach, in the decision to arrest her for her claim to go to the jury. We agree.

FN8. In addition to concluding that the abuse of process claim was barred by the Tort Claims Act, the circuit court concluded that there was no evidence to find

that the District instituted any process.

To successfully maintain an abuse of process claim, the plaintiff must show an ulterior purpose and a willful act in the use of the process that is not proper in the regular conduct of the proceeding. *Swicegood*, 379 S.C. at 351-52, 665 S.E.2d at 213. McBride points to evidence of her bad relationship with Roach and asserts that a jury could infer from this evidence Roach's desire to silence McBride and to ultimately obtain her dismissal from Berea High School. She also points to evidence*565 of the close relationship between Roach and Oslager, who arrested McBride; Oslager's repeated telephone calls to Roach during his interrogation of Doe; and Doe's testimony indicating that Oslager pressured him to implicate McBride in illegal activity. McBride argues that from this evidence, the jury could infer that Oslager was working in concert with Roach to assist him in accomplishing the purpose of silencing McBride and that they were improperly using the legal process to do so.

We believe that more than one reasonable inference can be drawn from the evidence of telephone calls from Oslager to Roach during **855 his interrogation of Doe. Granted, it is reasonable to assume that Oslager was telling the truth when he testified that he called Roach only to verify certain information Doe provided to him. However, it is equally reasonable to infer from this evidence, combined with Doe's testimony, that Roach provided information to Oslager in an attempt to elicit this information from Doe and use it against McBride. In reviewing the propriety of a directed verdict, neither the trial court nor this court has the authority to decide credibility issues or to resolve conflicts in the evidence. *Parrish*, 376 S.C. at 319, 656 S.E.2d at 388. Therefore, the circuit court should have allowed this cause of action to go to the jury.

III. Malicious Prosecution

A. Immunity

[25][26][27][28][29][30] McBride contends that the circuit court erred in concluding that a cause of action for malicious prosecution is barred by section 15-78-60(17). We agree. The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Law*, 368 S.C. at 435, 629 S.E.2d at 648. In this cause of action, malice is "the deliberate intentional doing of a wrongful act without just cause or excuse." *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982) (internal quotation omitted). It does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition. *Law*, 368 S.C. at 437, 629 S.E.2d at 649.

*566 Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person. Moreover, malice may be *implied* where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be *implied* in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. In an action for malicious prosecution, malice may be *inferred* from a lack of probable cause to institute the prosecution.

Id. (emphases added).

[31] Based on the foregoing, one need not show actual malice in order to successfully maintain an action for malicious prosecution. Therefore, the circuit court erred in concluding that a cause of action for malicious prosecution is barred by section 15-78-60(17) because of its elements.

B. Merits of claim

[32] McBride contends that there was sufficient evidence of the elements of malicious prosecution

to withstand the District's directed verdict motion. We disagree.

As previously stated, the elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Law*, 368 S.C. at 435, 629 S.E.2d at 648. Here, McBride has failed to show a lack of probable cause for pursuit of the charges against her.

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." 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 honestly believed them to be." *South Carolina *567 has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.* Although the question of whether probable cause exists is ordinarily a jury question, it ****856** may be decided as a matter of law when the evidence yields but one conclusion.

Id. at 436, 629 S.E.2d at 649 (citations omitted) (emphasis added).

In McBride's case, the grand jury's true bill of the indictment against her for contributing to the delinquency of a minor is prima facie evidence of probable cause as to that charge. Further, the information in several witness statements supports a finding that the sheriff's department had probable cause to pursue both the charge for contributing to the delinquency of a minor and the charge for enti-

cing an enrolled child from attendance in school. Therefore, the circuit court properly directed a verdict for the District on McBride's malicious prosecution claim.

IV. False Imprisonment

[33][34][35][36] McBride asserts that a directed verdict for the District on her claim for false imprisonment was inappropriate. We disagree.

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

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

Law, 368 S.C. at 440-41, 629 S.E.2d at 651 (citations omitted).

Here, McBride has failed to show a lack of probable cause for her arrest. The information in several witness statements ***568** supports a finding that the sheriff's department had probable cause to arrest McBride for the offenses of contributing to the delinquency of a minor and enticing an enrolled child from attendance in school. Further, an assistant solicitor testified that he believed there was probable cause to take the charges to a magistrate for the issuance of an arrest warrant. Based on the foregoing, the circuit court properly directed a verdict for the District on McBride's false imprisonment claim.

In view of our disposition of the foregoing issues, we need not address McBride's remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that the appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Accordingly, we affirm the circuit court's directed verdict for the District as to the causes of action for malicious prosecution and false imprisonment. We reverse the directed verdict as to defamation and abuse of process and remand for a new trial on these causes of action.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

PIEPER, J., and CURETON, A.J., concur.

S.C.App., 2010.

McBride v. School Dist. of Greenville County
389 S.C. 546, 698 S.E.2d 845, 259 Ed. Law Rep. 918

END OF DOCUMENT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
C. Victor Pyle, Jr., Circuit Court Judge
Edward W. Miller, Circuit Court Judge

Case No. 2005-CP-23-06048

RECEIVED

JUN 10 2012

SC Court of Appeals

Sherrie Mann McBride,.....Appellant

v.

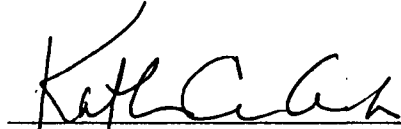
School District of Greenville County,.....Respondent

SECOND AMENDED NOTICE OF APPEAL

Sherrie Mann McBride, Appellant, appeals the decision of the Honorable C. Victor Pyle, Jr., granting a directed verdict in favor of the School District of Greenville County, respondent. A copy of the order, filed June 8, 2011, is attached. A notice of appeal from this order was served upon opposing counsel on July 7, 2011, and timely filed in both the Court of Appeals and the Greenville County Court of Common Pleas.

Appellant also appeals the order of the Honorable Edward W. Miller dated June 1, 2011, filed June 2, 2011, ruling on motions filed by the parties. A copy of this order is also attached. An amended notice of appeal with respect to this order was served upon opposing counsel on January 27, 2012, and timely filed in both the Court of Appeals and the Greenville County Court of Common Pleas.

Appellant also appeals the order of the Honorable C. Victor Pyle, Jr., dated June 26, 2012, ruling on the reconstruction of the testimony of Nancy Mann. A copy of this order is also attached. Appellant received written notice of entry of this order on June 28, 2012.



Katherine Carruth Goode
229 South Congress Street
Winnsboro, South Carolina 29180
Telephone: 803-799-4440
Attorney for Appellant

July 9, 2012

Other Counsel of Record:

N. Heyward Clarkson, III
Clarkson, Walsh, Terrell & Coulter, P.A.
P.O. Box 6728
Greenville, South Carolina 29606
Telephone: 864-232-4400
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
2011 JUL 11 AM 8:47
CASE NO: 2005CP2306048
FILED-CLERK OF COURT
GREENVILLE CO SC
PAUL B. WICKENSTEIN
2011 JUN -8 P 2:02
FILED-CLERK OF COURT
GREENVILLE CO SC

Sherrie Mann McBride vs. School District Of Greenville County

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:
Directed Verdict in favor of Defendant. grounds stated on the record.

Dated at Greenville, South Carolina, this .

Court Reporter: April Herron

C. Victor Pyle Jr.
PRESIDING JUDGE - C. Victor Pyle Jr.

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

Sherrie Mann McBride P.O. Box 4561 Greenville, SC 29608

N. Heyward Clarkson III Clarkson Walsh Rheney & Turner PA P.O. Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

original

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2005CP2306048

Sherrie Mann McBride vs. School District Of Greenville County

ENTERED COMPUTER

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:

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
JUN 1 2011

Sch

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court

Defendant's Motions for Summary Judgment are DENIED. Defendant's Motion to Amend the Answer is GRANTED. Motion for Continuance is DENIED.

IT IS SO ORDERED.

Dated at Greenville, South Carolina, this June 1, 2011.

Court Reporter:

ER (W. M. O)

PRESIDING JUDGE - EDWARD W. MILLER

This judgment was entered on the 1st day of June, 2011, and a copy mailed first class this 2nd day of June, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

David Lloyd Thomas Moore Taylor & Thomas, PA 23 Wade Hampton Blvd. Greenville, SC 29609
Sherrie Mann McBride P.O. Box 4561 Greenville, SC 29608
Sherrie Mann McBride P O Box 4561 Greenville, SC 29608

ATTORNEY(S) FOR THE PLAINTIFF(S)

N. Heyward Clarkson III Clarkson Walsh Rheney & Turner
PA P.O. Box 6728 Greenville, SC 29606
Kevin Lindsay Terrell Clarkson Walsh Rheney & Terrell, Pa
P.O. Box 6728 Greenville, SC 29607
Sean Ashley Scoopmire Clarkson Walsh Rheney & Turner,
PA P.O. Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Plaintiff,

Sherrie Mann McBride,

Vs.

School District of Greenville County,

Defendant.)

IN THE COURT OF COMMON PLEAS

2005-CP-23-06048

ORDER

This matter was first tried by Judge Larry Patterson upon multiple causes of action, including abuse of process and defamation. She was represented by attorney David Thomas. Dissatisfied with Judge Patterson's ruling, she appealed. The Court reversed and remanded for trial the causes of action for abuse of process and defamation. These causes of action were tried before me in June, 2011. She appeared *Pro se*. I directed a verdict in favor of the Defendant on both causes of action. She again appealed.

Due to a failure of the Court Reporter's equipment during the trial, portions of the testimony of Nancy Mann, the Plaintiff's mother, was not recorded. She petitioned the Court of Appeals to remand the matter to me to reconstruct her testimony. Since she had died three weeks after the trial, she was not available to testify and, therefore, unable to assist in reconstructing her testimony. A hearing for that purpose was held before me on June 18, 2012.

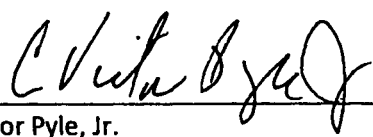
Testimony was presented by both parties as to what they recalled she said during the trial, and, as expected, there was disagreement. Over the objection of the Defendant, I admitted Plaintiff's proposed reconstructed testimony of Mrs. Mann, which I decline to adopt. I did not retain my notes of the trial and I do not remember the exact testimony presented. Having reviewed my reasons for granting the directed verdict, I find that Plaintiff is in error in her recollection of her mother's testimony in the 2011 trial before me. I find that the best evidence of Nancy Mann's testimony is her testimony at the first trial of the case.

I further find that the issues of prejudice and whether the reconstructed record provides for "meaningful appellate review", are issues for the Court of Appeals. It is, therefore,

ORDERED, that the reconstructed testimony of Nancy Mann be that presented by her during the first trial in 2007.



June 26, 2012



C. Victor Pyle, Jr.
Presiding Judge
Thirteenth Judicial Circuit

#2

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS
) C. A. NO.: 2005-CP-23- 6048

Sherrie Mann McBride,
Plaintiff,

-vs-

The School District of Greenville
County and William Roach,
Defendant.

COMPLAINT

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court as follows:

1. The Plaintiff is a citizen and resident of the State of South Carolina, County of Greenville.
2. The School District of Greenville County is a political subdivision located in Greenville County, South Carolina.
3. The Defendant, William Roach, is, upon information and belief, a citizen and resident of the County of Greenville, State of South Carolina, and is the principal of Berea High School, Greenville County, South Carolina.
4. The Plaintiff was first employed by Defendant in 1999 as a substitute teacher.
5. The Plaintiff became a full-time teacher in 2000, and worked for the Defendant under a continuing contract for her out of field certificate for Special Education. This was under a special agreement between certain social studies teachers and the School District to give them advanced training in Special Education to specifically enhance their ability to teach Special Education.

Plaintiff accepted this specially designed agreement and participated in course studies directed toward Special Education certification. Plaintiff participated in courses at Furman University, paid for by the Greenville County School District, in furtherance of this enhanced contract. Plaintiff completed the twelve hours of classroom work; the two years of practicum; and passed the Learning Disability Part One Test as was required under the special understanding for such teachers being specially equipped to teach leaning disabled children. Further, the School District had additionally committed to the Plaintiff in placing her in an educable mentally disabled teaching position. The commitment and acceptance of this further and enhanced contract between the School District and Plaintiff was established in the year 2000 and Plaintiff continued in every element of the fulfilling of the conditions of the enhanced contract.

6. The Plaintiff was employed with Berea High School. She taught special education and the preceding year had been assigned a student, Josh [REDACTED], who Plaintiff had previously taught as a home-bound student two years earlier. Because this student had been taught on home-bound by Plaintiff in prior years, his psychological problems of self-mutilation prompted the Guidance Counselor at Berea High School to assign him to Plaintiff's room half days for his own well-being.

7. On September 24, 2003, F [REDACTED], without permission, took the automobile of Plaintiff. Ferguson had stolen Plaintiff's keys from her desk drawer.

8. Later in the same class period that afternoon, Plaintiff requested two of her 4th block Life Skills Science class students to take some materials out to her car. She always used a spare key and did not realize her master keys were missing. The students promptly returned and informed Plaintiff that her car was missing.

9. The students and Plaintiff checked the parking lot again to see if Plaintiff's husband had exchanged cars and went to the parking lot to find there had been no exchange of cars.

10. The Plaintiff returned to her class to have someone care for the class while she was dealing with this emergency.

11. After having searched the parking lot about fifteen minutes, the Resource Officer, Daniel Oslager, pulled into the parking lot and Plaintiff reported her missing car to Oslager.

12. Oslager insisted that Plaintiff report the car as a stolen vehicle. The Plaintiff then officially reported that her car was stolen and Oslager took the case forward from there.

13. Since she knew Oslager was a Greenville County Sheriff's officer, Plaintiff believed that Oslager reported this incident to the Greenville County Sheriff's Department.

14. It then occurred to Plaintiff that perhaps Josh, who was still being allowed in her room by the Guidance Counselor and who had run away from home the preceding Friday, had stolen her keys from her desk and was the one responsible for the theft.

15. As the Plaintiff continued with her conversation with Oslager, F█████ pulled into the parking lot with the stolen vehicle.

16. F█████ parked the car and Oslager pulled him from the vehicle, pushed him face down on the hood of the vehicle and placed him under arrest. F█████ was calling out "Ms. McBride, Ms. McBride, I had to go to Legal Aid".

17. Plaintiff did not try to interfere with the arrest, being totally astonished at F█████'s actions.

18. Within fifteen minutes of returning to her classroom, the Principal, via the intercom, instructed the Plaintiff to return to the parking lot. Plaintiff went back to the parking lot and had a further discussion with Oslager who had Plaintiff sign a complaint against F█████ for the theft of her car.

19. The following day, officers from the Greenville County Sheriff's Department, Officer Leslie Lambert and Spokesperson Sgt. Shea Smith, further questioned Plaintiff. During this five hour questioning, it appeared that Sgt. Smith was taking the position that the car had actually been given, by permission, to F[REDACTED]. Plaintiff repeatedly and vigorously denied that assumption.

20. The officers were insistent that the student had been signed out by Plaintiff and had been given the car by Plaintiff on numerous occasions prior to the September 24th incident. Josh F[REDACTED] had been assigned to the Plaintiff's room by the Guidance Department and acted as a student assistant to Plaintiff. On two occasions, relative to school activities, F[REDACTED] rode with Plaintiff in her car. After the school year had begun and after the school day ended, he rode with Plaintiff to the Resource Center called Greenville County Instructional Materials and Resources. With the permission of Josh's mother, he drove on this errand. And after picking up materials and stopping by Plaintiff's home to pick up Plaintiff's husband, Josh was taken home. A second use of the car was after school hours on the following Friday when Plaintiff allowed F[REDACTED] to drive her car to Ingles, approximately 1/10th of a mile from the school. Plaintiff, within thirty minutes of Josh's return, took Josh to the B[REDACTED] home which was the appointed drop-off point for Josh that day. Josh's mother had given previous permission to Plaintiff that if Plaintiff allowed, Josh could drive Plaintiff's car. The following Wednesday was the day the Plaintiff's car disappeared out of the parking lot. Plaintiff had given no permission for anyone to use her car at that time. The sequence of events were fully explained to the officers who were questioning Plaintiff about the theft of her car.

21. That day, Plaintiff was arrested by these same officers for contributing to the delinquency of a minor and enticing an enrolled student from school. The delinquency of a minor charge was over Josh F[REDACTED]'s leaving home the preceding Friday night which was unknown to

Plaintiff until the next day, Saturday, when Josh F [REDACTED] surprised Plaintiff by showing up at her home. He knew where she lived and came to her house as someone he could go to for support. Plaintiff immediately called the Resource Officer at his home at 2:28 p.m., even though it was a Saturday afternoon and reported to him after being connected with him at a different job site, Plaintiff was instructed to call the police to have Josh picked up because Josh had reported to Plaintiff that he had run away from home. Plaintiff did so and a Sheriff's Deputy arrived within fifteen to twenty minutes. Officer Gladson knew Josh as a problem child and stated he had been to the F [REDACTED] home on more than one occasion.

22. The second accusation that was made contained within it the assertion that F [REDACTED] was actually given passes by the Plaintiff to other teachers to allow him to be gone from school property during school hours.

23. Plaintiff had known F [REDACTED] and his family since April 22, 2002, when she handled his home-bound instructional studies and had gone to his home two to three times per week.

24. Despite her explanation of the events and relationship to F [REDACTED] the officers charged Plaintiff.

25. The following day the then Superintendent of Education for the Greenville School District, William Harner, announced to a reporter that Plaintiff had been fired from the School District. All of this was without due process of her procedural rights.

26. A letter from the Greenville School District following within 10 days informed Plaintiff that she had been fired and that she had ten days to appeal that decision.

27. The Plaintiff appealed the decision the day she received the notice from the School District, October 7, 2003, and following that appeal there was a hearing on November 13, 2003, in front of Pat Mitchell and Henry Melton.

28. All issues related to Plaintiff's termination as enumerated in the September 24, 2005 dismissal letter from Dr. William Harner were answered, but when hearing questions turned to the criminal charges, Plaintiff had been instructed by her attorney, Pat Paschal, not to answer those questions. The hearing officers then stated that, if she could not answer the criminal charge questions, they could continue the hearing upon written request by Plaintiff, pending the outcome of the criminal matters. The hearing officers should have given a partial finding absolving Plaintiff of the wrong-doing stated in the September 24, 2005 letter, and then placed her back under a paid status while the criminal charges were being resolved as per South Carolina Code of Laws Section 59-25-430, and other pertinent Code sections.

29. The hearing officers then told Plaintiff they would allow for a continuation of her hearing upon written request by her when the criminal charges had been finally disposed of. The hearing was therefore suspended pending the outcome of the charges. In the letter of dismissal sent on September 26, 2003, six items were given as reasons for dismissal. All of these items listed were denied by Plaintiff at her hearing on November 13, 2003, with the exception that after hours on one day above-referenced, the student was allowed use of Plaintiff's car for a very limited and specific purpose and brief period of time.

30. Plaintiff then attempted to exercise her administrative remedies and reestablish her employment with the Greenville County School District. The Solicitor's office having dropped all charges against her, Plaintiff renewed her grievance before Mr. Mitchell and Mr. Melton in a hearing that took place on September 8, 2005. At that time, full testimony was taken. Complete evidence was given concerning all items listed in the Harner September 26, 2003 letter of dismissal. Plaintiff has fully exhausted her administrative remedies and demonstrated that she should not have been terminated under the conditions of her contract.

31. As of the date of the filing of this complaint, although Plaintiff has requested a response on the September 8, 2005 hearing, no response has been given. There being a deadline as to her ability to file a lawsuit, she has filed this suit after having attempted to precipitate a response from the School District via a letter on September 20, 2005, via registered mail.

32. Defendant William Roach, principal at Berea High School, had been irritated and angry with the Plaintiff because of her outspokenness to actions by the Greenville County School District, such as ignoring the number of special education students per classroom, as mandated by Federal Law.

33. Defendant Roach had been the assistant principal since 1996 and left Berea in the 2002-2003 school year but was brought back in 2003 as principal.

34. Upon Roach's return as principal, the animosity resumed against Plaintiff which had been present before. No problems had been experienced with the previous principal. Upon learning that Roach was returning as principal, Plaintiff put in her request for a transfer in 2003.

35. Because of a hiring freeze, no transfers were permitted until July 1, 2003.

36. Since her termination by the Greenville County School District, Plaintiff has been unable to get her job back with the School District and she has fought depression, emotional anxiety, and extreme stress after being televised and publically humiliated. Physical complications have also resulted and the School District deprived her of her insurance benefits in addition to her loss of her job. Her physical problem that developed in 2004 is a disease that was not covered by insurance because she had been deprived of insurance upon her wrongful termination resulting in consequential damages to her.

FOR A FIRST CAUSE OF ACTION

Breach of Contract

37. Each and every allegation contained above is incorporated herein as if fully set forth.

38. The Defendant wrongfully terminated Plaintiff and did not adequately determine the truthfulness of assertions made. Plaintiff had a contract with the Defendant wherein she made approximately \$37,000.00 per year and had never been under any disciplinary action. She was summarily fired without the ability to provide an explanation to the Defendant. Plaintiff had been employed with the Greenville County School District since 1999, and her first teaching contract was in the year 2000.

39. Wrong actions on the part of a teacher for which dismissal is appropriate are not applicable under the facts of this case. The contract was wrongfully terminated by Defendant School District.

40. Plaintiff had substantive due process rights because of her contract, as well as procedural due process rights, and was covered under South Carolina Code of Laws and Common Law Contract Law. Her substantive rights, procedural rights, and contract rights have been violated.

FOR A SECOND CAUSE OF ACTION

Wrongful Discharge

41. Each and every allegation contained above is incorporated herein as if fully set forth.

42. Further, Plaintiff's termination is a violation of public policy and therefore a wrongful discharge in that there is a public policy concern for the protection of teachers wrongfully terminated without just cause.

43. This teacher, the Plaintiff, had complained about classroom size being over the permissible numbers as well as other public policy issues which angered Principal Roach.

FOR A THIRD CAUSE OF ACTION

Defamation of Character

44. Each and every allegation contained above is incorporated herein as if fully set forth.

45. The Superintendent of The Greenville School District made public statements after the arrest of Plaintiff accusing her of misconduct, all of which has turned out to be incorrect. The principal of Berea High School, William Roach, has told faculty members that Plaintiff stole school property, which also is untrue. Plaintiff has been publically humiliated and has been permanently impacted by this egregious action. Such statements were made with malice and were untrue.

FOR A FOURTH CAUSE OF ACTION

Abuse of Process

46. Each and every allegation contained above is incorporated herein as if fully set forth.

47. The School District wrongly used police powers to fabricate a story resulting in the arrest of Plaintiff. Their ulterior purpose was to terminate employment of Plaintiff because she was disliked by the Principal, William Roach. Such action was willful and not proper.

FOR A FIFTH CAUSE OF ACTION

False Imprisonment

48. Each and every allegation contained above is incorporated herein as if fully set forth.

49. As a result of the foregoing, the Greenville County Sheriff's Department, upon prompting by School officials, had Plaintiff arrested and incarcerated, booked and finger-printed. Since that action, all charges against Plaintiff have subsequently been dropped.

FOR A SIXTH CAUSE OF ACTION

Malicious Prosecution

50. Each and every allegation contained above is incorporated herein as if fully set forth.

51. The Defendants proceeded with this criminal action although they knew, or should have known, there was no probable cause and such actions were malicious on the part of the Defendants, and the proceedings against the Plaintiff have been terminated in Plaintiff's favor. Damage to the Plaintiff has been her great humiliation and negative impact upon her career and personal assets.

FOR A SEVENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress and Outrage

52. Each and every allegation contained above is incorporated herein as if fully set forth.

53. Defendants intended to inflict emotional distress upon the Plaintiff because of her revelations concerning School District improprieties such as classroom size. There had been, since the year 2000, animosity from the principal toward the Plaintiff resulting in fabrications above delineated. These improper actions have resulted in the loss of employment, arrest and prosecution of Plaintiff. All such criminal charges have been dismissed, but Plaintiff has still been denied her job causing loss of personal assets and physical health and, as such, is permanently scarred by the outrages against her. Even to the time of this filing, as Plaintiff has desperately sought to have her job re-instated, the School District of Greenville County has refused to put her back to work.

FOR AN EIGHTH CAUSE OF ACTION

Negligence

54. Each and every allegation contained above is incorporated herein as if fully set forth.

55. Plaintiff was owed a duty of care before Defendants released publically any information concerning the Plaintiff and was owed a duty of care concerning her contract rights which were abridged by the Defendants, which constitutes negligence. Even though all of Plaintiff's end of year

evaluations were all satisfactory. Defendants ignored her excellent status as a teacher and negligently dismissed Plaintiff.

FOR A NINTH CAUSE OF ACTION

Negligence Per Se

56. Each and every allegation contained above is incorporated herein as if fully set forth.

57. The Defendants violated South Carolina Code of Laws Sections 49-25-430, 59-25-460, 41-35-120(2), and other applicable Code sections that afford a hearing prior to dismissal, in firing Plaintiff before she received a written notice specifying the cause of dismissal. All pay to Plaintiff was suspended October 7th, prior to any procedural hearing, violated South Carolina Code of Laws Section 59-25-430, which requires teachers being charged be placed under suspension at usual pay for the term of the contract or until found guilty. If charges are dismissed, suspension shall be terminated.

58. The South Carolina Employment Security Commission found in favor of Plaintiff to receive unemployment benefits stating in their findings, "After careful consideration of all the information given, a finding of discharge for cause in connection with the work is not justified under the South Carolina Employment Security Laws Section 41-35-120(2)."

Section 59-25-430 specifically states that "such teacher may be suspended pending resolution of the charges and receive his usual compensation during the suspension period, such suspension not to exceed the term of his teaching contract . . . If no conviction result, his suspension shall be terminated." The actual suspension of Plaintiff was due to criminal charges and those issues listed in the September 24, 2005 letter were patently untrue.

FOR A TENTH CAUSE OF ACTION

Gross Negligence

59. Each and every allegation contained above is incorporated herein as if fully set forth.

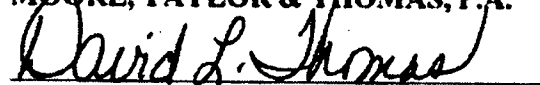
60. Defendants were grossly negligent in falsely accusing and dismissing Plaintiff for criminal charges as delineated in a letter of dismissal on September 26, 2003, all of which are demonstrably incorrect or distorted.

WHEREFORE, having fully complained against the Defendants above-named, Plaintiff would respectfully pray as follows

1. For Plaintiff to be re-instated in her job with the Greenville County School District;
2. For contractual damages for her missed years of employment;
3. For damages to her resulting from her emotional distress;
4. For consequential damages and punitive damages;
5. For any attorneys's fees which may be applicable under contract or code; and
6. For any further relief being just and proper.

Respectfully submitted,
MOORE, TAYLOR & THOMAS, P.A.

By:



David L. Thomas (SC Bar #09952)
23 Wade Hampton Boulevard
Greenville, South Carolina 29609
(864) 271-6371

Greenville, South Carolina

September 23, 2005.

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2005-CP-23-6048
	)	
Sherrie Mann McBride,	)	
	)	
Plaintiff,	)	ANSWER
	)	(Jury Trial Demanded)
vs.	)	
	)	
The School District of Greenville	)	
County and William Roach,	)	
	)	
Defendants.	)	
	)	

Defendants, The School District of Greenville County ("School District") and William Roach ("Roach"), hereby answer Plaintiff's Complaint. Defendants deny each and every allegation not specifically admitted below.

FOR A FIRST DEFENSE TO ENTIRE COMPLAINT

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, deny them.
2. Defendants admit the allegations of Paragraph 2.
3. Defendants admit the allegations of Paragraph 3.
4. Defendants admit Plaintiff was employed by School District in 1999 as a substitute teacher. Defendants deny the remaining allegations of Paragraph 4.
5. Answering the allegations of Paragraph 5, School District admits Plaintiff was hired as a full-time teacher beginning with the 2000-2001 school year. School District further admits Plaintiff was hired as an at-will special education teacher placed at Berea High School. Defendants deny the remaining allegations of Paragraph 5.

6. Answering the allegations of Paragraph 6, School District admits Plaintiff was employed as a teacher at Berea High School and that she taught special education. School District objects to the remaining allegations of Paragraph 6 in that they identify by name the special education student. The identity of special education students is a private and confidential matter that should not be made public. Therefore, School District will make a motion to strike if Plaintiff is unwilling to consent to an amendment of the pleadings to eliminate identification of the student by name. Defendants deny the remaining allegations of Paragraph 6.

7. Defendants deny the allegations of Paragraph 7.
8. Defendants deny the allegations of Paragraph 8.
9. Defendants deny the allegations of Paragraph 9.
10. Defendants deny the allegations of Paragraph 10.
11. Defendants deny the allegations of Paragraph 11.
12. Defendants deny the allegations of Paragraph 12.
13. Defendants deny the allegations of Paragraph 13.
14. Defendants deny the allegations of Paragraph 14.
15. Defendants deny the allegations of Paragraph 15.
16. Defendants deny the allegations of Paragraph 16.
17. Defendants deny the allegations of Paragraph 17.
18. Defendants deny the allegations of Paragraph 18.
19. Defendants deny the allegations of Paragraph 19.
20. Defendants deny the allegations of Paragraph 20.

21. Defendants admit Plaintiff was arrested for contributing to the delinquency of a minor and enticing an enrolled student from school. Defendants deny the remaining allegations of Paragraph 21.

22. Defendants deny the allegations of Paragraph 22.

23. Defendants deny the allegations of Paragraph 23.

24. Defendants deny the allegations of Paragraph 24.

25. Defendants deny the allegations of Paragraph 25.

26. School District admits it terminated Plaintiff by letter dated September 26, 2003. Defendants deny the remaining allegations of Paragraph 26.

27. Defendants admit the allegations of Paragraph 27.

28. Defendants admit the summary of the events that transpired at the hearing but deny the events occurred in September of 2005. Defendants deny the remaining allegations of Paragraph 28.

29. Defendants admit the summary of the hearing contained within Paragraph 29. Defendants deny the remaining allegations of Paragraph 29.

30. Defendants admit Plaintiff continued to prosecute her administrative remedies. Defendants further admit that Plaintiff's final administrative remedy consisted of a hearing before the Board of Trustees of the School District which occurred in November of 2005. Defendants deny the remaining allegations of Paragraph 30.

31. Defendants deny the allegations of Paragraph 31.

32. Defendants deny the allegations of Paragraph 32.

33. Defendants admit the allegations of Paragraph 33.

34. Defendants deny the allegations of Paragraph 34.

35. Defendants deny the allegations of Paragraph 35.

36. Defendants deny the allegations of Paragraph 36.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

37. Defendants incorporate by reference their answers to Paragraphs 1 through 36 of the Complaint as fully as if set forth verbatim.

38. Answering the allegations of Paragraph 38, Defendants admit Plaintiff was employed as a teacher by the School District from 2000 through 2003. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants deny the allegations of Paragraph 39.

40. Defendants deny the allegations of Paragraph 40.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

41. Defendants incorporate by reference their answers to Paragraphs 1 through 40 of the Complaint as fully as if set forth verbatim.

42. Defendants deny the allegations of Paragraph 42.

43. Defendants deny the allegations of Paragraph 43.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

44. Defendants incorporate by reference their answers to Paragraphs 1 through 43 of the Complaint as fully as if set forth verbatim.

45. Defendants deny the allegations of Paragraph 45.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

46. Defendants incorporate by reference their answers to Paragraphs 1 through 45 of the Complaint as fully as if set forth verbatim.

47. Defendants deny the allegations of Paragraph 47.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

48. Defendants incorporate by reference their answers to Paragraphs 1 through 47 of the Complaint as fully as if set forth verbatim.

49. Defendants deny the allegations of Paragraph 49.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

50. Defendants incorporate by reference their answers to Paragraphs 1 through 49 of the Complaint as fully as if set forth verbatim.

51. Defendants deny the allegations of Paragraph 51.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

52. Defendants incorporate by reference their answers to Paragraphs 1 through 51 of the Complaint as fully as if set forth verbatim.

53. Defendants deny the allegations of Paragraph 53.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION

54. Defendants incorporate by reference their answers to Paragraphs 1 through 53 of the Complaint as fully as if set forth verbatim.

55. Defendants deny the allegations of Paragraph 54.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION

56. Defendants incorporate by reference their answers to Paragraphs 1 through 55 of the Complaint as fully as if set forth verbatim.

57. Defendants deny the allegations of Paragraph 57.

58. Defendants deny the allegations of Paragraph 58.

FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION

59. Defendants incorporate by reference their answers to Paragraphs 1 through 58 of the Complaint as fully as if set forth verbatim.

60. Defendants deny the allegations of Paragraph 60.

FOR A SECOND DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Sole Remedy)

61. Defendants contend the sole remedy for the actions alleged in Plaintiff's Complaint is under the South Carolina Tort Claims Act, pursuant to South Carolina Code Ann. § 15-78-200. Therefore, Defendants request the following immunities from suit specifically raised in this Answer.

FOR A THIRD DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Legislative Immunity)

62. Defendants allege they are immune to the causes of action alleged in Plaintiff's Complaint due to the legislative immunity granted them under South Carolina Code Ann. § 15-78-60(1). Therefore, Plaintiff's Complaint should be dismissed.

FOR A FOURTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Administrative Immunity)

63. Defendants allege they are immune to the causes of action alleged in Plaintiff's Complaint due to the administrative immunity granted them under South Carolina Code Ann. § 15-78-60(2). Therefore, Plaintiff's Complaint should be dismissed.

FOR A FIFTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act)

64. The allegations of Plaintiff's Complaint do not meet the definition of "loss" contained within South Carolina Code Ann. § 15-78-30(f) nor the definition of "occurrence"

contained within South Carolina Code Ann. § 15-78-30(g). Therefore, all causes of action which do not meet these definitions should be dismissed.

FOR A SIXTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act Immunity -- Compliance with Applicable Law)

65. Defendants raise the immunity of South Carolina Code Ann. § 15-78-60(4), which provides for immunity when a governmental entity complies with applicable law. In this case, Defendants contend they complied with all applicable laws relating to the hiring and termination of teachers. Therefore, Plaintiff's Complaint should be dismissed.

FOR A SEVENTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Discretionary Immunity)

66. Defendants raise the immunity from suit preserved by South Carolina Code Ann. § 15-78-60(5), which provides for immunity for the exercise of discretion by a governmental entity. Therefore, Plaintiff's Complaint should be dismissed.

FOR AN EIGHTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Intentional Harm)

67. Defendants raise South Carolina Code Ann. § 15-78-60(17), which preserves governmental immunity in cases where an employee's action constitutes actual fraud, actual malice, and intent to harm, or a crime involving moral turpitude. Therefore, Plaintiff's Complaint should be dismissed.

FOR A NINTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Prosecutorial Immunity)

68. Defendants raise the immunity provided by South Carolina Code Ann. § 15-78-60(23), which preserves governmental immunity for the institution or prosecution of any judicial or administrative proceeding. Therefore, Plaintiff's Complaint should be dismissed.

FOR A TENTH DEFENSE TO THE ENTIRE COMPLAINT
(Statute of Limitations)

69. Defendants allege Plaintiff has failed to file suit within the two year statute of limitations mandated by South Carolina Code Ann. § 15-78-110. Therefore, Plaintiff's Complaint should be dismissed.

FOR AN ELEVENTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act – Limitation of Liability)

70. Defendants raise the limitation on liability provided by South Carolina Code Ann. § 15-78-120(a), which limits liability to \$300,000. In addition, Defendants raise the limitation on liability contained within South Carolina Code Ann. § 15-78-120(b), which prohibits the award of punitive or exemplary damages or interest prior to judgment. Therefore, Defendants request the Court apply the limitations on liability contained within South Carolina Tort Claims Act.

FOR A TWELFTH DEFENSE TO THE ENTIRE COMPLAINT
(Failure to State a Claim)

71. Defendants allege that the Complaint of the Plaintiff fails to state facts sufficient to constitute a cause of action against her and, therefore the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Mitigation of Damages)

72. Defendants allege that the Plaintiff has failed to mitigate her damages and, therefore, the Plaintiff's Complaint should be dismissed.

FOR A FOURTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Comparative Negligence)

73. Defendants allege that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff.

which exceeds the negligence and/or willfulness, if any, on the part of the Defendants, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery or Plaintiff's recovery should be lessened.

FOR A FIFTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Assumption of the Risk)

74. Defendants allege that the Plaintiff knew or should have known of the dangers attendant in undertaking the acts for which she was terminated and also knew or should have known that by engaging in this conduct, she assumed the risk of being terminated in the fashion in which she was.

75. Defendants allege that the Plaintiff, nevertheless, freely and voluntarily engaged in this conduct even though she knew or should have known of the attendant risks of doing so and that in so doing, she assumed the risk of being terminated and sustained the injuries and damages for which she is now complaining. Accordingly, her claim is barred.

FOR A SIXTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Truth)

76. All of the statements which the Plaintiff alleges of the Defendants are true statements of fact as to the Plaintiff, although the Defendants expressly deny making such statements.

77. The Defendants accordingly plead the truth of those alleged statements as a defense to the Plaintiff's Complaint.

FOR A SEVENTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Compliance with Statutory Mandate)

78. Defendants contend Plaintiff is not entitled to the statutory protections raised in the Complaint because she is not subject to employment dismissal provisions of Article 3.

Chapter 19, and Article 5, Chapter 25 of Title 59 of the South Carolina Code of Laws, pursuant to South Carolina Code Ann. § 59-26-40(H) because she is an annual contract teacher. Further, Defendants contend that, despite the fact that Defendants were not required to give her the hearing provided for in South Carolina Code Ann. § 59-26-40(H), nonetheless the hearing and appeal requirement of that section were met. Defendants complied with all applicable laws in the termination of Plaintiff and, therefore, Plaintiff's Complaint should be dismissed.

FOR AN EIGHTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Compliance with Due Process)

79. Defendants contend they complied with all applicable requirements of substantive and procedural due process under the United States and South Carolina Constitutions. Defendants provided Plaintiff with a post-termination hearing and right to appeal. Therefore, Plaintiff's Complaint should be dismissed.

FOR A NINETEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Insufficiency of Process)

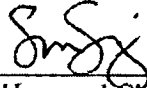
80. Process is insufficient. Therefore, the Complaint should be dismissed pursuant to Rule 12(b)(4) of the *South Carolina Rules of Civil Procedure*.

FOR A TWENTIETH DEFENSE TO THE ENTIRE COMPLAINT
(Insufficiency of Service of Process)

81. Service of process is insufficient. Therefore, the Complaint should be dismissed pursuant to Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure*.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that they be dismissed with costs and for such other and further relief as the Court may deem just and proper.

CLARKSON, WALSH, RHENEY & TERRELL, P.A.



N. Heyward Clarkson, III (S.C. Bar No. 1261)

K. Lindsay Terrell (S.C. Bar No. 9072)

Sean A. Scoopmire (S.C. Bar No. 15625)

1164 Woodruff Road

Post Office Box 6728

Greenville, South Carolina 29606

(864) 232-4400

Fax: (864) 235-4399

Attorneys for Defendants

Greenville, South Carolina

November 18, 2005

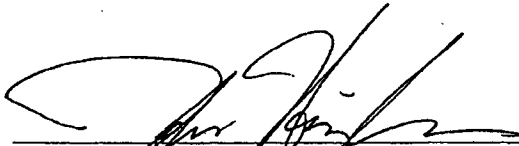
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2005-CP-23-6048
	)	
Sherrie Mann McBride,	)	
	)	
Plaintiff,	)	DEFENDANT'S MOTION TO
	)	AMEND ANSWER
	)	
vs.	)	
	)	
The School District of Greenville	)	
County,	)	
	)	
Defendant.	)	
_____	)	

TO: PLAINTIFF SHERRIE MANN MCBRIDE:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or at such time and place as the Court may deem appropriate, Defendant will move the Court to amend the Answer previously filed to include two additional affirmative defenses: (1) Tort Claims Act immunity provided by South Carolina Code Ann. § 15-78-60(3), which preserves immunity for any governmental entity's "lawful implementation of any process;" and (2) the defense of "qualified privilege" in response to plaintiff's claim for defamation. A copy of Defendant's proposed Amended Answer is attached.

This motion is brought pursuant to South Carolina Rule of Civil Procedure 15(a) which provides in pertinent part that a party may amend its pleading by "leave of court" and that "leave shall be freely given when justice so requires and does not prejudice any other party." The motion shall be further based upon the common statutory laws of the State of South Carolina and such affidavits and memorandum of law as may hereafter be presented to the Court.

CLARKSON, WALSH, TERRELL & COULTER, P.A.



N. Heyward Clarkson, III (S.C. Bar No. 1261)
John D. Harjehausen (S.C. Bar No. 76194)
1164 Woodruff Road
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Fax: (864) 235-4399
Attorneys for Defendant

Greenville, South Carolina

March 22, 2011

District. The case proceeded to trial on four causes of action, defamation, abuse of process, malicious prosecution, and false imprisonment. The trial court granted the District's motion for a directed verdict as to each cause of action.

Plaintiff appealed, and the Court of Appeals reversed the lower court's judgment with respect to two of the causes of action, defamation and abuse of process, finding that the evidence was sufficient to allow the claims to go to a jury. The Court of Appeals remanded the case for a new trial on these causes of action.

The District has now filed a motion to amend its answer. The amended answer seeks to add two additional defenses not previously asserted by the District – immunity under § 15-78-60(3) of the Tort Claims Act as a defense to both causes of action, and qualified immunity as a defense to the defamation claim. The court should deny the motion to amend the answer.

ARGUMENT AND AUTHORITIES

Affirmative defenses must be pled. Rule 8(c), SCRPC. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. *See Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002) (laches); *Adams v. B & D, Inc.*, 297 S.C. 416, 419, 377 S.E.2d 315, 317 (1989) (accord and satisfaction); *Branche Builders, Inc., v. Coggins*, 386 S.C. 43, 48 n. 4, 686 S.E.2d 200, 202 n.4 (Ct. App. 2009) (equitable estoppel and unclean hands); *D & D Leasing Co. of South Carolina, Inc., v. David Lipson, Ph.D., P.A.*, 305 S.C. 540, 542, 409 S.E.2d 794, 796 (Ct. App. 1991) (lack of enforceability of contract).

As the Court of Appeals held in the appeal of this case, a claim of qualified privilege is an affirmative defense. *McBride v. School District of Greenville County*, 389 S.C. 546,

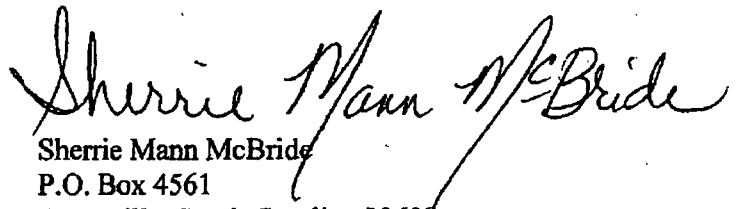
562, 698 S.E.2d 845, 853 (Ct. App. 2010), citing *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). The Court of Appeals has ruled that the District “did not include the defense of qualified privilege in its answer; therefore, it may not assert this privilege.” *McBride*, 389 S.C. at 562, 698 S.E.2d at 853. The District did not file a petition for rehearing as to this conclusion and did not seek review of this finding in the Supreme Court. Accordingly, the Court of Appeals’ determination that the District may not assert the defense of qualified privilege is the law of the case. See *Mazloom v. Mazloom*, __ S.C. __, __ S.E.2d __, 2011 WL 1744208 (S.C. May 9, 2011); *Simmons v. Simmons*, __ S.C. __, __ S.E.2d __, 2011 WL 1758825 (S.C. May 9, 2011); *South Carolina Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 353 S.C. 249, 250-51 n.1, 578 S.E.2d 8, 9 n.1 (2003); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). The District may not now amend its answer to assert this defense.

A claim of immunity is also an affirmative defense. See, e.g., *Plyler v. Burns*, 373 S.C. 637, 648, 647 S.E.2d 188, 194 (2007) (judicial immunity); *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997) (intra-family immunity); *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994) (sovereign immunity); *Crowley v. Bob Jones Univ.*, 268 S.C. 492, 497, 234 S.E.2d 879, 881 (1977) (charitable immunity). As with the affirmative defense of qualified privilege, because the District did not assert the immunity defense of Section 15-78-60(3) in its answer, it too has been waived and the court should not now allow the District to assert it.

The District may not amend its answer except by leave of court, and such leave should not be granted where the amendment will result in prejudice to the adverse party. See

Rule 15(a), SCRCP. Here, after this case has been fully developed with pleadings and discovery and has already been through one trial and appellate review, the District is attempting to inject new issues and theories, even one that has been disallowed by the Court of Appeals. Allowing the amendment of the pleadings at this late stage would be extremely prejudicial to the plaintiff, and the District's motion to amend should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sherrie Mann McBride". The signature is written in black ink and is positioned above the printed name and address.

Sherrie Mann McBride
P.O. Box 4561
Greenville, South Carolina 29608
Telephone: 864-322-7590
Plaintiff

Greenville, South Carolina

June 1, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2005-CP-23-6048
	)	
Sherrie Mann McBride,	)	
	)	
Plaintiff,	)	AMENDED ANSWER
	)	(Jury Trial Demanded)
vs.	)	
	)	
The School District of Greenville	)	
County,	)	
	)	
Defendant.	)	
	)	

Defendant, The School District of Greenville County ("School District"), hereby answers Plaintiff's Complaint. Defendant denies each and every allegation not specifically admitted below.

FOR A FIRST DEFENSE TO ENTIRE COMPLAINT

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, denies them.
2. Defendant admits the allegations of Paragraph 2.
3. Defendant admits the allegations of Paragraph 3.
4. Defendant admits Plaintiff was employed by School District in 1999 as a substitute teacher. Defendant denies the remaining allegations of Paragraph 4.
5. Answering the allegations of Paragraph 5, School District admits Plaintiff was hired as a full-time teacher beginning with the 2000-2001 school year. School District further admits Plaintiff was hired as an at-will special education teacher placed at Berea High School. Defendant denies the remaining allegations of Paragraph 5.

6. Answering the allegations of Paragraph 6, School District admits Plaintiff was employed as a teacher at Berea High School and that she taught special education. School District objects to the remaining allegations of Paragraph 6 in that they identify by name the special education student. The identity of special education students is a private and confidential matter that should not be made public. Therefore, School District will make a motion to strike if Plaintiff is unwilling to consent to an amendment of the pleadings to eliminate identification of the student by name. Defendant denies the remaining allegations of Paragraph 6.

7. Defendant denies the allegations of Paragraph 7.
8. Defendant denies the allegations of Paragraph 8.
9. Defendant denies the allegations of Paragraph 9.
10. Defendant denies the allegations of Paragraph 10.
11. Defendant denies the allegations of Paragraph 11.
12. Defendant denies the allegations of Paragraph 12.
13. Defendant denies the allegations of Paragraph 13.
14. Defendant denies the allegations of Paragraph 14.
15. Defendant denies the allegations of Paragraph 15.
16. Defendant denies the allegations of Paragraph 16.
17. Defendant denies the allegations of Paragraph 17.
18. Defendant denies the allegations of Paragraph 18.
19. Defendant denies the allegations of Paragraph 19.
20. Defendant denies the allegations of Paragraph 20.

21. Defendant admits Plaintiff was arrested for contributing to the delinquency of a minor and enticing an enrolled student from school. Defendant denies the remaining allegations of Paragraph 21.

22. Defendant denies the allegations of Paragraph 22.

23. Defendant denies the allegations of Paragraph 23.

24. Defendant denies the allegations of Paragraph 24.

25. Defendant denies the allegations of Paragraph 25.

26. School District admits it terminated Plaintiff by letter dated September 26, 2003.

Defendant denies the remaining allegations of Paragraph 26.

27. Defendant admits the allegations of Paragraph 27.

28. Defendant admits the summary of the events that transpired at the hearing but deny the events occurred in September of 2005. Defendants deny the remaining allegations of Paragraph 28.

29. Defendant admits the summary of the hearing contained within Paragraph 29.

Defendant denies the remaining allegations of Paragraph 29.

30. Defendant admits Plaintiff continued to prosecute her administrative remedies.

Defendant further admits that Plaintiff's final administrative remedy consisted of a hearing before the Board of Trustees of the School District which occurred in November of 2005.

Defendant denies the remaining allegations of Paragraph 30.

31. Defendant denies the allegations of Paragraph 31.

32. Defendant denies the allegations of Paragraph 32.

33. Defendant admits the allegations of Paragraph 33.

34. Defendant denies the allegations of Paragraph 34.

35. Defendant denies the allegations of Paragraph 35.

36. Defendant denies the allegations of Paragraph 36.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

37. Defendant incorporates by reference its answers to Paragraphs 1 through 36 of the Complaint as fully as if set forth verbatim.

38. Answering the allegations of Paragraph 38, Defendant admits Plaintiff was employed as a teacher by the School District from 2000 through 2003. Defendant denies the remaining allegations of Paragraph 38.

39. Defendant denies the allegations of Paragraph 39.

40. Defendant denies the allegations of Paragraph 40.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

41. Defendant incorporates by reference their answers to Paragraphs 1 through 40 of the Complaint as fully as if set forth verbatim.

42. Defendant denies the allegations of Paragraph 42.

43. Defendant denies the allegations of Paragraph 43.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

44. Defendant incorporates by reference its answers to Paragraphs 1 through 43 of the Complaint as fully as if set forth verbatim.

45. Defendant denies the allegations of Paragraph 45.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

46. Defendant incorporates by reference its answers to Paragraphs 1 through 45 of the Complaint as fully as if set forth verbatim.

47. Defendant denies the allegations of Paragraph 47.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

48. Defendant incorporates by reference its answers to Paragraphs 1 through 47 of the Complaint as fully as if set forth verbatim.

49. Defendant denies the allegations of Paragraph 49.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

50. Defendant incorporates by reference its answers to Paragraphs 1 through 49 of the Complaint as fully as if set forth verbatim.

51. Defendant denies the allegations of Paragraph 51.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

52. Defendant incorporates by reference its answers to Paragraphs 1 through 51 of the Complaint as fully as if set forth verbatim.

53. Defendant denies the allegations of Paragraph 53.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION

54. Defendant incorporates by reference its answers to Paragraphs 1 through 53 of the Complaint as fully as if set forth verbatim.

55. Defendant denies the allegations of Paragraph 54.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION

56. Defendant incorporates by reference its answers to Paragraphs 1 through 55 of the Complaint as fully as if set forth verbatim.

57. Defendant denies the allegations of Paragraph 57.

58. Defendant denies the allegations of Paragraph 58.

FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION

59. Defendant incorporates by reference its answers to Paragraphs 1 through 58 of the Complaint as fully as if set forth verbatim.

60. Defendant denies the allegations of Paragraph 60.

FOR A SECOND DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Sole Remedy)

61. Defendant contends the sole remedy for the actions alleged in Plaintiff's Complaint is under the South Carolina Tort Claims Act, pursuant to South Carolina Code Ann. § 15-78-200. Therefore, Defendant requests the following immunities from suit specifically raised in this Answer.

FOR A THIRD DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Legislative Immunity)

62. Defendant alleges it is immune to the causes of action alleged in Plaintiff's Complaint due to the legislative immunity granted it under South Carolina Code Ann. § 15-78-60(1). Therefore, Plaintiff's Complaint should be dismissed.

FOR A FOURTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Administrative Immunity)

63. Defendant alleges it is immune to the causes of action alleged in Plaintiff's Complaint due to the administrative immunity granted it under South Carolina Code Ann. § 15-78-60(2). Therefore, Plaintiff's Complaint should be dismissed.

FOR A FIFTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act)

64. The allegations of Plaintiff's Complaint do not meet the definition of "loss" contained within South Carolina Code Ann. § 15-78-30(f) nor the definition of "occurrence"

contained within South Carolina Code Ann. § 15-78-30(g). Therefore, all causes of action which do not meet these definitions should be dismissed.

FOR A SIXTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act Immunity -- Compliance with Applicable Law)

65. Defendant raises the immunity of South Carolina Code Ann. § 15-78-60(4), which provides for immunity when a governmental entity complies with applicable law. In this case, Defendant contends it complied with all applicable laws relating to the hiring and termination of teachers. Therefore, Plaintiff's Complaint should be dismissed.

FOR A SEVENTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Discretionary Immunity)

66. Defendant raises the immunity from suit preserved by South Carolina Code Ann. § 15-78-60(5), which provides for immunity for the exercise of discretion by a governmental entity. Therefore, Plaintiff's Complaint should be dismissed.

FOR AN EIGHTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Intentional Harm)

67. Defendant raises South Carolina Code Ann. § 15-78-60(17), which preserves governmental immunity in cases where an employee's action constitutes actual fraud, actual malice, and intent to harm, or a crime involving moral turpitude. Therefore, Plaintiff's Complaint should be dismissed.

FOR A NINTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Prosecutorial Immunity)

68. Defendant raises the immunity provided by South Carolina Code Ann. § 15-78-60(23), which preserves governmental immunity for the institution or prosecution of any judicial or administrative proceeding. Therefore, Plaintiff's Complaint should be dismissed.

FOR A TENTH DEFENSE TO THE ENTIRE COMPLAINT
(Statute of Limitations)

69. Defendant alleges Plaintiff has failed to file suit within the two year statute of limitations mandated by South Carolina Code Ann. § 15-78-110. Therefore, Plaintiff's Complaint should be dismissed.

FOR AN ELEVENTH DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act -- Limitation of Liability)

70. Defendant raises the limitation on liability provided by South Carolina Code Ann. § 15-78-120(a), which limits liability to \$300,000. In addition, Defendant raises the limitation on liability contained within South Carolina Code Ann. § 15-78-120(b), which prohibits the award of punitive or exemplary damages or interest prior to judgment. Therefore, Defendant requests the Court apply the limitations on liability contained within South Carolina Tort Claims Act.

FOR A TWELFTH DEFENSE TO THE ENTIRE COMPLAINT
(Failure to State a Claim)

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

FOR A THIRTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Mitigation of Damages)

72. Defendant alleges that the Plaintiff has failed to mitigate her damages and, therefore, the Plaintiff's Complaint should be dismissed.

FOR A FOURTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Comparative Negligence)

73. Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff,

which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery or Plaintiff's recovery should be lessened.

FOR A FIFTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Assumption of the Risk)

74. Defendant alleges that the Plaintiff knew or should have known of the dangers attendant in undertaking the acts for which she was terminated and also knew or should have known that by engaging in this conduct, she assumed the risk of being terminated in the fashion in which she was.

75. Defendant alleges that the Plaintiff, nevertheless, freely and voluntarily engaged in this conduct even though she knew or should have known of the attendant risks of doing so and that in so doing, she assumed the risk of being terminated and sustained the injuries and damages for which she is now complaining. Accordingly, her claim is barred.

FOR A SIXTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Truth)

76. All of the statements which the Plaintiff alleges of the Defendants are true statements of fact as to the Plaintiff, although the Defendants expressly deny making such statements.

77. The Defendant accordingly pleads the truth of those alleged statements as a defense to the Plaintiff's Complaint.

FOR A SEVENTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Compliance with Statutory Mandate)

78. Defendant contends Plaintiff is not entitled to the statutory protections raised in the Complaint because she is not subject to employment dismissal provisions of Article 3,

Chapter 19, and Article 5, Chapter 25 of Title 59 of the South Carolina Code of Laws, pursuant to South Carolina Code Ann. § 59-26-40(H) because she is an annual contract teacher. Further, Defendant contends that, despite the fact that Defendant was not required to give her the hearing provided for in South Carolina Code Ann. § 59-26-40(H), nonetheless the hearing and appeal requirement of that section were met. Defendant complied with all applicable laws in the termination of Plaintiff and, therefore, Plaintiff's Complaint should be dismissed.

FOR AN EIGHTEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Compliance with Due Process)

79. Defendant contends it complied with all applicable requirements of substantive and procedural due process under the United States and South Carolina Constitutions. Defendant provided Plaintiff with a post-termination hearing and right to appeal. Therefore, Plaintiff's Complaint should be dismissed.

FOR A NINETEENTH DEFENSE TO THE ENTIRE COMPLAINT
(Insufficiency of Process)

80. Process is insufficient. Therefore, the Complaint should be dismissed pursuant to Rule 12(b)(4) of the *South Carolina Rules of Civil Procedure*.

FOR A TWENTIETH DEFENSE TO THE ENTIRE COMPLAINT
(Insufficiency of Service of Process)

81. Service of process is insufficient. Therefore, the Complaint should be dismissed pursuant to Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure*.

FOR A TWENTY-FIRST DEFENSE TO THE ENTIRE COMPLAINT
(Tort Claims Act-Lawful Implementation of Any Process)

82. Defendant alleges it is immune to the causes of action alleged in Plaintiff's Complaint due to the immunity granted it under South Carolina Code Ann. § 15-78-60(3), which

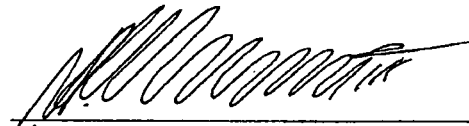
preserves immunity regarding loss resulting from lawful implementation of any process. Therefore, Plaintiff's Complaint should be dismissed.

FOR A TWENTY-SECOND DEFENSE TO THE ENTIRE COMPLAINT
(Conditional or Qualified Privilege)

83. All of the statements which the Plaintiff alleges of the Defendant, although the Defendant expressly denies making such statements, were conditionally or qualifiedly privileged since Defendant had an interest in the subject matter of such statements, the person (or persons) to whom such statements were made had a corresponding interest, every statement was honestly made and in good faith, and in order to protect such common interest, such statements were privileged by reason of the occasion. Murray v. Holnam, Inc., 344 S.C. 129, 140-41, 542 S.E.2d 743, 748 (S.C.App. 2001).

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that they be dismissed with costs and for such other and further relief as the Court may deem just and proper.

CLARKSON, WALSH, TERRELL & COULTER, P.A.



N. Heyward Clarkson, III (S.C. Bar No. 1261)
John D. Harjehausen (S.C. Bar No. 76194)
1164 Woodruff Road
Post Office Box 6728
Greenville, South Carolina 29606
(864) 232-4400
Fax: (864) 235-4399
Attorneys for Defendants

Greenville, South Carolina
March 22, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2005-CP-23-6048
	)	
Sherrie Mann McBride,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S MEMORANDUM
v.	)	IN OPPOSITION TO
	)	DEFENDANT'S MOTION
The School District of Greenville	)	FOR SUMMARY JUDGMENT
County,	)	
	)	
Defendant	)	
	)	

2011 JUN -1 A 8:55
 PAUL B. WICKENS JR.
 CLERK OF COURT
 GREENVILLE COUNTY

The plaintiff, Sherrie Mann McBride, respectfully submits this memorandum of law in opposition to the motion for summary judgment of the defendant, the School District of Greenville County ("the District"), in this action.

PROCEDURAL BACKGROUND

The plaintiff brought this action against two defendants, the District and William Roach. The complaint alleged causes of action against both defendants for breach of contract, wrongful discharge, defamation of character, abuse of process, false imprisonment, malicious prosecution, intentional infliction of emotional distress and outrage, negligence, negligence per se, and gross negligence.

The defendants brought motions for summary judgment with respect to the various causes of action. The court granted the motion for summary judgment of defendant Roach, and it granted, in part, two motions for summary judgment of the District. The case proceeded to trial on four causes of action – defamation, abuse of process, malicious

prosecution, and false imprisonment. The trial court granted the District's motion for a directed verdict as to each cause of action.

Plaintiff appealed, and the Court of Appeals reversed the lower court's judgment with respect to two of the causes of action, defamation and abuse of process, finding that the evidence was sufficient to allow the claims to go to a jury. The Court of Appeals remanded the case for a new trial on these causes of action. *McBride v. School District of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010).

The District has now moved for summary judgment with respect to both causes of action. That motion should be denied.

SUMMARY JUDGMENT STANDARD

Summary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Summary judgment is proper only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Madison*, 371 S.C. at 134, 638 S.E.2d at 655; *Hurst v. East Coast Hockey League, Inc.*, 371 S.C. 33, 36, 637 S.E.2d 560, 561 (2006). In determining whether any triable issues of fact exist, the court must view the evidence and all the reasonable inferences that can be drawn from the evidence in the light most favorable to the non-moving party. *Madison*, 371 S.C. at 134, 638 S.E.2d at 655; *Law v. South Carolina Dep't of Corrections*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

FACTUAL BACKGROUND

The plaintiff is a former teacher with the School District of Greenville County. She was employed as a special education teacher at Berea High School from August 9, 2000, until September 26, 2003. William Roach became the principal of Berea High School in 2003. In September 2003, Roach, acting as the agent of the District and within the scope of his employment, actively participated in a criminal investigation of the plaintiff, interacted with investigating officers, interviewed witnesses and assisted in procuring their statements, all of which led to the plaintiff's arrest, incarceration, booking, and fingerprinting by the Greenville County Sheriff's Department on September 25, 2003. Thereafter, William Roach told members of the faculty and staff of Berea High School that plaintiff had stolen school property. This statement was false.

The plaintiff contends that the District's employee, Roach, fabricated allegations so that plaintiff would be arrested, with the ulterior purpose of having her terminated from her employment and silencing her. The plaintiff had been active in seeking changes in how certain aspects of the special education program of the District were handled. She had previously made complaints concerning the illegality of certain policies and procedures engaged in by the District and about improper activities of certain employees of the District. The District's actions, through its employees and agents, in orchestrating her arrest on trumped-up charges were designed to discredit her and thereby curtail her efforts to have the District comply with the District's own standards, county and state laws, and federal regulatory mandates.

The evidence presented in the first trial is set forth in detail in the opinion of the Court of Appeals, *McBride*, 389 S.C. at 553-57, 698 S.E.2d at 848-50, incorporated herein

by reference. Based on that evidence, genuine issues of material fact exist with respect to the defamation and abuse of process causes of action, and the District's motion for summary judgment should be denied.

ARGUMENT AND AUTHORITIES

I. Defamation.

The District contends it is entitled to immunity on the plaintiff's cause of action for defamation, pursuant to S.C. Code Ann. § 15-78-60(17), because it contends the conduct of Roach on which the plaintiff's defamation claim is based involved actual malice or intent to harm. The court should deny summary judgment on this basis, for a number of reasons.

First, this position is inconsistent with the position taken by the District previously in this lawsuit. Earlier in these proceedings, both the District and the individual defendant, William Roach, brought a motion for summary judgment seeking dismissal of Roach as a defendant under the immunity provisions of S.C. Code Ann. § 15-78-70. Section 15-78-70(a) provides that an employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in Section 15-78-70(b). Section 15-78-70(b) provides that the employee is not immune "if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." The court agreed with the District that the individual defendant was immune from liability under Section 15-78-70(b) and dismissed him as a defendant. This ruling was a finding, as a matter of law, that the employee's conduct was within the scope of his official duties and did not constitute actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

The language of Section 15-78-70(b) mirrors the language of Section 15-78-60(17), under which the District now seeks to claim immunity. Section 15-78-60(17) provides immunity to a governmental entity for "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." The District cannot have it both ways. Under the dichotomy of the Tort Claims Act, if the elements of the various torts alleged in this case are established, there is either governmental liability or individual employee liability. The District having successfully established that its employee was entitled to immunity because, as a matter of law, his acts were not outside the scope of his official duties and were not committed with actual malice or intent to harm, it cannot now assert that those same acts were committed with actual malice or intent to harm. However, if the District is allowed to assert a position contrary to the position it asserted earlier in these proceedings, the question of whether Roach acted with actual malice or intent to harm is one of fact to be decided by the jury.

Second, the District contends the defamation cause of action should be dismissed under Section 15-78-60(17) because the plaintiff cannot recover against a governmental entity for actual malice or intent to harm. However, the District's own motion makes clear that neither actual malice nor intent to harm is a requisite element of a cause of action for defamation. The District recites the elements of defamation to include "publication with actual or *implied malice*." Defendant's Motion for Summary Judgment, p. 2, defamation element (2) (emphasis added). Because defamation can be established without proof of actual malice or intent to harm, the District is not entitled to summary judgment on the defamation cause of action on the basis of Section 15-78-60(17).

Third, the District's motion in essence reasserts the position rejected by the Court of Appeals – that the defamation claim should not go to a jury. The Court of Appeals squarely addressed the evidence that Roach told school personnel that the plaintiff stole school property and found the evidence sufficient to allow this cause of action to reach a jury. *See McBride*, 389 S.C. at 559-63, 698 S.E.2d at 851-54. The District did not file a petition for rehearing as to this determination and did not seek further review by the Supreme Court. Accordingly, the Court of Appeals' finding as to the sufficiency of the evidence is the law of the case. *See Mazloom v. Mazloom*, __ S.C. __, __ S.E.2d __, 2011 WL 1744208 (S.C. May 9, 2011); *Simmons v. Simmons*, __ S.C. __, __ S.E.2d __, 2011 WL 1758825 (S.C. May 9, 2011); *South Carolina Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 353 S.C. 249, 250-51 n.1, 578 S.E.2d 8, 9 n.1 (2003); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). For all the reasons articulated in the Court of Appeals decision of this issue, incorporated herein by reference, the motion for summary judgment with respect to the defamation cause of action should be denied.

The only basis asserted in the District's motion for summary judgment with respect to the defamation cause of action is the immunity provision of Section 15-78-60(17). If the District attempts to assert or argue different grounds at the summary judgment hearing, such grounds are outside the motion before the court and should not be considered.

II. Abuse of Process.

A cause of action for abuse of process has two essential elements: (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding. *See Hainer v. American Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103,

107 (1997); *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967). It is “the employment of legal process for some purpose other than that which it was intended by the law to effect – the improper use of a regularly issued process.” *Huggins*, 249 S.C. at 209, 153 S.E.2d at 695 (citation omitted). An ulterior purpose exists when the process is used to gain a collateral advantage or an objective not legitimate in the use of the process. *Hainer*, 328 S.C. at 136-37, 492 S.E.2d at 107; *Huggins*, 249 S.C. at 209, 153 S.E.2d at 694.

In its motion for summary judgment with respect to the abuse of process cause of action, the District claims “the Defendant did not institute any type of legal process against the Plaintiff and thus is entitled to summary judgment as a matter of law.” This argument, however, sidesteps the issue of the District’s role, through the actions of Roach, in having law enforcement officials bring charges against the plaintiff. The Court of Appeals has addressed the evidence of Roach’s role and found it sufficient to create a jury issue with respect to the cause of action for abuse of process. In its discussion, the Court addressed the plaintiff’s claim that Officer Oslager was working in concert with the District’s employee, Roach, to assist him in accomplishing the purpose of silencing the plaintiff and that they were improperly using the legal process to do so. *See McBride*, 389 S.C. at 564-65, 698 S.E.2d at 854-55. The Court concluded more than one inference could be drawn from the evidence of telephone calls from Officer Oslager to Roach during Oslager’s interrogation of the student referred to by the Court of Appeals as “John Doe.” *Id.*, 389 S.C. at 565, 698 S.E.2d at 854-55. The Court held it was reasonable to infer from this evidence and the testimony of the student that Roach provided information to Oslager in an attempt to elicit that information from Doe and use it against the plaintiff. *Id.*, 389 S.C. at 565, 698 S.E.2d at

855. The Court of Appeals has determined that there is sufficient evidence of Roach's involvement for this issue to go to the jury. That determination, which the District did not appeal, is the law of the case.

In its summary judgment motion with respect to the abuse of process cause of action, the District also asserts four immunity provisions of the South Carolina Tort Claims Act. The first two are simply not applicable. The actions of Roach which serve as the basis for the abuse of process claim were not "legislative, judicial, or quasi-judicial action." *See* S.C. Code Ann. § 15-78-60(1). Nor were they administrative actions "of a legislative, judicial, or quasi-judicial nature."

The third asserted immunity provision, Section 15-78-60(3), is not properly before the court because it was not asserted in the answer of the District. A claim of immunity is an affirmative defense. *See, e.g., Plyler v. Burns*, 373 S.C. 637, 648, 647 S.E.2d 188, 194 (2007); *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997); *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994); *Crowley v. Bob Jones Univ.*, 268 S.C. 492, 497, 234 S.E.2d 879, 881 (1977). Affirmative defenses must be pled. Rule 8(c), SCRPC. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. *See Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002); *Adams v. B & D, Inc.*, 297 S.C. 416, 419, 377 S.E.2d 315, 317 (1989); *Branche Builders, Inc., v. Coggins*, 386 S.C. 43, 48 n. 4, 686 S.E.2d 200, 202 n.4 (Ct. App. 2009); *D & D Leasing Co. of South Carolina, Inc., v. David Lipson, Ph.D., P.A.*, 305 S.C. 540, 542, 409 S.E.2d 794, 796 (Ct. App. 1991). For the reasons articulated in the plaintiff's memorandum in opposition to the defendant's motion to amend its answer, the court should deny that motion and this defense should not be considered.

However, should the District be allowed to assert this defense at this late stage of the proceedings, it is not applicable to the facts of this case. The alleged liability of the District in this case did not arise from the execution, enforcement, or lawful implementation of process. Rather, it arose from Roach's ulterior purpose and willful act in the use of process not proper in the regular conduct of the proceeding. A similar argument was raised and rejected by the Court of Appeals in *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), a case involving a claim of false arrest against a Sheriff's Department for the manner in which it procured an arrest warrant. The Court held

the Sheriff's Department's liability does not arise from the "execution, enforcement, or implementation" of the magistrate's order. It arises from allegedly securing the warrant without probable cause. Therefore, the Sheriff's Department is not shielded from liability by the arrest warrant.

Gist, 336 S.C. at 617-18, 521 S.E.2d at 166-67. Similarly, the issuance of an arrest warrant against the plaintiff cannot shield the District from liability for the acts of its employee in improperly orchestrating the issuance of that warrant.

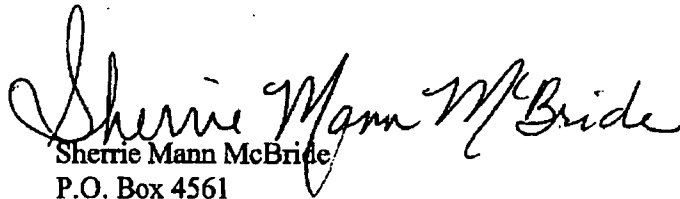
The District also claims immunity under Section 15-78-60(23), which applies to "institution or prosecution of any judicial or administrative proceeding." This immunity provision is inapplicable here, because the District did not "institute" the proceedings or "prosecute" the plaintiff on the charges for which she was arrested. If this narrow exception has any applicability to a claim against a governmental entity for abuse of process, the only entities which would arguably be immune would be the law enforcement agency, solicitor's office, and courts whose employees and officials actually instituted and prosecuted the judicial proceeding. It does not insulate the District, which was not the prosecuting authority, but which actively sought, for its own purposes and benefit, to have the prosecuting authorities arrest and prosecute the plaintiff. However, if it can be argued that

the District did "institute" the proceedings, the holding of *Gist* applies with equal force to this immunity provision. An entity that improperly procures a warrant for a person's arrest should not be insulated from liability for its actions by the fact that the warrant was issued.

CONCLUSION

For all the reasons set forth above, the court should deny the District's motion for summary judgment as to all the causes of action for defamation and abuse of process and allow them to proceed to the jury.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sherrie Mann McBride". The signature is written in black ink and is positioned above the printed name and address.

Sherrie Mann McBride
P.O. Box 4561
Greenville, South Carolina 29608
Telephone: 864-322-7590
Plaintiff

Greenville, South Carolina

June 1, 2011

)

1

1

7

1

:

1

1

1

:

7

Greenville, South Carolina

THE HONORABLE EDWARD W. MILLER, Judge.

SHERRIE MCBRIDE, PRO SE

Attorney for the Defendant

Official Court Reporter

There were no witnesses.

There were no exhibits.

» > ○ < «

Certificate of Reporter 29

1 MR. CLARKSON: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. CLARKSON: Heyward Clarkson for the school
4 direct. We moved for summary judgment on the two causes
5 of action that were remanded to this court from the Court
6 of Appeals. And we were fortunate that South Carolina
7 Court of Appeals set out a road map with exactly how this
8 Court should address these two issues that were remanded.
9 The two issues were defamation and abuse of process. And
10 I'm going to talk first about defamation. And I handed up
11 to the Court the Court of Appeals decision in this case
12 which is critical to this argument.

13 THE COURT: Okay.

14 MR. CLARKSON: I've also handed up three pages
15 from the trial transcript which created this situation
16 that the Court of Appeals had put us in. During the trial
17 we made an objection on page 100 of hearsay because a
18 witness, Linda Cochran, was going to say what someone else
19 said. So all we said is, Objection, hearsay.

20 MS. MCBRIDE: You know, I will object to this.
21 This is brand new evidence. We're--

22 THE COURT: Ma'am, ma'am--

23 MS. MCBRIDE: I have--

24 THE COURT: Ma'am, ma'am.

25 Okay.

1 MR. CLARKSON: I handed up and it's part of
2 transcript where it says, Objection, hearsay.

3 THE COURT: Okay.

4 MR. CLARKSON: And over the next three pages
5 there was some discussion with the witness and counsel and
6 the Judge. And Judge Patterson finally says, Okay, can't
7 come in. He sustained the objection to hearsay with
8 respect to four words. And those four words are set out
9 in this transcript. And they are, She cleaned us out.
10 Now, there was no--

11 THE COURT: What page are you on there?

12 MR. CLARKSON: That would be page 100 and --
13 well, I'm looking at the pages on the bottom. Now--

14 THE COURT: I don't see pages on the bottom.
15 I've got two letters, three of the letters -- you were--

16 MR. CLARKSON: Oh, I was referring to--

17 THE COURT: I'm sorry.

18 MR. CLARKSON: I was referring to the transcript
19 of the trial.

20 THE COURT: I was with you on that but I'm not
21 with you on where they address that in the decision.

22 MR. CLARKSON: That would be on page 5 of 11.

23 THE COURT: Okay.

24 MR. CLARKSON: And in the law analysis of
25 defamation.

1 THE COURT: Okay. All right.

2 MR. CLARKSON: So the Court of Appeals held, as
3 you can see in there, that those four words, She cleaned
4 us out, shouldn't have come in evidence. That's all they
5 ruled on. All they're saying is hearsay, an objection,
6 sustained. And this was brought up by the appellate
7 attorney in Columbia that knows that it shouldn't have
8 gone to the jury. Well Court of Appeals could have
9 stopped there and that would be enough, I guess. But the
10 Court of Appeals went forth and set forth exactly the
11 elements necessary to show that a governmental entity
12 cannot be liable for defamation. Because it is an
13 intentional tort. And they use, in the Court of Appeals
14 opinion, they use the exact words from the Tort Claims act
15 with regard to actionable per se, with regard to implied
16 malice, all of the things set forth by the Court of
17 Appeals that these words are defamation per se. They
18 could have been done with malice, all that sort of stuff,
19 telling us, being this Court, that that Tort Claims Act
20 specially, 15-78-60-17, says that a Governmental entity
21 cannot, as a matter of law, be liable for intentional
22 torts for -- and they even use the word, Moral turpitude,
23 which is also in the statute. They just followed the
24 wording of the statute word for word in their opinion.

25 And now we're back here on a hearsay objection,

1 trying to argue that somehow, the school district, a
2 governmental entity, which is immuned with two sections by
3 the way, not just one, but 15-78-60-17 and also 15-78-70
4 both A and B, that just makes it -- you know, it's about
5 as clear as you can get. And if it wasn't clear, the
6 Court of Appeals made it clear in their analysis of saying
7 common law malice, actionable per se, all these things.
8 And all they're ruling on is the simple fact that we say,
9 Objection, Hearsay. No effort was made to bring this out
10 for any other reason, no argument was made by trial
11 counsel as to those four words, nothing. So they said,
12 All right, well based upon that, it might have come in.
13 However, we're going to show the lower court, this court,
14 that those kinds of words cannot be used to find the
15 school district liable. And that's the basis for our
16 motion for summary judgment. That if, in fact, it was
17 said and the Court said it would come into evidence under
18 some circumstances, already ruled on, is that the
19 objection should not have been sustained. Code section
20 15-78-60-17 and 15-78-70, A and B are applicable.

21 Now, Ms. Mann is going to take the position that
22 the school district has taken inconsistent positions.
23 Because early on in this case, we did say that everything
24 that the school principal -- everything that everybody did
25 was within their scope of employment. That's true. We've

1 not deviated from that at all. At trial all we said is,
2 Objection, hearsay. Sustained. That was the end of it.
3 There was never, ever any argument or anything presented
4 to the trial Judge or the Court of Appeals Judge or any
5 Judge that these kinds of statements cannot be used to
6 hold a governmental entity liable under any circumstances.

7 And that's the basis of our summary judgment
8 with regard to the defamation. And I think all the Court
9 really needs to do is read the analysis from the Court of
10 Appeals which mirrors and uses the exact same words in the
11 Torts Claims Act. Code subsection 17-15-78-60 and in
12 15-78-70 A or B. And there would be no reason for them to
13 use those exact same words if they didn't have in mind
14 making this motion and bringing it to the... So the first
15 time ever, in this case, this Court's chance to rule on
16 it.

17 THE COURT: Okay.

18 MR. CLARKSON: And that's the basis for our
19 motion.

20 THE COURT: All right.

21 MS. MCBRIDE: My turn?

22 THE COURT: Yes, ma'am.

23 MS. MCBRIDE: Okay, thank you, Your Honor.

24 First of all, I'd like to say that I am pro se today, I'm
25 still working on that lawyer. I appreciate you letting me

1 come in here today and represent myself. I -- because I'm
2 not a lawyer, I may say the wrong thing today. I am going
3 to try my best to defend my argument, as I believe it to
4 be. But I want you to look at these documents that I
5 would like to introduce as Exhibits. Mr. Clarkson has
6 these, I've given them to him yesterday and today. The
7 clocked version's today. May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. MCBRIDE: These are -- let's see--

10 MR. CLARKSON: Are those copies of the ones you
11 gave me?

12 MS. MCBRIDE: They are. Those are the copies
13 you gave me before and these are the exhibits I'm entering
14 are of my argument today. Okay.

15 THE COURT: Okay. I guess she wants to make
16 that part of the record.

17 MS. MCBRIDE: I do. And may I also state for
18 the record, that anything I say today, I want to confirm
19 that anything in those documents to take precedence over
20 anything I say. Because I'm not a lawyer and I don't want
21 to stick my big foot in my big mouth. So I'm going to
22 rely heavy on what's there because I've done the research
23 and...

24 THE COURT: Okay.

25 MS. MCBRIDE: Okay. Thank you, sir. As to his

1 argument on the defamation, he knows his time is up on the
2 affirmative defense. We went before the Appellate Court,
3 I was found -- it was found on my behalf because there was
4 enough evidence there that the panel of Judges decided
5 that that should be for the jury to decide. And it now
6 takes precedence. And he had his 30 days to appeal that.
7 And he choice not to do that. And now he's trying to
8 bring it back up here before you and have that thrown to
9 the wayside. When it's now the law of the case. That
10 would be my first argument.

11 My second one is that he's -- that this is a new
12 piece of evidence that I'm seeing today. So I don't feel
13 equipped to respond to it so I would ask that it please be
14 omitted from your decision. And that if he needs to
15 re-bring [sic] this up in another trial, I'll be glad to
16 come back and address it. But once I've had time to read
17 it, research it and file a response. Okay.

18 THE COURT: This is the trial transcript from
19 your first trial.

20 MS. MCBRIDE: It is. In other words, it was not
21 presented to me that I would be needing to deal with that
22 today. Now I can look at it and tell you that why may be
23 as simple as what he said about, you know, He [sic]
24 cleaned us out. They took responsibility for Bill Roach
25 long ago. And he was brought as a party in the action.

1 But during summary judgment, he was dropped because they
2 wanted it. And the Court gave him to them. And so now
3 they take responsibility for what he's done. And now
4 they're trying to back away and say, No, no, no, we're not
5 responsible for him. It's already a law of the case. And
6 these curve balls, you know, that keep popping up, is he's
7 trying to take unfair advantage, I believe. Especially
8 now that I'm pro se, is inappropriate. And I just would
9 like to get that out there. That I do feel that he's
10 being taken advantage of myself and the Court.

11 These are both are laws of the case. One has
12 been decided by a previous motion. And I think it may
13 have been you that ruled on it. Or it may have been Judge
14 Cooper because this is our third motion to--

15 THE COURT: What are you referring to as the law
16 of the case?

17 MS. MCBRIDE: Okay, I'm referring -- the fact
18 that they now have Bill Roach. They said, Let him go,
19 we'll take responsibility, he acted within the domain of
20 his job, he's all ours, we'll be responsible for him. Now
21 they're backing off of that and they're saying, No. Well,
22 it's already the law of the case that he is, in fact,
23 there's and anything he did he did within the scope of his
24 job. And that's why I'm saying it's the law of the case.

25 Again, I just want to stress that the documents

1 I've presented here today, those exhibits, take precedence
2 over anything I've said. Just because I am pro se and as
3 I said I'll work on that lawyer given the opportunity--

4 THE COURT: Well, Ms. McBride.

5 MS. MCBRIDE: Yes, sir.

6 THE COURT: Let me just say that we're happy to
7 have people representing themselves, but if you come into
8 court as an advocate and you are held to the same
9 standard--

10 MS. MCBRIDE: I understand.

11 THE COURT: -- as an attorney.

12 MS. MCBRIDE: I understand that.

13 THE COURT: Okay.

14 MS. MCBRIDE: And I appreciate the opportunity
15 to come. I don't like to represent myself, I understand
16 this is not -- I'm a school teacher. So I appreciate the
17 opportunity to come do it but I'm not happy about having
18 to do it myself.

19 THE COURT: Okay. Well.

20 MS. MCBRIDE: Okay. I can read -- in other
21 words, to be sure that everything I want to put before
22 you, do I need to read these documents verbatim to the
23 Court? Because I will be glad to do that to be sure
24 that--

25 THE COURT: Which documents are you referring

1 to?

2 MS. MCBRIDE: The two exhibits that I gave you
3 today. One is called, The Plaintiff's memorandum and
4 opposition to the Defendant's motion for summary judgment.
5 And the other one is The Plaintiff's memorandum and
6 opposition to Defense's motion to amend answer. And this
7 is when their 30 days were up. They had 30 days to appeal
8 that decision by the Appellate Court and they didn't do
9 it. And I would like to read these verbatim, I know it
10 will take a little time--

11 THE COURT: No, ma'am, you do not have to read
12 them.

13 MS. MCBRIDE: Okay. Thank you, sir, very much.
14 I also submitted to you the Westlaw version of
15 the appellate decision and I would like for you to,
16 please, read that too. It's in that packet.

17 THE COURT: Yes, ma'am.

18 MS. MCBRIDE: Okay. Thank you, Your Honor.

19 MR. CLARKSON: Just very briefly to respond. I
20 agree with Ms. Mann [sic] that that is the law of the case
21 as set forth by the Court of Appeals, that this statement
22 she cleaned us out. Is actionable per se, that the
23 defendant presumed to have acted with common law malice.
24 And that it is a crime -- accused of committing a crime of
25 moral turpitude. All that's here. And the reason that

1 it's there is because the government specifically cannot
2 be liable for those kinds of statements made by an
3 employee.

4 And that's set forth, not in one, but in two
5 specific statutes. And that's why the Court of Appeals,
6 in my opinion, went out of its way to use those exact
7 words. And I pointed them out to you on page, of the
8 opinion, page 5.

9 THE COURT: All right.

10 MR. CLARKSON: At the very bottom.

11 THE COURT: All right.

12 MR. CLARKSON: When the statement is classified
13 as actionable per se, the Defendant is presumed to have
14 acted with common law malice. On page six.

15 THE COURT: Uh-huh.

16 MR. CLARKSON: The middle paragraph, Further,
17 the statement was actionable per se because it accused
18 McBride of committing a crime of involving moral
19 turpitude. Now South Carolina Code Section 17 -- 15-78-60
20 specifically holds that a governmental entity may not be
21 held liable for malice or crimes involving moral
22 turpitude. And it's further enumerated again in Section
23 15-78-70 A and B. That governmental entity may not be
24 liable for actionable matters intent to harm and crime
25 involving moral turpitude.

1 So the Court of Appeals said, Okay, we're going
2 to rule on this hearsay, we're going to reverse it, but
3 we're going to lay out for the Court what the real issues
4 that the lower court needs to address. And that's what
5 I'm bringing to the Court's attention.

6 THE COURT: So you're -- you all kind of jumped
7 into this thing, I did not get the factual background.

8 MR. CLARKSON: Oh.

9 THE COURT: I know it's obviously fresh in your
10 minds but I'm not quite up to speed on all of that.

11 MR. CLARKSON: Okay. Well I can give you a
12 thumbnail if you would like.

13 THE COURT: If you would.

14 MR. CLARKSON: And Ms. McMann [sic] can fix it
15 if I've misspoke.

16 THE COURT: Okay.

17 MR. CLARKSON: This matter started out a long
18 time ago when a young man at school by the name, who is an
19 adult now, Josh F [REDACTED], took Ms. McBride's car from the
20 parking lot of Greer High School. She reported the car
21 missing to the deputy sheriff -- or school resource
22 officer. Who then did an investigation. Initially it was
23 followed up with two officers from the sheriff's
24 department who did a further investigation. Ms. McBride
25 was charged with a crime, I think, of contributing to a

1 delinquency of a minor and getting between a minor and
2 parents.

3 Those crimes were then presented to the
4 Greenville County Grand Jury. A true bill came back that
5 said, Yes. Which knocked out a lot of the other elements
6 that I'm not going to talk about. A true bill was
7 returned, it finally got ready for trial. And the
8 prosecutor, Howard Steinburg and the other prosecutor's
9 name was J -- Carall --

10 THE COURT: J.D. Rowell.

11 MR. CLARKSON: Yeah, J.D. Rowell. Came in here
12 and said, well it's too hard to try to prove all these
13 elements so we're just not going to go forward with the
14 prosecution. Therefore, this suit arose. In the
15 meantime, when all of that was going on, the school
16 district, because of these allegations, terminated
17 Ms. McBride as the special education teacher. She
18 appealed that ruling before the school board and had a
19 full hearing that lasted about hours. And the full school
20 board confirmed her termination based upon all these
21 facts.

22 Thereafter, this lawsuit was filed. It was
23 tried, whenever it was tried, two years ago, here. Judge
24 Patterson was the trial Judge. It was appealed. The
25 Court of Appeals sustained all of the causes of action but

1 reversed on these two issues, She cleaned us out. Because
2 it was a hearsay objection. And they said that it
3 shouldn't come in.

4 THE COURT: Who said, I mean, I don't know what
5 the statement was made--

6 MR. CLARKSON: The statement was -- was
7 allegedly made, that it was ruled out on hearsay,
8 allegedly made by the principal at Greer High School.

9 THE COURT: Okay.

10 MR. CLARKSON: To a teacher's aid after
11 Ms. McBride had been terminated and they were going
12 through her desk or office. Classroom.

13 THE COURT: Okay.

14 MR. CLARKSON: Okay. And that's what that's all
15 about. And it a came out at trial. And we objected,
16 hearsay. No efforts were made to put it in through other
17 people or anything or no explanation about anything. So
18 the Court of Appeals ruled on that, as I pointed out to,
19 Your Honor. And that's where we are now.

20 The other thing that I think I need to point out
21 is that this case is on the trial docket for next Monday.
22 And we have some issues to talk about later on that
23 aspect. Now, if Ms. Mann [sic] wants to add to my
24 summation, you certainly can. But I think that's pretty
25 accurate.

1 THE COURT: Okay.

2 MS. MCBRIDE: First of all, going back to the
3 appellate decision, when all that was taken down there, I
4 felt he was misleading on their interpretation because
5 they clearly state it is an item for the jury. So they
6 did not lay out any such thing for him to make that
7 interpretation. And that's my belief.

8 Secondly, the second summary judgment, which I
9 do believe you ruled on, harm can -- not -- I mean, can
10 happen without actual malice. I don't have a copy of that
11 here today but that also has been determined to be the law
12 of this case. Thirdly, to get to what he was saying about
13 the school district, everything that those warrants were
14 based on was suborn perjury. It was like teachers that
15 were intimidated. And a lot of scheming went into that
16 investigation, it was built against me. I can prove that
17 in the court of law. And given the right Judge who would
18 let my witnesses testify to the facts, the actual facts of
19 case, some of which still work for the school district at
20 the time of the last trial, they will clear all that up.
21 And you have my word on that.

22 I would like to also, Your Honor, he's brought
23 up the continuance. I brought another one here -- we
24 turned in -- is it time to move to that? The continuance?
25 He asked for a continuance late last week. I got that in

1 the mail on Saturday.

2 THE COURT: Continuance for what?

3 MS. MCBRIDE: For our trial next week on
4 June 6th. He brought it up, then he stopped and I didn't
5 know if it was time to do that. And I rushed and put in
6 something yesterday saying that I oppose that. I don't
7 really oppose it, it's just that if we don't go next week,
8 we're getting into some issues where my witnesses are
9 going to be gone. Because they're teachers and they're
10 gone all summer. Some are gone six week, some are gone
11 two months. And I'm having surgery myself on the 22nd of
12 June. And that's the second surgery that I've made the
13 court aware of, via Ms. Coker. The doctor wanted to do
14 that at the end of May.

15 I said, I can't do it at the end of May, I have
16 to put my court date off again. And now it's being put
17 off to the end of June. And I'm not comfortable with
18 putting that off.

19 So I'm asking that if you do continue it, I beg
20 the Court, to put it off until October when one of my
21 witnesses will be back from out of the country. He will
22 be back the last week in September. I know that's a long
23 time.

24 THE COURT: Procedurally where are we?

25 MR. CLARKSON: Well procedurally I thought that

1 we were about finished arguing the summary judgment for
2 defamation. And I was wanting to argue the summary
3 judgment for abuse of process. And I just mentioned the
4 fact that it's on the trial docket and we can deal with
5 that continuance after we finish with the other summary
6 judgment, I would suggest.

7 THE COURT: All right, give me just a minute so
8 I can finish reading this. What about the Court of
9 Appeals blanket statement that they believe it ought to go
10 to a jury?

11 MR. CLARKSON: Because they weren't considering
12 the fact that the Defendant was the government. All
13 they -- they were narrowing, focusing on the statement
14 should not have been held out of evidence on the objection
15 of hearsay. That's all. Their decision is very narrow.
16 They're not thinking about the fact that the only
17 defendant standing is the government. And they didn't
18 address, nobody has addressed, because it's never come up,
19 those particular tort claims sections dealing with crimes
20 of moral, intentional torts, those sorts of things. Never
21 been addressed by anybody in this case. In spite of the
22 fact that it was tried and went up. It just got reversed
23 on he shouldn't have sustained that objection on hearsay.
24 And that's all they really talked about.

25 THE COURT: Okay.

1 MR. CLARKSON: Then they went on and quoted the
2 exact language saying that a government can't be held
3 liable for these types of things.

4 THE COURT: Okay.

5 MR. CLARKSON: It's a--

6 THE COURT: Why wasn't it? I mean, I'm just
7 curious.

8 MR. CLARKSON: All we said is, Objection,
9 hearsay. Because in our opinion, the statement was--

10 THE COURT: Yeah.

11 MR. CLARKSON: -- coming in from the wrong way.
12 Now the statement was asked of the actual person who
13 alleged to have made it and we didn't object to that.
14 They asked Bill Roach and no objection was made. All we
15 said is, Objection, that this witness isn't the proper one
16 to do it. That's all we did.

17 THE COURT: Okay. So what you're saying is
18 that -- well, go ahead with your next summary judgment,
19 abuse of process.

20 MR. CLARKSON: The next is not as complicated, I
21 hope. And that is the abuse of process which was the
22 other cause of action that was remanded. Now, here's what
23 happened in that case at trial. At the time of a directed
24 verdict, we got up and moved for a directed verdict on
25 each of the causes of action on several grounds. And for

1 abuse of process, I got up and argued to Judge Patterson
2 that this case ought to be dismissed pursuant to Section
3 15-78-60-17, which is the exact one we've been talking
4 about, actual fraud, actual malice. The Judge says,
5 Granted.

6 THE COURT: Okay.

7 MR. CLARKSON: So what do normal lawyers do when
8 the Judge says, Granted? They move on to another subject.
9 My motion had already been granted. The answer clearly
10 set forth additional grounds where abuse of process cannot
11 be brought against a government. And if you look at the
12 Court of Appeals opinion, on the very last page, this is
13 critical where they have given us a road map.

14 THE COURT: Okay.

15 MR. CLARKSON: Footnote seven. Although the
16 district cited in its answer, several additional
17 exceptions to the waiver of immunity under 15-78-60,
18 counsel raised only Subsection 6 -- 17 in its directed
19 verdict motion. And that's -- the Circuit Court addressed
20 only that exception. Because I can't imagine arguing to a
21 court, after you've already won, additional reasons.
22 Makes no sense.

23 We have raised, and I think the Court of Appeals
24 is telling this Court that abuse of process must be
25 dismissed pursuant to Section 15-78-61 legislature,

1 judicial or quasi judicial actions or inactions, which is
2 what we have of alleged abuse of process. Raised in the
3 answer. Number two, administrative action or inaction of
4 a legislature, judicial or quasi judicial nature. Same
5 raised in the answer.

6 But probably the most squarely on point with
7 regard to this abuse of process is Subsection 23, also in
8 the answer, which is what I think the Court of Appeals was
9 pointing out to us. The institution or prosecution of any
10 judicial or administrative proceeding. And that's what
11 the Plaintiff is accusing the school district of doing.
12 Abusing the process by wrongfully instituting a criminal
13 proceeding that the Grand Jury returned a true bill on.
14 And subsection 23 speaks squarely and absolutely to that.
15 The school district, as a matter of law, under the Tort
16 Claims Act, be liable for abuse of process under
17 Subsection 23.

18 Now, why the Court of Appeals did not include
19 those as additional sustaining grounds, I can't answer
20 that. All I can tell you is what they said in footnote
21 seven. To say that well the other applicable provisions
22 that the trial Judge didn't rule on because I didn't bring
23 them up because I already won. So it seems to me that the
24 Court of Appeals in footnote seven is wanting pointing us
25 and this Court to the right answer.

1 THE COURT: Okay.

2 MR. CLARKSON: If -- you don't argue something
3 to the Court when you already won.

4 THE COURT: I know. All right.

5 MS. MCBRIDE: May it please the Court?

6 THE COURT: All right.

7 MS. MCBRIDE: This is what I mean by trying to
8 sneak something in. Number one, it was not in his
9 original answer. And he knows that his time is up.

10 THE COURT: What was not?

11 MS. MCBRIDE: The defense of affirmative
12 defense, the stand he's taking now.

13 THE COURT: The Tort Claims Act?

14 MS. MCBRIDE: Yes, yes, sir. Affirmative
15 defense was not in his original answer. And he also had
16 30 days to take this up. And again, he did not do that.
17 They sent him back up here with the understanding that it
18 would be, you know, remanded to your court and to go
19 before a jury. I guess that's what I meant before why
20 we're standing here arguing, that he knows that that takes
21 precedence over these arguments that he's making. I also
22 would like to say that these people that he brought into
23 court who said all these things that the Grand Jury made a
24 decision on, his on witnesses made clear in court that
25 they had to base that decision on evidence that was put

1 before them. And trust me, all of that was -- I can't use
2 the word I want to use but. It's not a bad word but
3 anyway, it's made up, it's a scheme, it's suborn perjury.
4 And I can prove that.

5 THE COURT: Okay. Anything else?

6 MR. CLARKSON: We have a motion to amend our
7 answer which we have made a motion to amend in order to
8 add two additional affirmative defenses. Now the ones
9 I've already talked about are in the answer that was filed
10 with the court. The Court of Appeals even talked about
11 it. But we do want to add the affirmative defense of
12 qualified immunity in the event that we go to trial on
13 these four words which never came up before. And we want
14 to add one additional tort claims, specific subsection.
15 If we go to trial. We made an answer, Your Honor, knows
16 the standard on that.

17 THE COURT: Yeah. Well, you know, this is--

18 MS. MCBRIDE: An old case.

19 THE COURT: Reading this decision gives me
20 consternation. They obviously considered the Tort Claims
21 Act because they put in there. I mean, it's mentioned
22 specifically in the decision. And yet they say that the
23 allegation of defamation should go to the jury.
24 Unqualified when you say that. Then the same thing they
25 said about the abuse of process. I'm going to deny your

1 motions. I'm going to allow you to amend the answer.

2 When you want -- you want to wait until
3 September?

4 MS. MCBRIDE: Well I don't want to.

5 THE COURT: Well you don't have a lawyer.

6 MS. MCBRIDE: Well I'm meeting with someone this
7 afternoon and I feel good about it after I spoke to them
8 last night. So hopefully some time soon. But I've been
9 telling Mr. Clarkson that for three months, so. I want
10 someone that I know to represent me to the extent that I
11 need to be represented.

12 THE COURT: Well I tell you right now, there's
13 no lawyer -- I don't know a lawyer who can get into a case
14 at this point and be ready to go next week.

15 Mr. Clarkson, what?

16 MR. CLARKSON: The -- last week it came to our
17 attention that Ms. Mann [sic] had subpoenaed the school
18 resource officer, Officer Oslager. He was also going to
19 be one of our witnesses. When we contacted him we
20 discovered that he's got a family vacation planned in
21 Myrtle Beach next week. So we filed a motion late last
22 week asking that the case be continued for the absence of
23 a critical witness. And I believe Ms. Mann [sic]
24 concurred with that in her response. Because she
25 subpoenaed him as well. And that's the solely and only

1 basis for the continuance. Otherwise, we're ready to go
2 to trial.

3 MS. MCBRIDE: I would just like to say, my
4 witnesses are just as important and--

5 THE COURT: Well do you have them under
6 subpoena?

7 MS. MCBRIDE: I do.

8 THE COURT: Have you talked to them?

9 MS. MCBRIDE: I have. They've all -- there's
10 14. Thirteen have been subpoenaed and my mother. And
11 they're all quick, on and off the stand, except myself and
12 Mr. Roach and possibly Officer Oslager. I mean, I'm
13 prepared to go to court because I haven't had an attorney.
14 And I do not want to represent myself. So yes, if we
15 postponed this it would be a blessing. But if I can't
16 have my witnesses there that are intrical to my case, then
17 I can't go until the end of the summer. Until the fall.
18 Because one of my witnesses is leaving in the middle of
19 July, will not be back until the end of September.

20 THE COURT: Did they testify in first trial?

21 MS. MCBRIDE: No, he didn't. He's the one who
22 did not but that's because my lawyer didn't let him. The
23 others though did. The others are -- they're school
24 teachers and they have commitments in the summer. And I
25 don't want to put it off until October either --

1 THE COURT: I'm not putting it off until
2 October.

3 MS. MCBRIDE: Okay. Once I have surgery on the
4 22nd--

5 THE COURT: Well wait a minute.
6 What do you...

7 MR. CLARKSON: I conferred with my client and
8 we're prepared to go forward next week without Officer
9 Oslager if he won't come back from Myrtle Beach. We just
10 reached that decision.

11 MS. MCBRIDE: But I'm not going to quash my
12 subpoena. I mean, you can do that. I -- but I want him
13 here. He perjured himself on the stand and I can impeach
14 his testimony. So.

15 THE COURT: Well.

16 MS. MCBRIDE: I want him.

17 THE COURT: Well you got him under subpoena.

18 MS. MCBRIDE: You have to be here, right?

19 THE COURT: Yeah.

20 MS. MCBRIDE: Yea. So I'm good. We'll go
21 forward next week and I think I'll have an attorney. I'm
22 not going to promise but I'm 95 percent sure.

23 THE COURT: All right, Ms. Coker, can I speak to
24 you, please?

25

1 (WHEREUPON, an off-the-record discussion was
2 held.)

3 THE CLERK: We have a date certain.

4 MS. MCBRIDE: We'll be here.

5 THE COURT: Okay.

6 MS. MCBRIDE: Thank you, sir.

7 THE COURT: You need a formal order? Form four?

8 MR. CLARKSON: Form four.

9 THE COURT: Form four, all right.

10 MR. CLARKSON: Thank you, Judge.

11 MS. MCBRIDE: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 (WHEREUPON, the proceedings were concluded.)
14
15
16
17
18
19
20
21
22
23
24
25

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
C.A. NO: 2005-CP-23-6048

COUNTY OF GREENVILLE)

SHERRIE MANN MCBRIDE,)

Plaintiff,)

-vs-)

TRANSCRIPT OF RECORD

THE SCHOOL DISTRICT OF)

GREENVILLE COUNTY,)

Defendant.)

JUNE 7 AND 8, 2011
GREENVILLE, SOUTH CAROLINA

-----)

B E F O R E:

THE HONORABLE VICTOR C. PYLE, JR., JUDGE; and a jury.

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

THE PLAINTIFF APPEARED PRO SE

LAW FIRM OF CLARKSON, WALSH, TERRELL & COULTER, PA

BY: N. HEYWARD CLARKSON, ESQ.

JOHN D. HARJEHAUSEN, ESQ.

ATTORNEYS FOR DEFENDANT

APRIL HERRON,
CIRCUIT COURT REPORTER

1 (The following takes place
2 outside the presence of the jury panel.)

3 THE COURT: You're representing
4 yourself in this action?

5 MS. MCBRIDE: Yes, sir, not by choice.

6 THE COURT: Well, I understand that.

7 MS. MCBRIDE: Yes, sir.

8 THE COURT: And do you have any
9 knowledge on how to select a jury in a civil trial?

10 MS. MCBRIDE: Not really, just what Miss
11 Coker (ph) has shared with me this morning.

12 THE COURT: So you understand when you
13 go over this list you will be on strike first and you'll use
14 the number and you have four strikes. We'll alternate back
15 and forth.

16 MS. MCBRIDE: Okay.

17 THE COURT: Okay?

18 And then after we strike the four we'll
19 get one alternate juror you're allowed one strike and defense
20 one strike.

21 MS. MCBRIDE: Okay.

22 THE COURT: Okay?

23 Now, since this action is against the
24 school district and, you know, I'd expect to have a number of
25 people employed by the school district on the panel this week

1 I've instructed the jury clerk to remove all those names. So
2 there should be no active employee of the school district.
3 I'll still ask the questions that you've proposed. There's
4 not supposed to be any employee on the jury panel for this
5 case.

6 Mr. Harjehausen.

7 MR. HARJEHAUSEN: Harjehausen, Your
8 Honor.

9 THE COURT: In the initial Complaint
10 filed in the action, it contains multiple causes of action.
11 Are they all still pending?

12 MR. HARJEHAUSEN: No, no, Your Honor.
13 This case was tried and Judge Patterson directed a verdict on
14 all the counts. Miss Mann appealed to the Court of Appeals
15 and it was remanded on two causes of action, one being
16 defamation and one being abuse of process. So the only issues
17 for trial are those two causes of action. Miss Mann can
18 correct me if I'm mistaken.

19 MS. MCBRIDE: Yes, sir, that's correct.

20 THE COURT: I'll give about five
21 minutes to make a brief opening statement to the jury.

22 MS. MCBRIDE: Yes, sir.

23 THE COURT: Telling the jury what this
24 case is about.

25 MS. MCBRIDE: Okay.

1 THE COURT: All right.

2 MS. MCBRIDE: I think they're determined
3 to try to minimize everything, all my witnesses, things that
4 would just go to motive in the case and I feel confident that
5 I'm accomplished that, showed the motive that led in to the
6 abuse of process.

7 THE COURT: Okay.

8 Will, I'm sure Mr. Clarkson will object --

9 MS. MCBRIDE: I'm sure he will.

10 THE COURT: -- if he thinks you're out
11 of line.

12 (WHEREUPON, the jury returned to open
13 court.)

14 THE COURT: Brief statement to the
15 jury concerning your two causes of action.

16 MS. MCBRIDE: Good morning. I mean
17 Sherrie Mann McBride. You'll probably hear me called Sherrie
18 Mann, Miss McBride mostly in this case. My name is Sherrie
19 Mann now.

20 About 10 years ago an incident, several
21 incidents, chain of events that brings us here today. I've
22 been fighting this battle a long time so I'm excited to be
23 here before you today.

24 Again, I am -- I was a teacher at Berea
25 High School. The years were 2000 to 2003. Prior to that I

1 had been a sub and really enjoyed working with kids so I
2 decided to go back to school, get my master's degree and when
3 I finished school there was no social studies position
4 available so I tried out special ed and there I found my
5 calling. I loved it and I was going to school to get that
6 certification, as well, and the district was paying for
7 classes for me to go and do that.

8 About that same time I met a young man who
9 was homebound and he was a very troubled youth and I knew that
10 going into the situation and a relationship did bond there,
11 not an inappropriate one, just a bond between a young man who
12 needed someone in his life at the time and you'll hear from
13 him today.

14 I had been a problem for the school
15 district. I didn't approve of the way they were doing things
16 in special ed and there was a lot of packing classrooms,
17 children not getting what they were supposed to have and I had
18 been a source of -- I complained a lot, the guidance
19 department, the administration of my school.

20 At the time the vice principal of that
21 school was Bill Roach. He's the gentleman who's sitting right
22 over here at the end of the table.

23 Mr. Roach and I collided on many issues
24 and we'll get into that, too, here at the trial, and we never
25 along from day 1 and as the years went by it got worse.

1 He eventually left to go be a vice
2 principal somewhere else in my third year, came back as the
3 principal my final year. I only worked for Mr. Roach for one
4 month before he had me arrested and my life has never been the
5 same since.

6 They would have you believe that I was a
7 teacher - that's what you're gonna hear from these lawyers -
8 that I was a teacher who took this child and took him from his
9 classes, him and a runaway; come between him and his parents
10 and I beg you to listen to his story today and let him tell
11 the facts of the case.

12 I will have some veteran teachers coming
13 in who will further support the evidence of things that I have
14 to share with you about what got me in this hot water to begin
15 with, okay?

16 Thank you for your time.

17 THE COURT: Mr. Clarkson.

18 MR. CLARKSON: Please The Court, Your
19 Honor.

20 Good morning, ladies and gentlemen. My
21 name is Heyward Clarkson. I represent the school district
22 along with John Harjehausen and seated at the table is Bill
23 Roach who at the time was the principal of Berea High School.
24 He no longer works for the school district and now works as a
25 principal at a Charter High.

1 I'm gone briefly outline for you what we
2 anticipate the evidence will show this case. This goes back a
3 long way.

4 Back on September 24 of 2003, eight years
5 ago, Miss Mann reported to the school resource officer,
6 Officer Danny Oslager, who is back there in uniform, who works
7 for the sheriff's department, that her car was missing from
8 the parking lot at Berea High School. That put everything in
9 motion and that's where we are here today.

10 Miss Mann got in touch with Officer
11 Oslager and said, my car is missing, my husband didn't bring
12 the other car, somebody must have stole it. So he started an
13 investigation and at about that time this young man here, Josh
14 F[REDACTED] drove up in her car. That's how this whole thing got
15 going. As a result of that there was an investigation
16 conducted by the Greenville County Sheriff's Department. The
17 chief investigator was Investigator Leslie Lambert, who is
18 right there.

19 She conducted the investigation and she
20 interviewed six witnesses, took two statements from Josh
21 F[REDACTED], took a statement from Josh's mom and Josh's dad and
22 six witnesses and they were concerned, the sheriff department,
23 what to do with this information so they consulted the chief
24 solicitor who is the chief prosecutor in Greenville County,
25 Betty Strom, and Howard Steinberg, who's also a lawyer for the

1 solicitor's office, and they decided that Miss Mann should be
2 charged with contributing to the delinquency of a minor and
3 enticing an enrolled child from school.

4 Now, that was the charges that the
5 solicitor brought. An arrest warrant was signed by a judge
6 and then the matter was presented to the Greenville grand
7 jury, which is a jury similar to you guys but there're more of
8 you. There's 20 and cases are presented and if there's enough
9 to go forward they come back with what's called a true bill.

10 November 23 term of the grand jury, the
11 grand jury said, yes, those charges are valid against Miss
12 Mann.

13 Later on another prosecutor decided to
14 drop the charges way on because it wasn't worth going to trial
15 and that's where we are today.

16 There is also an allegation that Mr. Roach
17 made some statement after Miss Mann was gone from the school
18 that she either, something to the effect that she cleaned us
19 out or took some stuff that he made, allegedly, to a teacher's
20 aid. Now, we dispute that that was ever made and ever done
21 but that is what this case is about, those four words and
22 whether or not the sheriff department and the solicitor were
23 correct in their brining criminal charges against Miss Mann
24 that were later dropped.

25 And at the end of the trial, probably take

1 all day today and maybe in to tomorrow, we'd be asking that you
2 return a verdict on both causes of action in favor of the
3 Greenville County School District.

4 Thank you.

5 THE COURT: Okay, Ms. McBride, you,
6 yourself are gonna testify?

7 MS. MCBRIDE: I will at the end.

8 THE COURT: All right, and then you
9 want to call your first witness?

10 MS. MCBRIDE: I do.

11 THE COURT: Okay.

12 MS. MCBRIDE: I call Josh F [REDACTED].

13 JOSHUA F [REDACTED],
14 first being duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION BY MS. MCBRIDE:

17 Q. Hi, Josh. How are you?

18 A. I'm fine.

19 Q. Good.

20 Long time no see.

21 A. Right.

22 Q. You know why we're here. Our second trial.

23 I would think like to start at the very beginning,
24 you know, when we first met because none of these people know
25 you. They don't know me and it's important they understand the

1 chain of events that brought us here.

2 Would you tell the jury where you met me.

3 A. Okay.

4 I first met her as my homebound teacher. I was
5 attending high school previously to Berea and there was a
6 faculty member there who sexually assaulted me and because of
7 that I attempted suicide and I was placed on homebound because
8 I was unable at school, mentally and physically, just was not
9 able to hold up to it and Ms. McBride was my homebound teacher
10 at that time.

11 Q. Okay.

12 So you were at the charter school?

13 A. Correct.

14 Q. Where you were sexually assaulted by a male teacher?

15 A. Right.

16 Q. I was just trying to make sure we heard it all.

17 Can you move that just a little closer to your
18 mouth?

19 A. Okay.

20 Q. Yeah.

21 A. Is that better?

22 Q. That's better.

23 A. Okay.

24 Q. Thank you.

25 And what brought you to Berea? I think you started

1 the 2000-2001 school year. It was the end of the 2000 school
2 year - correct me if I'm wrong --

3 A. Right. I believe it was March, right.

4 Q. Of 2001?

5 A. Correct.

6 Q. So it was the end of the 2000-2001 school year and
7 you were in homebound. I think you had been coming to Berea?

8 A. I came to Berea, to the actual high school for a few
9 days and realized that emotionally, mentally, my doctor said,
10 no, he cannot take because I was still cutting on myself.

11 Q. And you were also -- How were you doing in your
12 classes?

13 A. I was not doing well. I was an emotional, you know,
14 just emotional wreck after it happened.

15 Q. Okay.

16 And so I was assigned your homebound and I started
17 coming to your home.

18 You tell the jury what happens on homebound. The
19 teacher --

20 A. You go to school, just like everyone else. You have
21 to do the same school work as all of your other peers. It's
22 just brought to your home and the teacher is there if you have
23 any questions, any, you know, thing that you don't understand
24 about the material to explain it to you. Your work is done and
25 it's turned back in and it is graded.

1 Q. Okay. Good.

2 And so, as we're, you know -- I come to your house
3 almost on a daily basis, through the week. You start sharing
4 things with me.

5 A. Right.

6 Q. And that was mainly the things you were discussing
7 with the jury earlier, that you had been assaulted and had just
8 came to us from, you share that.

9 MR. CLARKSON: Objection, Your Honor,
10 that's not a question; that's a statement.

11 MS. MCBRIDE: Sorry.

12 MR. CLARKSON: I mean she's questioning
13 the witness.

14 MS. MCBRIDE: I'm sorry.

15 MR. CLARKSON: Leading.

16 Q. You share, just tell them where you had been prior
17 to coming to Berea, about that.

18 A. I felt blessed that I had been at the charter
19 school. I had been in a situation where, legal situation that
20 left me, like I said, just emotionally ramped to the point
21 where I felt that I couldn't, obviously, trust teachers, I
22 couldn't trust anyone. There was a lot of trust issues and
23 when I met Ms. McBride, she came out, I began. I began to tell
24 her things. I began to confide in her and she understood.
25 She, you know, didn't judge me. She tried to look, you know,

1 passed the fact of what happened and tried to help me cope with
2 what happened and deal with what happened and just be a normal
3 person, like I had wanted to be.

4 Q. You had been in a state hospital, was what I was
5 getting at.

6 A. I had been, yes. I'd been there for two weeks after
7 attempting suicide. I had cut both of my wrists.

8 Q. And so as you and I were working together on your
9 school work and you're sharing these storied with me we formed
10 a friendship and was there anything inappropriate about our
11 relationship at all?

12 A. No, there was not.

13 Q. Okay. Thank you.

14 So we finish up that year on homebound and did we
15 have any contact over the summer?

16 A. No, we did not.

17 Q. And so the following year you come back to Berea.

18 A. Right.

19 Q. And try to do the classroom thing again.

20 A. Right. I'm no longer homebound. I'm actually
21 physically in class as of that time and I remember my grades,
22 they were pretty good but at the time I was still -- I was
23 still in a bad place emotionally. I still hadn't totally -- I
24 was still going through counseling at that point.

25 Q. Okay.

1 And you were in your classes, for the most part, and
2 we only saw one another when?

3 A. We would see each other just, you know,
4 occasionally, in passing. I would tell you, you know, hi, how
5 are you doing, how have you been when we first started back,
6 since I hadn't seen you all summer, and just like, I guess, you
7 know, just normal relationship.

8 Q. Okay.

9 And at that time when you would come by and talk to
10 me you would keep me updated on things going on and what were
11 some of the things going on at that time? You remember?
12 Leading up to the day you cut yourself, what happened prior to
13 that? What was going on in your life?

14 A. There was the prosecution, the gentleman who had
15 done it, which was adding stress and it was just -- There was
16 just a lot. I remember feeling so much stress and not knowing
17 who to talk to about it because it's difficult to talk to your
18 parents about the kind of thing and just to see the hurt in the
19 face because they blame themselves for letting it happen to you,
20 almost, and so I went to Ms. McBride and I had -- I had harmed
21 myself at school. I had cut myself and I went to her room
22 because that was the only person that I knew to -- felt safest
23 going to.

24 And she was not -- She was in another class at the
25 time so she went and got the guidance counselor, at that point,

1 Kim Fanning (ph), who I talked to, and after, I guess about 30
2 minutes of talking to her I finally expressed to her that, yes,
3 I did cut myself and I went in to what had happened to me and
4 explained it to her.

5 Q. Okay.

6 Now, when you say you cut yourself at school, you
7 did not slice your wrist open like you had done before?

8 A. No, it was not a suicidal injury.

9 Q. Can you explain tell the jury. It was new to me,
10 even though I knew you'd been cutting yourself, what self-
11 mutilation is and why you do that. Can you explain to them the
12 mentality that went in to your doing that?

13 A. It was a form, almost, of stress release, when I
14 would get so much emotions and so much stress built up that I
15 would do it, and it would relieve the emotional stress and a
16 lot of it was self guilt, self blame, feeling like I deserved
17 to have that happen to me because of what happened at Charter
18 High School.

19 Q. Okay.

20 Now, when we said that you had cut yourself, where
21 were you cutting yourself this particular day? This was in the
22 spring - correct me if I'm wrong - of '02. We're now in the
23 second school year because you came back to Berea.

24 A. Right.

25 Q. And first semester you have some issues but this was

1 in the second semester that you came to me one day and said
2 what?

3 A. Right. I told you that I had cut myself.

4 Q. And you had on a long jacket.

5 A. Right, I did and I'd cut myself on the upper part of
6 my arm.

7 Q. How many cuts would you say you had made that day on
8 each arm?

9 A. I couldn't remember. There were quite a few. There
10 were more than one.

11 Q. That's correct. Okay.

12 And I don't know if you remember this. I was going
13 to cover a class of Miss Foxx. You remember that?

14 A. Yes. That's what I was saying. You were not there
15 but you were there. You had to go and cover another class.
16 Miss Foxx was brought in and then that's when Kim Fanning was
17 brought in, the guidance counselor, to talk to me.

18 Q. Okay.

19 Now, who was the principal this particular year t
20 we're talking about right now. This is the year that your back
21 at school. You remember who the principal was at that point?

22 A. Actually, no, I don't. I know it was not Bill Roach
23 at that point.

24 Q. Does East, Dr. East (ph) sound familiar?

25 A. Dr. East, yes, that would be correct.

1 Q. Okay. All right.

2 Was that brought to his attention? That you'd cut
3 yourself?

4 A. No, I don't know whether or not guidance brought
5 that to his attention or not, whether Kim Fanning did.

6 Q. Okay.

7 A. I can't say that, whether she did or not, for sure.

8 Q. Have you ever had any conversations with the
9 principal? Did your parents ever have any conversations with
10 the principal?

11 A. No, they did not.

12 Q. Okay.

13 When I came back from that class we sat and talked
14 extensively with Miss Fanning. Then we decided to walk you out
15 that day.

16 What was decided about telling your parents about
17 you being at school cutting yourself?

18 A. That she was not going to tell them.

19 I did not want my parents to know. I had not cut
20 myself in a long time and I feared my mother was gonna get
21 angry that I had done it, that she's paying this money for me
22 to see a counselor and I had cut myself. And she decided it
23 would be in my best interest to not tell my mother about this.

24 Q. And who made that decision?

25 A. Kim Fanning did.

1 Q. And who is Kim Fanning?

2 A. The guidance counselor for Berea High School.

3 Q. Okay.

4 Now, after that day you started attending my classes
5 on a regular basis and I need to know how that took place, who
6 made those decisions, how it worked that you did your work and
7 those kind of things.

8 A. It was arranged by Kim Fanning, again, who was the
9 guidance counselor, that I did not need to be in class. She
10 was talking to my private counselor through email and she
11 shared this with me, that the two of them were talking.

12 MR. CLARKSON: Objection. I mean he's
13 talking about what other people are saying. He needs to stick
14 with what he knows.

15 THE COURT: Move on to something else,
16 please, ma'am.

17 MS. MCBRIDE: Okay.

18 Well, I was trying to make jury understand
19 why he's in my room. In other words, they argue the point that
20 I -- that I didn't -- that I put him in my room on my own
21 behalf or, you know, made that decision and I need for him to
22 clear up that.

23 THE COURT: Move on.

24 MS. MCBRIDE: Okay.

25 Q. So you're coming to my room and you're getting your

1 materials from other teachers.

2 A. Right.

3 Q. And doing the work in there.

4 A. I am.

5 Q. Okay.

6 And then what do you do with that?

7 A. I would take work back to my teachers.

8 Q. Okay.

9 And then if you finished your work what sort of
10 things were you doing? Did you stay in my room and what were
11 you doing?

12 A. Yes, I did. I stayed in your room and I enjoyed,
13 like, helping out. That was a big thing, like with lessons and
14 plans and stuff. I was big into the environment and
15 environmentalism and I wanted to have a whole entire
16 environment week where we talked, you know, to kids about the
17 importance of protecting the environment, that kind of thing.

18 Q. So you were a big help to me?

19 A. Right. I would like to think so.

20 Q. What are IEPs? Do you know what those are?

21 I don't know if anyone on the jury has a child in
22 special ed or has known what that is but what is your knowledge
23 of an IP?

24 A. Well, IP is basic breakdown of a student's goals for
25 the year. I would say for that individual student, what you

1 hope for the to achieve within the academic year.

2 Q. Okay.

3 As you know, they contend that you were doing things
4 inappropriately where IEPs are concerned and I want you to, you
5 know, share with the jury what kind of things you did on an IP
6 that -- I've got to be careful not to put words in your mouth
7 but specifically the things you were doing, I'll just say that.

8 A. Okay.

9 There was certain areas to IP that were the same on
10 every student. It's just generic information and I was copying
11 and pasting just generic information. There was no private
12 information, not HIPAA protected health information, none of
13 that kind of thing in there, no social security numbers, no
14 names, no anything, just generic information that was saved so
15 I could give it back to Ms. McBride. Then she could later go
16 in and enter the private information herself.

17 Q. Now, you quoted HIPAA. How would you know that
18 about HIPAA?

19 A. I'm a nurse.

20 Q. You're a nurse now.

21 A. Yes.

22 Q. Very good. Thank you.

23 There also is some speculation that you had
24 passwords to grading system and those kind of things. I want
25 to know -- Well, let's talk about my web page.

1 A. Okay.

2 Q. Who set up my web page for the district?

3 A. I did.

4 Q. You did. And did you have permission to do that?

5 A. Yes, I did.

6 Q. From who?

7 A. I had it from administration, that it was fine.

8 Q. Very good.

9 And the password to my web page at that time was
10 Tinkerbell, is that correct?

11 A. That is correct.

12 MR. CLARKSON: Objection, Your Honor, she
13 keeps doing all the testimony.

14 THE COURT: Ask questions. Okay.

15 MS. MCBRIDE: Okay.

16 Q. And so how did you -- What did you discover about my
17 email?

18 A. I was at home. I was working on the web site and
19 there was a little email icon on the web site and I clicked. I
20 was, like, I was wondering what it was and it opened up her
21 email for the school district and I was able to see any emails
22 that were sent to her and, as I said, you know, I just
23 discovered that on my own, as a fluke. I just connected into
24 the system together.

25 Q. Okay.

1 I think another password that they contend you had
2 was lobe one. Do you know where you got that or what it did?

3 A. Lobe one was a password that I had seen written down
4 in your desk one day and I thought, I remember it standing out
5 because lobe one was the strangest password I'd ever heard, you
6 know, an ear lobe. I thought it was a really strange password
7 and it just stuck with me.

8 Q. And what did that give you access to?

9 A. If I remember, I think that it was supposed to give
10 me access to a system called Novell, an operating system at the
11 school.

12 Q. Okay.

13 Do you know what was inside Novell? I mean when you
14 opened up Novell what would you see?

15 A. I'm not really sure what you would see inside of
16 Novell. I know that that's one way of being able to access the
17 grading systems for the schools, and different things, but even
18 the grading system has it's one password inside Novell which
19 would've separate.

20 Q. That's correct.

21 And at any time did you ever have those passwords?

22 A. No, I did not.

23 Q. Okay.

24 And getting into my email or being on the computer
25 at all, was there ever any changes made? Did you do anything

1 with these passwords that the one you discovered or into my
2 email?

3 A. No, no changes were made to anything.

4 Q. Okay. All right.

5 Let's move along.

6 Now, progress reports came out while you were in my
7 room how many blocks a day?

8 A. Two.

9 Q. Two blocks a day.

10 And who were your teachers that you were picking
11 with work up from? Do you remember?

12 A. Their exact names, I don't. After this many years I
13 don't remember their names.

14 Q. Do the names Ms. Miller, Ms. Bonner (ph)?

15 A. Miss Miller, Miss Bonner, that would be correct,
16 yes.

17 Q. Okay. Okay.

18 What did Ms. Miller teach?

19 A. I believe that Miss Miller was the one who was
20 teaching, I think it was chemistry. I thought it was
21 chemistry.

22 And Miss Bonner was teaching math.

23 Q. And those teachers, at any time did I ever write a
24 pass to get you out of class or how did that -- You've already
25 established that you were in my room and Kim Fanning's. So

1 what happened? What happened that got her into -- that got you
2 into my room?

3 A. Right.

4 Kim Fanning was the one who wrote the pass to my
5 teachers that I would be able to stay in her room for those two
6 blocks a day, go there, see them, pick up my work, take it to
7 her classroom, complete it and bring it back.

8 Q. Okay.

9 And so there were progress reports come out, your
10 grades have lowered, is that correct?

11 A. Yes, they had.

12 Q. What happened as a result of that?

13 A. My mother, she came up to the school and she wanted
14 to know why my grades had fallen and at first nobody acted like
15 they knew why and then she found out that Kim Fanning had
16 placed in Miss McBride room for those two periods a day and
17 that I had not been in my classes.

18 Q. Okay.

19 And so what happened as a result of that? After Mom
20 came up upset what took place?

21 A. Kim Fanning put me back into my classes.

22 Q. Okay.

23 And for the rest of the year?

24 A. I stayed in those classes.

25 Q. Okay.

1 Now, the end of the year come again. Did we have
2 any contact that summer?

3 A. No, we did not.

4 Q. Okay.

5 The following year we get a new principal.

6 A. Correct.

7 Q. Bill Roach.

8 And the previous year you, Miss Fanning had had a
9 conversation about you being an aide. What was that?

10 A. Right.

11 I was supposed to be Miss McBride teacher's aide and
12 I expressed that I wanted to do that and it was my
13 understanding that, you know, that was going to happen that
14 year and then when Mr. Roach came I was told there were going
15 to be no more teacher's aides.

16 Q. Okay.

17 And how did you take that news?

18 A. Well, I took it pretty bad because, like I said, I
19 was looking forward to being a teacher's aide. I enjoy doing
20 that kind of work.

21 Q. Okay.

22 So your schedule that year was in the mornings you
23 went where?

24 A. To Enoree Career Center. So I was actually not at
25 the high school in the mornings.

1 Q. So you'd some to school and take --

2 A. Leave on a bus to go to Enoree, come back by the bus
3 and I think it would be lunchtime. We would have lunch and
4 then finish up the two remaining blocks of classes for the day.

5 Q. Right.

6 Now, what were your two blocks that year? Now we're
7 in the school year in the 2003-2004 school year, is that
8 correct?

9 A. That's correct.

10 Q. Okay.

11 And You went to Enoree in the mornings and then you
12 came back. What did you have third block?

13 A. I know I had Miss Hills (ph) for fourth, for math
14 class, and then I third block I had -- I'm trying to remember
15 exactly what class it was. Been so many years now I can't
16 remember what classes I was taking when.

17 Q. Does Ms. Kite (ph) sound familiar?

18 A. Miss Kite, correct, yes.

19 Q. Okay.

20 What did you do in Miss Kite's class?

21 A. Sleep, honestly.

22 I'd reached a point where, you know, I did not want
23 to be in those classes and caused quite -- My presence caused a
24 commotion at times.

25 Q. Okay.

1 Why? Why would your presence cause a commotion?

2 A. The other kids there were -- They did not like me
3 because, you know, I have scarred up arms, I was gay and, you
4 know, there was all these things and I was constantly picked on
5 for it. There was one day I was assaulted on the bus at
6 Enoree, punched in the eye. So there were a lot of things that
7 happened.

8 Q. What happened as a result of you getting assaulted
9 on the bus?

10 A. Nothing.

11 Q. Was it reported?

12 A. It was, yes.

13 Q. To who?

14 A. I reported it to administration.

15 THE COURT: Ms. McBride, let's move on
16 now. This is not relevant thing any issue, please, ma'am.
17 Move on.

18 Q. When you came -- We started school on August 25 of
19 that year and one month later I was arrested. So it was a busy
20 month.

21 The first week, try to remember the first week of
22 school. Did you come to me at any point complaining about
23 anything or what happened, to the best of your recollection,
24 the first week of school?

25 A. I remember that I did come to your room. I was

1 upset about my parents and I was wanting to stay in your room
2 and I remember that I needed to -- you saying I need to go and
3 talk to, you know, Miss Fanning if I was going to, you know,
4 want to be in your room.

5 Q. It had to be a guidance issue?

6 A. Right, it had to be approved through her.

7 Q. All right.

8 And so was there ever any days that Miss Fanning was
9 unavailable?

10 A. I believe there might've been one or two days that
11 she was not available and that a pass was written and I was
12 able to, you know, stay in your room.

13 Q. Okay. All right.

14 So in those next three weeks how many passes would
15 you say that I wrote to Ms. Kite or Ms. Hills, your math
16 teacher?

17 A. I would say, maybe, two, three. That was it.

18 Q. All together?

19 A. Just altogether.

20 Q. All right.

21 So if I write you passes for you to miss those two
22 or three classes and Miss Fanning is not there why would I go
23 to that extreme?

24 MR. CLARKSON: Objection, Your Honor.

25 THE COURT: Yeah, I'll sustain the

1 objection on that question.

2 MS. MCBRIDE: Okay.

3 Q. If you came to me and I did make a decision to do
4 that --

5 A. You did it because at that point I was under duress.
6 I think I see what you're trying to get at.
7 I came to you under emotional duress.

8 Q. Thank you.

9 And was it ever to get you to come and help me do
10 anything in my room?

11 A. No, it was not. Like I said, it was because of
12 emotional duress.

13 Q. Okay. Thank you, Josh.

14 Okay, so let's move along now to some events that
15 took place in the next -- the two weeks before I was arrested.

16 Now, you often spoke of running away from home,
17 right?

18 A. That is correct.

19 Q. Would you share with the jury why you were so -- You
20 know, at this point you're 16 years old; you're gonna be 15 in
21 a couple of months so what was so urgent that you couldn't be
22 at home? Or felt that you couldn't be at home?

23 A. Well, I felt like I couldn't be at home because,
24 like a lot of teenagers, I felt that my parents didn't
25 understand me but there was an extra layer of it with me

1 thinking I was gay; they were sending me to a Christian
2 counselor and they were doing all these other things to try to
3 change me and, you know, I couldn't even talk to my parents
4 because is what I felt like we never had a conversation and
5 when we did it always ended as screaming match with each other.

6 Q. And was there any accusation against your parents?

7 A. There was, for abuse.

8 Q. Okay.

9 Now, so you're coming to me and you're going to Miss
10 Fanning and sharing all these events that are going on at your
11 home. You're trying to find --

12 A. A legal means to leave the home before I was 17.

13 Q. Okay.

14 And at any point did I ever discuss with you a legal
15 means of leaving your home?

16 A. No.

17 Q. Who did?

18 A. If I remember, it was Kim Fanning and she had
19 mentioned to me about emancipation and I believe that I had
20 spoke with Officer Oslager about emancipation and what it was
21 to be emancipated.

22 I'd also spoken through email with some people at
23 the ACOU about how to go about emancipation.

24 Q. Who is Officer Oslager?

25 A. The school's resource officer.

1 Q. He was the school resource officer?

2 A. Correct.

3 Q. Okay.

4 Was he there every day?

5 A. He would be, yes.

6 Q. Okay.

7 Did we ever have any other school resource officers
8 while you were there?

9 A. No, I don't believe so.

10 Q. Okay.

11 So everybody was real familiar with him?

12 A. Right.

13 Q. Did he know you?

14 A. Yes, he did. Throughout elementary school he was in
15 the D.A.R.E. program where I went to elementary school at
16 Anderson.

17 Q. Okay.

18 Now, other than emancipation had you approached him
19 about anything else before the events of the twentieth of
20 September and forward, or the nineteenth and beyond that point.

21 We'll get to that in a minute but prior to those
22 days what times did you -- did you come in contact with Officer
23 O about any other events?

24 A. I had talked to him about emancipation, wanted to
25 leave home and I told him there was abuse going on and I wanted

1 to go live with my aunt in Travelers Rest.

2 Q. Okay.

3 And, also, you came to school one day reporting to
4 me that your parents had abused you. What took place as a
5 result of that conversation?

6 A. I went to go talk to --

7 MR. CLARKSON: Excuse me, Your Honor. I
8 mean we are so far afield I cannot see the connection.

9 THE COURT: Let's move on, please.

10 MS. MCBRIDE: Well, this officer denied
11 he had any contact with this young man.

12 THE COURT: Okay.

13 Move on.

14 Q. So was there any time that you -- If you were -- If
15 you were accusing your parents of having child-abuse you did I
16 ask to see those marks? Let's just put it that way.

17 A. Yes, you did.

18 Q. Okay.

19 Did I see anything?

20 A. No.

21 Q. Okay.

22 But as a followup what did I do?

23 A. You said that I needed to go see Officer Oslager.

24 Q. Okay.

25 A. And show him the marks if I believed them to be

1 there.

2 Q. Okay.

3 Now, let's move along to the nineteenth of
4 September. That was a Friday.

5 A. Okay.

6 Q. Okay?

7 On that day as far as I knew - and correct me if I'm
8 wrong --

9 THE COURT: You're gonna be able to
10 testify when you're ready to testify.

11 MS. MCBRIDE: I'm having a hard time
12 remembering this stuff.

13 Q. Okay.

14 On the nineteenth you were supposed to be leaving
15 school with someone.

16 A. Right, I was. I had permission from my parents to
17 go and spend the weekend at Chris Bimkey's (ph) house and I had
18 brought some clothes and everything to school and that
19 afternoon I was gonna leave. We got into an argument and he
20 left school and Miss McBride was getting ready to go in to a
21 meeting with some of the other special education teachers so I
22 couldn't be in the room and I took her keys, went and took her
23 vehicle and I picked Chris Bimkey up and we came back to the
24 school.

25 Q. Okay.

1 Who was Chris Bimkey?

2 A. He was a friend of mine.

3 Q. Okay.

4 And did you often have sleep-overs with Chris on the
5 weekends?

6 A. Yes, I did.

7 Q. Okay.

8 Were you storing items in my room?

9 A. I was, like when I would go to his house I would
10 just keep them in there so I knew they were safe.

11 Q. Okay.

12 And did my other students do that?

13 A. Yes, they did.

14 Q. Okay.

15 I had a file cabinet. Is that where they were
16 stored?

17 A. Right, they were in the filing cabinet.

18 Q. Okay.

19 So on this particular first you had a prearranged
20 sleep-over planned and to leave these school with Chris Bimkey
21 and his mother, is that correct?

22 A. That is correct.

23 Q. And something happened that you didn't leave with
24 them that day.

25 A. Correct.

1 Like I said, he left. He left these school and went
2 home and I was still at the school. I said you were getting
3 ready to have a meeting with the other teachers. No one could
4 be in the room to hear this meeting since it's private and
5 information was gonna be exchanged and that was today that I
6 swiped your keys and took your vehicle, went and picked him up,
7 came back to the school before the meeting was over and you had
8 had no idea that I had even used your vehicle to go and pick
9 because I stopped and put gas in it to equal it back to the
10 mark that it was at when I took it.

11 Q. Okay.

12 Now, when you got back to the school you had Chris
13 and so did I know that Chris ever left?

14 A. No. You, actually, thought that he had gotten out
15 of the car and we had just been waiting outside on you the
16 entire time. You had no idea I'd ever taken your vehicle.

17 Q. That's right.

18 And so then you wanted to go get a video and where
19 was that video at?

20 A. I asked you if I could go to Ingle's to go and pick
21 up a video. They wouldn't sell it to me, ended up going to
22 Walmart, I believe.

23 Q. Okay.

24 And on that errand to Ingle's and back you did have
25 permission to take you car, is that correct?

1 A. That's correct, I did.

2 Q. And why would I give you to go across the street?
3 What would lead you believe I would have the authority to make
4 a decision like that?

5 A. Well, if I remember correctly, I had driven your
6 vehicle before with you in it one other time and I had told
7 you, you know, I had a driver's license, I had gotten a ticket
8 and, you know, you told me, you said, well, you need to pay a
9 little more attention when you're driving, speed limits do
10 change and I remember you saying that to me, speed limits do
11 change.

12 And so, you know, you were under the impression I
13 had a driver's license and my parents had allowed me to drive
14 your car on that occasion and, you know, there was no issue
15 with me doing it.

16 Q. Okay. Okay

17 So there was a day that we went to a resource
18 center, is that correct?

19 A. That's correct.

20 Q. Okay.

21 And on that day you had permission, did you say?

22 A. Right.

23 Q. I guess what I'm getting, how do you know you had
24 permission to go along and drive my car?

25 A. Right.

1 I had come out and asked my mother if it was okay
2 that day at school when it was over if I was to go and do that
3 and she said, yes, that that would be fine.

4 Q. Because you had a restricted license?

5 A. That's correct, I did.

6 Q. And you were getting driver's experience?

7 A. Uh-huh.

8 Q. Okay.

9 So we go on that outing and so about a week later is
10 when you went to go get the video.

11 Now, tell me about Highway 25, which is across the
12 street from where the old Berea High School was and Ingle's and
13 everything. Is that a road you'd be crossing on foot?

14 A. No, it's not. Well, now it's about to be a six-lane
15 highway but time it was still a four-lane highway, extremely,
16 extremely busy.

17 Q. Okay.

18 And you had permission to go straight across the
19 street and back because you do have a restricted license, is
20 that correct?

21 A. Correct.

22 Q. Okay.

23 So when you got back, what took place after that?
24 You and Chris went to get the video and they didn't let you
25 have. You went to Walmart without permission.

1 A. That's correct. I admitted that part to you. That's
2 correct.

3 Q. Okay.

4 And so when you came back what took place?

5 A. When I came back I remember I gave you the keys back
6 and we left to --

7 Q. Who left?

8 A. You, me and Chris. We left to -- You were gonna
9 take -- Since Chris' ride had already left you were gonna take
10 me and Chris back to his house and at that time you did, like I
11 say, because you knew that I was supposed to be going over
12 there for the weekend and you offered, you know, to take us
13 back.

14 Q. Okay.

15 A. Because his mother was refusing to come and get us.

16 Q. Okay.

17 So what were you planning to do that weekend?

18 A. I was planning to run away.

19 Q. Okay.

20 Run away where?

21 A. I was going to go live with my aunt in Travelers
22 Rest and I had expressed this to Chris and to Chris's mother,
23 that that was what I was going to do.

24 Q. Okay.

25 And I, too, was aware that you were trying to your

1 aunt into coming to pick you up, right?

2 A. Right, yes.

3 Q. And the conversation that I had with Miss Bimkey
4 would've been --

5 MR. CLARKSON: Object to that.

6 THE COURT: Please, Ms. McBride.

7 MS. MCBRIDE: I'm trying.

8 THE COURT: You ask questions to the
9 witness and --

10 MS. MCBRIDE: Yes, sir, I can do that.

11 THE COURT: All right

12 Q. When I got there with you, at the Bimkey residence,
13 we all went inside. Can you tell me what transpired when I
14 came in?

15 A. You did explain to her that I was trying to go and
16 live with my aunt, that you did, you know, tell her that, and
17 that I had been working on emancipation. We all had that
18 discussion.

19 And then you told her if there were any problems,
20 like if I tried to leave not to let me go unless it was with my
21 aunt because since I had been talking about running away.

22 And you gave her your phone number, said if there's
23 any problems call me.

24 Q. That's right.

25 And then what was I gonna do?

1 A. You were gonna get in touch with the school's
2 resource officer who was Officer Oslager.

3 Q. Okay. Very good.

4 So tell us what happened that night. I left and I
5 didn't see you anymore that night. Tell us what happened.

6 A. I had lied to my mother about where I was. I had
7 told her that I had went to the mall with a friend of mine and
8 she contacted that friend and the friend said, no, I don't know
9 where he is, and so my mom thought, you know, well, maybe I was
10 abducted. You know, she didn't know what happened and she came
11 to the home of Chris Bimkey and I was there at the time. It
12 was going close to midnight and she -- I remember her banging
13 on the door. Chris' mother went to the door and she said, he's
14 not here, I don't know where he is, and she just turned my
15 mother away.

16 Q. Okay.

17 A. And that, that morning the police got involved
18 because my mom had strong reason to believe that I was there
19 and Linda Bimkey, Chris' mother, being worried about being
20 arrested for aiding and hiding a runaway, she said I need you
21 to leave, you're gonna get out of my house, and the nearest
22 place to go to was to your home.

23 And I did that, tried to get you to the door but you
24 were asleep and I sat on your front porch until you woke up and
25 when you woke up you were, you know, well, what are you doing

1 here? And I said, well, I kind of ran away and the second I
2 said that we went into your kitchen. You said, come in, sit
3 down, and you called Officer Oslager. You said, what do I need
4 to do? He just told me he ran way.

5 Q. Okay. Let's hold up right here for a second.

6 So you run away and you come to my house. How do
7 you know where I live?

8 A. Well, you live right by Enoree Career Center and
9 what happened was we -- The day we went to the resource center
10 we came back, we stopped off at your house so I could set up
11 your ebay account on your home computer. So that's how I
12 remember where you live.

13 And, like I said, you lived by Enoree and since I
14 was going to Enoree every day I would pass your house going to
15 Enoree. So it was easy to remember where you lived.

16 Q. Okay.

17 Is that the only time you had ever been to my home?

18 A. Yes, it was.

19 Q. Okay.

20 So the day that you ran away would've been the
21 second time?

22 A. Right.

23 Q. Correct? Okay.

24 So you come into my house and sat down. I think we
25 got a drink out of the refrigerator and I called Officer O. Is

1 that what you said?

2 A. Yes, that's correct, you did.

3 Q. Okay.

4 And what did I report to him?

5 A. That I was telling you that I had ran away and that
6 you needed to know where to take this or what to do and he
7 advised you to contact, you know, the sheriff department and
8 you did so.

9 You contacted the sheriff department and I didn't
10 want to go home. I was fearful going home and you said, well,
11 you know, these deputies are gonna come out. You just tell the
12 truth. You tell them what's going on and, you know, let it
13 work out.

14 Q. Okay.

15 And when that officer got there did I hold you or
16 what happened?

17 A. No. You said -- You know, I stepped outside of the
18 house onto the front porch and talked to the officers and they
19 took me and took me down to the law enforcement center.

20 Q. Okay.

21 What happened there?

22 A. My mom came down to pick me up.

23 Q. Okay.

24 So you went back home, right?

25 A. Right.

1 Q. Okay.

2 So the following week was my last week at Berea High
3 School and I believe the twenty-fourth is the day that led up
4 to my arrest. That's when I all began. So let's talk about
5 what happened that day.

6 Why don't you tell me what happened that day, to
7 your recollection.

8 A. Okay.

9 That day I was going to go to legal aid, which is
10 downtown. They provide services to minors, people who can't
11 afford lawyers, that kind of thing, and I was gonna talk to
12 them about emancipation and they said being a teenager, having
13 taken Miss McBride's car, a, having got away with it before her
14 not knowing that I had taken it and, you know, b, the fact that
15 I was given permission kind of, in my mind, meant that I could
16 just take it whenever I wanted to, like I always had permission
17 to just be able to take it, even though I didn't.

18 Q. Had you ever been given permission to drive my car
19 during school hours?

20 A. No, no.

21 Q. Ever?

22 A. Ever.

23 Q. Okay.

24 Now, on this day it was during school.

25 A. On this day it was during school. I took your keys

1 out of the desk and I proceeded to leave, to leave the school.

2 And I did try to go to legal aid, tried to go
3 downtown but I couldn't find it. I didn't know where it was
4 downtown and I came back to the school and upon coming back to
5 the school I was arrested.

6 Q. Okay.

7 Who arrested you?

8 A. Officer Oslager.

9 Q. Okay.

10 Now, tell me exactly what happened that day. When
11 you came back to the school.

12 Q. I came back to the school. I didn't know that
13 anything was wrong. I pulled up into the parking space, went
14 to get out of the car and Officer Oslager is running across the
15 parking lot and, you know, I just put my hands up and he took
16 me, slung me up against the hood of the car and, you know,
17 handcuffed me and I saw you and he said something to the effect
18 of, you know, why do you want to steal a vehicle or take a
19 vehicle when these people are trying to help you or do this to
20 people who are trying to help you.

21 And I remember screaming at you, because I saw you
22 across the parking lot, that I was sorry, I didn't, you know,
23 mean for all this to happen, I was sorry, that I just wanted to
24 go to legal aid.

25 Q. How far apart were we that day when you were being

1 arrested? How far was I from you?

2 A. I would say we were good hundred, 200 feet away and
3 I was screaming at the top of my lungs that I was sorry.

4 Q. Go ahead. What did you say? What did you scream
5 out to me?

6 A. I told you that I was sorry that I had taken your
7 vehicle but I had to go to legal aid.

8 Q. And were you placed under arrest?

9 A. I was, yes.

10 Q. And then what?

11 A. I was placed in the back of the police car and my
12 mother was at the back of the school waiting for me to come
13 out. When I didn't come out she came around to the front of
14 the school to find out, to go inside to find out what was going
15 on and she saw that I was sitting in the back of a police car.

16 Q. And what was her --

17 A. Her immediate reaction, of course, was anger that I
18 was arrested. She didn't know what was going on.

19 Q. Who was she mad at?

20 A. And she was mad at you. She thought you had let me
21 take the car.

22 Q. Okay.

23 A. And or had given me permission to take the car, or
24 whatever.

25 And she, I remember that she had went off and she

1 said something to the effect of I had told you, you know, to
2 stay away from my son to you and you got upset. You walked off
3 back toward the school and then her and Officer Oslager, for a
4 minute, had a conversation and he told her I would be held
5 overnight at the law enforcement center, told her what I was
6 being arrested for and she could come and pick me up in the
7 morning when I would be arraigned.

8 And she came back to the police car and, like I
9 said, I was in the back. He had the window cracked, maybe,
10 that much, and she was able to talk to me for, you know, for
11 just a minute.

12 Q. Okay.

13 So then you were transported, I understand.

14 A. Right.

15 Q. Tell us about that.

16 A. I was transported down to the law enforcement
17 center.

18 During that ride Officer Oslager asked, he said, why
19 did your mom, you know, say that about, you know, Sherrie
20 McBride, about her staying away from you and I had went in to
21 the fact that, you know, she didn't like that I had been in
22 your room the previous semester, and had mentioned that to him
23 and when we got down to the law enforcement center he wanted me
24 to make a statement about how I had come to get your car and I
25 had mentioned that I had used it before and then it was, you

1 know, construed to be that you had given me the car.

2 Q. Okay.

3 Hold up right there for a second.

4 Where was your mother at this point?

5 A. My mom had went back home to get my father and they
6 came back to Berea High School and they were in Principal
7 Roach's office.

8 Q. Were they ever there with you at the police station?

9 A. No, they were not.

10 Q. Okay.

11 Did Officer Oslager read you your rights?

12 A. No.

13 Q. Miranda?

14 A. No.

15 Like I said, I sat there and I was handcuffed to the
16 chair. Like this hand was handcuffed and then I was handcuffed
17 down to the chair and we were sitting like, maybe --

18 THE COURT: You've gone far enough with
19 this. Let's move on to something else, please, ma'am.

20 You allege in your Complaint these
21 defendants acting through one or more of the employees made
22 statements after your arrest alleging your misconduct. That's
23 what I want to hear, what the jury needs to hear.

24 You further allege Mr. Roach told faculty
25 that you had stolen school property. I want to hear testimony

1 about that, not whether he was advised of his rights, what his
2 feelings were, okay?

3 MS. MCBRIDE: Okay.

4 Can I ask what he was being charged with?

5 THE COURT: What relevance --

6 MS. MCBRIDE: What he was being charged
7 with.

8 THE COURT: Well, what relevance is
9 that?

10 MS. MCBRIDE: Well, it goes in to the
11 statements that exist against me.

12 THE COURT: All right.

13 Well, what were you charged with, sir?

14 A. I was charged with felony grand theft auto.

15 THE COURT: All right. Okay.

16 Q. And did that charge stick?

17 A. No, it did not. It was dropped.

18 Q. Okay.

19 So what happened after that? I mean did you --

20 A. Like I said, there were conversations that took
21 place between Officer Oslager and Mr. Roach. They were calling
22 each other back and forth while I was down there at the police
23 station and giving my statement.

24 And, like when I mentioned the thing about having
25 your password, I was looking for anything to get out of trouble

1 and your password, like I said, had come to mind. He called
2 Principal Roach and said can you verify that lobe one, you
3 know, is her password or tinkerbelle. No, I think it was
4 tinkerbelle. Yeah, it was tinkerbelle is her password to the
5 email.

6 He was able to verify that and --

7 Q. So it appeared to you that he wanted to sign a
8 statement against me?

9 A. Right. Yes, it did.

10 Q. And how many times would you say he called Principal
11 Roach while you were --

12 A. It was at least three times.

13 Q. Okay. All right.

14 So then the following day what happened?

15 A. The following day you were arrested.

16 Q. I was arrested.

17 A. Yes. I remember seeing it splashed all over the
18 news.

19 Q. Okay.

20 A. That's how I found out you had been arrested.

21 Q. Okay.

22 Well, the officer who arrested me was a female and
23 she was supposed to be the lead investigator in this. Her name
24 is Leslie Lambert.

25 Did you ever meet Leslie Lambert, this lady sitting

1 right here with the long hair?

2 A. No. I never met Leslie Lambert.

3 Q. Okay.

4 She never took a statement from you?

5 A. No.

6 Q. To this day you've never met Officer Lambert?

7 A. I met one time and that was way after this case had
8 ended and this was to pick up evidence from that case, personal
9 belongings that had been taken from me.

10 Q. Okay.

11 Her supervisor was there, Shea Smith. I guess you
12 see him on the TV because he's --

13 A. The press media coordinator.

14 Q. Yeah.

15 He was at school that day, too.

16 Did you ever meet Officer Smith?

17 A. No, I did not.

18 Q. To this day have you ever met Officer Smith?

19 A. No, I have not.

20 Q. Thank you, Josh.

21 MS. MCBRIDE: I have nothing else.

22 THE COURT: All right, Mr. Clarkson,
23 any questions?

24 MR. CLARKSON: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. CLARKSON:

Q. Josh, you just told the jury just a minute ago that when you were taken down to the law enforcement center Officer Oslager did not give you your rights. Did you tell that to the jury?

A. Yes, that's correct.

Q. That's a damn lie, isn't it?

A. No, it is not and you don't have to curse at me, sir.

Q. That's a lie.

A. No, it's not a lie.

Q. What is this document right there?

A. It is a waiver of rights that I signed and I did not sign that until my mother got down there, sir.

Q. Is that your initials right there?

A. It is but if you'll look at the time it says 1739 but that's way in the afternoon.

Q. What did you initial? This statement. What does it say?

A. It say you have the right to remain silent.

Q. And it's signed by you.

A. Yes, it is. It's 1743 hours.

Q. Is that signed by your mother?.

A. Yes, it is and she was there at 1743 hours when I was released.

1 MR. CLARKSON: Your Honor, we'd offer
2 Waiver of Rights as an exhibit.

3 THE COURT: Any objection to that, Ms.
4 McBride?

5 MS. MCBRIDE: No.

6 (Waiver of Rights form entered in to
7 evidence as Defendant's Exhibit 1 without objection.)

8 Q. Now, Mr. F [REDACTED] you also gave a very, very
9 detailed statement that evening to Officer Oslager, didn't you?

10 A. Yes, sir, I did.

11 Q. And you signed that very detailed statement in the
12 presence of Officer Oslager and your mother, didn't you?

13 A. I signed it with my mother there after it was
14 finished. My mother wasn't there while I was giving it.

15 Q. You signed it --

16 MR. CLARKSON: Well, let's mark this as the
17 next exhibit.

18 THE COURT: All right.

19 Any objection to the statement, Ms. McBride?

20 MS. MCBRIDE: No objection.

21 (Statement entered in to evidence as
22 Defendant's Exhibit 2 without objection.)

23 Q. I'll hand you what we've marked as Defendant's
24 Exhibit Number 2.

25 Now, is that the statement that you provided to

1 Officer Oslager?

2 A. Yes, this would be.

3 Q. Is that it?

4 A. Yes, it is.

5 Q. And it's two pages and it's typewritten, correct?

6 A. Correct.

7 Q. And it is signed at the bottom by Elizabeth Ann

8 F [REDACTED]. Who's that?

9 A. That is my mother.

10 Q. It's also signed by a Deputy Oslager, correct?

11 A. Correct.

12 Q. And it's signed by you twice.

13 A. Correct.

14 Q. Twice on both pages, correct?

15 A. Correct.

16 Q. You gave this statement to Officer Oslager on that
17 evening, correct?

18 A. Yes, I gave this statement to him.

19 Q. All right.

20 And I believe if you'll look at the statement, you
21 have initialed. Is your initials J. L. F?

22 A. Yes, they are.

23 Q. And did you initial almost every line of this
24 statement?

25 A. Yes.

1 That's what you do when you give a statement.

2 Q. So you initialed every line of this statement; you
3 signed it after Officer Oslager typed it up, correct?

4 A. Correct.

5 Q. All right.

6 Could you read this statement to the jury, please?

7 A. Okay.

8 On today's date I went into Miss McBride's room. I
9 was talking with her about some personal problems. I told her I
10 was going to legal aid. I picked up some keys off her deck,
11 hooked them on my belt like normally do. I am not sure if she
12 seen me take the keys or not. Miss McBride told me to go to
13 Miss Hills' room and tell her that I would be in Miss McBride's
14 room. I've gotten out of class numerous times before after
15 going -- after Miss McBride writes a note; however, this time I
16 didn't.

17 Q. Stop.

18 Say that again for the jury, please. I have
19 gotten --

20 A. I have gotten out of cal numerous times before after
21 Miss McBride writes a note; however, this time I didn't.

22 Q. Okay.

23 I went. Go ahead, keep reading.

24 A. I went and talked to Miss Hills and she agreed it
25 would be okay. Then I went to the lunchroom to get something to

1 eat. I ran into Christina Conrad (ph), told her I was going to
2 legal aid she asked to go and I said okay. I asked her how she
3 would get out and she responded she would just walk out. We
4 went back to her room. I stood in the hallway and after
5 Christina came back we walked to Miss McBride's room and dropped
6 off her foot bag and then just walked out. I did tell Miss
7 McBride that I would be back in a little while. So we left,
8 walked to the parking lot and left. I was traveling up Buncham
9 (ph) Road and we went by someone's house. He didn't come to the
10 door. She suggested that we go to Enoree Career Center and pick
11 up some of her friends. After getting them we went back to
12 school and that is where you are waiting on us.

13 Q. And you initialed that right there. That's your
14 initials, correct?

15 A. Correct.

16 Q. All right.

17 Keep reading. Yesterday during lunch --

18 A. Only thing I would like to say, I was alone when I
19 was giving --

20 Q. I'm not asking you that question. I'm asking you to
21 please read the statement that you gave to the police.

22 A. Okay. All right but I just felt that needed to be
23 known.

24 Yesterday during lunch I went and talked with Miss
25 McBride about going to family court in reference to emancipation

1 papers. She then wrote me out a passes to Miss Hills to get me
2 excused from Miss Hills' math class. The note asked to be
3 excused if I was going to be in Miss McBride's room but it never
4 mentioned campus, leaving campus to go to family court. Later I
5 went back to Miss McBride and told her it was okay and she asked
6 me if I had told Miss Hills the reason why and I responded no.
7 She remarked good. On Monday --

8 Q. She remarked, you're taking about Ms. McBride
9 remarked good? That was her remark?

10 A. That's what I claimed, yes.

11 Q. All right.

12 And you initialed that J. L. F., correct?

13 A. Uh-huh.

14 Q. All right.

15 Now keep reading, On Monday --

16 A. On Monday, the twenty-second of September Miss
17 McBride had asked me to come by to fix her computer so I went by
18 during lunch. Then she wrote me a pass to come to her class
19 during my fourth block, Miss Hills' math class, to move her
20 computer.

21 Q. And you initialed again your initials?

22 A. Uh-huh.

23 Q. All right.

24 A. A 16-year-old with no parents and no lawyer present,
25 I initialed.

1 On Wednesday, the seventeenth of September I made up
2 in my mind that I was going to try and run away so I started to
3 take clothes a little bit at the time. I only took a little so
4 no one would realize what I was doing. I took them to school
5 and put them in Miss McBride's room. I told her that I as
6 planning to run away and she knew that I was putting the clothes
7 in her cabinet and she even remarked that her cabinet did not
8 lock. On Thursday the eighteenth of September I also took some
9 clothes by her room and placed them into the filing cabinet. On
10 Friday the nineteenth of September I took some more clothes, my
11 laptop computer and put them in her filing cabinet. This was
12 during lunch. Miss McBride then wrote me a pass to take to Miss
13 Hills to get me excused for the rest of the day. I went and
14 took it to Miss Hills and she agreed since Miss McBride wrote
15 it. Then during fourth block, instead of going to class I went
16 to Miss McBride's room and fixed her computer by adding a device
17 that enables the computer to be shown on a television. That was
18 just about the time that school was about to get out. I was
19 told Miss McBride that I was going to Walmart to get something.
20 I asked her if I could use her car and she replied it was all
21 right and told me where the keys were. So I left in her car and
22 drove to Walmart. I was gone about 30 minutes, came back and
23 got my clothes. I walked into her classroom and asked her if
24 she was ready to go and she replied yes. She already knew that
25 I as not going to go home and she gave me a ride to Chris

1 Bimkey's house. She went inside and spoke with his mom. She
2 told Chris' mom that I was running away and that I needed to
3 stay there. Chris's mom got mad at first. Then she calmed down
4 and said okay, for me just to hide in Chris' room if she knocked
5 on the door and I needed to stay there. My mom did come by and
6 look for me but Chris's mom did not tell her I was there. I
7 spent the rest of the night. Chris's mom told me that the next
8 morning that I would have to leave. She called about 10:30 a.m.
9 and asked if I was there and told Chris that I had to go. I
10 left on my bicycle and rode to Miss McBride's house. I got
11 there between 11 and 12. I was there when she called you, Deputy
12 Oslager. She then called the sheriff department and told them
13 I was there. They came and picked me up and took me to the law
14 enforcement center and later my mom picked me up.

15 Q. Okay.

16 And then the second page, read that, please.

17 A. Last year during the month of April 2003, which was
18 spring break, Miss McBride had asked me to work on some of her
19 IEPs that she does for school. She offered to pay me but did
20 not. She brought me past IEPs to work from to my house but in
21 order to do it while I was at school I would log in to the
22 computer and look up student grades to write down so that I
23 could add them to her IEPs. There was a section named academics
24 that their grades go into. Her login for the computer system at
25 the school was smcbride and her password is lobe one. I used it

1 at lease it five or six times. She also gave me her password
2 for the school-based email because it was the same as her
3 district web page that I designed for her. Her password for
4 that was smcbride and her password is tinkerbelle. Miss McBride
5 provided with CD to be able to write IEPs. The password for the
6 CD was horizon. I am not sure if I have the software - it was
7 Extent (ph) - still on my computer because I think I cleared it
8 out. Some of the IEPs that I worked on were labeled educably
9 mental disabled and some that I remember were Christina Johnson
10 and Tim Smith because his actual name was Lionel (ph) which I
11 remember because he doesn't go by that at school. Today I
12 printed off a parent invitation to a IEP meeting for Page
13 Camerino (ph). There were two. I can't remember other than Mr.
14 Howard, Miss Fanning and Miss Huff (ph) and Miss Camancho (ph)
15 was the teachers that were supposed to be there. Miss Camancho
16 is his out class. Before I printed I changed the date and the
17 time. The date I do not remember. I changed the time to 8:30
18 a.m. Sometime last week Miss McBride gave me a disk with the
19 school's new grading system. The teachers just type in the
20 daily grade and the system averages the grades. She did not
21 know how to use it so she asked me to check it out, learn how to
22 do it then return it. I remember it has a serial number on it
23 and you have to have it in order to install it. I still have
24 other returned ir not is it installed on my home computer. Last
25 year near the end of school, about four weeks left, Miss McBride

1 told me that my mom went to the school and spoke with Miss Hunt
2 and Miss Fanning about her -- about me missing so much class and
3 that I wasn't doing that well so as a result I had to stay in my
4 classes and Miss McBride was not supposed to get me out no more
5 this year. Miss Cott (ph) has gotten mad at Miss McBride for
6 getting me out of class too much and as a result Miss Cott went
7 and talked with Miss Fanning. Miss McBride told me about it and
8 as a result I cannot be excused from Miss Cott's class anymore.

9 Q. Okay. Thank you, Mr. F [REDACTED].

10 You also gave another statement to the police, didn't
11 you?

12 A. I believe so.

13 Q. And this was also a statement. This is handwritten
14 and it's got I Josh F [REDACTED] do hereby freely volunteer this
15 statement and it was signed by you twice and Officer Oslager and
16 your mother. Do you remember this statement?

17 A. I would have to look at it to --

18 Q. I'm gone hand it to you. It's two pages.

19 (Statement entered in to evidence as
20 Defendant's Exhibit 3.)

21 Q. All right.

22 I'm gone show you what has been marked as Defendant's
23 Exhibit Number 3. That's another victim -- You're the victim
24 here, right? Victim/witness statement. You were the victim.

25 A. I guess that would be correct.

1 Q. Okay.

2 A. Actually witness would be more technical since this
3 is a victim-witness statement.

4 Q. All right.

5 Start out at the very top and read this statement to
6 the jury. It's not as long. Start with I, I Josh.

7 A. I Joshua Lee F [REDACTED] do hereby give freely and
8 voluntarily this statement to D. Oslager and not applicable to
9 have identified themselves to me to be deputies of Greenville
10 County Sheriff's Office. I am 16 years old and I reside at 102
11 Irie (ph) Circle, Greenville, South Carolina. On Saturday,
12 September 20, I rode my bicycle to Miss McBride's house. I had
13 been there once before. When I got there I knocked on the door
14 and Miss McBride came to the door. She had a white tee shirt
15 with paint on it and shorts. She already knew that I had run
16 away. Then she said put your bicycle somewhere so no one could
17 see it. I pointed at the door that goes underneath her house
18 and said there and she replied that it would be good. I put it
19 under her house, the green multi-speed bicycle. It has rubber
20 handlebars. One of the brakes on it does not work. Then we
21 went inside her house. We talked for a little bit. She lives
22 at 20 Cownback (ph) near Enoree Career Center. Her house has a
23 lot of windows. It's a front porch. It's a brick house and one
24 story. If you go into the front there is a television on the
25 left.

1 And what is the purpose of this? I feel like a real
2 estate agent, you know, listing her house. I don't see the
3 purpose.

4 Q. Would you keep reading, please?

5 A. If you keep walking straight there is a hallway to
6 your left that if you go down the first bedroom to the left is a
7 computer room. That is as far as I went. If you don't turn
8 down the hallway but go straight is her kitchen. Through her
9 kitchen, to the right is a dining room. While I was there on
10 Saturday her husband was there on the couch. Two or three weeks
11 ago Miss McBride walked out back with me to ask if I could go to
12 the teachers outlet to help her pick out posters for her
13 classroom. We went and did that and then got something to eat.
14 I remember that my mom told Miss McBride I had to be back by
15 seven p.m. and we went back to Miss McBride's house to set up
16 her ebay account. Then she brought me back home. It was about
17 8:30 p.m. We were late. My mom got upset and told Miss McBride
18 that I could not go anywhere else with her.

19 Q. Thank you.

20 Now, Mr. F [REDACTED], there was a hearing before the
21 entire Greenville County school board involving Miss McBride,
22 wasn't there?

23 A. I guess there was.

24 Q. And you testified at that hearing, did you not?

25 A. Yes, I did.

1 Q. And you've seen the transcript of that hearing
2 before, haven't you?

3 A. Yes, I have.

4 Q. Can you confirm that that is a copy of the transcript
5 of that hearing?

6 A. It appears to be so, yes.

7 MR. CLARKSON: Your Honor, we would offer
8 that document.

9 THE COURT: Okay.

10 Any objection to that?

11 MS. MCBRIDE: No, sir.

12 (Transcript entered into evidence as
13 Defendant's Exhibit 4 without objection.)

14 Q. Now, I get you to look at Defendant's Exhibit Number
15 4 and, first, before I ask you about that, is everything in
16 those two police statements that you just read to the jury true?

17 A. No, they are not.

18 Q. All right.

19 Before we get in to the statement here before the
20 school board, you testified at that hearing, did you not?

21 A. Yes, I did.

22 Q. And you were placed under oath to tell the truth,
23 were you not?

24 A. Yes, I was.

25 Q. Did you tell the truth at the hearing?

1 A. No, I did not. There were certain times when I did
2 try to tell the truth.

3 Q. All right.

4 Take the transcript there and turn to page, if you
5 would, 197. Page 1 9 7.

6 A. Okay.

7 Q. Now, I'm gone read the questions beginning at line
8 12.

9 And you gave a statement to the police around
10 September 25, 26 of 2003. Do you remember that?

11 And your answer?

12 A. Yes, I do.

13 Q. When's the last time you looked at that statement?

14 A. I think it was last week.

15 Q. And this hearing was on November 7, 2005. So you
16 looked at the statement week before that, correct?

17 A. Right. I had went over it with the school district's
18 lawyer.

19 Q. All right.

20 Then on line 18, Did you read it?

21 A. I read parts of it, yes.

22 Q. Is there anything in that statement that you recall
23 when you read it that is not true?

24 A. No.

25 Q. You testified many times, or not many times, for a

1 long time during that school board hearing, correct?

2 A. Correct.

3 Q. And your testimony in the school board hearing was
4 consistent with the statement you gave to the police, correct?

5 A. No, it was not. In a lot of parts it was not.

6 Q. But we talked about passes. I mean if you want to go
7 through this, go to page 188. We're taking about passes.

8 Well, actually, it's 197, is where we start passes.

9 You made a statement -- I'm getting confused on where
10 we are on this thing.

11 A. Are we on page 190 where I said that I talked to Kim
12 Fanning about staying in Miss McBride's room? Are we on that
13 one?

14 Q. All right.

15 Let's go to page 190, line 10.

16 A. Okay.

17 Q. One ninety, line ten, And how did you get out of
18 regular classes? And your answer?

19 A. She would write me passes to get out or she would go
20 and talk with my teachers.

21 Q. And she, we're talking about Ms. Mann, correct?

22 A. Correct.

23 Q. And the next question, Did Miss McBride - Mann -
24 write the notes for you to sign them?

25 A. Yes, she would write notes and sometimes she would

1 tell me to write a note and she would sign it because she was
2 busy doing something else and no class.

3 Q. Was this during the morning or afternoon or what time
4 of day?

5 A. It varied but it was normally in the afternoons.

6 Q. How often did it occur? Was it once a week or twice
7 a week, every day?

8 A. I think at the beginning it just, maybe, a few times
9 a week and then eventually, as the year went on it became every
10 day and she no longer had to write passes for Miss Miller's
11 class because I was out so much she just went and talked to Miss
12 Miller and Miss Miller gave permission for me to stay out. She
13 didn't have to write notes any longer.

14 Q. All right.

15 In this school board hearing there was also talk
16 about IEPs. You remember that you testified earlier about IEPs?
17 And what is an IEP?

18 A. It's just an assessment for special education
19 students with there goals for the year that they would like to
20 be reached.

21 Q. And you were putting in information for IEPs on
22 behalf of Miss McBride, correct?

23 A. Right, yes. I said generic information.

24 Q. And you also gave statements that there were certain
25 passwords that Miss McBride gave you which allowed you to have

1 access to certain computer programs from the school, correct?

2 A. I did say that, right.

3 But I also said on page 196 about those passwords,
4 Did you ever access her email, and I said, By accident one time,
5 I think.

6 Where I clearly started to go back on my statement to
7 the police about passwords.

8 Q. You gave two statements to the police, correct?

9 A. Correct.

10 Q. And you testified at length at the school board
11 hearing, correct?

12 A. Correct.

13 Q. Did you ever at any time go to Officer Oslager or
14 anybody to say that the statement -- or the sheriff department,
15 Excuse me.

16 Anybody at the sheriff department and tell anybody
17 that the statements you gave them were not true?

18 A. And I would do that why? To get the police to arrest
19 me?

20 Q. I'm asking you a question, Mr. F [REDACTED].

21 Did you ever go to Officer Oslager or did you ever go
22 to anybody at the sheriff's office and tell them the statements
23 that I gave to them were lies?

24 A. No, but I admitted in court that they were. I gave
25 an affidavit and I admitted that I was lying, that I was a

1 scared 16-year old with no parents around, no attorney, no
2 nothing and, yes, I lied.

3 Q. All right.

4 So what you're telling the jury if that you're a
5 liar?

6 A. No. I'm telling them at the time I lied, before I
7 grew up and I had morals and I developed morals and understood
8 what my lies implicated, what they did to people, that they have
9 ramifications.

10 Q. How old were you in 2005?

11 A. Let's see.

12 Q. November, 2005.

13 A. I don't know. Eighteen. Nineteen.

14 Q. Eighteen, nineteen. You're an adult, aren't you?

15 A. Uh-huh.

16 Q. Correct?

17 A. Correct.

18 Q. All right.

19 Now, what I'm trying to get at is you admitted to
20 this jury you're a liar. Which times did you lie?

21 A. Like I said, I lied as a scared 16-year-old giving a
22 police statement, who is facing a felony charge and then when I
23 was in front of the school board I started to start recanting
24 and going back on the things that I had said.

25 Q. All right.

1 So you lied at the school board when you were an
2 adult and you lied to the police when you were a minor, correct?

3 A. Correct.

4 I started to, I said, go back on the things that I
5 said because I realized the implications of what I had done.
6 She has lost her job. She had gotten arrested.

7 MR. CLARKSON: That's all I have, Your
8 Honor.

9 MS. MCBRIDE: Your rested? Okay.

10 REDIRECT EXAMINATION BY MS. MCBRIDE:

11 Q. Josh, we just spent some time listening to those
12 statements. What's going through your mind when you gave those
13 statements?

14 A. I was terrified that I was gonna end up going to jail
15 for 10 years. You know, that was what was going through my
16 mind, that I was gonna have a felony on my record.

17 Q. And what happened to that felony charge after you
18 gave this statement?

19 A. It went away. The felony was reduced, I think, to
20 just a simple misdemeanor because I gave that statement and the
21 charges changed that day that I gave the statement.

22 Q. Now, on the second, the second statement you read,
23 that was a statement that they took the following day where
24 someone was meticulously walking you through my home, is that
25 correct?

1 A. That's correct.

2 Q. Who took that statement?

3 A. Officer Oslager.

4 Q. Is Officer Oslager not aware that you were at my
5 house just the Saturday before?

6 A. He was, right, because he was called about the
7 runaway incident. You called him. He knew that I was there.

8 Q. Right.

9 So why do you think that he walked you through that?

10 THE COURT: I sustain the objection to
11 that question.

12 MS. MCBRIDE: I withdraw the question
13 anyway.

14 Q. So today -- Well, when did you first start recanting
15 your statements that you made that day?

16 A. Like I say, when I was at the school district; when
17 I was at the hearing and, like I say, I started to grow up but,
18 at the same time I was still around some of the same people. I
19 still hadn't totally grown up and I was still worried about
20 perjury but, like I said, I finally did decide to come out and
21 tell the truth.

22 Q. Now, you said that you met with the district's
23 attorney just before that. Tell us about that day.

24 That was Lay (ph) Cleveland.

25 A. Yes, it was Lay Cleveland and he showed me my

1 statement and we sat in his office and we went over my statement
2 and if you read a lot through that testimony he coached a lot
3 out of me.

4 THE COURT: I sustain the objection.
5 Testify as to what he said.

6 Q. In one of the statements it said that we were late
7 getting you home. My recollection is 8:00 that you were
8 supposed to be home. What is yours?

9 A. It was eight.

10 Q. And how late were we?

11 A. We were just a few minutes late. We were not
12 extremely late.

13 Q. And what did we do?

14 A. We went in, like I said, I told Mom, you know, I'm
15 sorry that I'm running late and, you know, you told her that you
16 were sorry, that, you know, that had gotten behind what we were.

17 Q. Okay.

18 And at the last trial you recanted your police
19 statement, a lot of what you said at the district. You stand
20 behind that today?

21 A. Yes, I do.

22 Q. And have we had any contact since the last trial,
23 Josh?

24 A. No, we have not.

25 MS. MCBRIDE: Thank you.

1 THE COURT: Thank you. You can step
2 down.

3 (Court recessed for approximately
4 15 minutes.

5 MS. MCBRIDE: Plaintiff calls Kathleen
6 Hills.

7 KATHLEEN HILLS,
8 First being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION BY MS. MCBRIDE:

11 Q. Morning.

12 A. Good morning.

13 Q. Well, you know why we're here. You testified in our
14 last trial and I just want to review or go back through what we
15 did then.

16 We both had a student, he was not my assigned student
17 but we had a student at Berea High School we're both familiar
18 with, Josh F [REDACTED] In fact, he was assigned to your class?

19 A. Yes.

20 Q. And what do you teach?

21 A. Well, I've taught, you know, every math class there
22 is except calculus in my years of teaching but Josh was in Math
23 Tech 4 Statistics.

24 Q. Okay.

25 And I failed to say, you are a veteran teacher of the

1 district. How many years have you worked for the school district
2 of Greenville County?

3 A. I believe it's 17. I left in '05 to take care of an
4 ill mother and last year I did half a year at J.L. Mann for that
5 -- They had a need.

6 Q. How long were you at Berea?

7 A. Oh, my entire teaching career was at Berea, with the
8 exception of, you know, a little at Southside this summer.

9 Q. Okay.

10 And over that period of time you've taught, I know,
11 hundreds of students. Tell me about Josh.

12 A. Well, Josh was a very, very bright young man. He was
13 in math tech 4 in a class where I had students that, some of
14 which had not passed the exit exam, which Josh could've been
15 doing college preparatory work but he had a lot of emotional
16 issues. A lot of drama would go on with Josh in the classroom
17 where Josh between other students, Josh, Josh with notes,
18 sleeping in class but he would -- It would come out that Josh
19 was a homosexual. It would come out that Josh, his parents were
20 abusive and, according to Josh, which most of my, well, at least
21 half of my high school students, their parents hated them were
22 abusive so I always took that with a grain of salt.

23 But the big thing was the suicide. Other students
24 would say Josh had been suicidal. You know, he himself admitted
25 to suicide attempts, which I take that very seriously, as a

1 teacher, and would've gone to the guidance. Well, I did go to
2 guidance and alerted, in case they didn't already know because I
3 had Josh in '03 and this would've been August, September,
4 because that's really out of what I was doing. I was teaching
5 math.

6 THE COURT: Okay.

7 Now we can move on, Ms. McBride.

8 MS. MCBRIDE: Okay, okay.

9 Q. So with Josh in your room was there an incident where
10 you caught him writing about suicide?

11 A. To the best of my knowledge, you know, it's been a
12 long time but I do remember, you know, even talking to Josh in
13 the hallway. I don't remember all the specifics but I do
14 remember Josh was definitely, had either attempted suicide or
15 was thinking about suicide, which I have known people who have
16 committed suicide. I take it very seriously when someone
17 mentions suicide.

18 Q. And what did you do as a result of that?

19 A. Went to guidance and Josh also wanted -- Well, lot of
20 students like to get out of class all the time but Josh seemed
21 to have a legitimate. He would want to -- Causing kind of a
22 disturbance in my class. I would go to and make them aware.

23 Miss Fanning would've been assigned to Josh because
24 it's by alphabet or by grade level.

25 THE COURT: Ms. McBride, please, let's

1 move it on.

2 MS. MCBRIDE: Okay.

3 Q. What did you speak with her about, specifically? In
4 other words --

5 A. Well, number 1, making her aware for my peace of
6 mind.

7 MR. CLARKSON: Object to relevance, Your
8 Honor.

9 THE COURT: Let's move on, please.

10 MS. MCBRIDE: Okay.

11 THE COURT: Move on, Ms. McBride.

12 MS. MCBRIDE: I'm trying to prove --

13 THE COURT: No. I want you to move on
14 to something else.

15 Q. So what happened as a result of approaching Kim
16 Fanning?

17 A. Well, I made her aware of the problems Josh had and
18 Josh also wanted to leave my room to go to your room.

19 Q. What did he tell you about that?

20 A. She, under the circumstances, she was in agreement
21 with it

22 Q. Okay.

23 And so it was, basically, her who okayed that. He
24 needed to get away from a stressful situation.

25 A. I don't know if anyone at Berea High School, other

1 than the principal, would have permission to have a child out of
2 a class but, yeah, we try not to bother the principal with every
3 little thing.

4 So guidance department was aware that when, if need
5 be, for me to continue teaching math to the other students and
6 for him to be able to have a shoulder to cry on, could go over
7 to your classroom, which was almost directly across the hall from
8 mine. We were on the same hallway at school.

9 Q. Okay. All right.

10 And so how many notes would say that I wrote before,
11 you know, you had that conversation with Kim Fanning and she
12 said just let him go?

13 A. I really don't remember how many notes but Josh, on
14 some occasions, if memory serves me correctly, would come to me
15 insisting to go over to your room.

16 Josh, like I said, had a lot of problems, lot of
17 issues, lot of drama going on, and I would --

18 THE COURT: Now, please, ma'am, let's
19 move it on.

20 MS. MCBRIDE: Okay. Okay.

21 Q. I guess, you've been teaching a long time and I
22 think you've already established that teachers don't have the
23 authority to take students out of their classes?

24 A. Correct.

25 Q. Okay.

1 At what point does the teacher say, you know, you're
2 writing too many notes and I'm going to the administration? I
3 mean do you see this? In all the years you've been teaching do
4 you know any teachers who let their students just go with
5 teachers because teachers said so?

6 A. No.

7 Q. That would be something that the principal would need
8 to know about?

9 A. The number 1 thing is I'm getting paid to teach the
10 students that are in my class and they should be with me in my
11 classroom.

12 Q. Right.

13 And so is that something the principal should've
14 known about, if the teacher was taking students from a class on
15 a regular basis? Or was even try to. If the teacher was trying
16 to take a student out of class every day should that principal
17 know about that?

18 A. In Josh's situation in my classroom, Josh was --

19 THE COURT: You need to answer the
20 question she's asking you, please, ma'am, yes or no.

21 A. Yes.

22 Q. Thank you.

23 MS. MCBRIDE: No more questions.

24 THE COURT: All right.

25 Any questions?

1 MR. CLARKSON: Very briefly.

2 CROSS-EXAMINATION BY MR. CLARKSON:

3 Q. Miss Hills, you did give a witness statement to
4 Investigator Lambert, did you not? And Officer Oslager? Isn't
5 that your statement?

6 A. Yes. This is my signature but I don't remember it
7 being a female officer. I definitely remember being with
8 Officer Oslager but, the best of my knowledge, it was with
9 another -- Yes, and right there it says Leslie Lambert but it
10 seemed like I was with a man, it was two male officers.

11 Q. Well, my question is, is that your signature?

12 A. That is my signature.

13 Q. Did you sign it twice?

14 A. I did.

15 Q. And did you initial it four times?

16 A. Yes.

17 Q. Thank you.

18 MR. CLARKSON: We'll offer this as next
19 exhibit.

20 THE COURT: Any objection?

21 MS. MCBRIDE: No, no objection.

22 (Statement entered into evidence as
23 Defendant's Exhibit 5 without objection.)

24 MR. CLARKSON: And that's all the questions
25 I have.

1 THE COURT: Thank you.

2 MS. MCBRIDE: I have one more question,
3 please, sir.

4 REDIRECT EXAMINATION BY MS. MCBRIDE:

5 Q. You pointed out that you see Principal Roach's
6 signature at the bottom of this page and he was present when you
7 gave this statement?

8 A. I don't remember Principal Roach being present when
9 I gave that statement. I remember it being myself and two male
10 officers, to the best of my --

11 Q. And he was the principal of the high school?

12 A. Yes.

13 Q. When you gave this statement?

14 A. Yes.

15 Q. And he signed here saying that he saw you sign this
16 statement. So your boss stood over you while you gave this
17 statement, is that correct? Your boss. Bill Roach who was your
18 boss.

19 I'm just asking. I'm not attacking you.

20 A. To the best of my knowledge, when I gave this
21 statement it was Officer Oslager and another male officer.

22 Q. All right.

23 You've never seen this lady right here with the long
24 hair?

25 A. I don't remember that officer.

1 THE COURT: All right, she doesn't
2 remember.

3 MS. MCBRIDE: Thank you.

4 THE COURT: She is to be excused?

5 MS. MCBRIDE: Yes.

6 THE COURT: Thank you.

7 Okay, now, next witness.

8 MS. MCBRIDE: The plaintiff calls Deputy
9 Oslager.

10 Before we get started here, I need to try to
11 find out some documents that y'all had picked up from the last
12 trial that was exhibits that had been marked from Officer
13 Lambert's report. Do you want me to resubmit new ones or do we
14 want to use the ones in the past?

15 THE COURT: New ones.

16 MS. MCBRIDE: Okay. All right.

17 DANIEL OSLAGER,
18 first being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION BY MS. MCBRIDE:

21 Q. Morning.

22 A. Good morning.

23 Q. You are Daniel Oslager, correct?

24 A. Oslager, yes, ma'am.

25 Q. Oslager, but you're fondly known at Berea as Officer

1 O?

2 A. Yes, ma'am, I was.

3 Q. And the teachers call you Officer O, the students
4 call you Officer O and there's no disrespect; it's a fond --

5 A. It was a coined name from prior to being a resource
6 officer at Berea High School I was an elementary school D.A.R.E
7 officer where I taught drug prevention classes in elementary
8 school and for them to facilitate speaking with a police officer
9 it was just a coined name and it sort of has followed me for the
10 years.

11 Q. Okay.

12 So how long have you been an SRO? That's a student
13 resource -- school resource officer.

14 A. I have been for, this is my thirteenth year.

15 Q. Okay.

16 How many years have you been at Berea? Or were you
17 Berea.

18 A. I was at Berea for 11.

19 Q. Eleven years.

20 Who hired you there? Do you remember?

21 A. Well, I wasn't hired there. I was appointed by, at
22 that point in time Sheriff Johnny Mack Brown, due to some school
23 related shootings that had occurred with Columbine and one
24 closer in Georgia. The Sheriff Brown, at that time, he felt
25 that it was more necessary to take the D.A.R.E officers and

1 transfer us over to a --

2 THE COURT: Sir, in all due respect, we
3 don't need to go any further --

4 A. Okay.

5 MS. MCBRIDE: We'll move on. I walked him
6 there. Okay.

7 Q. So while you're at Berea you come in contact with a
8 student named Josh F [REDACTED], is that correct?

9 A. Yes, ma'am.

10 Q. Do you remember what point you met Josh?

11 A. Prior to the day here?

12 Q. Yes, prior to his arrest, my arrest.

13 A. Okay.

14 I didn't actually meet but the day prior to your
15 arrest was the situation that involved where you had made the
16 complaint in regards to a stolen automobile.

17 Q. He was arrested.

18 A. That I'd actually met him

19 Q. Right. Okay.

20 So you never talked to him about any allegations of
21 child abuse?

22 A. No, ma'am.

23 Q. Okay.

24 Someone approached you about emancipation process, is
25 that correct?

1 A. The guidance counselor had called me and told me the
2 young man had had some situations that wanted to know about
3 emancipation and what constituted how to go about the process to
4 declare himself emancipated.

5 Q. Okay.

6 You remember who that guidance counselor was?

7 A. I believe it was Miss Fanning.

8 Q. Miss who? Fanning?

9 A. Fanning.

10 Q. Okay.

11 Could you explain what the emancipation process is?
12 Because I have no idea.

13 A. Emancipation process is a situation where a juvenile
14 under the age of 18, that they feel, for whatever purpose, that
15 they want to be declared a adult, I guess is the most common way
16 to understand it.

17 At 14 or 13 years old you can actually represent
18 yourself, have an attorney go through the family court process
19 and have yourself declared an adult so that you would -- for
20 signatures, property, those kind of things.

21 Q. Okay.

22 Is it -- It's kind of like they divorce their
23 parents, is that what someone told Josh?

24 A. Well, I don't know what someone told Josh.

25 Emancipation is not divorcing your parents. It's,

1 basically, going through the court system to declare yourself an
2 adult.

3 Q. Okay.

4 And so you can leave the home without having to
5 report to your parents anymore?

6 A. You're declared an adult, yes, ma'am.

7 Q. Okay. Thank you. All right.

8 There's been some speculation that I was the one
9 helping Josh to have himself emancipated. In fact, your boss at
10 the last trial said that I was the one who had approached you.

11 THE COURT: Please, ma'am, you're
12 testifying now.

13 MS. MCBRIDE: Okay.

14 Well, I like to present the transcript from
15 the last trial and we'll go over that in here.

16 MR. HARJEHAUSEN: I don't believe that's
17 the proper way to go about it.

18 MS. MCBRIDE: Well, they read from it the
19 last time.

20 Here's the things, Your Honor.

21 THE COURT: Well, this is another trial.
22 We're not --

23 MS. MCBRIDE: I know.

24 Well, who told his boss, let me just ask him
25 that.

1 Q. Who told your boss I was the one helping Josh to be
2 emancipated.

3 A. Which boss are you directing?

4 Q. Shea Smith, I'm sorry.

5 A. Okay.

6 Q. He testified that I had helped Josh assist in
7 emancipation process. Who told your boss that?

8 MR. HARJEHAUSEN: Objection, Your Honor.

9 THE COURT: I sustain the objection.

10 A. I do not know.

11 Q. Okay.

12 Let's just move to the events of September 24, okay?
13 We'll go late in the afternoon when you pulled into the parking
14 lot. You were approached by students and myself and what
15 happened in that conversation?

16 A. Is this where you're declaring -- you had spoke to me
17 about your car, that you thought your car possibly had been
18 stolen

19 Q. Been stolen, that's correct.

20 A. It was just after lunchtime.

21 Q. Okay.

22 You're sure about that?

23 A. I don't know the exact time.

24 Q. Just after lunch, it was late in the day, right?

25 Last block. Okay. It was approximately 10 to 3.

1 When you pulled into the parking lot did you get the
2 idea that I genuinely did not know where my car was?

3 A. Yes.

4 Q. You believed me?

5 A. Yes, ma'am.

6 Q. Okay.

7 And me and my students were looking for that car and
8 in pulls the car. Who was driving that car?

9 A. Okay.

10 At the time that you approached me about someone
11 taking your car, there's a period of time there, because when
12 you first approached me you even made the comment that you felt
13 that it could possibly -- that your husband may have had it
14 because you were going through some marital problems.

15 Q. Yes.

16 A. And then I made the comment, well, do you want me to
17 report it stolen, do you want to check with him, and at that
18 point in time you said, well, I don't think that he has gotten
19 it or you felt that he didn't get it and you said I want to
20 report it stolen. So I went through the process where I
21 notified the sheriff's office.

22 I called the sheriff's office so I could get a case
23 number that's assigned to the incident and I give them the
24 information about the car so that we can do -- let other police
25 officers know that the car was stolen, let them look for it.

1 And that's when I'd start my documentation process.

2 Q. If this took place at 3:00 Josh is obviously missing
3 school, is that correct? If it's 3:00, school's not out and
4 he's in my car he's missing school.

5 A. I don't know if he was missing from school or not. I
6 know that he drove back into the school parking lot --

7 Q. I mean he was --

8 A. -- later on in the afternoon.

9 Q. -- missing his classes. If it's 3:00.

10 A. I am assuming so, yes.

11 Well, later on he pulled in in your car.

12 Q. Well, I hope so because the majority of this
13 investigation you based on the fact that I --

14 MR. HARJEHAUSEN: Objection.

15 THE COURT: Yes, ma'am.

16 Q. When he pulled into the parking lot you go running,
17 pulled the door open and you pulled Josh out, is that fair?

18 A. I placed him under arrest.

19 Q. Yeah, you did.

20 And you put him down head first on the hood real
21 hard. Was he resisting?

22 A. I don't think I put him on the hood of the car. I
23 think I, actually, leaned him up against the back of the car
24 door but I mean it was eight years ago.

25 Q. Well, what happened while you were handcuffing him?

1 What happened in that parking lot? What happened?

2 A. Well, I placed him in the -- I had put handcuffs on
3 him and placed him I the back of the patrol car.

4 Q. Before that. Before that.

5 Did he and I have any conversation?

6 A. Oh, he was hollering and screaming at you.

7 Q. Hollering and screaming how? What did he say?

8 MR. HARJEHAUSEN: Objection, Your Honor.

9 THE COURT: No, I'll allow that.

10 Go ahead.

11 A. I don't remember what he said.

12 THE COURT: He doesn't remember. Move
13 on.

14 Q. Was the apologizing? For taking my car?

15 A. I think he said something that he was sorry, yes.

16 Q. Okay.

17 So did it appear that I had loaned him that car? If
18 he was apologizing for having my car did I loan him the car?
19 It's a simple question.

20 A. I don't know but if you reported it stolen I'm
21 assuming you didn't loan it to him.

22 Q. Okay.

23 Well, one of the charges against me was that I had
24 loaned him my car, I enticed him from school, gave him your car.
25 So why I was charged with that if he was apologizing for having

1 my car?

2 A. Restate your question.

3 Q. I said that if he's screaming to me, Miss McBride,
4 come back, I'm sorry, I had to go to legal aid, I'm sorry, I'm
5 sorry, is it not obvious that I did not loan him my car? Why
6 was I charged with taking him out of his class and letting him
7 take my car?

8 THE COURT: Now, Ms. McBride, it's not
9 his job to make any determination what somebody else did. Now
10 move on to something else, please, ma'am.

11 Q. So later that day you take Josh to the police
12 station, is that correct?

13 A. Yes, ma'am.

14 Q. And you testified before that his parents were there
15 the whole time. You made that statement.

16 A. They weren't there the whole time. They responded to
17 the law enforcement center.

18 Q. Right, after you were through they came down and
19 signed him out, right?

20 A. No, that's not correct.

21 Q. So you're gone stand by the story that they were
22 there the entire time?

23 A. They were not there the entire time.

24 Q. Well, I mean while he gave a statement.

25 A. I responded to the law enforcement center where I

1 went down into the juvenile division, okay? While I'm in the
2 juvenile division he is starting to tell me things. I told him
3 that his -- I gave him his Miranda warnings. I explained to him
4 it was in his best interest at this point in time not to talk to
5 me till his parents got there.

6 We have a policy at the sheriff's office, we do not
7 interrogate juveniles without parents present.

8 Then his mother arrived with his father. I asked
9 them to sign the Miranda forms and that's when I took the
10 statement from him detailing what he had said.

11 Q. Okay.

12 I understand you were in conversation with Mr. Roach
13 numerous times while you took that statement. Is that correct?

14 A. I talked to him two or three times over the telephone
15 because when Josh would tell me a particular point of -- He
16 would make a statement within his -- while talking in reference
17 to the user name and the password. I did call him but that's,
18 more or less, to verify, verification of the statement that he's
19 giving me.

20 If someone tells me that they own a 2007 car I'm gone
21 call and I can run the computer and check to see if they own a
22 2007 car. It was a way of verifying what he was telling me.

23 He told three different, two or three different
24 things. One was about the first name of a student. The
25 student's name was, they called him Tim Smith, and he told me

1 his first name was Lionel. I called Mr. Roach, I said, can you
2 tell me what this student's first name is? He verified what,
3 the information that I told him.

4 Q. He was in my room. Of course he knew my students.

5 THE COURT: No. Please don't.

6 MS. MCBRIDE: I'm just trying to get into
7 the mentality.

8 THE COURT: Well, I don't care what
9 you're trying to do.

10 MS. MCBRIDE: Okay.

11 THE COURT: You ask questions and let
12 the witness answer, okay?

13 MS. MCBRIDE: Okay.

14 Q. If he -- If he's trying to get out of trouble does it
15 not make sense he's gonna tell you what you want to hear

16 MR. HARJEHAUSEN: Objection, Your Honor.

17 THE COURT: I sustain the objection.

18 Q. Did you threaten him with a 1-year felony charge if
19 he didn't give those statements?

20 A. No.

21 Q. Why did you take a statement second day and you
22 walked him through a house that you knew he'd been a week before
23 because I called you when he ran away from home?

24 A. Because earlier -- To verify what he's telling me.
25 He's telling me that he is a teacher's house. I asked him,

1 describe the house to me. Well, if you do in the door this is
2 here. It's a way of verification of the statement that he's
3 provided.

4 Q. Okay.

5 Did you know that he was at my house on the twentieth
6 when hear ran away from home? Was that not reported to you on a
7 Saturday afternoon?

8 A. Okay.

9 You called me and told me that you thought he was at
10 your house and you thought me might be a runaway --

11 Q. Not that I thought he was at my house, he was.

12 MR. HARJEHAUSEN: Objection --

13 MS. MCBRIDE: I'm sorry. I apologize.

14 THE COURT: Now, Ms. McBride, you --

15 MS. MCBRIDE: I'm sorry. I feel emotional
16 about it myself.

17 THE COURT: Let me explain something to
18 you. When you call a witness it's your witness and you cannot
19 cross-examine that witness, okay?

20 MS. MCBRIDE: Okay.

21 THE COURT: All right.

22 You have any questions? You through?

23 MS. MCBRIDE: May I establish for this
24 purpose that he's a hostile witness, an adverse witness?

25 THE COURT: Well, it's a little bit late

1 to do that on this witness, okay?

2 MS. MCBRIDE: Okay.

3 THE COURT: All right. Anything else?

4 MS. MCBRIDE: Yes, sir.

5 Q. When I called you Saturday you were on duty
6 elsewhere. So I'm curious. What happened? Are you admitting
7 that I called? Well you agree that I called you that day?

8 A. Oh, yes, ma'am, you called me.

9 Q. And what did you tell me to do?

10 A. You told me that there was person at your house that
11 you thought was a runaway and I told you that if think that
12 person is a runaway to call the sheriff's office and if he's at
13 your house to request a deputy to come to your house to take
14 custody of that run-away child.

15 Q. And what did I do?

16 A. I'm assuming you called the sheriff's office.

17 Q. In fact, you know I did, don't you?

18 MS. MCBRIDE: We can have him look at his
19 testimony, can't we?

20 THE COURT: Move in.

21 A. I don't know. Do I know? Yes, you called the
22 sheriff's office.

23 Q. You followed up. Did you follow up?

24 A. No.

25 Q. At the last trial you followed up and you said that

1 boy was returned, I had a deputy to pick him up. You remember
2 that?

3 A. Yeah. I mean I just, I just said that you did call
4 the sheriff's office, yes.

5 Q. And that boy went home; he did not stay with me.

6 Did I aid and abet him as a runaway? At any point?

7 MR. HARJEHAUSEN: Objection, Your Honor.

8 THE COURT: I sustain the objection.

9 Moot question.

10 Q. Why was I charged with assisting this young man in a
11 run-away? Tell me how you came to that --

12 THE COURT: Ms. McBride, he cannot
13 answer that question on why somebody was arrested. That's not
14 his job.

15 MS. MCBRIDE: He arrested me. He signed a
16 warrant.

17 THE COURT: Don't argue with me.

18 A. Ma'am, I did not sign warrant on me.

19 Q. You were one of the signatures. Or two signatures on
20 the warrant. We'll look at that.

21 Two warrants. Whose signature?

22 A. I served the warrant; I did not sign the warrant. I
23 served process.

24 The affidavit, the affiant is Investigator Lambert,
25 that signed the warrant. I served the warrant.

1 THE COURT: All right.

2 He's answered that question.

3 MS. MCBRIDE: Okay. Okay.

4 Q. So you were there?

5 A. When you were arrested?

6 Q. During my arrest.

7 A. Yes, I was there when you were arrested for these
8 works.

9 Q. Okay.

10 Are you and Mr. Roach friends? Other than working
11 together?

12 A. Yes.

13 Q. Do you go to church together?

14 A. Do I go to church with him?

15 Q. Uh-huh.

16 A. I go to the same church as he does.

17 Q. You moved there after he became -- he came to Berea,
18 I believe, right?

19 A. I don't know when he started going to church there.

20 Q. How long have you been going to Monaghan Baptist
21 Church?

22 A. Two thousand and -- I'd have to figure out the ages
23 of my children.

24 THE COURT: Can you just approximate how
25 long, sir?

1 A. It would've been 2002, 2003.

2 Q. Was Mr. Roach already a member there when you joined
3 that church?

4 A. I don't know.

5 Q. Why don't you know?

6 MR. HARJEHAUSEN: Objection, Your Honor.

7 THE COURT: Doesn't know. Move on,
8 please, ma'am.

9 Q. And it's your testimony that y'all were -- strictly
10 had a working relationship?

11 A. No. We're friends. I know him.

12 Q. Pretty good friends.

13 A. I'm good friends with a lot of people.

14 Q. Yeah.

15 And you called that friend the day y'all were taking
16 me to jail and you conversed with him, did you not?

17 Do you do that in a crime? When your investigating a
18 crime do you call your buddies, even if he is the principal of
19 the school? How often do you do that when your signing a
20 statement against someone who you obviously knew disliked me?

21 MR. HARJEHAUSEN: Objection, Your Honor.

22 THE COURT: I sustain the objection,
23 instruct the jury disregard the comment of Ms. McBride.

24 MS. MCBRIDE: Okay.

25 I have no more questions.

CROSS-EXAMINATION BY MR. HARJEHAUSEN:

Q. Officer Oslager, in 2003 you were employed by the Greenville County Sheriff's Office, correct?

A. Yes, sir.

Q. And at that time what was your position?

A. I was a master deputy assigned to the school resource officer unit.

Q. And who did you report to?

A. At that time he was a sergeant. Shea Smith was my immediate supervisor.

Q. And who placed you as an SRO at Berea High School?

A. Sheriff Johnny Mack Brown.

Q. The school district have any input in to which officer gets assigned which school?

A. At that point in time I don't know. I think - and it's an opinion, understand that - because I worked on that particular side of town as a D.A.R.E. officer for such a pd of time that Dr. East expressed concern that he would like to have me as a resource officer there because of my ties to the community and that area.

Q. Now, when Miss McBride, excuse me, Miss Mann informed you that her vehicle was missing and might be stolen did you inform Mr. Roach?

A. I don't remember. I mean I don't recall. I don't know.

1 Can I -- And it just has come to me. Let me. I do
2 believe there as another assistant principal in the parking lot
3 at the time. I think his name was Mr. Howard (ph). So I would
4 say that the administration of the school was aware of the
5 larceny, or the report of the larceny. Because I do remember
6 that now.

7 Q. So the administration of Berea High School was aware
8 of Miss Mann's care being --

9 A. Yes.

10 I believe he was out in the parking lot at the time.

11 Q. Let me change gears. I want to ask you about
12 something.

13 Ask you briefly to take a look at Defendant's Exhibit
14 1 and what is that?

15 A. It's a common form that we do -- that we do for
16 Miranda warnings. A person's rights.

17 Q. And is that what you read to Mr. F [REDACTED]?

18 A. Yes, sir, I did.

19 Q. Okay.

20 And has it got your signature on it?

21 A. Yes, sir, it does.

22 Q. Thanks.

23 After you received the statements from Mr. F [REDACTED]
24 what else did you do with regard to the investigation of the
25 matter? In other words, what was the next step?

1 A. In the process of the charges related to the vehicle?

2 Q. Yeah.

3 A. After meeting with -- His parents came to the law
4 enforcement center, went through, we typed the statement and at
5 that time his parents were given a -- I requested that they sign
6 a family court release to custody form, which they did, and then
7 he was -- It's a sheet where, much like an adult person would be
8 booked on adult charges. A juvenile is processed in the same
9 manner, where they would go and have fingerprints and photograph
10 taken if the particular charge mandates fingerprints being
11 taken. That doesn't happen every time.

12 Q. Thank you.

13 How did Leslie Lambert and Shea Smith get involved in
14 this?

15 A. Because of the course related to the statement I
16 called my supervisor who was Sergeant Smith at that time,
17 explained to him that there could possibly be a situation in
18 regards to -- involving Josh and Investigator Smith, because I'm
19 assigned at the school, we have a, it's not a policy but it's a,
20 just a written kind of thing that if that's the case, then we
21 don't investigate it ourselves. We have an outside investigator
22 come in so there's no improprieties kind of thing.

23 Q. So in this case, with respect to Miss Mann, who was
24 the outside investigator that came in?

25 A. Investigator Lambert.

1 Q. And you assisted Officer Lambert with the
2 investigation at that point?

3 A. That occurred the next morning. It wasn't that
4 night. That was the next morning.

5 Yes, I did sit with some witnesses and take
6 statements with him, just helping her.

7 Q. And you went down to the high school to get some
8 statements?

9 A. Yes.

10 Well, she actually came there, that's correct.

11 Q. Okay.

12 (Statement marked as Defendant's
13 Exhibit 6 for identification only.)

14 Q. Take a look at what's been marked as Defendant's
15 Exhibit 6 for me. If that one of the statements that was taken
16 the next day, on September 25, 2003?

17 A. Yes, sir.

18 Q. And who, who was the statement taken from?

19 A. A Miss Carolyn Kite (ph).

20 Q. Okay.

21 And does that statement bear your signature on it?

22 A. Yes, sir, it does.

23 Q. And does that appear to be a true and accurate copy
24 of the statement Miss Kite gave you?

25 A. Yes, sir.

1 Q. All right.

2 And when Miss Kite gave you that statement she
3 reported that Miss McBride had let Josh out 14 to 18 times out
4 of school, is that right?

5 Can you take a look at that statement?

6 A. If I can glance over it, please.

7 Yes, it does say that, says he has missed about 14 to
8 18 days due to notes being -- to be in Miss McBride's room.

9 Q. And what is the sentence after that say?

10 A. I think there's only one time that I received a note
11 from Miss Fanning in guidance.

12 Q. And what does the next statement say?

13 A. Most of the notes were written by Miss McBride.

14 MR. HARJEHAUSEN: Your Honor we would
15 move that in to evidence.

16 THE COURT: All right.

17 You have any objection to that?

18 MS. MCBRIDE: No, sir.

19 THE COURT: All right.

20 Put it in.

21 (Defendant's Exhibit 6 entered in to
22 evidence without objection.)

23 Q. Now, statements from Mr. F [REDACTED], did he indicate
24 that he had some knowledge of grading software?

25 A. Yes, sir.

1 Q. Do you recall whether or not he reported have access
2 to any sort of CDs for grading software?

3 A. Yes. There was a -- There was a disk for Novell, I
4 think.

5 Q. Do you recall where he had that?

6 A. He had it at his house.

7 Q. And did he report that to you when you were
8 interviewing him and he gave his written statement?

9 A. I believe so. Let me look at the statement.

10 Yes.

11 Q. And at some point did you go to Mr. F [REDACTED]'s house
12 and obtain a copy of the disk?

13 A. Yes, sir, I did.

14 (CD marked as Defendant's Exhibit 7 for
15 identification only.)

16 Q. Deputy Oslager, I ask you to take a look at what's
17 been marked as Defendant's Exhibit 7. You recognize that?

18 A. It looks like the disk that I recovered from Josh
19 F [REDACTED]'s residence.

20 Q. Okay.

21 And that's a disk that you obtained when you went to
22 his house and he gave it to you?

23 A. Yes, sir.

24 Q. Has it got a numerous on the top, top right there?

25 A. The case number or the -- There's --

1 Q. It's got a criminal case number on it, right?

2 A. Correct.

3 Q. And that's criminal case number that during your --
4 the sheriff's office's investigation?

5 A. That's correct.

6 MR. HARJEHAUSEN: Your Honor, we'd move
7 that in to evidence.

8 THE COURT: Do you have any objection to
9 that?

10 MS. MCBRIDE: No, sir, I do not.

11 (Defendant's Exhibit 7 entered in to
12 evidence without objection.)

13 THE COURT: Now, does that disk contain
14 confidential information?

15 MS. MCBRIDE: No, sir. It's blank.

16 MR. HARJEHAUSEN: I don't believe so,
17 Your Honor.

18 A. My understanding the disk is just an operating
19 system; it doesn't have any information.

20 THE COURT: All right.

21 (Statement marked as Defendant's
22 Exhibit 8 for identification only.)

23 Q. I ask you to take a look at what's been marked as
24 Defendant's Exhibit 8. You recognize that?

25 A. It's a statement from Kim Fanning.

1 Q. And Kim Fanning was the guidance counselor or a
2 guidance counselor at Berea High School at that time?

3 A. Yes, sir.

4 Q. Has that statement got your name on it as a witness?

5 A. Yes, sir.

6 Q. And does it have the signature of Investigator Leslie
7 Lambert on it?

8 A. Yes, sir.

9 Q. And is it signed by Miss Fanning?

10 A. Yes, sir.

11 Q. Okay.

12 Does that appear to be a true and accurate copy of
13 the statement that Miss Fanning gave to you during the
14 investigation?

15 A. That's correct.

16 MR. HARJEHAUSEN: Your Honor, we'd move
17 that in to evidence.

18 THE COURT: Do you have any objection to
19 that?

20 MS. MCBRIDE: I do not.

21 THE COURT: All right.

22 Put it in.

23 (Defendant's Exhibit 8 entered into
24 evidence without objection.)

25 MR. HARJEHAUSEN: No further questions,

1 Your Honor.

2 THE COURT: All right.

3 You have some questions of this --

4 MS. MCBRIDE: I do.

5 At this time I would like to enter that
6 transcript and I would also like to enter a deposition that we
7 did on Deputy Oslager.

8 THE COURT: You can open it up.

9 That's his deposition?

10 MS. MCBRIDE: It is. This is a copy of
11 the original. It's actually at the appellate court, my copy, and
12 I spoke with Mr. Heyward Clarkson yesterday and he said he would
13 not object to me using a copy of the original because the
14 appellate court, my lawyer has the original transcript.

15 This is from the last trial.

16 THE COURT: Okay.

17 For what purpose do you intend to use that?

18 MS. MCBRIDE: Mr. Oslager, there's a
19 conversation in here where he had a direct order from his
20 lieutenant not to get involved in this situation.

21 MR. HARJEHAUSEN: Your Honor, I would
22 object to the introduction of the whole transcript. If she
23 wants to cross-examine deputy Oslager based on specific portions
24 of his prior testimony, that's one thing --

25 THE COURT: You can do that.

1 MS. MCBRIDE: If he perjures himself can
2 we then pull this out?

3 THE COURT: Ma'am, you can use -- If
4 that's a transcript of his testimony --

5 MS. MCBRIDE: It is.

6 THE COURT: -- of a prior trial, then
7 you may use that to cross-examine him because he's your
8 witness --

9 MS. MCBRIDE: That's right.

10 THE COURT: -- but I'll let you ask him
11 some questions.

12 MS. MCBRIDE: Okay.

13 First of all, this is his original copy of
14 the deposition.

15 THE COURT: All right.

16 Open it up and give it to him.

17 MS. MCBRIDE: Okay.

18 (Deposition of Daniel Oslager marked as
19 Court's Exhibit 1.)

20 REDIRECT EXAMINATION BY MS. MCBRIDE:

21 Q. First of all, page 29, I believe. Will you read --
22 Let's see. We'll do this like round-robin. I'll read the
23 question there at the top of page 29 and did they come straight
24 to your office? Kind of take me through what transpired with
25 the two of them. Did you sit down and talk to the two of them or

1 did they just immediately start interviewing? What happened?
2 And this is in regards to your superiors, Leslie Lambert and
3 Shea Smith. That was who they were talking about that.

4 THE COURT: What was your answer?

5 A. I don't understand what her question is.

6 Q. Here's the question. I just read the question and
7 the they in this question are your superiors.

8 THE COURT: Just tell me what line. He
9 can read his answer.

10 A. Okay. All right.

11 You're wanted me to read line number 8?

12 Q. I do.

13 A. Okay.

14 Said, Well, I mean I met with Leslie or Investigator
15 Lambert in regards to what I had, showed her my police report in
16 regards to the juvenile and the statements that he made and
17 then, basically, you tell me how I need to help you.

18 Q. All right.

19 A. And the reasoning is when a school atmosphere anytime
20 there's an accusation against a teacher or a staff member, or
21 something like that, generally the resource officer in the
22 school does not deal with that directly. We do, in other words,
23 I would file an initial police report and then it gets sent to
24 an investigator for followup. That removes us out of that
25 scenario, I guess.

1 Q. Read that last line again. It says what?

2 A. And I would file an initial police report and then it
3 gets sent to an investigator for followup. That removes us out
4 of that scenario, I guess.

5 Q. Okay.

6 So where were you removed out of the scenario?

7 Let's flip back to page 22 and start on line -- We'll
8 start at the top and I'll read that question.

9 Or just being, you know, you participated in any way.
10 You participate in any way.

11 Now you do the answer starting on line 3.

12 A. I mean, generally, no. They do not come in when we
13 do interviews. That's not a -- I mean he could have been
14 advised of, at some point in time I'm assuming that, you know,
15 assuming that we told him, you know, what the charges were going
16 to be and then some of this stuff in reference to because he had
17 made a comment about a CD that was given to him to put on his
18 laptop or put on his computer at home.

19 Q. He being Josh?

20 A. You want me to read the next --

21 Q. I do.

22 A. Okay.

23 Josh, yes, sir. I mean other than what the charges
24 were, you know, he did not come into the interviews that I know
25 of.

1 Q. You're talking about Principal Roach. I just want to
2 clear that up.

3 A. Of course, of course, I think I sat in one or two of
4 them.

5 Q. Okay.

6 You took some of the -- You took a number of -- You
7 played an active participation in all of those interviews, is
8 that right?

9 A. In every one of the, no, sir.

10 Q. Not every one of them.

11 A. Not every one of them

12 Q. Just a good number of them?

13 A. Yes, sir.

14 Q. Okay.

15 You helped -- Flip the page for me.

16 You helped?

17 A. I was present there during the conversation, yes

18 Q. Okay.

19 Talking about the witnesses right? So where were you
20 out of this scenario after Smith and Lambert took this
21 investigation over? I'm not missing you.

22 Let's look at the transcript, over on page --

23 THE COURT: Are you reading now from --

24 Q. -- 394.

25 MS. MCBRIDE: May I pull 394? From this

1 transcript?

2 Q. Again, I'll read the question.

3 To confirm what Josh was telling you was true and
4 correct.

5 THE COURT: What are you reading from
6 now?

7 MS. MCBRIDE: This is the trial transcript
8 from the last trial.

9 Q. I want to get really sincere on the page so I'll
10 start at line 7. I say, okay, did you do any other
11 investigation in to these matters.

12 And what was your answer?

13 THE COURT: What was your answer?

14 A. Well, as a result of the conversation Sergeant Smith
15 said at the sheriff's office we have a policy that if it
16 involves a teacher as a suspect of a crime or anything, that
17 it's not handled by the school resource officer within the
18 school, that it's handled by a separate entity. So through the
19 course of calling him he called Investigator Lambert and advised
20 Investigator Lambert to meet me at the school the next morning.

21 Q. Did you know that she never even talked to the victim
22 in this case? She's supposed to be the lead investigator.

23 A. You'll have to discuss that with her, Miss McBride.

24 Q. I know, I know.

25 You took the majority of the witness statements yet

1 you were not supposed to involved. Why were you heavily
2 involved if your superior told you step away?

3 A. My superior didn't tell me to step away.

4 Q. Well, it sounds like it. You contacted him and he
5 said --

6 THE COURT: Let's not argue with the
7 witness.

8 MR. HARJEHAUSEN: Objection, Your Honor.

9 THE COURT: Please, ma'am.

10 MS. MCBRIDE: Okay.

11 Q. At the time Shea Smith was your supervisor what was
12 his title?

13 A. Sergeant.

14 Q. Sergeant.

15 I mean he worked for what area of the sheriff's
16 department?

17 A. He's assigned to the school resource officer unit.

18 Q. Okay.

19 And he was, like, school services. And where is that
20 housed? Is that at the sheriff's department?

21 A. I don't know where. I don't remember where it was
22 housed in 2003.

23 Q. It was housed in the same place. Where is that?

24 MR. HARJEHAUSEN: Objection, Your Honor.

25 THE COURT: Now, please, ma'am.

1 A. We've had several offices. We've been --

2 THE COURT: I'm gone stop you from
3 questioning this witness if you don't mind what I'm telling you.

4 MS. MCBRIDE: Okay. I'm sorry.

5 THE COURT: Don't make any comment.

6 MS. MCBRIDE: Trying to get the right
7 answer.

8 Q. What is school services?

9 A. You're asking me?

10 Q. Yes.

11 What is that, that unit? What do they do?

12 A. Our unit is a school resource officer unit, okay.
13 We're attached to school investigations.

14 Q. This office right her look familiar to you?

15 THE COURT: Now, tell me, please, ma'am,
16 what this is in reply to.

17 MR. HARJEHAUSEN: Objection, Your Honor,
18 relevance.

19 MS. MCBRIDE: Oh. This is an exhibit.
20 This is an exhibit.

21 THE COURT: I'm saying you are now on
22 redirect of your own witness and you have a right to ask him
23 something brought out by this lawyer.

24 MS. MCBRIDE: And it is.

25 THE COURT: All right. Tell me what it

1 is.

2 MS. MCBRIDE: He said to him that the
3 school district was not involved in any way because they were
4 not employed by the school district but they are housed by the
5 school district.

6 THE COURT: What's that you have?

7 MS. MCBRIDE: This is Leslie Lambert's of
8 course and Shea Smith's at the time and it is on school district
9 property called school services.

10 THE COURT: I'm not gone allow that.
11 Go on to something else, please, ma'am.

12 MS. MCBRIDE: Okay.

13 I have no more questions.

14 THE COURT: Thank you.

15 You can step down.

16 MR. HARJEHAUSEN: Your Honor, may he be
17 excused, please?

18 THE COURT: Yes. You can be excused.

19 Okay, the next witness.

20 LESLIE LAMBERT,
21 first being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION BY MS. MCBRIDE:

24 Q. Good afternoon.

25 What is your official title again? I knew you were a

1 master deputy at one time.

2 A. I still am a master deputy.

3 Q. Okay.

4 And you're Investigator Lambert?

5 A. Yes.

6 Q. Okay.

7 You were the one that was called out to the school
8 when all of this originated with the stolen car and my arrest.

9 Can you tell me who called you?

10 A. Then Sergeant Smith, my supervisor called me and told
11 me he needed me to go over to Berea High School because they had
12 an employee allegation.

13 Q. Okay.

14 And, generally, when you are assigned an
15 investigation like this to do, what's the first thing you do
16 when you get there?

17 A. I will meet with -- Well, Sergeant Smith, he's
18 Lieutenant Smith now.

19 Lieutenant Smith had told me he was gonna meet me
20 over there so I met with him and I normally meet with the
21 administration and the resource officer - there's a resource
22 officer at the school - do I can get an idea of what's going on
23 and what the complaint is.

24 Q. Okay.

25 So when you came on to this investigation what was

1 the procedure you did?

2 A. I met with then Sergeant Smith, Officer Oslager and
3 Mr. Roach.

4 Q. Okay.

5 And what did they reveal to you in that first
6 conversation?

7 A. I was told that on the day prior Officer Oslager had
8 arrested a young man at the school for taking a teacher's car.
9 in the course of that he learned that the student had some
10 unusual contact with the teacher, unusual in the fact that it's
11 not just a normal student-teacher type relationship and there
12 were concerns being raised about what the relationship was.

13 Q. Okay.

14 Did anyone tell you that he was a gay young man?

15 A. I learned that later.

16 Q. Okay.

17 When they say an unusual relationship, can you tell
18 me what they meant by that?

19 A. Not your typical student-teacher relationship.

20 Q. Okay.

21 And, like, what made it not typical?

22 A. The fact that -- I'm trying to remember.

23 The fact that the teacher was not his classroom
24 teacher but he met with the teacher frequently, that he had been
25 given the use -- We learned he'd been given the use of her car.

1 It was very general in the beginning and we had to
2 talk to several people to bring into focus exactly what the
3 situation was.

4 Q. Do you know how many people you talked to that day?

5 A. No, ma'am.

6 Q. Okay.

7 But you started with Principal Roach.

8 A. That's normal.

9 Q. Okay.

10 Why is that normal if you have a victim and an
11 assailant, that it's normal to do that first?

12 A. Because the school is the one that brought the --
13 Well, the school was directly related in bringing the problem to
14 light.

15 When it's a parent that calls us directly we meet
16 with the parent. The parent had not called us. It had been
17 routed through the school so then I meet with the
18 administration.

19 Q. In the past it has always been stated that Officer O
20 was the one who initiated the investigation. So now it's the
21 school?

22 We already have the testimony. We can pull that.

23 Was it the principal or was Officer O?

24 A. Sergeant Smith is the one who called me. And told me
25 to meet over at the school.

Q. Okay.

So, then, why did you say the principal is the one who initiated the investigation?

A. He was in the room when everything -- It was very interrelated at this point because of the prior investigation from the incident the day before. Mr. Roach was already aware of the situation but we also bring the principal in to inform them of what the allegations are, to keep them abreast of the investigation and it was, basically, a round-table meeting to bring the information to light so I knew what I was doing there.

Q. When you said it was a round-table, did you ever speak to the victim Josh F [REDACTED]?

A. I don't believe he was at the school that day.

Q. And did you go to his home? Did you ever -- As part of a thorough investigation you talk to the victim. So did you go talk to a victim?

A. Officer Oslager went and did that.

Q. I didn't ask you if he did. I said did you.

A. No, sir. No, ma'am.

Q. Okay.

And so you signed off on the information he gave you.

A. Yes, ma'am.

Q. Uh-huh.

And so when -- Did you even talk to the victim's mother, the parents who were making the allegations that I was

1 interfering in their relationship?

2 A. I believe the only time I may have talked to her was
3 on the phone. That evening.

4 Q. Did you take a statement from her?

5 A. She provided a statement. It was nothing that I
6 officially sat down and took. She wrote up her knowledge and
7 her input and gave it to me at a later time.

8 Q. Okay.

9 So if you didn't talk to him and you didn't talk to
10 her except on the phone and you didn't do an official interview,
11 what was the basis of the things that you were arresting me on?
12 Is it all on the statements that Officer O took from all the
13 people that -- Once you got to the school there's all these
14 statements that he had taken. Is that what you based your
15 investigation on?

16 A. I based them on the statements from my six witnesses.

17 Q. Why were you called in if we were just gonna use what
18 his investigation? I don't understand why you were there if you
19 -- if you signed off on his work. That makes no sense to me.

20 MR. CLARKSON: Objection.

21 THE COURT: Yes, sir. I sustain the
22 objection, instruct the jury to disregard the comments by Ms.
23 McBride.

24 MS. MCBRIDE: That's all.

25 THE COURT: All right.

1 You have any questions?

2 MR. CLARKSON: Please The Court, Your
3 Honor.

4 CROSS-EXAMINATION BY MR. CLARKSON:

5 Q. Investigator Lambert, who do you work for?

6 A. Greenville County Sheriff's Office.

7 Q. Greenville County Sheriff's Office.

8 And you were assigned to do an investigation by your
9 superior at that time, Sergeant Smith?

10 A. Yes, sir.

11 Q. He's now a lieutenant?

12 A. Yes, sir.

13 Q. And you weren't investigation Josh F [REDACTED] were
14 you?

15 A. No, sir.

16 Q. Was the focus of your investigation Sherrie Mann?

17 A. Yes, sir.

18 Q. And when you did the investigation you filled out an
19 incident report after you finished your investigation, correct?

20 A. Correct.

21 Q. Is this a copy of your incident report?

22 A. Yes, sir.

23 Q. Okay.

24 MR. CLARKSON: We'd offer that.

25 THE COURT: Do you have any objection,

1 ma'am?

2 MS. MCBRIDE: I do not.

3 THE COURT: Thank you.

4 (Incident Report entered in to evidence
5 as Defendant's Exhibit 9 without objection.)

6 Q. Now, if you look at the -- What's the number there?
7 Exhibit?

8 A. Nine.

9 Q. Exhibit number 9, Investigator Lambert, is that what
10 you fill out after you have done your investigation?

11 A. The initial part, the first page and possibly a page
12 after, is done closely, as soon as we can after the incident has
13 occurred. And this following is afterwards.

14 Q. And so in your investigation of the allegations
15 against Miss Mann you took statements from, at least according
16 to this report, six witnesses, correct?

17 A. Yes, sir.

18 Q. And could you tell the jury who it is you took
19 statements from?

20 A. Now, these would be -- Let me qualify. I may not
21 have personally taken those statements but the sheriff's office
22 gleaned statements or gathered statements from the following
23 people.

24 Q. Okay.

25 A. Carolyn Kite, Kathleen Hill, Crystal Hunt, Linda

1 Bimkey, Kim Fanning and Christopher Bimkey.

2 Q. Okay.

3 And then, also, as part of the investigation we have
4 the two statements from Josh F [REDACTED] correct?

5 A. We have, yes, sir, there's a statement from Josh
6 F [REDACTED]

7 Q. Is that correct?

8 A. We've got -- I have one statement here from Josh
9 F [REDACTED]. The other one, in the report I refer back to the ca
10 number of the prior incident saying it was directly related to
11 this.

12 Q. Okay.

13 Do you have or original file here with you?

14 A. I have a copy of my original file.

15 Q. A copy of your original file?

16 A. Yes, sir.

17 Q. Would you look at that and tell me, is anything in
18 there, statement from Josh F [REDACTED] s parents? Is that in
19 there?

20 A. Yes, sir.

21 Q. So a statement from his parents was also included in
22 your investigation?

23 A. Yes, sir.

24 Q. How'd you get that?

25 A. I don't remember whether it was something the

1 parents typed up and brought to the school or they faxed it to
2 me or they gave it to Officer O. I don't remember.

3 Q. And it's signed by Elizabeth Ann F [REDACTED], Clarence
4 G. F [REDACTED], Jr. It's got their telephone number and home
5 address on the back, correct?

6 A. Yes, sir.

7 MR. CLARKSON: We'd offer this as exhibit
8 as part of the investigation.

9 MS. MCBRIDE: No objection.

10 (Statement entered in to evidence as
11 Defendant's Exhibit 10 without objection.)

12 Q. And did you consider this statement as part of your
13 investigation?

14 A. Yes, sir.

15 Q. What does the last sentence state for Mr. and Ms.
16 F [REDACTED]?

17 A. The very last sentence?

18 Q. Well, the last two, I guess.

19 A. Okay.

20 I do not think Mrs. McBride should be a teacher at
21 any school. She does not act enough like an adult and especially
22 not a teacher to be teaching kids.

23 Q. Thank you.

24 Now, officer Lambert, you prepared this incident
25 report and also a supplemental incident report, did you not?

1 A. Yes, sir.

2 Q. And in your incident report that we've offered as an
3 exhibit in evidence do you summarize the statements that you
4 took?

5 A. Yes, sir, I did.

6 Q. And after, during all that and summarizing the
7 statements did you and Sergeant Smith know what to do with what
8 you'd gathered and what charges should be brought and or not
9 brought?

10 A. It is common practice with the sheriff's office when
11 we have an employee allegation because the implications of such
12 are so serious, that we take the evidence we've gathered and we
13 present it to the solicitor's office to let them look over it
14 and determine whether or not it is a case that they would
15 prosecute. Prior to us signing any warrants.

16 Q. All right.

17 So if you will look at your supplement incident
18 report. I'm not sure which page it is but the page where
19 Sergeant Smith. You see this right here? About the third page
20 of supplement report.

21 A. Yes.

22 Q. Okay.

23 Read that paragraph to the jury, please.

24 A. Sergeant Smith apprised Howard Steinberg and Betty
25 Strom of the situation.

1 Q. Who is Howard Steinberg and Betty Strom?

2 A. Howard Steinberg is an assistant solicitor with the
3 solicitor's office. He's housed in the law enforcement center
4 and he acts as an liaison and resource for us when we have any
5 questions about a prosecution of a case or criminal questions.

6 Q. Okay. Thank you.

7 Now go, finish this paragraph.

8 A. And did you want Betty Strom? She was a deputy
9 solicitor who was directly under Bob Aerial (ph).

10 Q. Okay.

11 Bob Aerial was the head solicitor at that time?

12 A. Correct.

13 Q. The solicitor?

14 A. Yes.

15 Q. All right.

16 Now, finish reading that paragraph, please.

17 A. They both advised that the appropriate charges would
18 be enticing an enrolled child from attendance in school and
19 contributing to the delinquency of a minor. Based on this and
20 the statements obtained I went to Magistrate Cagels' (ph) office
21 -- Magistrate Cagels - excuse me - and obtained warrants H dash
22 five zero six zero six zero and H dash five zero six zero five
23 nine for the above charges respectively. After obtaining the
24 warrants Sergeant Smith and I met with the suspect. Sergeant
25 Smith advised her of her Miranda rights. The suspect advised

1 she understood her rights and signed the waiver and the suspect
2 advised the following.

3 Q. All right.

4 Let me show you the two arrest warrants that you just
5 referred to and asked whether you signed them as the
6 investigating police officer.

7 A. Yes, sir, I did.

8 MR. CLARKSON: We'd offer those two arrest
9 warrants in evidence.

10 THE COURT: All right.

11 Any objection?

12 MS. MCBRIDE: I have no objections.

13 MR. CLARKSON: For clarification, the next
14 exhibit would be enticing an enrolled Chris from school and the
15 following one would be contributing to the delinquency of a
16 minor.

17 (Arrest warrant entered in to evidence
18 as Defendant's Exhibit 11 without objection. Arrest warrant
19 entered in to evidence as Defendant's Exhibit 12 without
20 objection.)

21 Q. And were these two arrest warrants served, to your
22 knowledge, on Miss Mann?

23 A. Yes, sir.

24 Q. As part of your investigation, I forgot to ask this
25 but did you take a statement from Miss Mann?

1 A. Yes, sir, I did.

2 Q. And that was included in you summary and in your
3 incident report, correct?

4 A. Yes, sir.

5 Q. All right.

6 Now, in the criminal process, after an arrest warrant
7 is served, are some of them presented to grand jury?

8 A. Yes, sir, they are.

9 Q. All right.

10 Tell the jury what the grand jury is.

11 A. The grand jury is a group of people that look over
12 each individual case to determine whether probably cause was met
13 and whether enough evidence exists for it to go on to trial and
14 I'm sure it was presented to the grand jury.

15 Q. And one of the charges in this case, contributing to
16 the delinquency of a minor was presented to the grand jury, 20
17 citizens of Greenville County?

18 A. Correct.

19 Q. And they concluded that there was probably cause to
20 go forward with the charge, correct?

21 A. What?

22 Q. The indictment was issued.

23 A. Okay.

24 Yes, sir.

25 Q. Is that a copy of the indictment?

1 A. Yes, sir.

2 MR. CLARKSON: We'd offer that as the next
3 exhibit.

4 THE COURT: All right.

5 Any objection to that?

6 Put it in.

7 MS. MCBRIDE: Oh, no, no objection.

8 (Indictment entered in to evidence as
9 Defendant's Exhibit 13 without objection.)

10 Q. Officer Lambert, did you have any further involvement
11 in this matter after the case was presented to the grand jury
12 and a true bill returned?

13 A. I would only testify when it was called to ct.

14 Q. Okay.

15 MR. CLARKSON: Just one minute.

16 Thank you. That's all we have.

17 THE COURT: Anything else?

18 MS. MCBRIDE: I do.

19 I'd like to enter her testimony in a
20 deposition that we did.

21 (Deposition of Leslie Lambert marked as
22 Court's Exhibit 2.)

23 REDIRECT EXAMINATION BY MS. MCBRIDE:

24 Q. Look on page 7 first, briefly.

25 A. Seventy-one?

Q. Page 7.

A. Oh, I'm sorry.

Q. And my attorney at the time asked in this deposition, what were you doing on the investigation? What was your part of it?

Would you me your answer over on line 3?

A. Let's see. I know I spoke to a couple of faculty people and I talked with the principal and then I know I sat down and took a statement from Miss McBride.

Q. Okay.

That's who we talked to, right? Two faculty members, myself and the principal of Berea High School. That's what you said. You stand by that today?

A. Yes, ma'am.

Q. Flip over to page 22. About halfway down the page there. Mr. Thomas, in the deposition said, Of all of these I want you to just flip through them with me, and this was your evidence report right here that's attached to the back. It was the statements that you attached to your incident report of what happened at Berea High School, every one that was collected.

It says, I want to know which one of these to ask you about, the one that you worked on versus the ones that Oslager worked on versus the ones that Shea worked on, and what was your answer on line 15?

A. I don't know that Sergeant or Lieutenant Smith

1 worked, actually took any statements.

2 Q. Okay.

3 Can we keep going?

4 A. Oh.

5 Q. Okay.

6 A. He may have been present during some but --

7 Q. You'd have a little more trouble, little more trouble
8 answering questions about things that Oslager did versus vice-
9 versa.

10 A. Right.

11 This would --

12 Q. Go ahead.

13 A. This would be mine right here; these would be
14 Oslager.

15 Q. Okay.

16 And he had two stacks before you there and the ones
17 that are here, what did you say?

18 A. And this one, this is from Miss Ferguson and I
19 honestly don't know.

20 Q. Okay.

21 And then he says, that was you, wasn't it?

22 A. I don't remember whether she sent it to me or whether
23 she sent it to him and, you know, we read over it.

24 Q. Sure.

25 A. It's not something where we actually sat down and

1 asked her a bunch of questions.

2 Q. That would be which one of these?

3 A. Number 4.

4 Q. Number 4, number 4. You're not sure or it's --

5 A. It would've been one of those things where she wanted
6 -- we -- she wanted to contribute so she sat down and came up --
7 Well, not came. That's a bad phrase.

8 Q. Okay.

9 So why would she want to contribute there? Why would
10 you say that? Why would she -- What would be her motive to
11 contribute a statement that you didn't ask for?

12 THE COURT: Now, now, please, ma'am, she
13 can't answer that question.

14 MS. MCBRIDE: Well, she's trying to.

15 THE COURT: Please, ma'am, don't make
16 any comments like that.

17 MS. MCBRIDE: Okay. I'm sorry.

18 Q. Next question, no, I know what you're talking about,
19 sure.

20 A. But she, she composed her own statement without
21 someone doing an interview.

22 Q. Sure, sure. So that's number 4 and you couldn't
23 really attribute that to anybody except her. That was --

24 A. She could've emailed it to me or she could have, you
25 know, you know -- She wouldn't -- Since it's signed she would've

1 actually had to have printed it off and then brought it in in
2 order to have --

3 Q. Then next it says faxed or brought personally. All
4 right. What about these other ones that fit in the same
5 category? This one here.

6 A. I'm sorry, there was a blank page.

7 Q. Page 24, I'm sorry. We're over on 24 and I just read
8 the first question.

9 A. Okay.

10 This one. The answer is this one.

11 Q. This one, that's right.

12 A. On line 5.

13 Q. That's the --

14 A. These are the property and evidence sheets.

15 Q. And that would have been --

16 A. And the only one that I would have had anything to do
17 with was the bottom one where I returned --

18 Q. Okay.

19 Would have been filled out that --

20 A. Officer Oslager filled out the top.

21 Q. All right.

22 Let's put that one with these here, leaving the ones
23 that are not Officer O's. Read the numbers off to me.

24 A. Number 2, number 9, number 10 and 11 and 12.

25 Q. Those are the -- Those are -- Let's see.

1 Those are the ones that you worked on, leaving -- I
2 want to read this sideways. Number 8, 13, 7, 6, 5, 3 and 1.
3 Those would be Officer Oslager's. Those are the ones he filled
4 out or was involved in, is that correct?

5 A. Yes, sir.

6 Q. Now, let's start. And so I don't get them confused
7 and, if you would, hand me that stack of yours. Thank you.
8 And, again, I'm seeing -- I'm seeing -- I'm seeing 9, 2, 12 and
9 10 all typed. You didn't type these?

10 A. There's still more question.

11 Q. Okay. Let me see.

12 You didn't type these at the school, did you? This
13 would have been the things you would have been done after or
14 whatever?

15 A. This is the one I typed at the school.

16 Q. Okay.

17 I want to look back over here at -- If you would,
18 just go back to page 24. I thought that continued over.

19 If we count these your answer for the ones you did
20 was number 2, 9, 10, 11 and 12. That's five.

21 And then the question that Mr. Thomas asked you, you
22 said that Oslager did 8, 13, 7, 6, 5, 3 and 1. That's seven.

23 A. Yes, ma'am.

24 Q. So I'm gone ask you one more time. How much an
25 investigation did you do if you accepted all of those statements

1 to be the evidence that you used to have me arrested?

2 A. I have no reason to believe that Officer Oslager
3 would falsify any documents.

4 Q. Okay. Well, I appreciate that answer.

5 Let's go to your statements, the incident report that
6 was just entered in to evidence by the defense. If you could
7 flip over to the third page of that.

8 Trying to see if you had any identifying page numbers
9 on there, would be other than three. It says it's SD.

10 Yeah, 364 if the page we're on.

11 That last paragraph at the bottom, you don't even
12 need to read the whole paragraph.

13 A. I don't know which one you're talking about.

14 Q. This bottom, big paragraph over on three.

15 A. There's page 3.

16 Q. I know and that's why I should let me look.

17 It's 364.

18 A. It doesn't have that. Location number at the top.

19 You want me to read the bottom paragraph?

20 Q. You don't have to read the entire one. We'll start
21 right here where it says witness 4.

22 A. Witness 4 told the victim?

23 Q. Uh-huh.

24 A. Witness 4 told the victim to come by -- let's see.

25 Okay.

1 Witness 4 told the victim to hide and witness 6's
2 closet if the victim's mom knocked on the door so she would not
3 get in to trouble. The victim advised that his mom did come by
4 and looked for the victim but witness 4 did not tell her where
5 he was. The victim advised he spent the remained of the night
6 there but witness 4 told him he had to leave in the morning.
7 The victim advised he left on his bicycle and rode it to the
8 suspect's home. The suspect advised that he arrived at the
9 suspect's home between 11 and 12.

10 And I think that was a typo.

11 The victim advised that he was present when the
12 suspect called the complainant.

13 Q. Let's finish that paragraph.

14 A. The suspect then called the sheriff's office and told
15 them that he was at her home. Deputies came out and took the
16 victim to the LEC - which is the law enforcement center - and
17 turned him over to his mother.

18 Q. Okay.

19 So in that statement you just read, you have a lady
20 who has confessed to hiding a runaway in her closet while the
21 mother is beating on the door, looking for her son and she goes
22 to that door and she tells that son -- that lady that her son's
23 not there but she admitted to you, an officer of the law, that
24 he was there.

25 MR. CLARKSON: Objection.

1 Q. Why was she not charged?

2 MS. MCBRIDE: He entered it.

3 THE COURT: She cannot answer what
4 someone else says --

5 MS. MCBRIDE: But why didn't she charge
6 her?

7 THE COURT: Please don't argue with me,
8 ma'am.

9 MS. MCBRIDE: I don't want to do that.

10 THE COURT: Now move on to something
11 else, please.

12 MS. MCBRIDE: Okay.

13 Q. Over on the next page you said that the suspect then
14 called the sheriff's office and told them that he was at her
15 home.

16 If I called the sheriff's department and reported
17 that he was at my home what justifies an arrest for a runaway,
18 for aiding and abetting a runaway?

19 THE COURT: Ma'am, please, ma'am.

20 MS. MCBRIDE: But she --

21 THE COURT: You are --

22 MS. MCBRIDE: I do not want to argue with
23 you.

24 She signed the warrant. I'm just trying to
25 figure out what -- If she's the arresting officer --

1 Q. You're the arresting officer.

2 THE COURT: Now, ma'am, she can't. Move
3 on to something else please. Okay.

4 MS. MCBRIDE: Thank you.

5 THE COURT: Thank you, ma'am. You can
6 step down.

7 A. May I be excused?

8 THE COURT: Any objection to excusing
9 this witness?

10 MS. MCBRIDE: No, sir.

11 THE COURT: Thank you.

12 (WHEREUPON, The Court took up a
13 matter off the record and out of the presence of the jury. The
14 jury then returned to open court.)

15 THE COURT: Ladies and gentlemen, there
16 is a matter unrelated to this case that I need to address this
17 afternoon. So what we're going to do, I'm gonna run until about
18 2:00 and then let you have the rest of today off. So that's my
19 plan. Then we'll pick back up with this trial tomorrow morning.

20 THE COURT: You may proceed.

21 MS. MCBRIDE: The plaintiff calls Tina
22 Hart.

23 TINA HART,
24 first being duly sworn,
25 testified as follows:

DIRECT EXAMINATION BY MS. MCBRIDE:

Q. Good afternoon, Miss Hart.

A. Hey.

Q. How are you?

A. Hot.

Q. All right.

Before we get started, I know you wanted to share that you had a speech impairment, need to talk slow, due to an automobile accident some 10 years ago. You're nervous about testifying.

I want to just briefly discuss, first of all, tell the jury under what circumstances you and I met.

A. I met Sherrie when I was at Berea High School. I met Sherrie when I was at Berea High School when I was a teacher's aide and I was Sherrie's aide for awhile. That's how I met Sherrie.

Q. That's how we met.

And we remained at Berea High School for many years together but you were someone else's aide?

A. Yes.

Q. And during that time we got to know each other pretty well and where I'm going with this is I need for you to share with this jury what kind of relationship that I had Principal Roach had while you and I worked at Berea High School.

MR. HARJEHAUSEN: Objection, Your Honor.

1 What's the foundation there?

2 MS. MCBRIDE: There is.

3 MR. HARJEHAUSEN: Miss Mann can testify
4 as to what the relationship was.

5 THE COURT: Well, what she observed,
6 what she --

7 MS. MCBRIDE: What she observed.

8 THE COURT: Go ahead.

9 Q. What did you observe?

10 A. Okay.

11 When I was there I can remember Sherrie had a lot of
12 complaints back then, some things the school, special ed
13 department and what I remember was Sherrie would address Roach
14 and he, it's like he ignored her. He never respond to her
15 request.

16 Q. As time progressed Dr. East left. There was an
17 announcement that Bill Roach would be the new principal
18 returning to the school. What did that result in for me? What
19 happened after that or how did I -- What did I do about that?

20 A. What I remember, it seemed to me, with another
21 teacher but it seemed to me that the relationship between them
22 two was terrible. He's never ignored her, ignored her, in my
23 opinion.

24 Q. And what did want to do?

25 A. One thing was the most issue that we had. And some

1 things with the special ed IEPs.

2 Q. Right.

3 A. Just things seemed never to address with her.

4 Q. I guess what I'm getting at is what did I'd? How did
5 I react when I found Mr. Roach was going to be the new principal
6 of Berea High School?

7 A. You wanted another job; you wanted to leave.

8 Q. I wanted to leave.

9 And one final question. You and I have maintained a
10 friendship over the years?

11 A. Yes, we have.

12 Q. And we haven't seen each other much the last year or
13 so. This'll be the first time we spoke since your granddaughter
14 was born over a year ago.

15 A. Yes. Yeah, I know, yeah.

16 Q. But leading up to that point, our lives just got busy
17 but leading up to that point, you knew the person that I am today
18 versus the person that I was prior to my being arrested and I
19 would like for you to share with this jury who Sherrie Mann was
20 before the arrest and who Sherrie Mann is today.

21 A. Sherrie was very active with the children. Children
22 loved her. Very involved and just happy person, always giving.
23 And today she's still a giving person but she's, she's lost,
24 just doesn't have a place to be.

25 THE COURT: Okay.

Questions?

MR. HARJEHAUSEN: No questions, Your Honor.

THE COURT: Thank you. You can step down.

SHARON WILSON,
first being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MS. MCBRIDE:

Q. Hi.

A. Hi.

Q. Thank you for coming home to do this, be here to testify.

Today we've been hearing about all the things that led up to my arrest and you know a lot about that and that's why I called you here today, because I want you to share with this jury what happened at Berea High School that formed a relationship that I've built with Mr. Roach over the years.

Let's establish, first of all, how long did you work for the school district?

A. I retired January 21 and I worked for Greenville County schools for 31 1/2 year. My total teaching is 32 1/2 years. I am learning disabled certified, elementary certified, highly qualified, masters plus 30. And I think that's it.

Q. Awesome.

1 And how many of those years did you actually teach
2 special ed?

3 A. Approximately 15.

4 Q. Fifteen. Okay.

5 Now, you came to Berea what year?

6 You and I, it was both of our first year at Berea.
7 It was my first year, pd, teaching. It was your first year at
8 Berea --

9 A. So whatever year you came is the year I came.

10 Q. That was 2000-2001.

11 A. Okay.

12 Q. My first year.

13 A. Time gets away from me.

14 Q. And that's the only year you worked at Berea High
15 School?

16 A. Absolutely.

17 Q. Okay.

18 When I took that job how much did I know about
19 special ed?

20 A. Nothing.

21 Q. Absolutely nothing, and someone took me under their
22 wing, showed me the ropes. Who was that?

23 A. That would be me.

24 Q. That was you.

25 A. However, remember, we didn't get along at first.

1 Q. We did not get along at first and --

2 A. Because I would tell her the rules and she would be,
3 like, I don't want to hear you.

4 Q. Okay.

5 And as those rules were revealed to me and we learned
6 what should be right with special ed and what was not going
7 right, just please explain to this jury what you and I were like
8 at Berea High School. And you can start with the guidance
9 department.

10 A. Well, let me back up just a tab. I had taught at
11 several schools. Most of my experience has been at the middle
12 school level and I actually was asked to become a special ed
13 teacher by our principal. They had a special circumstance. The
14 teacher, basically, threw in the keys after three weeks and said
15 I'm out of here and I was teaching regular ed and she asked me
16 if I would try this position. And she said she was in a bad
17 situation. I said I would try it, I'd give it two weeks and
18 that was at Beck Academy. And I loved it.

19 I was able to change over the years a lot of
20 children's lives. The particular girl --

21 Q. I want to stop you right there for a minute.

22 A. Am I talking too much?

23 Q. What about me? You worked very closely with me. How
24 did I --

25 A. I'm getting to you.

1 Q. Oh.

2 A. I'm long-winded.

3 Okay, let me get on over it.

4 But, anyway, the whole reason that I took the job at
5 Berea is because my husband was asked to be the assistant
6 football coach and I thought I wanted to be a farmer so I had
7 bought a bunch of land in Gray Court. That didn't work out so
8 well but it was such a long distance for us to drive with two
9 cars, there was an opening at Berea and I interviewed and I took
10 that job.

11 I was only there one year and the occupational
12 diploma was a new program. It'd only been in existence for,
13 maybe, a year or two.

14 And I had taught middle school my entire career and I
15 thought, well, I'll give this a try. And so that's how we met.

16 Q. And that's how we met.

17 And you came from a school where you approved of the
18 way things were done and I want to know how that differed from
19 the way things were being done at Berea High School.

20 A. I have taught at Bryson Middle, I have taught at
21 Lakeview Middle, I have taught at Beck. I taught at Berea one
22 year and I finished out my career at Northwood Middle and I have
23 never, ever, ever, seen such a mess as Berea High School.

24 Q. And to be more specific about that, what kind of
25 issues were we colliding and butting heads with, with

1 administration at Berea High School?

2 A. I don't know how much this jury knows about special
3 education.

4 Q. Well, let's tell them.

5 A. Okay.

6 I'm known as the law Nazi. If anybody wants to know
7 what the rules are, they come to me because, you know, special
8 ed is, it's like a big umbrella and there's all these categories
9 underneath it.

10 Now, I myself mostly taught the learning disabled,
11 self-contained which meant my students stayed in the room all
12 the time and would go out just for regular classes but there's
13 all kinds of little divisions of it and at Berea we had the
14 occupational diploma program.

15 And should I explain that?

16 Q. Not really.

17 I wanted, basically, get in to the federal
18 guidelines --

19 A. Okay.

20 Q. -- that are enacted by congress.

21 A. All right.

22 Each child has an individual IEP.

23 MR. CLARKSON: Objection, Your Honor. I
24 don't see where the federal guidelines enacted by congress have
25 anything to do with the lawsuit.

1 A. Well, everything to do with it.

2 MS. MCBRIDE: We were butting heads
3 constantly over things that were not being done and we had lost
4 a --

5 THE COURT: I'm gone let you go just a
6 little ways.

7 A. An IEP is an individualized education plan. That is
8 a legal document. What is written in there must be followed or
9 the school district can be sued and the parents will win.

10 For example, I'll just give you an example. It's in
11 there that my child were to be able, allowed to use a calculator
12 for math and have extra time to complete tests and that
13 accommodation was not followed, that's a legal document. If the
14 teacher says, well, I'm not doing that, well, there's your
15 lawsuit and they will win.

16 Q. What about out classes? What are out classes?

17 A. Well, out classes, again, it's an individualized
18 education plan and the only way I know how to explain it is to
19 give an example and I'll take my own child because my own child
20 went through us.

21 Let's say my son was at Berea and he would take an
22 English - which is what I taught, a social studies - which is
23 what Miss Mann taught. They called it, really -- You didn't
24 teach social studies. You taught --

25 Q. Environmental math.

1 A. -- environmental math and what was the other one?

2 The math, science, reading.

3 Q. And English.

4 A. Reading and English were together.

5 And Careers.

6 Q. Right

7 A. But some kids could go out for a class. Everybody
8 has to be mainstreamed to a certain point, like for PE and, you
9 know, depending on what it is, they could have or two related
10 arts classes.

11 Q. And were not supposed to be -- have the same
12 electives before them that the regular ed students had when it
13 came to those out classes such as drivers ed? Were they not
14 allowed to --

15 A. Absolutely.

16 Q. They were supposed to have that selection --

17 A. Absolutely.

18 Q. -- but did they?

19 A. Absolutely, no, they did not.

20 Q. Okay.

21 A. Absolutely.

22 Q. What about classroom size? I mean the mother of all
23 complaint.

24 What is the mandate? How many students are we
25 supposed to have in a classroom?

1 A. That varies.

2 I know that when I was there, when I had an English
3 class that had, in fact, one of the people sitting in the thing
4 was one of my -- the teacher's aide that brought them in there.

5 I had, like, 25 kids.. Now, these 25 kids have
6 ability levels from first grade to tenth grade and just to show
7 you the variations, we had one Downs Syndrome child that
8 couldn't write a lick of English, was fluid in Spanish.

9 Q. What were the numbers supposed to be?

10 A. Well.

11 Q. Seventeen? Or eighteen?

12 A. Probably -- Well, we want to know my opinion.

13 What I think, there was supposed to be around 18, 17
14 or 18, but these classes were way overfilled and we kept
15 screaming and screaming about it. Nothing was ever done.

16 I mean that's not even a manageable number.

17 Q. Right.

18 A. For a regular classroom teacher.

19 Q. And so with all this complaints what kind of
20 relationship developed between me and Bill?

21 A. Well, the whole administration, as a general rule,
22 was very different than anything I had ever seen before. And I
23 don't know what, how to describe it but it was kind of like they
24 liked to hire people that had gone to Berea, kind of a good ole
25 boy kind of thing but -- And it was not good.

Q. And so how were we --

A. In fact, when we found out he was going to become administrator the first thing I said was you need to get out of there.

Q. And what did I do?

A. And I said because he will get you. Did I not tell you that?

Q. And what did I do?

A. You stayed.

Well, you did try to interview. I'll take that back.

Q. I did and why didn't I get the interview? Why didn't I get the interview that summer? Do you remember?

THE COURT: If you know.

If she knows.

MS. MCBRIDE: Okay.

Q. If you know. If you don't --

A. I don't remember.

Q. That's okay.

A. I'm getting old.

Q. That's okay.

All right.

And so were we viewed by the guidance department where we were constantly making these complaints? Have you ever seen a guidance department have that kind of control over a school?

1 A. No, I have not.

2 And not only that, it's just that when I would go and
3 try to tell them you can't do this, and I can remember examples
4 or tried to get kids into the career center and you know I'm
5 talking about three or four ones that wanted to be a
6 cosmetologist and they were, like, oh, no, they can't pass the
7 test, we not even gonna fool with them.

8 Q. They would not give them --

9 A. They were not even given the chance to go.

10 Q. They would give them a chance?

11 A. Not even given a chance, and that is illegal.

12 Q. That is illegal.

13 And so what happened at the end of that school year?
14 What did you do?

15 A. I left.

16 Q. After fighting the whole year?

17 A. I was out of there. So fast it wouldn't have made
18 your head spin.

19 I interviewed one day and got four job offers and I
20 took the one that I finished.

21 But, you know, somebody's got to toot their horn for
22 these kids. And a lot of parents don't know the law. And as
23 their teachers, and I taught Sherrie the difference from right
24 and wrong.

25 I mean you've got to think about it as your own

1 children. I mean what if you didn't know that, you know? I
2 mean here you've got kids that want to do things, they should be
3 in certain classes, they get dumped in Sherrie's room, they're
4 stay there all day and, you know, that's legal.

5 It's, like, oh, that's okay, they can just stay there
6 because they're happy there.

7 Q. All right. Okay.

8 I have one last question.

9 The week before I was arrested I was at your home in
10 tears over a student who had been made to football without a
11 football helmet because he was late to practice.

12 THE COURT: Please, ma'am, your
13 testifying.

14 MS. MCBRIDE: Okay.

15 Q. Would you please tell the jury --

16 MS. MCBRIDE: I'm sorry.

17 Q. Would you please tell the jury about an incident that
18 occurred the week before I was arrested and I came to you in
19 your home?

20 A. Well, my husband was a football coach here for years.
21 In fact, he's coaching professional football in Germany right
22 now.

23 And there was a child that was made to practice,
24 special ed student, we no helmet.

25 Q. And why did I come to you?

1 A. Because I know the law, I guess, because I'm
2 always -- You know, I'm not afraid to get up and so to speak
3 someone's face about it and --

4 Q. And James was your husband, right?

5 A. My husband.

6 Q. What was he gonna do?

7 A. We contacted Bill Utsey which is the athletic
8 director, I believe of the district and it was -- It was just
9 another example, though, of how things were, were done.

10 Q. So if I wasn't getting anything why would I come to
11 you? Why didn't I go to Principal Roach with it?

12 MR. CLARKSON: Objection.

13 THE COURT: I sustain the objection to
14 the form of the question.

15 A. What does that mean?

16 THE COURT: You can't answer.

17 A. I can't answer? Okay. Thank you.

18 Q. What was Bill Utsey contacted for? What was the
19 purpose in contacting him?

20 A. To get something done.

21 MS. MCBRIDE: I have no more questions.

22 THE COURT: All right, Mr. Clarkson.

23 MR. CLARKSON: Just very briefly.

24 CROSS-EXAMINATION BY MR. CLARKSON:

25 Q. You're good friends with Miss Mann, aren't you?

A. We used to be.

Q. And I think you were sort of like her mentor, correct?

A. I was. Somebody had to do it.

Q. Okay.

Have you been on vacation with her together?

A. Many, many, many years ago.

Q. And you were only at Berea High School for one school year, correct?

A. Yes, sir.

Q. And before and after that you were in the middle school?

A. That's correct.

MR. CLARKSON: That's all I have.

REDIRECT EXAMINATION BY MS. MCBRIDE:

Q. After you left school that year we remained very good friends for many years.

A. We did.

But you know what? Everything that happened to you that was so unfair changed Sherrie.

MR. CLARKSON: Objection. Move to strike.

THE COURT: That's not responsive to the question she asked you.

MR. CLARKSON: Move to strike, strike the comment.

1 THE COURT: Instruct the jury disregard
2 it.

3 Q. So for many years we did remain very best friends and
4 spoke several times a day but over the last two to three years,
5 how many times would you say we've had contact in the last two
6 or three years?

7 A. I came to your granddaughter's baby shower. Maybe
8 twice.

9 Q. Twice in the last three years and I would agree with
10 that.

11 THE COURT: All right.

12 Anything else?

13 MR. CLARKSON: No, thank you.

14 THE COURT: You can step down.

15 Witness?

16 MS. MCBRIDE: That's all that I have here
17 today.

18 THE COURT: Okay.

19 Ladies and gentlemen, we will, so far as
20 you're concerned, suspend for the day and we'll pick back up
21 tomorrow morning at 9:00.

22 And before you go I need to read to you an
23 order issued by Jean Toal who is the chief justice of our
24 supreme court and it relates to the use of personal
25 communication devices and it reads as follows:

1 him, would that in any way interfere with your ability to
2 continue being a fair and impartial juror on this case.

3 JUROR NUMBER 37, ALICIA HAMES: No. I
4 just wanted to let you know.

5 THE COURT: That's fine.

6 JUROR NUMBER 37, ALICIA HAMES: Just to
7 be on the safe side.

8 THE COURT: So you can be a fair witness
9 one way or the other, is that --

10 JUROR NUMBER 37, ALICIA HAMES: Yes.

11 THE COURT: Okay. Thank you very much.

12 (WHEREUPON, Juror Number 37, Alicia
13 Hames was escorted back to the jury room. The following takes
14 place outside the presence of the jury.)

15 (Note from Juror Hames marked as
16 Court's Exhibit 4.)

17 THE COURT: All right.

18 Are you ready to proceed?

19 MS. MCBRIDE: I am.

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the jury returned to open
22 court.)

23 WILLIAM F. ROACH, JR.

24 First being duly sworn,

25 testified as follows:

DIRECT EXAMINATION BY MS. MCBRIDE:

Q. Morning.

A. Good morning.

Q. If you will, please tell the jury how long you worked with the school district. I understand you left last year.

A. Eighteen years with the school district of Greenville County and, then, of course, I've gone since July 1.

Q. Okay.

And how long were you at Berea High School?

A. Six as an assistant and seven as a principal.

Q. Okay.

And you were then when I started in 2000. You would've been an assistant?

A. That's correct.

Q. And you were there the first two years, I believe, that -- my first two years there and then you left go to be an assistant somewhere else?

A. That's correct.

Q. Then you came back as a principal?

A. Correct.

Q. My last year?

A. Correct.

Q. Okay.

And that was 2000, '03 or '04?

A. That's correct.

1 Q. Okay.

2 How would you describe our relationship?

3 A. I mean as an assistant principal you deal with
4 teachers a lot but you're still not their boss.

5 Q. You don't feel like you were the boss?

6 A. No. As assistant principal you're not the boss. The
7 principal's always the final word.

8 Q. But in the chain of command we would report to you
9 before we went to him?

10 A. That's correct.

11 Q. Okay.

12 Do you remember any episodes that might've gotten you
13 and I off on the wrong foot? When I first started.

14 A. It's been a long time. I don't remember. I know I
15 was the assistant principal in charge of special education so we
16 would've dealt with each other a great deal.

17 Q. Okay.

18 How about Micky Belt (ph)? Do you remember that
19 name?

20 A. I remember Micky. I don't remember much about when
21 he was I school.

22 Q. Okay.

23 Does he still attend your church?

24 A. Micky Belt? Not to my knowledge.

25 Q. I'll testify about that later but if you don't

1 remember any episode I just want to be sure you don't want to
2 share anything before I testify about it.

3 How do you feel, you know, you said you were in
4 charge of special ed. If I had complaints about a lot of things
5 would that tend to be a source of irritation between us, if I
6 didn't agree with the way that you handled special ed?

7 A. I mean my handling of special ed would've been done,
8 whatever the district had informed me to do and, then, of
9 course, Dr. East, whatever he had, because, basically, he
10 appointed me as the assistant principal over special ed so,
11 again, I'm answering to the district and to him, so.

12 Q. All right.

13 Let me show you documents here.

14 Now, you know we're here because I was arrested and
15 you contend that you had no involvement in that, is that
16 correct?

17 A. I did not.

18 Q. Could you explain for me what did happen in your mind
19 that day?

20 A. The day?

21 Q. That I was arrested or the day before when Josh was
22 arrested.

23 A. Which one would you like me to talk about?

24 Q. Do the first one and we'll start at the beginning.
25 What was brought to your attention and how did it go from there?

1 A. With Josh, I was informed that there was an incident
2 involving your vehicle and that Josh F [REDACTED] was the one. And I
3 spoke with Josh briefly.

4 And, then, of course, he was taken to the detention
5 because he was under arrest.

6 Then his mother did come in. I met with mom for
7 awhile.

8 As Officer Oslager testified yesterday, he did call
9 me to verify information. Basically, I would verify that
10 information; we would hang up the phone. We did speak a couple
11 of times to verify information he was given.

12 I did notify -- Penny Fisher (ph) was the assistant
13 superintendent at that time. In notified her on a cc and Dr.
14 Horner (ph), who was the superintendent, to let them know there
15 was an issue with -- possibly with a teacher, to keep them
16 informed so that they would know.

17 And then continue on the next day. The next day,
18 the, of course, stating conversations with -- Leslie Lambert
19 showed up the next day and she is the investigator for the
20 school district, Greenville County.

21 So she arrived, met we her and Shea Smith and Officer
22 Oslager. They, basically, told me what their job was there that
23 day. I told them if I could help them any way to let me know and
24 that was pretty much my last involvement with that.

25 I continued to stay in contact with the

1 superintendent, let him know what was going on. Then as I gave
2 the superintendent information that I discovered through
3 investigation, he then told me to draft a letter of termination.
4 He told me exactly what to say in it and then, of course, you
5 were terminated.

6 Q. Okay.

7 So was it your decision or his decision?

8 A. It's always the superintendent's decision. Principal
9 has no right to hire or fire anybody.

10 Q. Okay.

11 Did you have any say-so whatsoever in me being fired?

12 A. No. That's not my call. Superintendent's call.

13 Matter of fact, when we hire teachers we have to send
14 in a recommendation for employment and if they don't want -- the
15 district does not want to hire that person you cannot hire them
16 as a principal. Same thing with termination.

17 Q. All right.

18 MS. MCBRIDE: I'd like to approach,
19 please. This is an email he sent to Dr. Horner on the twenty-
20 fifth.

21 Q. Would you please read that document for us?

22 THE COURT: Well, wait, it's not in
23 evidence.

24 MS. MCBRIDE: I'm sorry.

25 THE COURT: Has to be in evidence before

1 it can be read to the jury.

2 MS. MCBRIDE: Okay. Has to be?

3 THE COURT: An exhibit.

4 MS. MCBRIDE: Oh, okay.

5 Mark that as exhibit. I have no clue
6 what number.

7 THE COURT: You have any objection?

8 MR. HARJEHAUSEN: I have no objection,
9 Your Honor.

10 THE COURT: All right.

11 Go ahead and mark it as an exhibit.

12 (Email entered in to evidence as
13 Plaintiff's Exhibit 1 without objection.)

14 A. You want me to read the email?

15 Q. Yes, sir, please.

16 A. This is an email that I sent on September 25, 2003,
17 to Superintendent Dr. Horner and cc'd Dr. Fisher and, basically,
18 the subject line is request for leave to teacher. It says, Dr.
19 Horner, I have a situation with a teacher adult a student that I
20 possibly could need an extended leave for a teacher. The
21 teacher is Sherrie Mann McBride. She is a self-contained EMD
22 teacher. It is alleged that she has done the following -
23 they're in bullets - giving out the passwords to Novell login
24 screen on her computer; giving out the passwords to her district
25 email login; giving out a school-city program to review and then

1 download on her computer; repeatedly taking a student out of his
2 academic classes; allowing student to drive her personal
3 vehicle; assisting the student running away from home; knowing,
4 allowing the student to leave campus during a school day in her
5 vehicle. The student was given numerous IEPs on students for
6 him to fill out, was given access to SASSY (ph) to look up
7 grades to put on IEPs. This is a situation that had been
8 allegedly going on since last school year. I have numerous
9 statements to support many of the allegations. Thanks, Bill.

10 Q. Okay.

11 Now, when you sent this to him had you spoke to me?
12 Had you asked me the first question?

13 A. I had not.

14 MS. MCBRIDE: I would like to approach
15 again, please. This is a second document.

16 THE COURT: Any objection to this one?

17 MS. MCBRIDE: It's also from him to Dr.
18 Horner.

19 MR. HARJEHAUSEN: No objection, Your
20 Honor.

21 THE COURT: All right.

22 Mark it as an exhibit.

23 (Letter entered in to evidence as
24 Plaintiff's Exhibit 2 without objection.)

25 A. Like me to read it?

1 Q. Yes, please read this.

2 A. Yeah. This is a letter sent to Dr. Horner after he
3 had told me what needed to say in it. So it says, dated
4 September 26, 2003.

5 Dr. Horner, This letter is to recommend the
6 termination of Sherrie McBride, a self-contained EMD teacher at
7 Berea High School for the following reasons - and then the
8 bullets say - giving a student her password for her Novell login
9 screen and her district email, giving a student a school-owned
10 CD with the state's new grading system on the CD, repeatedly
11 taking a student not in her class out of his academic classes,
12 allowing a student to drive her personal vehicle, allowing a
13 student access to personal special education records of students
14 and coming between a student and his parents. Sincerely William
15 F. Roach, Jr., Principal, Berea High.

16 Q. Okay.

17 Now, the first one, the email you read first was on
18 the twenty-fifth and this one was on the twenty-sixth.

19 A. Correct.

20 Q. Did you talk to me between these two? Did you ask me
21 the first question before you sent this recommending me for
22 termination?

23 A. Did not.

24 Q. Okay.

25 Why not?

1 A. Again, I basically did what Dr. Horner told me to do.
2 I spoke with him numerous times and did exactly as he had said.

3 Q. Okay.

4 THE COURT: Any objection?

5 MR. HARJEHAUSEN: Yeah, we would object,
6 Your Honor. This letter isn't addressed to Mr. Roach.

7 THE COURT: Let me see a copy of it.

8 MR. HARJEHAUSEN: It's not relevant. The
9 only claim in this case for abuse of process and defamation.
10 We're not here about Miss McBride's termination.

11 THE COURT: All right.

12 MS. MCBRIDE: It's not to prove of
13 termination.

14 THE COURT: All right. I'll allow it.
15 Note the objection.

16 (Letter entered in to evidence as
17 Plaintiff's Exhibit 3 over objection.)

18 Q. Okay.

19 Now, what is that document, Mr. Roach, please?

20 A. Appears to be a letter written to you from Dr. Horner.

21 Q. Okay. Thank you.

22 Would you please read this letter for the jury?

23 A. Sure.

24 It says, Dear Ms. McBride, The principal of Berea High
25 School Mr. Bill Roach brought to my attention today evidence of

1 several instances of your inappropriate conduct. Information
2 provided indicates that you gave a student your passwords that
3 allowed him to access both Novell and your district email, gave
4 this same student a school-owned CD with the state's new grading
5 system on it, repeatedly removed or allowed this student to be
6 absent from other teachers' classes, allowed this student to
7 drive your car, allowed this student access to confidential
8 information from student records and inappropriately interfered
9 with the student's relationship with his parents. As a result of
10 these incidents Mr. Roach recommended your immediate dismissal
11 from the school district. As an annual contract teacher the
12 South Carolina Employment and Dismissal Act doesn't not apply to
13 you. Presumably, then, the standard for dismissal of a teacher
14 with your status is less than set forth in the act.
15 Nevertheless, I know that even under the stricter provisions of
16 that act you're dismissal would be appropriate. The act states
17 any teacher may be dismissed at any time who shall fail to give
18 instruction in accordance with the directions of the
19 superintendent or who shall otherwise manifest an evident
20 unfitness for teaching. Your involvement with this student and a
21 release of confidently information to him clearly met both of
22 these standards for dismissal. Therefore, I am dismissing you
23 from your position as a teacher in the school district effective
24 seven days after your receipt of this letter. If you wish to
25 challenge this dismissal you may receive an informal hearing on

1 the matter before me or my designee by delivering a request for
2 such a hearing to me within seven days of receipt of this letter.
3 If after such a hearing my decision remains unchanged you would
4 have the right to request that the school board review that
5 decision. The board would then have the option of hearing or not
6 hearing your case. For your information I am enclosing a copy of
7 relevant provisions of school board policy GBN which at section 4
8 on page 3 describes the right of annual contract teachers to
9 challenge their dismissals. Until your dismissal is effective or
10 either I or the board reverses it you will remain on suspension
11 from your position. Very respectfully, William E. Horner.

12 Q. Thank you.

13 Okay.

14 So did anyone from the school district ever question
15 me about the events and the things I'm being accused of in these
16 documents?

17 A. I have no knowledge of that.

18 Q. Okay.

19 Did you?

20 A. I did not.

21 Q. And you have no knowledge that anyone ever
22 investigated from my angle?

23 A. Investigated or spoke with you?

24 Q. Spoke with me whatsoever.

25 A. No, not to my knowledge.

1 Q. Okay.

2 You heard Josh testify yesterday, didn't you?

3 A. I did

4 Q. And was it not common practice for a lot of the
5 students to build web pages and those kind of things for
6 teachers?

7 A. Not while I was there an assistant. Now, I know that
8 occurred the year I was gone so I can't speak to that.

9 Q. But it was. I mean kids today are pretty technical
10 savvy, right?

11 A. Kids today are technically savvy, that's correct.

12 Q. And we do depend on them sometimes to do things that,
13 maybe, we can't do, like help with the technical instruction in
14 the classroom and that kind of thing.

15 A. I don't know if I agree with that statement.

16 Q. Okay.

17 You were not there when he had permission to set up
18 the web page but you heard him testify to did.

19 A. I did hear that.

20 Q. Okay.

21 And so he a password that he figured out on his own,
22 was my email, as well. He testified to that.

23 A. That's what he said yesterday.

24 MR. HARJEHAUSEN: Objection, Your Honor.

25 THE COURT: I sustain the objection.

1 Q. If a teacher is taking a student out of class, two
2 classes, from what I've been accused of, on a daily basis and
3 she's writing numerous passes day after day after day why would
4 you not know about something like that? I mean it's your job to
5 run that school. Do you have teachers that would report that? I
6 mean I'm trying to find out how you could believe for even
7 from -- you know, try to establish something like that. Is that
8 common practice?

9 MR. HARJEHAUSEN: Objection, Your Honor.

10 THE COURT: I sustain the objection to
11 the form of that question.

12 Q. Did you talk with Carolyn Kite?

13 A. I did speak with Miss Kite.

14 Q. And what did she tell you?

15 A. That you had taken Josh out of class numerous times.

16 Q. Okay.

17 A. No, it would've been that year.

18 Q. Okay.

19 And what about Miss Hills?

20 A. I did speak with Miss Hills, also.

21 Q. And what did she tell you?

22 A. Similar thing, that you had taken out Josh different
23 times throughout the year so far.

24 Q. Twice, right?

25 A. I don't remember exact number.

1 Q. Okay.

2 Let' look at another document. You were just
3 referring in the letter the GBN that constituted employee
4 handbook.

5 MR. HARJEHAUSEN: Your Honor, I object on
6 the relevance once again.

7 THE COURT: All right.

8 Let me see it

9 Document is not relevant to this case. Among
10 other things, it's dated December 1987. So I sustain the
11 objection.

12 Q. Do you know what the policy is for the school district
13 for having an employee investigated?

14 A. Do I know the policy for the school district?

15 Q. Uh-huh.

16 A. Not having worked there in the last year, I don't
17 remember most of the policies.

18 Q. But you were principal for seven years?

19 A. I was.

20 And, again, it's not a principal's job to terminate so
21 it would be the district's job.

22 Q. If it's in the employee handbook and it says that a
23 principal should know these guidelines should you know them?

24 A. There's nothing in the employee handbook said I should
25 know all the policies of the school district for Greenville

1 County.

2 Q. No, but how to investigate an employee, the proper
3 procedures.

4 A. Oh, I know the proper procedures investigate an
5 employee.

6 Q. And would you share those with us?

7 A. One is you collect all the evidence relevant to the
8 case. You build a case and then you, again, if it's a
9 termination thing you contact the superintendent, provide them
10 the evidence that you collected, see if there's anything else
11 they want you to collect and then go with there recommendation.

12 Q. All right.

13 I want to go back in to these two documents right
14 here. The first email that you sent Dr. Horner, would you pull
15 that one back up, and then the letter that you sent to him the
16 following day.

17 But that's changed. Between the two days. You
18 removed something from the list and I want to talk about that.

19 MR. HARJEHAUSEN: Your Honor, I'm gone
20 object. These exhibits wasn't even drafted by Mr. Roach so he
21 didn't remove anything from any list.

22 THE COURT: All right.

23 Proceed, please, ma'am.

24 MS. MCBRIDE: Okay.

25 I would like to enter -- There's these two

1 documents I'd like to enter.

2 MR. HARJEHAUSEN: Your Honor, we would
3 object on relevance again and or foundation.

4 THE COURT: All right.

5 Let me see.

6 Lay the proper foundation for introduction of
7 this document.

8 MS. MCBRIDE: It's the grading system.

9 THE COURT: Well, I sustain the
10 objection.

11 MS. MCBRIDE: We've already entered, Your
12 Honor, a mean email that Mr. Roach sent to Dr. Horner and then
13 the following a letter that he sent to Dr. Horner.

14 THE COURT: Thank you.

15 MS. MCBRIDE: Can we just look at a couple
16 of things on there?

17 Q. The last thing on the email, you said that he was
18 given access to SASSY to look up grades to put on some IEPs but
19 that miraculously disappeared on the letter that you sent the
20 next day.

21 MR. HARJEHAUSEN: Objection, Your Honor,
22 the letter that she's referring to was issued by Dr. William
23 Honor.

24 MS. MCBRIDE: No, I mean the letter he
25 wrote to Dr. Horner.

1 A. Can you restate your question? I'm sorry.

2 Q. If you compare those two documents, the allegations
3 against me were altered the following day. In other words, when
4 you initially approached him you listed more items than you did
5 the second day, some things came away from that. Do you know why
6 that things disappeared from that list?

7 A. Dr. Horner, like I say, he had this email that I'd
8 sent him and then when he and I spoke he went through and he
9 asked me to put a few of them together.

10 If you look at the second from last bullet, says,
11 allowing a student access to personal special education records
12 of students. So he changed the verbiage.

13 THE COURT: Okay. Move on, ma'am.

14 MS. MCBRIDE: Okay.

15 THE COURT: Explained it.

16 Q. So SASSY, you didn't have passwords to SASSY and you
17 don't have the proof that he had passwords to SASSY why would you
18 tell Dr. Horner that he did?

19 A. Again, recollecting from eight years ago, it would've
20 been documentation from evidence that I had at the time.

21 Q. But I've been through all the statements and he never
22 had those passwords. So why would you tell Dr. Horner that?

23 A. Again, as I just said, it would've been from evidence
24 that I had at the time.

25 Q. If he had the password lode 1 did that give him access

1 to the grading system?

2 A. Again, I don't remember what that password was to. I
3 think I remember it was the one that logged him into the
4 computer.

5 Q. Okay.

6 And what did he get to by using that logon?

7 A. Well, it gives you access to the computer. Then you'd
8 have to click on other icons to get to other things.

9 Q. Okay.

10 So what would he need to get into a grading system?
11 Where we put students' grades?

12 A. Why would he need to get into it?

13 Q. What would he need?

14 A. To get students' grades to put IEPs.

15 Q. Yeah.

16 What would he need to get into that --

17 A. Oh, a password.

18 Q. Was that password different for every teacher or was
19 it the same?

20 A. Again, I'd be speculating to remember that but usually
21 they are teacher specific.

22 Q. Okay.

23 Grading system.

24 A. We're on our third grading system different from back
25 then. I know, I know now teachers have their own, individualized

1 passwords. For security reasons.

2 Q. The entire time that I was at Berea High School we had
3 the very same sign on.

4 And who, who distributed the document that gives
5 access to the grading system?

6 A. Then?

7 Q. Yes.

8 A. It would've been Boris Bower (ph), the -- He was over
9 the computers.

10 Again, it's speculation.

11 Q. The grading system then, the grading system.

12 A. Who gives you access?

13 Q. Yeah. Every time we did a report to every time we did
14 a report card who gave us access to that grading system for that
15 period of time? All those years.

16 A. I'm not real sure what you're asking me. Who
17 originally gave you access to it? Every teacher would have
18 access to it to put their grades in.

19 Q. That's right.

20 Who gave use that access? Who gave us the passwords?

21 A. The district, ultimately, would have give them.

22 Q. At the school?

23 A. I believe it comes from the district in their email,
24 most time, what your passwords were.

25 THE COURT: Move on.

1 MS. MCBRIDE: Nothing else.

2 THE COURT: Okay.

3 Do you have any questions, sir?

4 MR. HARJEHAUSEN: I've got a couple, Your
5 Honor.

6 CROSS-EXAMINATION BY MR. HARJEHAUSEN:

7 Q. First, Principal Roach, I think your referred, during
8 your direct testimony, to Leslie Lambert as being investigator
9 for the school district.

10 A. That's correct.

11 Q. She's an investigator for the Greenville County
12 Sheriff's Office --

13 A. That is correct. Her placement if for the entire
14 school district as the investigator.

15 Q. So when you refer to the school district you just
16 meant that for the sheriff's office she investigates incidents at
17 the school?

18 A. That's correct. That's her job.

19 Q. Can you give me a little bit of your educational
20 background?

21 A. Sure. Have a bachelor's degree for Furman University
22 I political science, got certified to teach social studies; have
23 a master's in administration from Furman; have an educational
24 specialist degree from University of South Carolina and I've
25 completed all course work for a PhD from University of South

1 Carolina, eight months away from the PhD.

2 Q. And tell the jury, if you will, about your
3 progression, about how you became -- just an overview of how you
4 became a principal.

5 A. Sure.

6 My senior of college I actually coached football and
7 baseball at Greenville High. That would've been '91.

8 Where I graduated from Furman I received a teaching
9 position at Greenville High as a social studies teacher, taught
10 there for four years; two of the last years I taught there was an
11 unofficial administration assistant which meant when an assistant
12 principal was out I filled in for them.

13 After those four years, which would've been '96, I
14 went to Berea High School as an assistant principal, stayed there
15 from '96 to 2002 as an assistant, went to Woodmont High School
16 for a year as assistant principal and director of the
17 international baccalaureate program and then came back to Berea
18 High School June 1, 2003, as the principal, served there seven
19 years as principal and then July 1, 2010, went to the Greer
20 Middle College Charter High School as the executive director and
21 principal.

22 Q. Now, while you were principal at Berea High School,
23 can you also give us a brief, brief overview of what the
24 responsibilities as principal were? What it encompassed?

25 A. Sure.

1 Responsibilities of a principal are a lot. You're,
2 basically, in charge of everything that has to do with that
3 school, the facilities, all the adults that are in the building,
4 all the kids at are in the building.

5 While I was there I had anywhere from 60 to 65
6 teachers that were under my are, had to make sure that they were
7 teaching students, that instruction was going on, that they were
8 at their posts when they had duties, that their attendance was
9 the way it should be, that they met all the requirements of the
10 state and the district.

11 Also had aides that worked for me, had to make sure
12 that they did what they were supposed to do.

13 Of course, I had custodians that worked in the school
14 that did not work for me but I also had to work with their, their
15 boss on campus to make sure the school was clean, everything was
16 fixed as it needed to be down.

17 Had a cafeteria staff that worked that that, again,
18 did not work for me but I worked in conjunction with their
19 supervisor to make sure that we provided lunches to student in a
20 timely manner, make sure we met the guidelines by the federal
21 government.

22 And then, of course, I had anywhere from 1100 to 1200
23 students that I had to make sure that they did the things that
24 they were supposed to do.

25 And on top of that, I had clerks, secretaries,

1 assistant principal, guidance counselors.

2 All in all, over a hundred employees of my own plus
3 anywhere from 20, 25 other adults that worked in the building for
4 the district. They did not directly report to me but I was,
5 again, over their job duties.

6 Q. And as for issues of teacher fitness, you were
7 responsible for reporting to Dr. Horner, is that right?

8 A. That's correct. We're mandated by the district and
9 the state to evaluate teachers, third of your staff every year.

10 All of the second year teachers have to go through a
11 state evaluation process and we have to make sure that that is
12 done correctly and report back to the district.

13 Q. And after the incident with Mr. F [REDACTED] and Miss
14 McBride, Miss Mann reporting her car stolen, you did a brief
15 internal investigation for the school district, is that right?

16 A. That's correct.

17 Q. And as part of your investigation you received copies
18 of the statements that the police obtained from their separate
19 investigation?

20 A. Usually what we do with that is, instead of have to
21 interview a person again, they've had to swear that they told the
22 truth; they signed off on a statement in front of an officer,
23 many times they would provide their statements to us. If we saw
24 something that just didn't sound right we would talk to that
25 person again but many times we would not take a separate

1 statement.

2 But we did hold our own investigation, read the report
3 and then sometimes follow up with a person but not take another
4 written statement.

5 Q. Okay.

6 Did you have anything to do, whatsoever, at all, with
7 the sheriff's department investigation of Miss Mann?

8 A. No.

9 Q. Now, there were arrest warrants that were issued for
10 Miss Mann for contributing to the delinquency of a minor.

11 Did you have any contact with Leslie Lambert, Sergeant
12 Shea Smith or Deputy Oslager concerning the issuance of that
13 arrest warrant?

14 A. No.

15 Q. Now, there was another arrest warrant that was issued
16 for Miss Mann and that was for enticing an enrolled child from
17 school. I ask you the same question. Did you have any input
18 other anything to do with the issuance of that arrest warrant?

19 A. No.

20 Q. Now, at some point, apparently, the charges against
21 Miss Mann were dropped. Were you aware of that?

22 A. Public knowledge, that's, basically, how we found out.

23 Q. Okay.

24 Now, did you have any input whatsoever in the
25 solicitor's dropping those charges?

1 A. No.

2 Q. Did anybody contact you from the Greenville County
3 Sheriff's Office about the charges against Miss Mann?

4 A. No.

5 MR. HARJEHAUSEN: That's all the questions
6 I have at this time, Your Honor.

7 THE COURT: All right.

8 Anything else?

9 MS. MCBRIDE: I do.

10 REDIRECT EXAMINATION BY MS. MCBRIDE:

11 Q. Does Miss Lambert, does she work for a special unit
12 called school services?

13 A. Not sure what the unit is called. I know it's -- It
14 deals with schools. I'm not sure what it's called, though.

15 Q. That's all they deal with, isn't it?

16 A. That's their assignment.

17 Q. Okay.

18 And where is that office located?

19 A. They used to be on Tindal Avenue. Now I think they're
20 located on, I don't know the name of the road. It's right off of
21 Wade Hampton.

22 Q. Okay.

23 And who owns that building? Who owns that facility?

24 A. I don't know.

25 Q. You have no idea?

1 A. I do not know who owns that.

2 Q. I want to move be to the trial transcript.

3 THE COURT: Now, what's this in reply to?

4 MS. MCBRIDE: Okay.

5 He said that he --

6 THE COURT: Tell me what.

7 MS. MCBRIDE: It's to prove that he did
8 have input in to the investigation. He said he had --

9 THE COURT: Go ahead.

10 What in the transcript are you looking for?

11 MS. MCBRIDE: It's his. It's his from the
12 previous trial.

13 Okay.

14 THE COURT: Okay.

15 What page, what line?

16 MS. MCBRIDE: On page 502.

17 Q. First let's talk about the web site. Let's start on
18 line 14 and I'll read the question, if you don't mind answering
19 on this page.

20 Question -- After I read the questions.

21 There's nothing wrong with a child, with a young
22 person helping a teacher out relative to their web site and that
23 sort of thing, is there?

24 A. You want me to read the answer?

25 Q. Please.

1 A. Answer: My understanding there have been teachers who
2 have had students who have helped them develop a web site and
3 then they change their password once the student had done that.

4 Q. All right.

5 And so that would not be uncommon, where a teacher
6 would have that sort of help?

7 A. Answer: I think some teachers do get help because
8 they don't feel comfortable with developing a web site.

9 Q. Okay. Good.

10 Now let's move over to page 8.

11 See which line to start on here.

12 Okay. Let's start on line 15.

13 Did you have any concern about her - and this is David
14 Thomas (ph) - asking you about me.

15 Did you have any concern about her, her complaints
16 concerning the system of special education to the fault that she
17 perceived in the system of special education at Berea?

18 A. Answer: Did I have any problems with that?

19 Q. Yeah. Did she -- Yeah. Did you know about her
20 concerns?

21 A. Answer: She had expressed some concerns when I was an
22 assistant principal. That was several years before. Not as a
23 principal.

24 Q. Okay.

25 So before you said that you don't really remember

1 anything between you and I.

2 When we say concerns is it fair to say we were butting
3 heads?

4 A. Again, I'd be speculating to remember that far back.

5 Q. Okay.

6 It's you and I. And I'm in your office and I'm mad
7 about something that's happened, is that speculation? You don't
8 remember us butting heads at all?

9 A. Again --

10 Q. That's your testimony?

11 A. As I said, by my statement here I said you expressed
12 some concerns when I was an assistant principal.

13 Q. What concerns?

14 A. Again, I'd be speculating if I remembered that far
15 back.

16 THE COURT: Move on.

17 Q. Let's move over to page 509. Let's talk about --
18 Let's start on line 6. David said, Let me get this straight.
19 You're coming -- That's all right. I'll let your answer just
20 stand, and that's where he finished the question.

21 Then he goes on to say, You understand -- Let's
22 quickly ask this question. Do you understand IEPs are federal?
23 They're guarded by federal laws?

24 A. Answer: Yes, sir.

25 Q. Okay.

1 When you were vice-principal did you sign off on IEP
2 group meetings even though you were not present?

3 A. Once I read those documents I did.

4 Q. You signed off on them?

5 A. Answer: After I talked with the teacher and they
6 explained what was going on I did, that I agreed what was being
7 done.

8 Q. All right.

9 So even though you were not at the meetings
10 themselves?

11 A. Answer: I have done that before as an assistant
12 principal once I knew what was going on.

13 Q. All right.

14 So when you sign off on these documents are you not,
15 in fact, stating to the federal government that you were in that
16 meeting, that you participated as an IEP committee member and if
17 you sign off on that documentation that you were there and that
18 you oversaw that IEP and you really were not there, is that not
19 falsifying a federal document?

20 MR. HARJEHAUSEN: Object to the form of
21 the question.

22 THE COURT: I sustain the objection.
23 Instruct the jury to disregard the question.

24 Q. Did I have concerns over your signing off on documents
25 when you were not there?

1 A. Again, speculating that far back.

2 Q. Do you think that's proper conduct?

3 A. Do I think it's proper conduct to sign off on an IEP?

4 Q. Uh-huh. Stating you were there is you weren't.

5 A. Your signature on a IEP doesn't necessarily mean that
6 you were actually there. It means you agree as a member of that
7 committee that everything that the child's being done, their
8 goals, their objectives and everything they have set forth for
9 the rest of that year or the rest of that IEP period.

10 Q. So your testimony is that it's all right --

11 THE COURT: Move on, please, ma'am. He's
12 responded to your question.

13 MS. MCBRIDE: Okay.

14 No more questions.

15 THE COURT: Thank you. You can step
16 down.

17 All right.

18 MS. MCBRIDE: Plaintiff calls Ms. Cochran.

19 LINDA DIANE COCHRAN,
20 first being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION BY MS. MCBRIDE:

23 Q. Good morning, Ms. Cochran.

24 A. Good morning.

25 Q. Would you please share with the jury where you used to

1 work and what you're doing now?

2 A. Well, I read for the school district for about 15
3 years off and on. I was a substitute teacher for about 10 years
4 and then after that I was hired after filling in as a sub. At
5 Berea High School.

6 The principal came to me and asked me would I be
7 interested in staying there long-term. So from 1999 till 2004 I
8 was there.

9 Q. Were you there as?

10 A. Special education aide.

11 Q. That's correct.

12 So in that time you served as an aide for our
13 department and you primarily worked in the occupational diploma
14 program?

15 A. Yes, ma'am.

16 Q. And what was your responsibilities supposed to be?

17 A. My responsibilities were supposed to assist the
18 teachers and their instructions. If the child was having
19 problems keeping up, instead of holding the class back I would
20 take them, supposed to take them and give them independent
21 instructional aid to help them kind of stay up with the
22 situation.

23 That didn't always work out that way.

24 Q. Okay.

25 So you were supposed to be taking, like, a one on one

1 or maybe one on three or four that were struggling and needed
2 some independent instruction?

3 A. Supposed to be, yes.

4 Q. Okay.

5 But what were you doing?

6 A. I was the aide for the entire department most of the
7 time as far as the ED, the ELD, all the special ed except for,
8 basically, the physically handicapped, more deeper problems. But
9 I was the aide for four different teachers.

10 A lot of the times, a lot of the times when you're, in
11 particular -- I was pretty much the teacher for that entire year.

12 They couldn't keep a teacher in that position.

13 Q. And you had some complaints?

14 A. Oh, yes, I did.

15 Q. And what were they?

16 A. I went numerous times to let them know the problems I
17 was having.

18 Our classes were overloaded. The district had a
19 tendency to manipulate think numbers to where we could take on
20 that many kids. That wasn't really legal but they kind of
21 manipulated around to where we had more than we were supposed to
22 have.

23 I'm supposed to be an aide to a teacher. I was
24 supposed to be in a classroom with other teacher.

25 Q. And did that occur?

1 A. Numerous times. Matter of fact, the last year --

2 THE COURT: Hold on, please, ma'am.

3 A. Oh, I'm sorry.

4 THE COURT: What's the relevance, ma'am?

5 MR. HARJEHAUSEN: Relevance.

6 MS. MCBRIDE: It goes to show complaints
7 that I had about the aides and abuse of aides in the classroom.

8 MR. HARJEHAUSEN: Your Honor, I don't see
9 how that's relevant to --

10 THE COURT: I don't see that that's
11 relevant to any issue in this case so I sustain the objection.

12 Q. Miss Cochran, after, after Mr. Roach became principal
13 you were coming in my room after classes sometimes very upset
14 about conditions that we were working on for you. Would you
15 please share with the jury what was going on that last year, the
16 months, the last month that I worked for the school district?

17 MR. HARJEHAUSEN: Same objection, Your
18 Honor.

19 THE COURT: I sustain the objection.

20 Q. What do you know about my relationship with Bill
21 Roach?

22 A. Well, basically, it was rocky and I can attest to the
23 fact that I went to Bill Roach numerous times with complaints.
24 As you know and as he knows, I had a problem with you for quite
25 some time. We, we had a very strained relationship to the point

1 to where I didn't want to be in your class

2 Q. I remember.

3 A. And I would go to Mr. Roach because he was the one
4 that I was supposed to report to, plus the fact I trusted Mr.
5 Roach, I respected him quite well.

6 Not only that, but I had some issues with my daughter
7 that I was able, due to the respect I had for Mr. Roach I went an
8 dealt with some of that, also, and he never hesitated to talk
9 with me. He never hesitated to come around his desk, sit down
10 and pray with me. And I had a deep respect for Mr. Roach.

11 THE COURT: All right.

12 Move on, please, ma'am.

13 A. I'm sorry.

14 The last year, during the month that you were there, I
15 was quite impressed. I even went to Mr. Roach and told him that
16 things had changed, you were an entirely different teacher.

17 You were -- I guess after all your things where you
18 were being observed, all that was off your back, you were
19 teaching the class. You constantly had them on task and had, had
20 turned into a real teacher. And I acknowledged that even though
21 at the time I still had harsh feelings with you because of
22 situations that happened. And -- But right is right and wrong is
23 wrong and I admitted the fact that you had made a complete turn
24 around that, that new year. It was like a new teacher.

25 Q. So when you went to him with complaints about me what

1 took place in those conversations?

2 A. I would complain about the fact that the class was
3 kind of out of control. They were doing their own things. You
4 were doing a lot of paperwork, which you were having to be bound
5 down in class.

6 But the kids kind of ran rampant in there. Rampant.

7 Q. The first year.

8 A. There wasn't a lot of instruction for awhile and just
9 kind of give them something to keep them occupied.

10 And the kids that I dealt with were the ED kids which
11 were the emotionally disabled. Some of them had been in and out
12 of jail or juvenile centers, things of that nature, and I grew to
13 love those kids. Those kids were my kids and you can ask them.
14 They called me Momma Linda. Those kids were very important to me
15 and Mr. Roach knew that.

16 Q. Okay.

17 Well, to move on, was there any conversations with Mr.
18 Roach that were negative? About me?

19 A. Well, I had several conversations with Mr. Roach that
20 were negative about you and he assured me that it's being dealt
21 with, that he was gonna deal with it, that he's working on it and
22 first opportunity they get they're gonna replace you.

23 MR. HARJEHAUSEN: Objection, Your Honor.

24 THE COURT: Hold on.

25 MR. HARJEHAUSEN: Hearsay.

1 THE COURT: Overruled.

2 Go ahead.

3 Q. What did you just say? Will you repeat that last,
4 please? I didn't --

5 A. That, that he was working on handling it, they're
6 looking to see what they could do to replace you.

7 Q. Getting rid of me?

8 A. Yes, ma'am.

9 Q. Thank you.

10 A. And at the time I was --

11 Q. Glad?

12 A. Glad.

13 Q. I know. We butted heads, too.

14 THE COURT: Now, ma'am, please don't make
15 comments like that.

16 Q. Moving along.

17 What knowledge do you have of -- Mr. Roach likes to
18 write poems, doesn't he?

19 A. Uh-huh.

20 Q. And after I was arrested he wrote a little poem,
21 didn't he?

22 A. Well, that's the only poem --

23 THE COURT: Hold on, please, ma'am.

24 A. Oh, I'm sorry.

25 MS. MCBRIDE: He wrote a poem about me and

1 I want to share it with the jury.

2 THE COURT: Go ahead.

3 A. Word for word, I can't remember. The only poem I know
4 of him writing was at the end of year. We always have a get-
5 together at the end of the year and we had a cookout at Mr.
6 Rice's (ph) house, which is another teacher. He lived okay
7 Saluda Lake and Mr. Roach stood up and discussed all the problems
8 he'd been through his first year and --

9 THE COURT: Ma'am, just tell us what the
10 poem said.

11 A. Okay.

12 The poem said, referred to, well, you know, we went
13 through of our problems, however, Miss Mann, or he didn't say
14 Miss Mann. He said we all know that we had one teacher arrested
15 and led off campus and kind of laughed about it and then
16 proceeded to -- You know, it was just another poem and how
17 grateful he was to some of the support he had.

18 THE COURT: Go oh.

19 Q. He thought that was funny?

20 A. Yeah, he did and some, some of the other teachers
21 thought it was funny but there was several of us sitting there
22 going --

23 MS. MCBRIDE: Okay.

24 THE COURT: Move on, ma'am.

25 Q. Let's talk about what happened the week or just a few

1 days after I was arrested.

2 You had a conversation with Mr. Roach about my
3 classroom and after I had been to clean out my classroom. I
4 would like for you to share with the jury what Mr. Roach had to
5 say about me to you.

6 A. Well, we were sitting in your classroom and he, he had
7 come in there and he said -- I kind of looked around. He said,
8 she cleaned us out, didn't she? And I said, sir? And he said,
9 she cleaned us out, didn't she? She took everything. I said,
10 Well, she only took what she had put in there.

11 Miss Mann had a tendency to put a lot of her personal
12 money, and I'm saying, probably, thousands of dollars that she
13 had personally placed in that department because our department
14 not always got what they needed. So the small allotments that we
15 got, she got certain things it would cover and then she put, like
16 I said, a lot of her own personal money into it.

17 And when he addressed that issue I told him, I said,
18 Well, no, sir. I said, Mr. Roach, you don't realize how much
19 money, her own money that she put in to this classroom, and he
20 said, Well, where's the TV? We had a TV VCR combination. I
21 said, It's in my classroom, she passed it on to my classroom and
22 the calculators that bought through the district was given to me
23 because I did a lot of the math teaching.

24 There was some little personal globes so each student
25 would have a globe she passed on to Mr. Foxx -- Miss Foxx's room.

1 And it was just --

2 Q. It was redistributed --

3 A. It was redistributed. The school's property was
4 redistributed.

5 And even some of her stuff that she said, Well, you've
6 probably used this, go ahead and keep it. Show left furniture.
7 She left a huge nice bookcase for me to use and then she gave a
8 nice bookcase to Miss Foxx to use in her classroom that was
9 bought out of her own personal money.

10 Q. But he, basically, said that I had cleaned y'all out?

11 A. Oh, yes, and I said, Mr. Roach, she didn't. I said --
12 And I took him into the classroom, in my classroom and showed him
13 exactly where everything was.

14 Q. Okay. Very good.

15 With you being an aide in out department, what
16 knowledge do you have of Josh F[REDACTED] being in my room?

17 A. I know he spent a lot of time in there and you had
18 expressed concerns because it was becoming a disturbance in your
19 classroom and you had sent him back to class and told them that
20 you just couldn't to area anymore.

21 And I was in the coffee room one day and you were
22 talking with Miss Kite and she actually approached you and asked
23 you about it. And you told her then, I would rather you not; I
24 really object to that because I need to focus my attention on my
25 students. And she said, Well, he -- because of his lifestyle he

1 was getting into a lot of confrontations with other kids in the
2 classroom and then he'd get real depressed and he would be very
3 boisterous and Miss Kite was, like, he's disrupting my class, I
4 can't --

5 MR. HARJEHAUSEN: Objection, Your Honor.

6 THE COURT: Hold on, please, ma'am.

7 I sustain the object. Don't tell us what
8 anyone said.

9 A. I'm sorry.

10 MS. MCBRIDE: Okay.

11 THE COURT: Move on, please.

12 A. I can't hear.

13 THE COURT: Move on.

14 MS. MCBRIDE: Okay.

15 Q. So if we had a teacher Miss Kite - and we've already
16 entered these statements - who says that I was the one writing
17 notes to her excessively and taking this boy out of class, with
18 what you know to be true, would that be a true statement or would
19 that be a false statement --

20 MR. HARJEHAUSEN: Objection.

21 THE COURT: I sustain the objection,
22 instruct the jury disregard the question.

23 Q. You were our aide in that department the entire time
24 that I served at Berea High School, is that correct?

25 A. Yes, ma'am.

1 Q. You have any knowledge of me ever taking any student
2 out of class, ever?

3 A. No, ma'am.

4 Q. Thank you.

5 MS. MCBRIDE: Nothing else.

6 THE COURT: All right.

7 Any questions?

8 MR. HARJEHAUSEN: Couple, Your Honor.

9 CROSS-EXAMINATION BY MR. HARJEHAUSEN:

10 Q. Miss Cochran, now, you helped Miss Mann clean her room
11 out, is that right?

12 A. I did.

13 Q. And when you and Mr. Roach allegedly went into Miss
14 Mann's classroom it was fairly empty, right?

15 A. It was, yes, sir.

16 Q. Okay.

17 And when Mr. Roach allegedly said she cleaned us out
18 you didn't believe him. You didn't believe that Miss Mann had
19 stole anything --

20 A. I knew she had not.

21 Q. Okay.

22 So you didn't think any less of Miss Mann at that
23 time, did you?

24 A. No, sir. We pretty much kind of had worked things out.

25 I was in a position where I didn't have any choice but

1 to have the support from the other teachers because I had no
2 teacher. I was serving as a teacher in that other classroom.
3 Which was illegal.

4 MR. HARJEHAUSEN: No more question, Your
5 Honor.

6 THE COURT: Thank you.
7 Step down.

8 A. Okay.

9 Can I address one issue, sir?

10 THE COURT: No, ma'am.

11 A. Is there --

12 THE COURT: No, ma'am. Step down.

13 MS. MCBRIDE: Plaintiff calls Lynn Foxx.

14
15 LYNN FOXX,
16 first being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MS. MCBRIDE:

19 Q. Morning.

20 A. Morning.

21 Q. How are you?

22 A. I'm good, thank you.

23 Q. Would you please tell the jury who you are and how we
24 came to met and what you've been doing with your -- in your
25 career the last several years and what you do now?

1 A. Okay.

2 I'm a special education teacher and I was working at
3 Berea High School when Sherrie was hired to work there. I
4 believe I was at Berea for eight years and I left after, I
5 believe it was the '03'04 school year and accepted a position in
6 Pickens County, which is where I live. And I've been teaching in
7 Pickens County at various schools, special education departments,
8 since then.

9 Q. Okay.

10 When I came to work at Berea did I have any training?

11 A. You just had your degree.

12 Q. And it was in social studies?

13 A. Right.

14 Q. Okay.

15 And so I was, you know, starting in a field I knew
16 nothing about and you were -- What position would say that you
17 were, kind of unofficially for me?

18 A. Well, at Berea we had a fairly large special education
19 department. We had one side that was resource and that's for
20 kids whose disabilities were not so severe that they couldn't
21 earn a high school diploma so they just had, maybe, a period of
22 resource built in their schedule to help them with their
23 assignments and to help them with whatever their academic
24 deficiency might be.

25 And then we had a self-contained side which was for

1 kids whose disabilities were severe enough that they, they could
2 not earn a high school diploma. So we had separate curriculum
3 that focused mostly on life skills, job skills. And I taught in
4 that part of the department.

5 We had an overall department head but he taught in the
6 resource side of the department so I was sort of the, the
7 unofficial team leader for the self-contained side.

8 Q. Okay.

9 And what was my position there?

10 A. You were a self-contained EMD teacher.

11 Q. Right.

12 And where were we in physical proximity to one another
13 the entire time that we worked getting?

14 A. Across the hall. My room was across the hall from
15 yours.

16 Q. Okay.

17 And you were the team leader of a group of four
18 teachers.

19 A. Right.

20 Q. And you don't tend to pat yourself on the back very
21 much but your extremely qualified.

22 MR. CLARKSON: Objection.

23 THE COURT: Yes.

24 Please don't make --

25 MS. MCBRIDE: No comments.

1 THE COURT: -- comments like that.

2 MS. MCBRIDE: Okay.

3 Q. Would you tell the jury how you were regarded by Dr.
4 East at that school?

5 MR. CLARKSON: Objection.

6 THE COURT: I sustain the objection to
7 the form of that question.

8 Q. Do you think you were very qualified?

9 A. Yes, ma'am.

10 Q. Okay.

11 And you were sort of assigned to show me the ropes?

12 A. That's right, right. I believe at that particular
13 time I had the most experience in our department outside of,
14 maybe, Mr. Painter (ph) who was the department head and he had
15 asked me to sort of be your mentor because you were a new teacher
16 and you were also teaching in a field that you weren't certified
17 in initially. So he just asked me if I would be your mentor and
18 make sure if you had any questions or any problems that, you
19 know, I could help you get acclimated to teaching, get acclimated
20 to Berea, get acclimated to special education, that sort of
21 thing.

22 Q. Okay.

23 And Miss Cochran testified that I had a rocky first
24 year. Would you agree to that?

25 MR. CLARKSON: Objection.

1 THE COURT: What's your question?

2 Q. Did have a hard, difficult time at first?

3 A. Yes, as most first year teachers do.

4 Q. Okay.

5 And did I adjust?

6 A. Yes, as most teachers do, as they get more experience.

7 Q. Okay.

8 When I had a hard time figuring things out where did I
9 go?

10 A. Usually to me.

11 Q. Okay.

12 And did I always try to do what you recommended me to
13 do?

14 A. I think you did.

15 I tried to tell you what I would do based on my
16 experience.

17 Q. And do you feel that I was responsible?

18 A. Yes.

19 Q. And what kind of teacher was I?

20 A. Oh, you were -- you were -- You turned into a
21 fantastic teacher. You were very enthusiastic. You had always
22 been a very enthusiastic teacher and you could tell that you
23 wanted to be there.

24 You know, special ed's not a field that some people
25 want to go in to because of the nature of the students that you

1 have to work with, that they have -- Obviously, they have
2 academic difficulties. A lot of them have behavioral issues,
3 also, and so there's a lot of people out there that don't want to
4 deal with that.

5 But you embraced that from the very beginning and, you
6 know, you always tried to do what was best for those kids.

7 Q. And I loved my job?

8 A. Yes, ma'am.

9 Q. But there was problems with special ed, right?

10 A. Yes, ma'am.

11 Q. There were complaints?

12 A. Yes.

13 Q. And do you remember what some of those complaints are?

14 Or were?

15 A. Some of them were that our kids --

16 MR. CLARKSON: Objection. This has --

17 THE COURT: I sustain the objection.

18 Ms. McBride, we're concerned in this case
19 with your alleged defamation which in this case is slander, and
20 also with abuse of process and that's what we need to hear
21 testimony on.

22 MS. MCBRIDE: This goes to the abuse of
23 process because they were trying to physically get rid of me and
24 this is how they did. They had me arrested. And that's what I
25 think I can prove through my direct supervisor here.

1 THE COURT: Go ahead.

2 Q. The years that we were there we had a lot of
3 complaints with administration, in particularly, guidance. And I
4 want to talk about what those were.

5 A. Okay.

6 Q. And when we had these problems we had two
7 administrators that we would go to.

8 A. Uh-huh.

9 MR. CLARKSON: Objection, Your Honor, she's
10 not asking a question.

11 Q. I want you to explain --

12 MS. MCBRIDE: Okay.

13 Q. Take it from there.

14 THE COURT: Please just ask questions.

15 Q. Tell me what our experience were with those two? Who
16 were those administrators and what was our experience with those
17 two different administrators?

18 A. Mr. Roach was one of the assistant administrators and
19 I believe you're referring to Miss Tally (ph).

20 Q. That's correct.

21 A. Was the other assistant administrator.

22 Honestly, Miss Tally was more supportive of our
23 concerns and tried to, tried to work with the administration
24 above her and the guidance department in dealing with some of the
25 concerns that we had but, to my knowledge, she didn't get very

1 far, either.

2 Q. How about Mr. Roach?

3 A. Mr. Roach would usually tell me he'd look into it.
4 And that would be about all I would find out.

5 Q. Okay.

6 Well, when I approached him was I okay with that?

7 A. No.

8 Q. When he would look into it?

9 A. No.

10 Q. How would I handle these things with Mr. Roach?

11 MR. CLARKSON: Objection.

12 THE COURT: I sustain the objection to
13 the form of that question.

14 Q. Could you tell me about the relationship that Bill
15 Roach and I had from the get-go?

16 A. It was not the smoothest of relationships.

17 You -- Sherrie's, Sherrie's a very outspoken. Miss
18 McBride is a very outspoken person and if she felt like there was
19 something wrong she didn't, you know, she didn't hesitate to
20 speak her mind and, and, you know, argue and argue and argue that
21 this is a problem, this is an issue, we need something done about
22 it.

23 Q. And did that get me in trouble?

24 A. I think it probably did. I think they got tired of
25 hearing that.

1 Q. Have you ever seen a guidance department control
2 things the way that Crystal Hunt (ph) had leeway with? Can you
3 talk about -- Tell us about our issues with the guidance
4 department.

5 A. Guidance, the guidance department, one of their
6 responsibilities was to create the students' schedules every
7 year. You know, they signed up for courses in the spring and
8 then the guidance department would schedule children into various
9 courses.

10 And our kids would often, you know, in the self-
11 contained department they would take their core academics, which
12 would be their math, science, English and social studies, with us
13 and then they could take elective courses out in the regular
14 education part of the school. And so they were free to request
15 whatever courses they wanted to request, whether it be drivers ed
16 or P.E. II or art or music or foods and nutrition or the career
17 center.

18 We also sent children to the career center and a lot
19 of times they would request on their schedules courses at the
20 career center and, you know, it never failed that they would not
21 get into those courses.

22 We particularly had girls, young ladies that liked to
23 do hair and wanted to become cosmetologists and there was a
24 cosmetology program at the career center and they would often
25 request that on this schedules and they'd never get it.

1 And I had asked Miss Hunt before, you know, why, why
2 do our kids not ever get to do these programs and she told me
3 that it was too hard for our kids, that they would never be able
4 to pass the class, that there was a state exam, they'd never be
5 able to take the exam and pass it, it was too difficult so she
6 wasn't going to use a spot on one of our kids when they couldn't
7 pass the test when she could give it to a regular ed kid.

8 And I tried to explain to her that our kids had, you
9 know, a right to take those courses and that there were
10 accommodations built into their IEP, such as oral testing, where
11 the test could be read to them or played on a CD or a tape, so
12 that they didn't have to physically read the test themselves.
13 They could get assistance with that or they could get assistance
14 with the course work because that would be one of the
15 accommodations in their IEP.

16 Q. Okay.

17 It's more than they had rights. They had federally
18 mandated rights to have the same opportunities that the
19 mainstream children have, is that correct?

20 A. Right.

21 MR. CLARKSON: Objection.

22 THE COURT: I sustain the objection.

23 Q. And so when you went to her was it only career courses
24 or was there other courses, like drivers ed?

25 A. Yeah, there were other courses.

1 It seemed like they kept getting placed in the same
2 electives year after year after year, like art. I remember art
3 was one that they kept ending up in and food and nutrition stands
4 out in my mind as another that they kept getting put in on a
5 regular basis. Even if they'd had the course before they kept
6 getting put back in there.

7 Q. When they clearly wanted other things?

8 A. Right.

9 Q. Did they tend to get classes that no one else wanted,
10 such as speech or --

11 A. We would have sometimes students put in courses, like
12 speech, that they hadn't signed up for.

13 Q. And were they really suited for that type class?

14 A. Probably not. No.

15 Q. Some had speech impairments?

16 A. Uh-huh.

17 Q. Some had what else? About their personalities that --

18 A. Right. Some had behavior issues where they'd be
19 excessively withdrawn or, you know, they would explode, had
20 explosive tempers and that sort of thing.

21 And we always tried to guide them more toward classes
22 that would help them obtain a job or help them in their adult
23 life.

24 Q. Okay.

25 You were there the entire time that Mr. Roach was the

1 vice-principal.

2 A. Yes.

3 I believe we both started at Berea the same year.

4 Q. In that time did you notice his relationship with
5 Officer O?

6 A. They seemed to be good friends. Yes.

7 Q. It was well known they were good friends.

8 MR. CLARKSON: Objection.

9 THE COURT: I sustain the objection,
10 instruct the jury to disregard the comment by Ms. McBride.

11 Q. Did he have other friends at the school?

12 A. Mr. Roach?

13 Q. Yes.

14 A. Yes.

15 Q. Did you see favoritism?

16 A. It appeared to me that he, he favored people with
17 Furman ties or ties to his church.

18 Q. And we had a lot of employees that went to his church.

19 MR. CLARKSON: Objection.

20 THE COURT: Please, ma'am.

21 A. Well, I believe we did have --

22 MS. MCBRIDE: I'm asking. It's a question.

23 THE COURT: Go ahead.

24 Q. After he was hired as principal did that number of
25 people increase?

1 A. I believe it did. But I can't recall specific number.

2 Q. Let's talk a little bit about the IEP.

3 Yesterday Miss Wilson testified that it's a legal
4 document.

5 I had some IEPs and that was what I was getting at
6 before. You are qualified to be able to testify about an IEP.
7 You've been doing it for how long?

8 A. I've been a special ed teacher about 15 years. I've
9 been a teacher for 20 years.

10 Q. And you've been doing IEPs for?

11 A. About 15 years.

12 Q. Okay.

13 And so you would be a qualified expert?

14 A. I would be qualified, yes. I wouldn't call myself an
15 expert on anything but, yes, I feel like I know what I'm doing,
16 yeah.

17 Q. Okay.

18 MS. MCBRIDE: I would like to make this an
19 exhibit, please.

20 THE COURT: What is it?

21 MS. MCBRIDE: It's a IEP. It's not a
22 student- specific one. It's one that they give us as a guide.

23 THE COURT: Let me see.

24 MR. CLARKSON: Your Honor, I'm objecting to
25 this document. It has absolutely nothing to do with what --

1 MS. MCBRIDE: That's not true.

2 THE COURT: Ma'am, would you, please,
3 ma'am.

4 Go ahead, Mr. Clarkson.

5 MR. CLARKSON: Relevance.

6 MS. MCBRIDE: I've been accused,
7 excessively, of letting this child do my work and --

8 MR. CLARKSON: Objection to her speaking.

9 MS. MCBRIDE: I'm making an argument to
10 your argument.

11 THE COURT: Go ahead.

12 MS. MCBRIDE: We can present it?

13 If she's qualified to look at an IEP I think
14 I can prove to this jury why Mr. Roach had to have known that
15 this child not had been doing my IEPs. I mean there's not way
16 and Miss Foxx can prove that.

17 THE COURT: Do you have a copy that has
18 not been highlighted?

19 MS. MCBRIDE: No.

20 The reason that I did highlight the areas.

21 THE COURT: I asked you do you have --

22 MS. MCBRIDE: Oh. I don't.

23 THE COURT: I'm sorry. I won't allow
24 that to be introduced, then.

25 MS. MCBRIDE: That was what she was

1 testifying.

2 Thank you.

3 Q. You're also qualified to be an ADEPT coordinator,
4 correct?

5 A. An ADEPT evaluator, yes.

6 Q. Evaluator.

7 And it's been testified that, you know, I was going
8 through the ADEPT process when I was fired.

9 A. Right.

10 Q. Okay.

11 Typically, the way that works, if I was teaching out
12 of field the first year what happened?

13 MR. CLARKSON: Objection. She's testifying.

14 THE COURT: What's your question?

15 Q. What happened the first year file you're teaching out
16 of field? With the ADEPT process?

17 A. You don't, you don't go through it. You had a waiver,
18 I guess, best way to put it.

19 Q. Okay.

20 And then the second year what takes place?

21 A. Well, the first year that you were at Berea you were
22 trying to get your certification for EMD.

23 Q. Right.

24 A. So you didn't go through ADEPT because you were
25 teaching out of field.

1 And then your second year you went through the first
2 year of the ADEPT process, which is, if I remember correctly, was
3 called induction.

4 Q. That's correct.

5 MS. MCBRIDE: I'd like for her to take a
6 look at this letter from my evaluator. It's, actually, an
7 attachment to my evaluation. And the front letter is my principal
8 at the time Mr. Keith East.

9 THE COURT: Let me see what you've got.

10 MR. CLARKSON: Number 1, it's hearsay. It
11 is from a Dr. East.

12 Number 2, it's date April 10, 2002, which was
13 more than a year before the events leading up to this case and,
14 3, it's not relevant to anything. With the two issues that we're
15 trying.

16 THE COURT: All right.

17 Over the objection I'm gonna allow this.

18 MR. CLARKSON: Just for clarification, Your
19 Honor, just so my objection is on the record, I'm objecting to
20 both the letter and to the attachment, two separate documents.

21 THE COURT: Okay.

22 (Letter entered in to evidence as
23 Plaintiff's Exhibit 4 without objection.)

24 MS. MCBRIDE: Now, Miss Foxx is my
25 supervisor, unofficially at Berea.

1 Q. You were aware of what was taking place as I was going
2 through this ADEPT process. This was a letter that was shared
3 with me and I'd like for you to share it with the jury, from our
4 principal at the time Dr. East.

5 A. Okay.

6 Q. Can you certify that he's his signature?

7 A. It is. That's Dr. East.

8 Q. Okay.

9 Would you read that, please?

10 A. April 10, 2002, to Sherrie Mann from Keith East,
11 Principal, induction feedback. I was pleased to receive a copy
12 of your induction feedback form this afternoon from the district
13 observer Patty Owens (ph). It was evident from her report that
14 you're doing the things that students in self-contained science
15 class need and require in order to be successful. When I spoke
16 with Ms. Owens she commented on how you expertly you were able to
17 refocus your students on the task at hand and to provide meaning
18 learning experiences. In addition, I was pleased with the
19 portfolios that your students had put together relative to the
20 unit on safety. It was obvious that they had put in a great deal
21 time and that you had provided guidance and facilitated their
22 learning. I also wanted to say thank you for the job that you
23 have done with the student council. I believe that our students
24 enjoyed all the activities that you and the council provided and
25 I appreciate all the extra time and effort that you put in to

1 make it a success. I look forward to working with you in the
2 future here at Berea High School. Sincerely, Keith East, PhD,
3 Principal.

4 Q. When you successfully complete induction what takes
5 place the following year?

6 A. The next year is a more formal process. It involves
7 more observations, lot of written documentation that the teacher
8 who's going through the process has to provide regarding things
9 like long-term lessons plans, their philosophy on education.

10 Q. They've observed?

11 A. And they're observed multiple times.

12 Q. Okay.

13 And you get feedback from that committee.

14 A. Right.

15 Q. And I think I tried to establish before, you're also
16 certified to evaluate people going through ADEPT in addition to
17 knowing the process when teacher's going through it.

18 A. Right.

19 Q. Okay.

20 You went to training for that.

21 A. I did, yes.

22 Q. In fact, I believe that where you were the day I got
23 arrested.

24 A. I do, I remember I was not there at school the day
25 that you were arrested but I could not remember why but I did

1 know I don't find out about it until, I think there's a weekend
2 in between and I didn't find out about it until the next time we
3 had school, which I think was on Monday. And I just found out
4 by, by chance. A fellow teacher, I think she was our job coach,
5 actually, at the time, Miss Darnell (ph) told me what had
6 happened.

7 MR. CLARKSON: I object to this, not
8 relevant.

9 It's a two-page document, as well.

10 THE COURT: I sustain the objection to
11 this document and instruct the court reporter to remove the
12 second page of the one I just introduced. There's no evidence
13 that's relevant to this matter. So letter stays in but not the
14 second page.

15 Please take it off.

16 MS. MCBRIDE: The second page?

17 THE COURT: Second page.

18 And the letter stays in evidence.

19 All right, move on.

20 Q. Miss Foxx, so we're -- My first year at Berea I did
21 not have any kind of evaluation. That was the 2000-2001 school
22 year.

23 The following year I went through induction, which
24 would've been the 2001-2002 school year. So the third year at
25 Berea Keith East is still the principal and that is the 2002--

1 2003 school year, is that correct?

2 A. I believe that's correct.

3 Q. Okay.

4 Now, when you go through ADEPT you go through it some
5 the first part of the year and then you go through it again the
6 second part of the year.

7 What is your knowledge of my progress the first part
8 of the year?

9 A. First semester you had excellent observation reports,
10 excellent feedback.

11 Q. What are those called? You have 10 points. What are
12 they called?

13 A. The indicators.

14 Q. The PDs.

15 A. PDs, PDs, right.

16 Q. And I passed how many of those 10?

17 A. I think you passed almost all of them.

18 Q. That's correct.

19 And the second semester something happened with the
20 announcement of a new principal.

21 A. Right. We found out late, late winter, early spring,
22 maybe around March or late March, early April.

23 Q. And we did more than find out. What happened at that
24 point?

25 A. Well, Dr. East had decided to retire so we found out

1 that he was not coming back and then on afternoon we had a
2 faculty meeting and Dr. Horner was there and we found out he had
3 come to introduce our new principal and who was gonna be Mr.
4 Roach.

5 Q. Okay.

6 And up until that point I had passed the test, is that
7 correct?

8 A. That's correct.

9 Q. And what happened after Mr. Roach came and he didn't
10 wait for the next year, did he?

11 A. No.

12 Q. Dr. East kind of disappears. And who was our --

13 MR. CLARKSON: Objection.

14 THE COURT: Yes.

15 Please, ma'am.

16 MS. MCBRIDE: Okay. Okay.

17 Q. Tell me your, your opinion of what took place from the
18 point of that announcement.

19 A. After that, whether it's sometime in March or early
20 April, we started to see less and less of Dr. East on campus and
21 we started seeing more of Mr. Roach.

22 And, in fact, I remember going to Dr. East's office
23 several times and Mr. Roach would be in there and Dr. East
24 wouldn't be there but it appeared to me that Mr. Roach was sort
25 of the acting principal at that point. I think he was there

1 making his, you know, plans for what he was gonna do when he took
2 over. Or whatever the official date for that was but he was very
3 visible around campus that spring after the announcement had been
4 made. He's in the office. He's on campus. You'd see him in the
5 hallways and we didn't see as much of Dr. East.

6 Q. And my administrator at that point was Nancy Lee (ph),
7 is that correct?

8 A. The assistant principal, yes, on your -- I think she's
9 on your ADEPT team.

10 Q. And what is your opinion of her relationship to Mr.
11 Roach?

12 A. They appeared to be very good friends.

13 Q. They were very good friends, weren't they?

14 And what happened to my ADEPT after Mr. Roach came
15 onboard at Berea High School? What happened to that process for
16 me?

17 A. Well, your second semester scores and reports were,
18 were not good at all. In fact, I think they recommended that you
19 go back through the process the following year

20 Q. I was failed.

21 A. Right.

22 Q. Okay.

23 And that meant what? I had to do what at that point?

24 A. You had to do everything all over again.

25 Q. That's right.

1 And if I failed it the second year what would've
2 happened to me?

3 A. They could recommend you not getting a contract.

4 Q. That's right.

5 And what happened if I sit out a year and come back
6 failed it a third time?

7 A. I believe the same thing, you could be recommended not
8 to receive a contract.

9 Q. And you don't -- They take your certificate, don't
10 they?

11 A. Right.

12 Q. Is that more permanent?

13 A. That could be.

14 THE COURT: Proceed.

15 MR. CLARKSON: Your Honor, again we object
16 on relevance.

17 MS. MCBRIDE: It goes to show --

18 THE COURT: I sustain the objection.

19 Q. Now, Miss Foxx, when the announcement was made that
20 Bill Roach was going to be coming to the school, can you explain
21 what I was -- What did I come to you about?

22 A. You, you were almost, I'd have to describe it in a
23 state of panic. You said you had to transfer, you had to get
24 out. Get out of Berea.

25 Q. What was I afraid of?

1 MR. CLARKSON: Objection.

2 THE COURT: I sustain the objection to
3 the form of the question.

4 Q. What did I do as a result of that announcement?

5 A. You requested a transfer.

6 Q. I did.

7 And what was the problem with transferring that year?
8 Do you remember?

9 A. There was -- I believe there was a hiring freeze in
10 the district so they weren't hiring new people and they were not,
11 really, transferring people from school to school, either.

12 Q. So I was stuck.

13 A. Basically.

14 Q. Until about July 1 and then what happened after that?
15 You remember?

16 A. I'm sorry, I don't recall.

17 Q. Do you remember me trying to do anything?

18 A. I know you tried to get a transfer.

19 Q. Okay.

20 I put in for the transfer right after the announcement
21 was made but what -- After the freeze was lifted what happened?

22 A. I think you were denied. You were denied a transfer.

23 Q. Okay. All right.

24 Let me just ask you about a IEP. What goes on the
25 front of an IEP?

MR. CLARKSON: Objection, again.

THE COURT: I sustain the objection.

Move on, please, ma'am.

Q. Is there any way a student could do IEPs for teachers?

A. In my opinion, absolutely not.

Q. Thank you.

MS. MCBRIDE: No more questions.

THE COURT: All right.

Any questions, Mr. Clarkson?

MR. CLARKSON: Yes, Your Honor, few questions, not many.

CROSS-EXAMINATION BY MR. CLARKSON:

Q. Miss Foxx, in the special ed department back in 2003 who did you report to?

A. Sort of our chain of command, I guess, was Mr. Painter was the department head.

Q. Mr. Who?

A. Mr. Painter, Marvin Painter was our department head.

Q. He was the department head, right.

A. Correct.

And then we'd go to an assistant principal.

Q. And who was that?

A. Mr. Roach, I believe, at that time.

At different years it was different principals and so I'm not positive on that but I think. I know he was at one time.

1 Q. Okay.

2 And did you ever go in the hierarchy to the assistant
3 superintendent for special education for the school district Mary
4 Smith (ph)?

5 A. I didn't, no, sir.

6 Q. You never approached her about any of these concerns?

7 A. No, sir. No. We were always told to try to, you
8 know, go through the proper channels at the school first.

9 Q. And that would've been your supervisor and then the
10 assistant principal that was Mr. Roach at some point in time?

11 A. Right, right.

12 And then the principal.

13 Q. And then who was when he was principal?

14 A. Who? Who?

15 Q. Who was the assistant principal in charge of special
16 ed?

17 A. When Mr. Roach was principal?

18 Q. Yeah.

19 A. It was a man and he's no longer there and I can't
20 recall his name right now.

21 That was my last year. My last year at Berea was Mr.
22 Roach's first year.

23 I can't recall his name.

24 Q. Okay.

25 So if you had problems the proper thing to do would be

1 to go to your supervisor, go to the assistant principal, go to
2 the principal and then go the assistant superintendent for
3 special education for the school district. That would be the
4 chain of command in special ed?

5 A. Correct.

6 Q. Okay. Thank you.

7 Now, you testified a good deal about this ADEPT, A D E
8 P T.

9 A. Correct.

10 Q. What is that?

11 A. It's an evaluation process that was used at the time
12 in Greenville County. We don't use it in Pickens County. I
13 don't even know if Greenville County uses it anymore.

14 Q. But it was -- Was it as a state mandated evaluation?

15 A. It was a -- It was one of the options that districts
16 could use to evaluate teachers. I don't know that every district
17 in the state used it but it was one of the evaluation processes
18 you could use, right.

19 Q. And Ms. Mann failed it, did she? The second, the
20 second phase.

21 A. Yes, sir.

22 Q. And at that time the evaluation team, specifically,
23 Deborah Howard, Debbie Howard (ph), right?

24 A. I don't recall all the names on her team.

25 Q. Well, you think she was one?

1 MS. MCBRIDE: Objection, Your Honor, he
2 asked this document not to be entered and now he's reading off of
3 it. The names.

4 THE COURT: He's cross-examining.

5 Go ahead.

6 Q. Well, would the evaluation team be Debbie Howard,
7 Nancy Lee and Debbie Henson (ph)?

8 A. That sounds correct. There were three people, yes.

9 Q. And Mr. Roach was not on that evaluation team?

10 A. No.

11 Q. And she was -- She failed the ADEPT in March of 2003,
12 correct?

13 A. I believe that's correct.

14 Q. And that's before Mr. Roach showed up and it was
15 before it was announced that he was going to be the principal, isn't
16 it?

17 A. It was around that same time. It was some time in
18 March, late March, early April.

19 MR. CLARKSON: That's all I have. Thank
20 you.

21 MS. MCBRIDE: I have one more question.

22 REDIRECT EXAMINATION BY MS. MCBRIDE:

23 Q. Miss Foxx, why did you leave Berea High School?

24 A. Couple of reasons. One reason, just, you know, kind
25 of tired of fighting those battles to get our kids what we

1 thought they deserved, to be treated the same as the regular ed
2 kids, and also because Pickens County and it was just more
3 convenient for me to be there but frustration was a big part of
4 it, also.

5 Q. Were you concerned with the processes you were
6 observing?

7 MR. CLARKSON: Objection.

8 THE COURT: I sustain the objection.

9 Thank you, ma'am. You can step down.

10 All right, next witness.

11 MS. MCBRIDE: Plaintiff calls Nancy Mann.

12 (Direct examination and a portion
13 of cross-examination of Nancy Mann are not available due to
14 malfunction of both the court reporter's primary and backup
15 systems.

16 CROSS-EXAMINATION BY MR. HARJEHAUSEN:

17 Q. She was estranged from her husband, right?

18 A. No, no. They'd had an argument and she did spend the
19 night couple of nights. At my house.

20 Q. She'd been staying at your house --

21 A. A couple of nights.

22 Q. In your basement?

23 A. Right.

24 Q. And she was estranged from her husband and that's why
25 she was in your basement, is that right?

1 A. Well, she wasn't in my basement at that time. That's
2 where she moved in after all this happened. But at that time she
3 was in the guest bedroom. She only came over to spend a few
4 nights while they settled their argument.

5 MR. HARJEHAUSEN: That's all the questions
6 I have, Your Honor.

7 THE COURT: Thank you. You can step
8 down.

9 THE COURT: All right. Next witness.

10 MS. MCBRIDE: I call myself.

11 THE COURT: All right.

12 Come around and be sworn.

13 DIRECT EXAMINATION BY MS. MCBRIDE:

14 A. Good morning.

15 I don't know how to testify, other than I would just
16 like for you to know that the facts that you've heard in the case
17 are true.

18 MR. CLARKSON: Objection. That's not
19 testimony.

20 A. Oh, okay.

21 How do I do this?

22 THE COURT: Ma'am, what I'm gone let you
23 testify to is what the school district did --

24 A. Okay.

25 THE COURT: -- to slander you and what

1 the abuse of process was with respect to the school district.

2 That's what --

3 A. Okay.

4 THE COURT: -- you can testify to, okay?

5 A. Okay.

6 Everything that I tried to present is that the school
7 district, Bill Roach used any powers possible to get rid of me.

8 And I loved my job and I did my job well. I tried. It
9 took a little while to adjust to special ed but I found my
10 calling there and I did all I could to protect the safety of each
11 and every student and that includes Josh F [REDACTED].

12 Did I write passes for him to be out of class to
13 lollygag around? That never happened. He was put in my room by
14 the guidance department the first year. The second year I wrote
15 a couple of passes to each one of his teachers on events when his
16 guidance counselor was not at the school. And I think he
17 testified to that and I, I agree to that.

18 I do believe with all my heart and soul that he worked
19 with his officer to frame me for things that did not happen. As
20 you know, a lot of that has been recanted by the student in this
21 case and I am still amazed that they were capable of using the
22 means that they did to destroy my life.

23 MR. CLARKSON: Objection. That's not facts.

24 THE COURT: Go ahead. Go ahead.

25 A. Okay.

1 I'm just trying to think what else I need to say.

2 Josh was in my room and I did have concerns about
3 that. He did help me do things that, that a lot of students
4 probably would not be capable of doing. He is a very bright
5 young man. He found a home in our classroom because the kids in
6 my class did look up to him. And he did well in there and I
7 think that's how that got out of hand, you know, the first year,
8 is that it was working for him, not that he should've been
9 missing class.

10 I'm a firm believer that students should be in their
11 classes and I never took any student out of class, including Josh
12 F██████, and I believe, my heart and soul, that if that were the
13 case teachers would be addressing that with a principal. So
14 that, in and of itself, proves that there's no way that I would
15 have played such a part as making him miss school or having
16 assisted him in any type of runaway.

17 I don't know what else I need to address.

18 I made a list. I don't know if I can see my list.
19 Can I see my list?

20 THE COURT: Sure.

21 MS. MCBRIDE: Thank you.

22 A. I would like to say to you that I did have a lot of
23 complaints. I believe with all my heart and soul that they were
24 valid complaints that I made. I was just being an advocate for
25 our students and I would do it again. Even after all I've been

1 through I would do it again because that's who I am.

2 I was laughed at by the school board and I said that
3 and I'll that now, even though it's cost me my life, everything.

4 And my mother just shared with you as far as damages
5 go. I've lost it all. She had an apartment in her basement.
6 I've enjoyed being with my mother but is it what is acceptable?
7 I don't know but it is. It feels like an inappropriate social
8 situation because I don't go out with my friends anymore. That's
9 what I guess I tried to establish yesterday, is that I had a
10 social life.

11 I stay glued to my mother's hip even today and I guess
12 the one thing has given me hope is that I had a granddaughter who
13 just turned a year old and until she was born I honestly didn't
14 care if I lived or died because I thought I want to be there for
15 my momma but if I didn't have my momma I didn't really want to be
16 here because I couldn't see any purpose in life anymore.

17 My life was ruined. I was on all three news stations,
18 locally, and they said I had an inappropriate relationship with a
19 student and that Bill Horner had told them, had said that I was
20 released for having an inappropriate relationship and so I've
21 been asked many times over the years what kind of relationship I
22 had with this student. They don't know that he's a gay young man
23 so to this day.

24 And one thing that you don't know is that I, too, was
25 born and raised in the Berea community. I graduated from that

1 school and I had the opportunity at that school. A lot of the
2 teachers that I worked with were my old teachers and I was
3 honored to be with them. Dr. East, who was my principal for
4 three years, was one of my former teachers.

5 And so I don't live in Berea now but since this
6 happened I do not even go to Berea. I won't go thing the
7 restaurants and eat because I get stared at and I feel like I
8 constantly have to address the issue of what really happened and
9 I had to address that issue a million times in the last seven and
10 a half years and it hasn't been easy.

11 I did, I truly lost my identity and not just teaching
12 but who I was and all the people I grew up with who still live in
13 Berea I don't see because I don't go there anymore. I don't move
14 in those circles.

15 I don't go to footballs games and I grew up going to
16 this football team's every Friday night and I did my whole life,
17 even, you know, after I graduated and as I went back to work as a
18 teacher. It's where I enjoyed being but after I was arrested and
19 taken to jail and I just didn't have that anymore.

20 I couldn't be who I used to be and so I've been a
21 hermit and, luckily, tho, like I said, I had a granddaughter who
22 had just turned a year old and she is my heart and she gives me
23 hope and I'm starting to try to put my life back together outside
24 of this case. I'm trying to be a good grandmother. I want to
25 live to see somebody who is positive and upbeat and not depressed

1 and mopey and antisocial and all the things that I've been but up
2 until she came into my life I, honestly, could not have, seen any
3 value in living anymore. I was just ready.

4 It's like was living dead. I told my counselor that
5 one time because my momma had said that, you know, I lived in her
6 basement for a year and she could hardly get me out of the bed
7 and that's the truth. I could not, I could not move. I was
8 immobile and in shock over what had happened to my life because I
9 had not been raised to be arrested and taken to jail and I was in
10 shock for the longest.

11 But I finally got tired of that and I got up and my
12 mom told me, you've got to do something to try to live again. So
13 I went to Greenville Mental Health and there I met a good doctor
14 who helped me work with the depression and I've come a long ways.
15 I still see her but I've gotten better over the years.

16 It was so terrible in the beginning I could not
17 function and if my momma hadn't have been there for me, I'll be
18 honest truth, and I just have a lot to be thankful for, even
19 though I feel like it has been a devastating situation for me and
20 I've put my family through it, over this case because I didn't so
21 anything about it the first year but --

22 THE COURT: Okay, now, about another
23 minute.

24 A. Okay.

25 After that I pursued a lawsuit and I did go down and

1 testify in front of the room in a formal hearing. I was denied
2 my job back and I pursued lawsuit at that point and the first
3 judge --

4 THE COURT: No, ma'am; no, ma'am.

5 A. Oh, no, no.

6 THE COURT: No, ma'am.

7 A. Okay.

8 THE COURT: Is that all?

9 A. I'll say that's all. That's all.

10 THE COURT: All right.

11 Any questions?

12 MR. CLARKSON: Very, very few questions,
13 Your Honor, please The Court.

14 CROSS-EXAMINATION BY MR. CLARKSON:

15 Q. Ms. Mann, let's just go back to the beginning of this
16 whole story.

17 A. Okay.

18 Q. Which was September 24, 2003. You remember that day?

19 A. I do.

20 Q. And it was you that discovered that your car was not
21 in the parking lot, right?

22 A. Some of my students came back and reported that it was
23 missing, yes, sir.

24 Q. And you thought that your husband at that time
25 might've come and switched cars but that wasn't true, was it?

1 A. No.

2 Q. Because both you and your husband's cars were missing,
3 correct?

4 A. Yeah.

5 Sometimes he would trade the car to, like, wash one
6 but neither car was in the parking lot.

7 And my students went to the car and put some items in
8 the car and they had permission to do that for me. That's how
9 they discovered it gone.

10 Q. But then you reported that your car was missing to
11 Deputy O.

12 A. I did.

13 Q. All right.

14 Then Josh F [REDACTED] showed in your car, correct?

15 A. He did.

16 Q. It's true that Josh F [REDACTED] should have been in class
17 during the time he was driving your car --

18 A. That is correct.

19 Q. He should not have been driving your car --

20 A. No.

21 Q. -- during class time?

22 A. No, he shouldn't but he shouldn't have went to jail.

23 Q. And he had driven your car in the past, correct?

24 A. Twice, yes.

25 Q. All right.

1 A. With his mother's permission.

2 Q. And you knew that Josh didn't have a driver's license?

3 A. No, he did.

4 Q. Huh?

5 A. He did. The first time he drove he had a driver's
6 permit and I was in the car with him. Second time he had a
7 restricted license. No one had to been in the car with him.

8 Q. Didn't have a full driver's license?

9 A. Had a restricted license. He could drive alone.

10 Q. All right.

11 Then the next day which would've been September 25 you
12 were interviewed by Investigator Lambert, correct?

13 A. No, sir. She was present. She fibbed about that.

14 Q. All right.

15 Let me just show you document, see if you can
16 identify that that's your signature.

17 A. It is my signature.

18 MR. CLARKSON: Let's mark this as an
19 exhibit, please.

20 THE COURT: All right.

21 (Rights form entered in to evidence as
22 Defendant's Exhibit 14.)

23 Q. This is your rights, is that correct?

24 A. It is.

25 Q. And you signed it?

1 A. Yes, sir.

2 I was glad to sign it.

3 Q. And you initialed it seven times in addition to
4 signing it right?

5 A. Yes.

6 I was instructed by Shea Smith to do that.

7 Q. And you even circled that you were under no coercion
8 and you initialed that, correct?

9 A. He signed it. I mean he circled it and I signed it.

10 Q. And that's Lieutenant Smith right there, Sergeant
11 Smith at the time, is that right?

12 A. That's him.

13 Q. And this is signed by Sergeant Smith and Investigator
14 Lambert, their signatures on it?

15 A. It is.

16 Q. Then after going through that you did sign an
17 statement that was typed up by Investigator Lambert, correct?

18 A. She typed it, yes, sir, and I signed it.

19 Q. Is this your statement that you signed twice?

20 A. It is.

21 Q. Two pages.

22 A. It is.

23 MR. CLARKSON: We'd offer this as the next.

24 THE COURT: All right. Mark it.

25 (Statement entered into evidence as

Defendant's Exhibit 15.)

Q. And this is the statement that you gave and you signed to Leslie, Investigator Lambert, right?

A. It is.

Q. And in that you tell your side of your relationship with Josh F [REDACTED], correct?

A. If you want to call it a relationship, yes. It tells the events of what happened, not my relationship with Josh F [REDACTED].

Q. All right.

Well, Josh F [REDACTED] felt very comfortable going to your desk and getting your car keys?

A. He did.

Q. And being involved with your stuff at school?

A. He did.

Q. And putting his clothes in your filing cabinet so he could run away?

A. No. No, he did not.

Q. His clothes were not in your filing cabinet?

A. Not so he could run away. I mean he had sleep-overs over the weekend and he testified that he brought his clothes every week and put them in that for the day, you know.

I had other students who left their clothes. If they were in R.O.T.C uniforms in my room when they went to do other things. If they had band instruments, those were in my room.

1 Had a lot of things in my room.

2 And I never assisted him in a runaway, no, sir, if
3 that's you question.

4 Q. Well, you discussed with him his running away?

5 A. He talked about it with a lot of people. He was
6 obsessed with it.

7 Q. And you?

8 A. And he talked about it with me.

9 Q. Yeah.

10 A. Constantly.

11 MR. CLARKSON: One second.

12 Q. You do know, Miss Mann, that the sheriff's department
13 conducted an investigation and interviewed and took statements
14 from a number of people involved
15 in this matter?

16 A. No, I don't.

17 Q. You don't know that?

18 A. No, not the sheriff's department, not an outside
19 entity. The school's services department did.

20 They are master deputies but they do not function at
21 the sheriff's department. They're part of the school district.
22 They have a building at the school district.

23 Q. Is Lieutenant Smith part of the school district?

24 A. Not now but he was then.

25 Q. He was then?

1 A. He was then. He was housed by the school district.
2 And he was hd of the school services.

3 Q. And Investigator Lambert, she works, you say, and she
4 works for the school district?

5 A. She is paid with funding from the school district,
6 yes.

7 Q. And we saw Officer O who came in here in a deputy's
8 uniform. We works for the sheriff's department, doesn't he?

9 A. No.

10 Well, he does. He is certified to be a sheriff's
11 deputy but he -- His title is S.R.O. which means he's a student
12 resource officer and he's paid with school district funding.

13 Q. Well, you do know that these people that we've talked
14 about just now took statements from Carolyn Kite, Linda Bimkey,
15 Kathleen Hills, Kim Fanning, Carolyn Hunt, Chris Bimkey, Josh
16 F[REDACTED] and they got a statement from Josh F[REDACTED]'s mother and
17 father. You knew that, right?

18 A. The school S.R.O., yes, took most of those statements.

19 Q. And so you also understand that before any charges
20 were brought that Lieutenant Smith went and discussed it with the
21 prosecutor for Greenville County, the solicitor. You knew that,
22 didn't you?

23 A. Yeah, he took them some false statements to look at,
24 yes, sir.

25 Q. Oh, you think these are false --

1 A. Most of them are.

2 Q. Most of them --

3 A. I mean they've been doctored.

4 Q. Oh, so now your testimony is that these statements
5 that the sheriff's department took are false statements, right?

6 A. There was a one there who was facing charges for
7 aiding and abetting a runaway. She gave a statement against me
8 to keep that from happening, okay?

9 A young man was facing 10 years felony charge and he
10 had already testified to you and to this jury that he gave that
11 statement to keep from going to jail for 10 year, okay?

12 So, yes, I do contend that those statements have been
13 -- There's teachers on there who were -- a boss stood over
14 Because she was fearful of losing her job, a guidance counselor
15 who was facing the same charges they were charging me with.

16 So, yes, the majority of those statements have been
17 falsified.

18 Q. So those statements along with the summary and writeup
19 that Leslie Lambert did which is part of the evidence in this
20 case were presented to the chief deputy solicitor in this county
21 along with the deputy solicitor Mr. Steinberg and they
22 recommended, they recommended that the two charges be brought
23 against you.

24 A. Based on those statements, that's correct. They did
25 not do an investigation. That is correct.

1 I wish they had come and talked to me. Nobody talked
2 to me.

3 Q. Oh, nobody --

4 A. From the school district. I mean not Bill, not --

5 Q. Correct me if I'm wrong, Miss Mann, but I thought that
6 you gave a statement to the police. Isn't that true?

7 A. Yes. I mean Shea Smith did talk to me but I'm just
8 saying outside of the school district there was no investigation
9 and no one from the district office came in and did an internal
10 investigation. It was all handled at that school by Bill Roach
11 and his buddies.

12 Q. And then, excuse me but then after the two charges
13 were brought an arrest warrant was signed by a magistrate judge
14 and they were served on you. These charges were then brought
15 before a grand jury in Greenville County, weren't they?

16 A. They were, based on those statements.

17 And they were also dropped, okay?

18 Q. And a grand jury came back with an indictment, didn't
19 it?

20 A. Based on those statements I would say, yes, I would do
21 the same in their shoes.

22 MR. CLARKSON: One moment.

23 Thank you.

24 THE COURT: Thank you, ma'am. You can
25 step down.

1 MS. MCBRIDE: Thank you.

2 If I want to call a rebuttal witness do I
3 call then now or after they rest?

4 THE COURT: After they rest.

5 MS. MCBRIDE: After they rest, okay.

6 I have no more witnesses.

7 (The following takes place outside the
8 presence of the jury.)

9 MR. CLARKSON: The defense does not have any
10 motions at this time.

11 MS. MCBRIDE: I do.

12 THE COURT: All right.

13 MS. MCBRIDE: I'd like to move that when
14 Judge Milling found for the defendant to be able to amend their
15 answer he directly went against what was found at the appellate
16 court. They clearly say in that document that those considered
17 asserted defenses, affirmative defense. I said the wrong word.

18 And that those are to be stipulated from the
19 get-go in their first answer and that did not happen.

20 Then at the appellate court they were given
21 the opportunity to appeal the decision and to have those added
22 back at that point and they did not exercise their right to do so
23 and for him to put that back in, in my opinion, is inappropriate
24 and goes against the law of the case.

25 THE COURT: All right.

1 What's your motion?

2 MS. MCBRIDE: I'd like to have it removed
3 and I brought documents today, an order if you would consider
4 amending that. I mean I don't know how to do this but I brought
5 it in case you wanted anything.

6 THE COURT: All right.

7 MS. MCBRIDE: Okay.

8 I just want it to go on the record that --

9 THE COURT: All right.

10 MS. MCBRIDE: Okay.

11 (WHEREUPON, the jury returned to open
12 court.)

13 MR. HARJEHAUSEN: Your Honor, the school
14 district would call Mr. William Roach to the stand.

15 THE COURT: All right.

16 You're still under oath.

17 DIRECT EXAMINATION BY MR. HARJEHAUSEN:

18 Q. Mr. Roach, there's been an allegation in this case of
19 defamation and I want to be clear. Have you ever accused Miss
20 Mann of theft?

21 A. No.

22 Q. Have you ever accused Miss Mann of stealing property
23 belonging to the school district?

24 A. No.

25 Q. Do you recall ever saying anything, the effect of she

1 cleaned us out?

2 A. Do not recall that.

3 Q. You don't think you a that to anybody?

4 A. Not to my recollection.

5 Q. Now, Miss Mann had testified that you had it out for
6 her. Did you have it out for her?

7 A. I did not.

8 Q. Were you involved in any way in the ADEPT program that
9 Miss Mann was going through?

10 A. I did not. I was at another high school that year.

11 Q. Were you a part of the evaluation team which evaluated
12 Miss Mann for the ADEPT program?

13 A. I was not.

14 Q. So you didn't give any feedback as to her progress
15 under ADEPT?

16 A. Didn't even know she was going through it.

17 Q. Miss Mann testified about, or there was testimony in
18 this case about a poem and I think you were present for that.
19 Can you tell us how that poem came about?

20 A. I did do a, I guess survive, kind of like, and it said
21 survived my first year at the end of the year reception. To the
22 best of my recollection, I did make a statement that said I
23 survived the police coming to the school and that was the
24 statement in there.

25 Q. That statement was within the poem?

1 A. That's correct.

2 MR. HARJEHAUSEN: That's all the questions
3 I have, Your Honor.

4 THE COURT: Okay.

5 You have some questions, ma'am?

6 MS. MCBRIDE: I do. And I'd like to enter
7 his poem at this time.

8 Give it to you?

9 THE COURT: Yes, ma'am.

10 MR. HARJEHAUSEN: Your Honor, she hasn't
11 laid the foundation of this document as the poem that Mr. Roach
12 actually wrote.

13 THE COURT: All right.

14 MS. MCBRIDE: I didn't have to; he did.

15 THE COURT: Why don't you do that?

16 MS. MCBRIDE: Okay.

17 CROSS-EXAMINATION BY MS. MCBRIDE:

18 Q. Did you write a poem called *Reflections on a Year*?

19 A. I did write one.

20 Q. Okay.

21 MS. MCBRIDE: Can I enter that?

22 THE COURT: Show it to him and see.

23 A. That does look like the one I wrote.

24 MS. MCBRIDE: Can I introduce that?

25 THE COURT: Okay. Yes, ma'am. Go ahead

1 and put it in, over objection.

2 MR. HARJEHAUSEN: No objection, Your
3 Honor.

4 THE COURT: All right.
5 Without objection.

6 (Poem entered in to evidence as
7 Plaintiff's Exhibit 5 without objection.)

8 Q. Skip down to the third one from the bottom, third
9 insert from the bottom. It starts, I reflected back over those
10 11 . . . Would you read that?

11 A. Sure.

12 Says, I reflected back over those 11 or so months and
13 had several things to remember like hiring and firing and having
14 to call the police around September.

15 Q. Having to call the police around --

16 THE COURT: Now, now, don't make comments
17 like that, please, ma'am, okay?

18 Q. Who called the police?

19 A. According to this?

20 Q. Uh-huh.

21 A. I said, . . . I having to call the police around
22 September.

23 Q. How did you read that that day?

24 A. I'd be speculating. It's been a long time ago.

25 Q. Would you be shocked to find out that I got three

1 phone calls about this poem and how you made fun of me that day?
2 From teachers who were working for you.

3 A. I can't speculate on other people said.

4 Q. Was it appropriate for a principal to get up in front
5 of an entire school and read a poem he wrote about a teacher?
6 That he called the police on.

7 A. I didn't say I called the police on you, said I called
8 the police around September.

9 Q. I had to call the police around September. And
10 calling the police. Who was calling the police?

11 A. I had to call the police --

12 Q. You looked about Josh calling them?

13 A. -- unfortunately, a lot.

14 Q. Who called them?

15 A. I actually had to call the police a lot for different
16 reasons.

17 Q. But this was in September.

18 A. I called the police several time in September.

19 Q. So you're not -- It's your testimony that does not
20 make any reference to me, having me arrested in September?

21 MR. HARJEHAUSEN: Objection, Your Honor,
22 that's characterizing testimony.

23 THE COURT: Answer the question if you
24 can.

25 A. Repeat your question for me.

1 Q. This is not a reference to me and you having me
2 arrested in September?

3 A. It says like hiring and firing, yes.

4 Q. Okay.

5 A. That is in reference.

6 Q. And calling the police.

7 A. Around September.

8 Q. Who is that in reference to?

9 A. It's in reference to calling the police.

10 Q. On who?

11 A. Several people. Like I say, I had several people
12 arrested that year.

13 THE COURT: All right. He's answered the
14 question.

15 Q. Why was September so memorable to you? If you called
16 the police a lot that year why September?

17 A. Again, I'd be speculating if I said that.

18 Q. I feel like you're dodging my question, Bill.

19 MR. HARJEHAUSEN: Objection, Your Honor.

20 THE COURT: Yes, ma'am. I'll sustain the
21 objection.

22 MS. MCBRIDE: Okay.

23 No more questions.

24 THE COURT: Thank you. Step down.

25 MR. CLARKSON: Call Lieutenant Shea Smith.

DIRECT EXAMINATION BY MR. CLARKSON:

Q. Mr. Smith, Lieutenant Smith, is that your correct designation?

A. It is, yes, sir.

Q. And where do you work, Lieutenant Smith?

A. I'm employed by the Greenville County Sheriff's Office.

Q. And how long have you been employed by the sheriff's department?

A. Eighteen years this coming fall.

Q. Have you always been lieutenant?

A. No, sir. I was promoted in 2005 to that rank.

Q. And when you first started with the sheriff's department where did you start at? What rank?

A. Started out as a deputy in the uniform patrol division, just like any other deputy in the sheriff's office.

Q. And you were promoted up until now you're lieutenant?

A. Yes, sir. That is correct.

Q. Back in 2003 you were still working for the sheriff's department?

A. I was.

Q. And what was your rank at that time?

A. At that time I was a sergeant assigned to the selective enforcement division which houses many units, on of which is the school resource officers and school investigations

1 unit.

2 Q. Are you familiar with Officer Danny Oslager?

3 A. I am.

4 Q. That everybody refers to as Officer O?

5 A. Yes, sir, I am.

6 Q. Who does he work for?

7 A. He works for the Greenville County Sheriff's Office.

8 Q. And back in 2003 did he sort of -- were you in his
9 chain of command?

10 A. I was. I was his direct supervisor at that time

11 Q. Are you familiar with Investigator Leslie Lambert?

12 A. I am.

13 Q. And in 2003 what was her position?

14 A. She was assigned as the investigator assigned to the
15 school district, employed by the Greenville County Sheriff's
16 Office to investigate crimes that happened within Greenville
17 County schools.

18 Q. And how did she -- She report to you aw?

19 A. She did. I was her direct supervisor, also.

20 Q. Now, I'm gone call your attention to September 24,
21 2003. Actually, it's September 25, I think it is, the day after
22 the.

23 Did this matter involving Miss Mann and Josh F [REDACTED]
24 come to your attention?

25 A. Yes, it did.

1 Q. And what did you do when this matter came to your
2 attention?

3 A. I was initially briefed by Investigator Lambert, as I
4 would be, of a case that she was working on at the time.
5 Obviously, due to the nature of this case involving --

6 THE COURT: Come in a little closer to
7 the microphone, please.

8 A. I'm sorry.

9 Obviously, due to the nature of this complaint
10 involving a school district I, obviously, wanted to be advised of
11 everything that was going on.

12 Office or Investigator Lambert and Danny Oslager were
13 both beginning to talk with individuals that names that has
14 surfaced during the preliminary stages of their investigation.
15 So as that progressed they kept me advised of what was going on.

16 Obviously, that investigation culminated in arrest
17 warrants being issued for Miss Mann.

18 Q. Were you involved in taking of statements from
19 witnesses?

20 A. I was present when some of the statements were taken.
21 I did witness some of the statements as far as, you know, being
22 present while they were being taken and then also just witnessing
23 some of the signatures on the statements, yes, sir.

24 Q. All right.

25 Now, explain to the jury, after statements are taken

1 from various witnesses, six or seven of the witnesses, what's the
2 next step? How does this incident report get prepared and tell
3 the jury about that.

4 A. Okay.

5 Well, essentially, once we have determined, obviously,
6 who we need to talk to and during the course of an investigation
7 we'll take statements from those individuals. We will prepare
8 our reports and, then, generally, in a case like this we will
9 consult with the solicitor's office, which is what I did in this
10 case, contacted Assistant Solicitor Howard Steinberg, and,
11 ultimately, Deputy Solicitor Betty Strom, and at that point, you
12 know brief them on the facts of the case, the statements that we
13 had taken and it was their recommendation as to what charges that
14 we should make against Miss Mann at that time.

15 Q. And is Howard Steinberg in the courtroom?

16 A. Yes, he is.

17 Q. All right.

18 So he is one of the two solicitors or lawyers that
19 work for the solicitor that you consulted?

20 A. Yes, sir. That's correct.

21 Q. And as a result of that conversation these two arrest
22 warrants were issued, were they not?

23 A. Yes, sir. That is correct.

24 Q. And they're also signed off on by a magistrate judge,
25 right?

1 A. That's correct. I think Magistrate Cagel.

2 Or, I'm sorry, Dean Ford (ph) actually signed those
3 warrants.

4 Q. And he signed both of them?

5 A. Yes, sir. That's correct.

6 Q. Thank you.

7 When you presented these charges, these facts to the
8 solicitor and they suggested the two charges that were eventually
9 brought did Bill Roach have any involvement in that at all?

10 A. Absolutely not.

11 Q. Was that decision made solely by the sheriff's
12 department and the solicitor's office?

13 A. That is correct. We do not consult with the school
14 district when we're investigating a criminal offense. They have
15 no -- They have no bearing on any charges that we me or in the
16 course of our investigation.

17 It would be, actually, inappropriate if that was the
18 case.

19 Q. So this was totally independent decision on the part
20 of the sheriff's department and the solicitor as to what to be
21 done?

22 A. That is absolutely correct.

23 MR. CLARKSON: That's all the questions I
24 have

25 THE COURT: Okay.

1 MS. MCBRIDE: I have some questions for
2 you.

3 CROSS-EXAMINATION BY MS. MCBRIDE:

4 Q. Now, Mr. Smith, you say you were there that day and
5 you were kind of overseeing the investigation, is that correct?

6 A. I was there during parts of the investigation, not for
7 it's entirety.

8 Q. Okay.

9 Did you read all the witness statements that day?

10 A. Did I read all of them? I don't necessarily know that
11 I read every single one of them. I was told what facts those
12 statements contained and based on that information I was able to,
13 you know, consult with the solicitor to determine what charges
14 needed to be filed.

15 Q. Okay.

16 Now, I believe that you gave a deposition for us back
17 in '07.

18 A. I did give a deposition.

19 Q. Okay.

20 THE COURT: All right.

21 That is the original?

22 MS. MCBRIDE: It is the original.

23 THE COURT: All right.

24 Give it to him.

25 (Deposition of Shea Smith marked as

1 Court's Exhibit 3.)

2 Q. Now, this is the deposition that was taken by my
3 former lawyer David Thomas. You remember giving this deposition?

4 A. I remember giving a deposition, yes.

5 Q. Okay.

6 Let's turn over to page 8. Or 9, actually.

7 A. Okay.

8 Q. All right.

9 On line 13, I'm gonna read that question there and, if
10 you don't mind, give me your answers for these next two the
11 questions.

12 A. You're on page 9?

13 Q. On page 9, line 11.

14 David said, You didn't make any private notes at that
15 time, is that correct?

16 A. The answer to the question was no.

17 Q. Okay...

18 So in answer to my first question, why was there not a
19 charge that was made concerning the Bimkey? Basically, the
20 answer is, in a nutshell, they put him up and they kept him.

21 And what was your answer to that?

22 A. I mean he was, you know, in our -- in the opinion of
23 no allegations had been made against this family. I mean they
24 were allowing Josh to stay there that particular night in
25 question but at that point I don't believe that there was ever

1 the appearance that they had involved in committing some type of
2 crime or criminal activity.

3 Q. Okay.

4 Next page, please. Nest page.

5 A. It's not uncommon for kids, you know, to call up a
6 friend and say, hey, can I spend the night here. It's not
7 necessary. What this was, was just another piece of the
8 investigation of what -- Well, not him staying there but what,
9 you know, was -- what transpired previous to that, that Miss
10 McBride did bring him over there, just another part of the
11 investigation itself but this particular situation, in and of
12 itself, did not create the charge of contributing.

13 Q. Okay.

14 Now, you know who the Bimkey are, obviously, right?

15 A. I do.

16 Q. Okay.

17 We had a statement there from Linda Bimkey. It was
18 read yesterday and you weren't here.

19 MS. MCBRIDE: Do we need for him to read it
20 out or can I tell him what was read from that letter?

21 We'll read it. We'll read it.

22 MR. CLARKSON: Objection, Your Honor. I
23 don't see how this is in response to any question --

24 MS. MCBRIDE: Of course --

25 MR. CLARKSON: He's not contradicting or

1 impeaching.

2 THE COURT: I sustain the objection.

3 Move on to something else, please.

4 Q. You've been a policeman for a long, long time.

5 A. I have.

6 Q. And so is it not breaking the law to harbor a runaway?

7 A. It is.

8 Q. Okay.

9 And if a person tells you that they have harbored a
10 runaway and you don't do anything about it are you doing your
11 job?

12 A. It would, obviously, depend on the circumstance of the
13 case and what we presented to the solicitor's office whether
14 charges would move forward. Every case is, obviously, different.

15 Q. Okay.

16 If a mother comes to a door and she's tries to get her
17 child and she's told he's not there and when that person's
18 admitting that he's there has she broke the law?

19 A. Potentially, yes.

20 Q. What's potentially mean? Yes or no? Did she break
21 the law or she didn't?

22 A. Ever case is different. It would depend.

23 Q. Did she break the law?

24 A. Potentially, yes.

25 Q. What's potentially --

1 A. That's my answer.

2 THE COURT: He's answered the question.

3 Q. Is she an accessory to a crime? At least?

4 A. Potentially.

5 Q. Okay.

6 Like to move to the last trial when you testified.

7 Page 434. This is testimony that you gave at the trial at the end
8 of October of '07.

9 And I want to do kind of like we just did.

10 I'm gone skip down to line 13 and I'm gonna read that
11 question. If you will, please, just read the answer.

12 The category of items like IEPs, passwords to the
13 computers and David is asking you here, Mr. Thomas is asking you
14 on the stand what were the basis of the charges against me.
15 That's where he went with this question. Maybe we should start
16 at the top but let me start at line 3. I want you to come all
17 the way down the page.

18 The question is, All right, the charges, the charges
19 against Miss Mann involved two things. What were they?

20 A. Your Honor, I'm not sure this is my testimony.
21 There's nothing here to indicate that it is. So I don't know
22 whose.

23 MS. MCBRIDE: It is.

24 A. I don't know that it is.

25 MS. MCBRIDE: I can -- I can pull all the

1 way to the beginning of his testimony. If he wants to verify it.

2 THE COURT: Yeah, all right. He wants to
3 know that's his testimony.

4 MS. MCBRIDE: Okay. I understand. I don't
5 blame him.

6 A. Been quite a number of years.

7 Q. Okay.

8 So here's 4 35 and if you want to see, it starts your
9 cross-examination.

10 A. Okay.

11 Q. Mr. Clarkson, Lieutenant Smith. So we're finishing up
12 David's on one page and your cross is starting on the next page.
13 See that? You're Lieutenant Smith.

14 A. Okay.

15 Q. Okay?

16 So this is where Mr. Thomas' questioning you.

17 Line 3, All right, the charges, the charges against
18 Miss Mann involved two things. What were they?

19 A. Well, enticing an enrolled child from attendance in
20 school and the second charge was contributing to the delinquency
21 of a minor.

22 Q. Okay. All right.

23 These charges and other things that have been heard
24 about, IEPs, passwords computers, those two things, really, have
25 nothing to do with that category of items, is that true?

1 A. Which category of items are you referring to?

2 Q. The category of items like IEPs and passwords and the
3 use of computers.

4 A. It depends. If she was allowing him to have access to
5 that when he should've been in another class and he was in her
6 room doing things with IEPs or having access to district computer
7 systems when he should've been in another class and she allowed
8 him to do that, then that's certainly part of the investigation
9 that we would consider and the solicitor's office will consider
10 in determining whether we charged her or not.

11 Q. Right.

12 So you're saying that you took in to the charges that
13 he was working on computers and possibly doing IEPs and those
14 kind of things and based your charges on those items.

15 A. No, not solely on those items. That would've been a
16 consideration in the investigation but not the sole --

17 Q. Why?

18 A. Well, because the child would've been in your class
19 when he should've been in another class attending school as he
20 should've been.

21 Q. And I agree, he should be in class, that he was put in
22 my class by someone else but I am -- I guess what I'm trying to
23 get at here is if these are nonchargable items I agree that they
24 may be things that an employer would deal with but why were you
25 dealing with these things?

1 A. This is just an overall part of the investigation.
2 These are just some things that came up. They could've gone to
3 some of the facts in the case and led us to make our conclusion
4 for the charges.

5 Your charges were not based solely on those particular
6 items in that we're referencing now.

7 Q. Are you aware that now Miss Lambert's report, the one
8 that's right there before you, it says in there that I called
9 Officer Oslager and reported that I had a runaway at my house and
10 he told me to call the sheriff's department and have him picked
11 up but you still charged me, still part of the charges for me,
12 aiding and abetting a runaway? How did you justify that charge?

13 A. That particular instance didn't have anything to do
14 with your charges and you weren't charged with aiding and
15 abetting a runaway.

16 Q. Well, assisting a runaway. It says that I assisted in
17 a runaway.

18 A. That was part of the facts that determined what we
19 charged you with.

20 Q. Well, that's the only time that there's any question
21 of a runaway so what runaway are you talking about that has
22 nothing -- Nothing, you said, wasn't based on that incident, what
23 incident's it based on? That's the only incident there is.

24 A. There were many other facts in that case.

25 Q. What? What facts?

1 THE COURT: Move on, please.

2 Q. What facts? What facts?

3 A. Excuse me?

4 Q. I asked you what facts was the runaway charge based on
5 if not based on that incident.

6 A. You know, obviously, I was the supervisor during the
7 course of the investigation. I was not conducting the
8 investigation so, you know, I couldn't answer all those questions
9 at this point.

10 Q. You got strong ties with the Berea community, too,
11 don't you? Didn't you go to Berea?

12 A. I certainly did.

13 Q. And you lived over at Northcliff with Officer O, don't
14 you?

15 A. I do not live in Northcliff, no.

16 Q. Well, you have.

17 A. I live in Watson Crossing.

18 Q. Well, you must've just moved.

19 A. No. I've lived there for 15 years.

20 Q. One and the same subdivision.

21 And when I say you have strong ties to the Berea
22 community, you wanted to be over there at that school that day
23 because you have friends in administration over there, don't you?

24 A. I had a job to do. Obviously, I supervise all the
25 school resource officers. So when they're involved in an

1 investigation of this magnitude I would've been present.

2 Q. Of what magnitude?

3 A. Involving a district employee.

4 Q. That had did nothing wrong. Hadn't ben established.

5 THE COURT: All right.

6 MS. MCBRIDE: I have no more questions.

7 THE COURT: Thank you. Step down.

8 MR. CLARKSON: Call Howard Steinberg.

9 HOWARD STEINBERG,
10 first being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION BY MR. CLARKSON:

13 Q. Mr. Steinberg, tell the jury where you work.

14 A. I'm an assistant solicitor. My primary office is at
15 the law enforcement center. I also try cases here in this
16 courthouse.

17 Q. In 2003 what was your job?

18 A. Same job. I was a law enforcement advisor. Officers
19 come to me with questions, either how to get a search warrant,
20 how to seize a computer, what charges to make, whether to make
21 charges at all, things of this nature.

22 Q. Well, you try cases. You're asking questions like I
23 do. You don't normally testify, do you?

24 A. I testify quite a bit, actually, but you're right, I
25 normally do ask questions.

1 Q. You're normally the one asking the questions?

2 A. Yes, sir.

3 Q. And tell me what the solicitor does and deputy
4 solicitor. What's the purpose of that? The solicitor's office.

5 A. We are the same thing as you see on television as a
6 prosecutor's office, a state's attorney, a district attorney.
7 We simply prosecute cases. We decide which cases to prosecute,
8 which cases not to prosecute, which cases are best handled
9 outside of the legal system, which one are handled through
10 pretrial intervention. We have a number of decisions.

11 One of the most common roles is what we're doing here,
12 try cases.

13 Q. Okay.

14 And I'll show you what we've marked as exhibits 11 and
15 12 which are the two arrest warrants that were involved in this
16 case involving Miss Mann. You see those?

17 A. Yes, sir, I do.

18 Q. All right.

19 Prior to those arrest warrants being signed by the
20 magistrate do you recall meeting with Sergeant, now Lieutenant
21 Shea Smith?

22 A. Yes, sir.

23 I actually may have met with Investigator Lambert. I
24 certainly spoke with Shea Smith but I think I remember actually
25 seeing, at least Leslie Lambert. It may have been Leslie Lambert

1 and Shea Smith.

2 Q. Okay.

3 And in the incident report it says Sergeant Smith
4 apprized Howard Steinberg - that's you - and Betty Strom of the
5 situation.

6 And tell the jury who Betty Strom is.

7 A. Betty Strom was then and is now my supervisor. She is
8 the deputy solicitor, essentially, second in command over the
9 Greenville and Pickens solicitor's offices.

10 Q. Okay.

11 And based upon that consultation between you, Betty
12 Strom, Leslie Lambert and Shea Smith, what did you and Betty
13 Strom recommend?

14 A. We recommended presenting this case to a magistrate
15 for two charges. This was a rather unusual case. Normally these
16 contributing delinquency cases are sexual in nature. This was a
17 bit of an unusual case. We never had anything like this so,
18 actually, I think I also ran it past Deputy Solicitor Strom to
19 get her input. Then we recommended presenting these two charges
20 to the magistrate.

21 Q. And was one of those charges presented to the grand
22 jury?

23 A. Yes. Only one was eligible to be presented. One
24 charge has to stay in magistrate's court. The other charge which
25 is contributing to the delinquency of a minor was presented to

1 the grand jury of Greenville County.

2 Q. While you and Betty Strom and the sheriff's department
3 making these decisions did you have any input from Bill Roach or
4 anybody from the school district?

5 A. No, sir.

6 I've never spoken to Mr. . before.

7 Q. Have you ever seen him before? I mean except maybe in
8 court.

9 A. I don't believe I ever have.

10 Q. Okay.

11 And you never consulted with him about Miss Mann
12 whatsoever?

13 A. No, sir.

14 MR. CLARKSON: Thank you. That's all.

15 THE COURT: Okay, Ms. Mann.

16 CROSS-EXAMINATION BY MS. MCBRIDE:

17 Q. Mr. Steinberg.

18 A. Yes, ma'am.

19 Q. When your officers, the officers come in and present
20 these things to you do you do any kind of investigation yourself
21 before you -- or do you base it on what's before you?

22 A. No, ma'am, I typically do not do any separate
23 investigating. I make sure that they have done all the
24 investigation that I require. If everything that I need is not
25 there I will send the officers back out to do more work but I

1 frequently will not do any research or investigation after that.

2 Q. Okay.

3 So on that particular day what did you base your
4 information on when you decided to send this to a grand jury or
5 whatever the next step was? I know it went to the solicitor.

6 So what did you base that decision on?

7 A. Primarily on the report.

8 I do remember asking Ms. Lambert some questions. I
9 wanted to make sure she had spoken with you.

10 That's one of the requirements that I have. They're
11 gone ask my opinion, they have to get both sides of the story.

12 I do remember asking some questions. I think there
13 were two conversations, one over the telephone and then one in
14 person in my office at the law enforcement center and the
15 decision made based on the report or on questionings that I had
16 for the officers.

17 Q. Okay.

18 Would it surprise you to know that neither Lieutenant
19 Smith over here or Leslie Lambert ever met the victim Josh
20 F [REDACTED] in this case? They have never met him to this day. Or
21 laid eyes on he. He saw them for the first time at the last
22 trial and to this day they have not taken a statement from him or
23 his mother, any of the parents. He was a minor at the time.

24 Are you surprised when you say get both sides of the
25 story? Are you a bit surprised that they never -- this young man

1 never had any communication with the two investigators who were
2 in charge?

3 A. Actually, I would be surprised if no officer at any
4 point did. It doesn't matter to me whether it be Investigator
5 Lambert, Lieutenant Smith or anyone.

6 At some point I'm convinced that somebody would've
7 spoken with the young man.

8 Q. Right.

9 An SRO.

10 A. And SRO is a police officer, just like everybody else.

11 Q. Paid by district funds.

12 A. With district funds but, keep in mind, they answer to
13 the sheriff's office.

14 Q. Well, they have a dual employer, from what I
15 understand.

16 A. They do but they take police officers.

17 Q. They work for both.

18 A. Well, they work for the sheriff. They're sheriff's
19 deputies.

20 We've had disputes between principals and sheriff's
21 deputies and I get involved I remind them they work the sheriff's
22 deputy -- sheriff's office.

23 Q. If they were working with a principal in a situation
24 and that principal was actively involved in investigation and he
25 actually took witness statements and signed off on witness

1 statements, would that be deemed inappropriate?

2 A. When you say he you're referring to the officer.

3 Q. Referring to the principal of the school.

4 Stood over his employees when he took those
5 statements.

6 A. If the officers are convinced that the statements are
7 complete and they've answered all the questions, then that is
8 sufficient regardless of whether a principal is in the room or
9 not.

10 Sometimes having a principal in the room assists an
11 investigation. We had a case this morning where that assisted a
12 case.

13 I leave it up to the officer's discretion.

14 Q. To the officer's discretion.

15 A. As far as they have met my requirements I leave it up
16 to the officer's discretion.

17 Q. If you had a parent in a case who was lying to a
18 mother and was keeping her child as a runaway and you found out
19 an officer did not press charges against that person what would
20 you do with that officer? If a mother comes to a home looking
21 for a child and she is turned away and told that they don't have
22 her child but that child is, in fact, and she admits in a sworn
23 statement that he is, was in the home the entire time and no
24 charges were pressed against that parent what would you feel
25 about the officer, a lead investigator doing in that situation?

1 MR. CLARKSON: Objection.

2 THE COURT: I sustain the objection,
3 instruct the jury disregard the statement made.

4 MS. MCBRIDE: I don't have any further
5 questions. Thank you.

6 THE COURT: Any objection to excusing
7 this witness?

8 MS. MCBRIDE: I don't.

9 THE COURT: Thank you.

10 MR. HARJEHAUSEN: Your Honor, the school
11 district would call Mr. John David Rowell to the stand.

12 JOHN DAVID ROWELL,
13 first being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. HARJEHAUSEN:

16 Q. Good afternoon, Mr. Rowell.

17 A. Good afternoon.

18 Q. Can you tell us where you work?

19 A. I work at the United States Attorney's Office in
20 Columbia.

21 Q. And what does the US Attorney's Office do?

22 A. We represent the federal government, the United States
23 on civil and criminal matters that are brought in the state of
24 South Carolina.

25 Q. How long have you been there?

1 A. Going on four and a half years.

2 Q. And where were you employed before the US Attorney's
3 Office?

4 A. I was employed with Mr. Steinberg at The Thirteenth
5 Circuit Solicitor's Office here in the Greenville office.

6 Q. Okay.

7 Can you give us a brief overview of just what your
8 educational background is?

9 A. Sure.

10 I attended Wofford College for my undergraduate degree
11 and then I went to University of South Carolina to obtain my law
12 degree.

13 Q. And right after that did you become a solicitor?

14 A. I did.

15 Actually clerked for Solicitor Aerial while I was in
16 law school and then as soon as I graduated I started as an
17 assistant here in Greenville.

18 Q. Okay.

19 Now, we're here today about two charges that were
20 brought against Miss Mann. Were you involved in that?

21 A. I was, I was involved after the case was charged,
22 after the warrants were signed off on by the magistrate. When the
23 case was processed in to the solicitor's office I was assigned as
24 the assistant solicitor to prosecute the case.

25 Q. Okay.

1 And did you draft an indictment in this case?

2 A. I did.

3 Q. I ask you to take a look at what's been marked as
4 Defendant's Exhibit 13.

5 A. Yes, sir.

6 Q. Is that your signature on the back of that indictment?

7 A. It is.

8 Q. And is there a description of the charges being
9 brought on that indictment?

10 A. There is.

11 Q. And what I'd the description?

12 A. I'll just read it. It says, At a Court of General
13 Sessions convened on November 18, 2003, the grand jurors of
14 Greenville County present upon their oath that Sherrie Mann
15 McBride did in Greenville County on or about the twenty-fifth day
16 of August, 2003, knowingly and willfully encourage, aid or cause
17 Joshua F [REDACTED] to do any act which caused or influenced Mr.
18 F [REDACTED] to deport himself in a manner so as to willfully injure
19 or endanger his morals or health or the morals or health of those
20 in violation of section 16 17 4 90 of the South Carolina Code of
21 Laws as amended.

22 Q. And was that the charge of contributing to the
23 delinquency of a minor?

24 A. Yes, sir.

25 Q. And on the front of that is it stamped a true bill?

1 A. It is, yes, sir, it is.

2 Q. And what does that mean?

3 A. Essentially, after a case is charged by a warrant the
4 South Carolina Constitution provides that no citizen will be,
5 will be tried without their case first being presented to a grand
6 jury.

7 Grand jury is just like these ladies and gentlemen.
8 It's a group of citizens. I think the South Carolina
9 Constitution requires thee be 18, at least 18 citizens who hear a
10 case to determine whether or not there's probable cause to bind
11 the case over to general sessions court for trial.

12 Q. Okay.

13 And in this case the grand jury said it was a true
14 bill, there was probably cause to bring this charge against Miss
15 Mann?

16 A. That is correct.

17 Q. Now, I think you mentioned that you were assigned to
18 be assistant solicitor with respect to this charge, is that
19 right?

20 A. That's right.

21 (Letter entered in to evidence as
22 Defendant's Exhibit 16 without objection.)

23 Q. Mr. Rowell, let me hand you what's been marked as
24 Defendant's Exhibit 16. Take a look at that, tell me if you
25 recognize what that is.

1 A. This is a letter that I drafted on August 24, 2004, to
2 Pat Pascal (ph) concerning Miss McBride's case.

3 Q. And do you know who Mr. Pascal was at that time?

4 A. At that time he was her attorney. He represented her
5 on the criminal charges that I was prosecuting.

6 Q. And so this was a letter that you sent to her criminal
7 defense attorney, right?

8 A. That's right.

9 Q. And what did you advise Mr. Pascall in the letter?

10 A. Essentially, that I was dismissing the charges against
11 Miss McBride.

12 Q. Okay.

13 And, now, did you meet with any of the witnesses
14 before you dismissed the charges against Miss McBride?

15 A. I did.

16 Q. Did you met with Josh F [REDACTED]?

17 A. I believe I did, yes, sir, on at least on occasion
18 that I can recall, possibly more than one.

19 Q. And did you meet with his mother?

20 A. I seem to recall meeting with Josh and his mother here
21 in the courthouse at the solicitor's office.

22 Q. Okay.

23 And based upon -- Why did you dismiss the charges
24 against Miss McBride?

25 A. After reading this letter and trying to refresh my

1 recollection, the best I can recall, after I met with all the
2 witnesses in the case, met with Mr. F [REDACTED] and evaluated our
3 chances of winning at trial I just felt that we would not be able
4 to meet our burden at trial, which is proof beyond a reasonable
5 doubt, and or that I didn't think putting Josh through a trial,
6 having him testify weighted against our chances of winning at
7 trial would be in the state's best interest.

8 Q. Did Mr. Roach or the Greenville County School District
9 have any input in to your decision to dismiss the charges?

10 A. None whatsoever.

11 Q. Did you have any discussions with anybody at the
12 Greenville County School District about dismissal of those
13 charges?

14 A. Not that I recall, no, sir. I don't believe I would.
15 I may have advised them or someone that I was gonna dismiss the
16 case but I certainly wouldn't have sought their input or their
17 approval in order to do so.

18 MR. HARJEHAUSEN: Your Honor, we would
19 move the indictment and or the letter which was marked as
20 Defendant's Exhibit --

21 THE COURT: All right. Has it been
22 marked?

23 MR. HARJEHAUSEN: I think the indictment
24 is already in evidence but I don't believe that Defendant's
25 Exhibit 16 is but, in any event, we move them both in.

1 THE COURT: Okay. All right.

2 Now, Miss Mann.

3 CROSS-EXAMINATION BY MS. MCBRIDE:

4 Q. Morning.

5 A. Good afternoon.

6 Q. This letter, I'm happy to hold till this day. I love
7 the first part. Would you just read that first sentence to the
8 jury for me? Just the first sentence.

9 A. I'm sorry, we handed up to the clerk.

10 Q. Okay.

11 A. I've you'll hand it back to me I'll be glad to.

12 Q. Okay.

13 A. After meeting with all the potential witnesses in this
14 case I've decided that it is not appropriate for trial.

15 Q. Very good. All witnesses.

16 Now, in my last trial you defined all witnesses as
17 school employees and Mr. F [REDACTED]. Do you recall that or could
18 we pull your --

19 A. I don't recall saying that but I do remember meeting
20 with all of the -- When I say all of the witnesses, it would've
21 been individuals that provided statements that were provided to
22 me in my case file and most of those would've been from the
23 school.

24 Q. Right.

25 A. Other teachers.

1 Q. Other teachers.

2 Because after you spoke them you felt like maybe they
3 were backing off or --

4 A. I don't recall, to be honest with you, I really don't.

5 Q. Something changed your mind. About pursuing it.

6 A. I don't know that changed my mind is the right
7 characterization.

8 Q. Okay.

9 A. Once a case is charged and indicted and assigned to a
10 solicitor we have, at any given time, about 300 cases or more
11 that we're handling. We make a decision to indict based on the
12 evidence that we have in our case file.

13 After the case is indicted and someone indicates that
14 they want to go to trial, at that point we'll begin meeting with
15 witnesses and evaluating the case to determine whether or not we
16 think we can win at trial to determine whether or not the case is
17 appropriate for trial.

18 So that's when, when I had to make the decision as to
19 whether or not to take the case to trial or to dismiss it, that's
20 when I made the decision. So --

21 Q. Okay.

22 A. -- I hope that answers your question.

23 Q. You were sitting here when Mr. Steinberg just
24 testified, right?

25 A. Yes, ma'am.

1 Q. And he said this was a very unusual case, he didn't
2 really know what to do with it and he had to send it to the
3 magistrate. Did you hear him testify to that? Something made
4 this unusual to him. So is it unusual to you? Something made it
5 unusual to him and so I'm trying to understand. Did you drop the
6 charges against me, which I thank you --

7 MR. HARJEHAUSEN: Objection, Your Honor.

8 MS. MCBRIDE: I'm sorry.

9 THE COURT: I sustain the objection.

10 MS. MCBRIDE: I'm sorry.

11 Q. I'm just trying to understand your mentality behind
12 dropping those charges.

13 A. I'm not sure if you're asking me a question or making
14 a statement.

15 MS. MCBRIDE: I'll tell you what, no more
16 questions.

17 THE COURT: Thank you. Step down.

18 MR. CLARKSON: Defense rests.

19 THE COURT: All right.

20 Ms. Mann, you have, I understand, something I
21 reply?

22 MS. MCBRIDE: Yes. I have just two quick
23 rebuttal questions to two witnesses.

24 THE COURT: To something that was brought
25 out I the defense?

1 MS. MCBRIDE: It was.

2 THE COURT: All right, okay. You may
3 proceed.

4 MS. MCBRIDE: I recall Josh F [REDACTED] to the
5 stand.

6 THE COURT: You're still under oath.

7 DIRECT EXAMINATION BY MS. MCBRIDE:

8 Q. Morning.

9 A. Morning.

10 Q. I just got two quick questions, things that have come
11 up since you were on the stand last time. Number 1, a CD was
12 admitted as an exhibit after you testified yesterday. I want you
13 to tell me about that CD and how you came to get it and what it
14 is and why you had it and --

15 A. Okay.

16 That CD was, what it is, basically, is a grading
17 program that was gonna be implement some time within the next one
18 to two years that the teachers had to learn how to use and learn
19 how to put grades in.

20 And I was fairly good at learning how to do programs
21 like that and computer programs. And Miss McBride had a lot on
22 her hands at the time and she said -- I told her, I said, You
23 know, maybe I can learn it for you and kind of run you through
24 it, show you how it works and that's how -- Well, that's why I
25 had it, rather.

1 Q. Is there any personal information on there?

2 A. No. It's a blank disk.

3 Q. It's just a software package.

4 A. Right, yes.

5 Q. Is this the only software package that you ever had of
6 mine or --

7 A. Yes, it is.

8 Q. And what about, like, ASCEND which was a special ed
9 CD? Did you have an opportunity to do something with that in my
10 room?

11 A. Like I said, that was worked or, you know, for IEPs
12 and everything but outside of that, it was never put on, like, my
13 home computer or anything of that nature.

14 Q. Do did I ever turn anything over to you and say here
15 is some district property and you can have it or --

16 A. No.

17 Q. -- anything like that? It was for the sole purpose of
18 training, is that --

19 A. Right. That's correct. Like I said, that disk has
20 nothing on it.

21 Q. I would like to know. When Officer O testified
22 yesterday he said again that your parents were with you when he
23 did the questioning of you.

24 A. Correct, he did.

25 Q. And what do you think about that statement?

1 A. Well, I think his statement is obviously a lie. I
2 mean my parents were not there. They were I Bill Roach's office
3 at Berea High School until I was released from the law
4 enforcement center at around 5:30 or 5:45.

5 Q. Okay.

6 And that document that they presented that has your
7 signature, momma's signature on it, when did that take place?

8 A. The one that has my mom and dad's?

9 Q. Your Miranda rights.

10 A. My Miranda rights? That was there when we got ready
11 to go, later, the same my mom came down. I signed the statement;
12 she signed the statement and we signed the Miranda rights. We
13 signed everything.

14 Q. Why would you sign that after the fact? Why would you
15 sign it after the fact?

16 A. That was because we were told it was time, that if we
17 went ahead and signed it she could take me home tonight. That's
18 how Officer O put it to her, said you can go ahead, take it home,
19 all you got to do is sign these papers and you guys can go on
20 home.

21 Q. Okay.

22 One last question.

23 The questioning that was going on, of you, while he
24 was on the phone, Officer O was on the phone with Bill Roach, do
25 you -- Is it your testimony - correct me if I'm wrong - that that

1 questioning was directed, targeted toward having me arrested?

2 A. It was, yes. The focus had switched off of me and was
3 onto you. I would say that, yes.

4 Q. Thank you, Josh.

5 THE COURT: All right.

6 Any questions?

7 MR. CLARKSON: No.

8 THE COURT: Thank you. Step down.

9 MS. MCBRIDE: One last witness. I'd like
10 to recall Linda Cochran for one quick question.

11 THE COURT: Okay.

12 You're still under oath. Come around.

13 DIRECT EXAMINATION BY MS. MCBRIDE:

14 Q. Miss Cochran, just a couple of quick questions. Who's
15 this gentleman sitting right over here with his arm up on the
16 back? Do you recognize him?

17 A. I know him through the fire department.

18 Q. And what's his name?

19 A. Shea Smith.

20 Q. And how long have you known him?

21 A. Oh, my goodness, I don't know. My ex-husband was a
22 volunteer at Berea Fire Department for many, many years.

23 Q. Would you say he has strong ties to the Berea
24 community and Berea High School?

25 A. Yes, ma'am.

1 Q. How strong?

2 MR. HARJEHAUSEN: Objection, Your Honor.

3 THE COURT: I sustain the objection to
4 that question.

5 MS. MCBRIDE: Okay.

6 Q. Who are the Meyers (ph)? Branna (ph) and Allen (ph)
7 Meyers?

8 A. Well, Allen --

9 MR. HARJEHAUSEN: Objection, Your Honor,
10 relevance.

11 THE COURT: What's the relevance --

12 MS. MCBRIDE: She's an administrator at the
13 school and his best friend.

14 THE COURT: Well, I sustain the objection
15 to that question.

16 MS. MCBRIDE: Okay.

17 Q. Let me ask you this. Do you think it appropriate that
18 he was doing investigation of me, considering his ties?

19 MR. HARJEHAUSEN: Objection, Your Honor.

20 THE COURT: I sustain the objection.

21 MS. MCBRIDE: No more questions.

22 THE COURT: All right. Thank you.

23 All right. Anything else?

24 (The following takes place outside the
25 presence of the jury.)

1 THE COURT: What's your motion?

2 MR. CLARKSON: Our motion, Your Honor, is
3 for a directed verdict, particularly on -- Well, I'm gone take
4 them both.

5 The first directed verdict motion is on the
6 claim for abuse of process and the elements of abuse of process
7 are six. Two.

8 First there has to be a process and an
9 ulterior purpose and a will act and abuse of the process is not
10 proper in the regular conduct of the process.

11 In this case we are talking about the two
12 charges that were brought against Miss Mann. The evidence is
13 conclusive in every respect. I submit, Your Honor, that
14 everything with regard to those two charges was brought by the
15 sheriff's department and not by the school district in any way,
16 shape or form. Witness after witness after witness testify that
17 it was the sheriff's department and the solicitor's office that
18 brought the charges and that, therefore, there is no evidence
19 whatsoever that the school district was involved in starting the
20 charges, processing them or that there was any ulterior purpose
21 in that.

22 Furthermore, we would move for a directed
23 verdict on the tort claims act, specifically, section 15 78 60,
24 subsection 23 that says that a governmental entity cannot, as a
25 matter of law and this never was ruled on in the first trial or

1 by any judge, institution or prosecution of any judicial or
2 administrative proceeding whatsoever. So there's absolutely
3 immunity even if - which we don't admit - that the school
4 district was some how involved in bringing the charges but the
5 entire matter, the entire testimony in this trial is that the
6 charges were investigated by the sheriff's department, the
7 charges were brought by the solicitor's office, they were
8 indicted by the solicitor's office and eventually they were
9 dropped by the solicitor's office, the solicitor's office through
10 now involvement whatsoever through the school district at all.

11 So I believe that on that charge of abuse of
12 process there is certainly -- a directed verdict would be
13 appropriate.

14 THE COURT: What do you have to say about
15 that?

16 MS. MCBRIDE: I would like to say a lot
17 about that.

18 I gave you the West Law.

19 These are the same arguments they made at the
20 last trial and I took it to the appellate court. They looked at
21 the same evidence that we've presented here today and they
22 determined that on two of those causes, the two that are before
23 us today, that there was enough question that it should go to a
24 jury and they're adamant in that, in their -- in their findings
25 that it is a decision for the jury to make on both causes of

1 action and I worked long and hard to get here to be sure that
2 that happens this time and I even came and represented myself
3 when my legal counsel decided he couldn't do any more for me and
4 he just -- This was too much loohah he said.

5 So I came. And, you know, that takes a lot
6 of courage when you don't know anything about the law but I've
7 done my research. I've done the best I could to come and defend
8 my case because I believe in my case and I believe with all my
9 heart and soul it should go to the jury, just as the appellate
10 court found that it should.

11 In this case we had dual employers who had
12 you believe that they strictly worked for the sheriff's
13 department and that's not true. They are certified master
14 deputies, that they are employed partly by the school district.
15 They are paid by the school district.

16 I would know that. I wrote checks. I had
17 to put in to have checks cut over student council where they
18 participated in events that took place after school hours. I'd
19 pay them out of funds that was an account for student council so
20 I know beyond a shadow of a doubt they are paid for school
21 district funding.

22 I also would like to say that on this
23 affirmative defense, he continues to argue that when the
24 appellate court told him in their answer to them that he had
25 already lost his right to do that because he did not bring it up

1 in the original answer to the original petition that brought this
2 case to court to begin with.

3 So when he did not argue it there they
4 specifically tell him in the answer that he didn't do it then and
5 he had 30 days to appeal that decision if he wanted to disagree
6 with them at that point and he didn't do it then.

7 So I don't know why he keeps trying to bring
8 this up. He did with Judge Miller.

9 THE COURT: I'm not concerned with that.

10 MS. MCBRIDE: Okay.

11 Well, he didn't plead it then and I ask you
12 please don't let him plead it now because he's lost all his time,
13 you know, to do that.

14 THE COURT: Ms. Mann, he has correctly
15 set forth the evidence for abuse of process and, also, which he
16 did not say, that in addition, with respect to abuse of process,
17 that there's no liability to where a defendant has done nothing
18 more than carry out the process to its authorized conclusion even
19 though it's done with bad intentions.

20 MS. MCBRIDE: But he gave them incorrect
21 information.

22 THE COURT: So even if what you say is
23 true, that Mr. Roach had bad intentions then --

24 MS. MCBRIDE: They colluded. The two of
25 them colluded and the built a case against me and had me

1 arrested. That's the truth.

2 THE COURT: I'm sorry. I'll have to
3 grant his motion with respect to abuse of process.

4 MR. CLARKSON: I understand, Your Honor, the
5 last time The Court granted it the court of appeals said that
6 another element was not mentioned so I also want to just
7 emphasize that the motion is bad upon 15 78 60, subsection 3 as
8 well.

9 THE COURT: All right.

10 MR. CLARKSON: Thank you.

11 THE COURT: Let's hear you on the other.
12 Let's see on the defamation.

13 MR. CLARKSON: Your Honor, we would also
14 move for a directed verdict on defamation. Again, the only
15 statement of any defamatory statement whatever is from this
16 witness back here and she, basically, said that Mr. Roach made an
17 offhand comment that he denies having made, that she cleaned us
18 out, that that does not rise to the elements of a defamation or
19 slander, which there's six elements.

20 There had to be a defamation meeting. That
21 could be.

22 Number 2, it was published with actual or
23 implied malice. There is no actual or implied malice in that
24 statement. She put it in total context that she heard it. It
25 was offhand when he walked in the room, according to her, and

1 everything was gone. So there's no actual or implied malice.

2 It was not false, one way or the other
3 because the room was empty.

4 That it was published by the defendant.
5 That's true.

6 That it concerned the plaintiff. That's
7 true.

8 And it result in damages. In this case there
9 are not damages, as well, because the witness testified --

10 THE COURT: Now, how about that? Where
11 have you shown damages? I mean assuming that it was slanderous.

12 Wait just a minute, ma'am.

13 Even assuming that that might constitute
14 slander you have not shown any damage. I mean --

15 MS. MCBRIDE: To my character.

16 THE COURT: -- your only witness
17 testified that she didn't believe it and didn't make any
18 difference to her, that you're a good person as far as she was
19 concerned. So where is your damage?

20 MS. MCBRIDE: That wasn't my only concern
21 to defamation.

22 She corrected him because she knew better but
23 rumors were proceeding throughout the school that he was saying I
24 cleaned them out.

25 THE COURT: Well, where's the testimony?

1 What was the testimony about rumors?

2 MS. MCBRIDE: She brought that to my
3 attention.

4 MS. MCBRIDE: Appellate court look at both
5 these and they looked at the evidence.

6 THE COURT: Ms. Mann, I'm so very sorry
7 but --

8 MS. MCBRIDE: I got to appeal it.

9 THE COURT: -- you just totally failed --

10 MS. MCBRIDE: No, I didn't.

11 THE COURT: -- to prove the elements of
12 your two causes of action.

13 MS. MCBRIDE: No, I didn't, not on abuse of
14 process, no, sir.

15 THE COURT: All right, ma'am. I
16 understand you disagree with my ruling but I have to make a
17 ruling in the case and I grant the motion.

18 -- END OF TRANSCRIPT OF RECORD --
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

) COURT OF COMMON PLEAS
) 2005-CP-23-06048
)
)
)
)

SHERRIE MANN MCBRIDE)

PLAINTIFF)

vs.)

SCHOOL DISTRICT OF GREENVILLE)

COUNTY)

DEFENDANT)

ORIGINAL

TRANSCRIPT OF RECORD

June 18, 2012

Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., Judge.

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

KATHERINE C. GOODE, ESQ.
Attorney for the Plaintiff

N. HEYWARD CLARKSON, III, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

SHERRI MANN

Direct By Ms. Goode	12
Cross By Mr. Clarkson	18
Examination By The Court	23

SUSAN RICE

Direct By Ms. Goode	24
Cross By Mr. Clarkson	27

JOSH F [REDACTED]

Direct By Ms. Goode	28

BILL ROACH

Direct By Mr. Clarkson	30
Cross By Ms. Goode	32

DOUG WEBB

Direct By Mr. Clarkson	33
Cross By Ms. Goode	35

» > ○ < «

Certificate of Reporter	42

PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Reconstructed Transcript	14	14

1 THE COURT: Okay, this is in the matter of
2 McBride against the School District of Greenville County.
3 The matter was remanded to me to reconstruct or attempt to
4 reconstruct the testimony of Ms. Mann who is now deceased.
5 I have reviewed the material that was sent to me by both
6 sides.

7 Ms. Goode, I agree with you that the issue of
8 prejudice is not a matter of concern for me. I agree with
9 you that -- I agree with you that the issue of prejudice,
10 if any, is not a concern of mine. That's -- both of those
11 are for the Appellate Court. My sole function is to try
12 to reconstruct the testimony of Ms. Mann. And I don't
13 know whether that can be done or not.

14 So are we ready to proceed?

15 MR. HARJEHAUSEN: Your Honor, they're two
16 preliminary matters that I'd like to bring to the Court's
17 attention. Your Honor, had asked for a briefing on May
18 18th with a deadline of June 4th. The school district
19 submitted a legal memorandum, Ms. Goode submitted a email
20 to, Your Honor, on the same date. Then on June 13th
21 Ms. Goode submitted supplemental legal memorandum to which
22 the school district has not had a chance to address. And
23 it's important that the school district be allowed to
24 address the issues raised in the memorandum because they
25 may impact the procedure that takes place today for

1 purposes of reconstructing the record. The school
2 district would like the opportunity to briefly address
3 some of the issues that were raised in Ms. Goode's
4 June 13th memorandum.

5 THE COURT: Sure.

6 MR. HARJEHAUSEN: Probably one of the statements
7 in her memorandum that the school direct concedes that
8 it's okay or affidavits or witnesses to testify as to what
9 other witnesses testified at the trial. That is not
10 correct. And I think that if you look at the two cases,
11 they have been decided by the Court of Appeals, you will
12 find that they are distinguishable in the number from
13 what's going on in this case. The first one is China vs.
14 Parrot. And it essentially involved an appeal from the
15 Zoning Board of Appeals of the grant of variance and it
16 went up to the Circuit Supreme Court. Then it went from
17 there up to the Court of Appeals. And the prevailing
18 party who was trying to address some arguments on appeal
19 said, Well we need a portion of what happened in front of
20 the zoning board.

21 In that case, a request was made for a de novo
22 trial in front of the zoning board which was denied. So
23 in other words, their -- the request to reconstruct, to
24 re-present same witnesses who testified at the zoning
25 board.

1 And the Circuit Court said, No we're not going
2 to do that, submit affidavits.

3 The important thing from that case is that the
4 affidavits that were submitted to reconstruct the record
5 were from witnesses who previously testified in that case.
6 That is not what's being proposed here today. Ms. Nancy
7 Mann is deceased. So we're not contemplating Ms. Mann, if
8 she were here alive today, submitting a affidavit to the
9 Court about what her prior testimony was as opposed to
10 perhaps putting her back on the stand and allowing her to
11 testify and both of the parties to ask questions of her.
12 That's essentially what was proved in the Parrot case.
13 But that's not what Ms. Goode wants to have happen here
14 today. She wants the other witnesses to testify as to
15 what Nancy Mann said.

16 So that the Parrot case and the Dolive vs. J --
17 I got that backwards. What I was talking about was the
18 Dolive case and the Parrot case involved a case where
19 there was a portion of the record as to whether or not the
20 plaintiff withdrew their request for punitive damages.
21 And whether or not they withdrew that request for punitive
22 damages before it was submitted to the jury also effected
23 whether or not contributory negligence was at issue. So
24 in that case what happened was that affidavits were
25 submitted by the plaintiff's attorney as to whether or not

1 there was a withdrawal as to punitive damages going to the
2 jury and also from the Court Reporter as to whether or not
3 the plaintiff had withdrawn the request for punitive
4 damages to be submitted to the jury.

5 Again, that case didn't involve what's proposed
6 to happen here today. Which is to present testimony from
7 these witnesses as to supposedly what Ms. Mann said at the
8 trial. It was more of a procedural question as to whether
9 or not the claim for the punitive damages was actually
10 supposed to be given to the jury for decision. And so --
11 so we believe that -- that those two cases do not stand
12 for the proposition that it's okay to essentially present
13 wholesale hearsay testimony as to what another witness
14 said.

15 I don't know how the Court wants to handle this
16 but the school district's position that to the extent any
17 witness testifies as to what Nancy Mann said, it's going
18 to be inadmissible hearsay. And, you know, we can, I
19 guess, wait to try to object when that testimony is
20 presented. If that's what's going to occur. But we
21 believe that the only proper way to reconstruct the record
22 is to take Nancy Mann's testimony from the first trial.
23 And, if necessary, we can produce witnesses here to say
24 that essentially the testimony from the first trial is
25 consistent with what was presented at the second trial.

1 Ultimately, the case law says, Your Honor, that it's up to
2 you to determine disputes as to what's included to
3 reconstruct the record.

4 THE COURT: And I don't know if I can do that.
5 I mean, that's why we're here today to see if I can.

6 MR. HARJEHAUSEN: Thank you, Your Honor, I just
7 wanted to point that out.

8 THE COURT: What I intend to do this afternoon
9 is to take whatever testimony each side wants to present
10 without making any ruling on it and just see where we are.
11 I don't have a whole lot of recollection about the
12 testimony in this trial. I remember trying the case. But
13 I've been thinking about it and my impression is that
14 Ms. Mann was a witness on damages. And that was the
15 extent of her testimony. Now, like I say, I don't know
16 and I'm not in a position to sit here and tell you that I
17 can remember what she said. I have ordered the transcript
18 of what I said in directing the verdict. I have reviewed
19 that. And we can discuss that later.

20 So, Ms. Goode, if you have -- tell me what
21 you're intending to do.

22 MS. GOODE: Well, Your Honor, I am prepared to
23 put on witnesses to testify as to their recollection of
24 what Ms. Mann -- the substance of what Ms. Mann's
25 testimony was. My client, Plaintiff, has prepared a

1 written reconstruction of her recollection of the
2 testimony of Ms. Mann. And I am prepared to question her
3 about that reconstruction. I'm the person most
4 disadvantaged in the room because I'm the only person here
5 that didn't participate in the trial. I don't know what
6 her testimony was and I simply would like to put on
7 witnesses who have a recollection of what her testimony
8 was--

9 THE COURT: Who are the other two witnesses?

10 MS. GOODE: Other two witnesses are Susan Rice,
11 who was not a witness in the trial but attended the trial
12 and assisted Ms. Mann who was putting up her case, pro se.

13 THE COURT: What's the name, Susan what?

14 MS. GOODE: Susan Rice. My other witness, Josh
15 F [REDACTED], who was a witness in the trial of the case and
16 remained in the courtroom during the testimony of the
17 remaining witnesses.

18 THE COURT: And he was a witness for the
19 plaintiff?

20 MS. GOODE: He was a witness who testified in
21 the case.

22 THE COURT: All right, then as far as the
23 Defense is concerned, what?

24 MR. HARJEHAUSEN: Well, Your Honor, Doug Webb
25 was present in the courtroom when Ms. Mann testified.

1 Bill Roach was also in the courtroom and sitting at
2 counsel table, I believe, when Ms. Mann testified. If
3 necessary we anticipate presenting them as rebuttal
4 witnesses. Of course, Mr. Clarkson and myself were also
5 both in the courtroom when Ms. Mann testified. And that
6 again, poses something that -- that's somewhat unique to
7 the extent that if we go under oath and testify as to what
8 a witness said, it's almost an interjection as counsel as
9 being, at some point, a witness in the case. And again,
10 we just don't think that that's the proper way to
11 reconstruct the record through witnesses.

12 In this case, we believe that the best evidence
13 of what Ms. Mann's testimony was in the second trial was
14 what she said at the first trial. There's no reason that
15 whatever she presented at the second trial couldn't have
16 been presented in the first trial. A lot of the issues
17 that Ms. Goode says she wants to address here today,
18 could, should or were addressed by other witnesses already
19 at the trial. So for instance, in her brief to the Court
20 she says, Appellant's recollection is that Nancy Mann
21 testified concerning what others had heard what the
22 principal says about Appellant.

23 Well I counted how many individuals were talking
24 about that statement and it's four. I mean, it's hearsay
25 four times removed. It's Appellant's recollection, which

1 is Sherri Mann, the Plaintiff, about what Nancy Mann said,
2 her mother, concerning what others, which are not
3 identified in this brief, heard the principal, Mr. Roach,
4 say about the Appellant. But the record contains, the
5 transcript contains, testimony from the Plaintiff. She
6 could have testified about those things, what people said.
7 She actually questioned Mr. Roach about various things.
8 And that is in the record. So we think that this is an
9 unusual proposition and we're certainly prepared, if
10 necessary, to present Mr. Webb and Mr. Roach and counsel
11 ourselves. But I think it's going to become a very
12 difficult he said, she said kind of affair.

13 THE COURT: Well that's a determination that
14 I'll have to make.

15 MR. HARJEHAUSEN: Okay.

16 THE COURT: Okay then, Ms. Goode, you may
17 proceed.

18 MS. GOODE: I would call Sherri Mann McBride.

19 THE COURT: All right, come on around.

20 THE CLERK: Place your left hand on the Bible,
21 raise you right hand.

22 SHERRI MANN, after being duly sworn, testified
23 as follows:

24 THE CLERK: State your name, please.

25 THE WITNESS: Sherri Mann.

1 THE CLERK: Thank you, please be seated.

2 THE WITNESS: Thank you.

3 DIRECT EXAMINATION

4 BY MS. GOODE:

5 Q Ms. Mann, you're the Plaintiff in this action, is
6 that correct?

7 A Yes, ma'am.

8 Q Okay. And you actually handled your own
9 representation, pro se, at the trial in this case, is
10 that correct?

11 A That is correct.

12 Q Okay. The witness whose testimony is missing, Nancy
13 Mann, what was her relationship to you?

14 A That was my mother.

15 Q And since the time of the trial, your mother has
16 passed away, is that correct?

17 A Yes, ma'am, she died three weeks to the day after the
18 trial.

19 Q When we reviewed the transcript and discovered that
20 her direct testimony, her direct examination, was
21 missing, did I ask you to try to reconstruct to the
22 best of your recollection what that testimony was?

23 A Yes, ma'am, you did.

24 Q And have you prepared a written version of what you
25 believe her testimony was?

1 A Yes, ma'am, I did.

2 MS. GOODE: Your Honor, may I approach?

3 MR. CLARKSON: I'm sorry, go ahead.

4 THE COURT: Yes, go ahead.

5 BY MS. GOODE:

6 Q I see you have a copy but is this the document that
7 you have prepared as a reconstruction of your
8 mother's testimony?

9 A Yes, ma'am, that's it.

10 Q Okay.

11 MS. GOODE: Your Honor, I'd offer this.

12 MR. HARJEHAUSEN: Your Honor, I object to the
13 reconstructive transcript testimony of Nancy Mann's
14 testimony. First of all, it contains numerous aspects of
15 hearsay. There are areas and collections of that
16 reconstructive testimony that lack foundation. It's
17 self-serving. There are misstatements,
18 mischaracterizations. There are statements, for instance,
19 that the school district charged the Plaintiff with
20 various crimes and that is completely inaccurate with the
21 factual record which clearly establishes that it was the
22 sheriff's department that processed the charges. That
23 Ms. Mann -- or excuse me, Sherri, the Plaintiff, was the
24 one who reported her car stolen. There's just a number of
25 problems with this reconstructive transcript and we object

1 to the entirety of it.

2 THE COURT: All right, proceed.

3 MS. GOODE: Your Honor, I would like to have
4 this marked as an Exhibit.

5 THE COURT: Subject to the objection put it in.

6 MS. GOODE: Thank you.

7 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
8 for identification and received into evidence.)

9 BY MS. GOODE:

10 Q Ms. Mann, was your mother's testimony in the trial in
11 2007, identical to her testimony in the trial of
12 2011?

13 A No, ma'am.

14 MR. HARJEHAUSEN: Objection, Your Honor. She's
15 leading the witness, Your Honor.

16 THE COURT: No, that question's all right.

17 Go ahead.

18 THE WITNESS: No, ma'am, it was not. As the
19 case, with a lot of witnesses, Mr. Thomas --

20 THE COURT: Move back a little bit.

21 THE WITNESS: Can you hear me now?

22 THE COURT: Uh-huh.

23 THE WITNESS: Mr. Thomas -- there was a lot of
24 questions that I asked that Mr. Thomas did not go into
25 with many of the witnesses. And my mother was one of

1 them.

2 BY MS. GOODE:

3 Q Mr. Thomas was the attorney who represented you in
4 the 2007, in the original trial?

5 A That is correct.

6 Q Okay. What areas in particular did your mother
7 testify about in the 2011 trial that were not covered
8 in the 2007 trial?

9 MR. HARJEHAUSEN: Objection, Your Honor.

10 Again--

11 THE COURT: Subject to your objection.

12 Go ahead.

13 THE WITNESS: Specifically I was concerned, you
14 know -- first of all, let me say that my mother was very
15 ill when she came here to testify. As I said, she died
16 three weeks later. It was quite a struggle for her to be
17 here. And I would not have had her here if I did not feel
18 her testimony was crucial to this case. With that said,
19 some of the things that I was concerned that Mr. Thomas
20 did not go into was that my character, as far as who I am
21 and the fact that I don't break laws and that I have the
22 upmost respect for authority, were things I thought were
23 important to get in there. And that includes the things
24 the district had accused me of doing. And, you know,
25 assisted in my arrest along with the sheriff's department.

1 And also, that after the fact, Mr. Roach wrote poems about
2 me, wrote a pome about me and had--

3 THE COURT: Ms. Goode, we're here to
4 reconstruct, if possible, the testimony of Ms. Mann.
5 That's what I want.

6 THE WITNESS: That's what my mother testified
7 to.

8 BY MS. GOODE:

9 Q So you're saying that your mother actually testified
10 about the poem that Mr. Roach wrote?

11 A That's why she came.

12 Q Did she also testify about what was reported to y'all
13 concerning what Mr. Roach was saying about you in the
14 school?

15 A She did.

16 Q And what was that?

17 A Well--

18 MR. HARJEHAUSEN: Objection, Your Honor.

19 THE COURT: Subject to your objection.
20 Go ahead.

21 THE WITNESS: That my character had been marred.
22 That I had been terribly effected by it emotionally.

23 BY MS. GOODE:

24 Q Did she testify in the 2011 trial about specific
25 comments that Mr. Roach made that were reported to

1 you through school teachers and also other personnel
2 at the school?

3 A She did.

4 Q What was the substance of that testimony?

5 MR. HARJEHAUSEN: Objection, Your Honor.

6 THE WITNESS: That Bill--

7 THE COURT: Go ahead.

8 Subject to objection.

9 THE WITNESS: That Bill Roach -- I'm sorry.

10 That Bill Roach consistently after my arrest said to
11 numerous people that I had cleaned out the school. When
12 the classroom I cleaned up, the materials I took, they
13 were bought with my own money.

14 Q And your mother testified to the identity of some of
15 the people who reported this to you?

16 A That is correct.

17 Q Who were they?

18 A Lynn Fox, who was my mentor at the school. And the
19 head of our special ed team. An aide, her name was
20 Linda Smith, then Linda Cochran later. And I don't
21 think my mother really called anyone else by name.
22 That's the only names that she knew of.

23 Q And you have included the substance of that testimony
24 in the summary that you've prepared that we've
25 submitted to the Court?

1 A That's correct.

2 Q Those were matters that were not covered in the 2007
3 testimony of your mother, is that correct?

4 A Not by my mother. He went into that with other
5 witnesses, Mr. Thomas did. You do mean the 2006? He
6 covered that -- those things with other witnesses but
7 not with my mom.

8 Q Okay. To the best of your recollection, was any of
9 her testimony objected to by the defense?

10 A Nothing. They did not object not one time.

11 Q So every bit of the testimony that you have written
12 that you recall her giving was actually admitted into
13 evidence without objection?

14 A That is correct. She was on the stand about 10 to 12
15 minutes I would say, at the most. And that's why she
16 came.

17 Q Okay.

18 THE COURT: All right, who's going to
19 cross-examine her? Or do you have any questions?

20 CROSS-EXAMINATION

21 BY MR. CLARKSON:

22 Q Ms. Mann, you do realize that in this statement that
23 you said those people here accusing you of
24 contributing to the delinquency of a minor, enticing
25 an enrolled minor from school. That's what's in this

1 statement, right?

2 A Yes.

3 Q You know that's absolutely not true, don't you?

4 A I know it's absolutely true.

5 Q You know that the sheriff's department made the
6 charges? The charges were presented to the Grand
7 Jury and the Grand Jury of Greenville County came
8 back saying that you should be charged with that; you
9 know that's the truth, don't you?

10 MS. GOODE: Objection, Your Honor. This
11 cross-examination is challenging her recollection --

12 THE COURT: Okay, overruled.

13 Go ahead, Mr. Clarkson.

14 BY MR. CLARKSON:

15 Q You know that's true, don't you?

16 A What's true?

17 Q That the charges that were brought against you were
18 brought against you by the sheriff's department,
19 correct?

20 A An employee -- excuse me. An employee of the school
21 district, yes.

22 Q And you know that the solicitor presented those
23 charges to the Grand Jury of Greenville County; you
24 know that, don't you?

25 A I do know that. I do know they were also dropped.

1 Q And you know that -- you know that a true bill was
2 returned by the Grand Jury saying that there was
3 enough evidence to bring those charges against you
4 from the Grand Jury; you know that, don't you?

5 MS. GOODE: Objection, Your Honor. Again, this
6 cross-examination doesn't have anything to do with her
7 recollection of what the witness said, the person whose
8 testimony we're attempting to reconstruct.

9 THE COURT: All right, subject to objection.
10 Go ahead.

11 BY MR. CLARKSON:

12 Q You know that the Grand Jury returned a true bill,
13 right?

14 A I've never heard that term, True Bill.

15 Q You didn't hear that at both trials? You never heard
16 that term?

17 A I don't remember it being called a True Bill but if
18 you call it that, I apologize.

19 Q And you remember the Solicitor that came in here and
20 testified at both trials?

21 A I do.

22 Q About why the charges were eventually dropped, do you
23 remember that?

24 A Why they were dropped?

25 Q Yeah.

1 A Yes, I do. But he said after talking to the
2 witnesses that he didn't feel like he could move
3 forward. I still don't understand what that has to
4 do with my mother's testimony.

5 Q And you're testimony here, from what I'm looking at
6 here, that somehow a poem written by Bill Roach
7 mentioned you? You're trying to tell the Judge that?

8 A Everybody knows that it mentions me.

9 Q It does not mention you--

10 A It makes reference to the arrest in September. How
11 many people did he have arrested in September? I
12 think I'm the only one he had arrested that year. In
13 September.

14 THE COURT: Okay, let's move on please,
15 Mr. Clarkson.

16 BY MR. CLARKSON:

17 Q He didn't have anybody arrested. Now, this poem that
18 you talk about, your mother never saw that poem.

19 A Yes, she did.

20 Q She did?

21 A Yes.

22 Q She saw the poem?

23 A Yes. Like a lot of all these documents.

24 Q That's your testimony?

25 A Yes.

1 Q And it's your testimony that your mother at the
2 second trial, testified about what two or three
3 unknown witnesses said and I did not object to that?

4 A My mother actually knows these witnesses, you know,
5 pretty well. We were friends outside of school, they
6 were at my home.

7 Q You're telling Judge Pyle that neither I or nor
8 Mr. Harjehausen objected to that kind of hearsay at
9 your trial, is that what you're saying?

10 A Wait a minute, I'm confused.

11 Q You said that no objection was made--

12 A No objection was made, no, sir. Absolutely not.

13 Q You're saying your mother testified at trial of what
14 other people told her and no one objected?

15 A Not one time. And I think you'll find that's the
16 case in the first trial as well.

17 Q Now Linda Cochran, who's that?

18 A She was an aide, of the special ed department at the
19 time of my arrest.

20 Q Okay. And at the second trial you never asked her
21 anything about that poem, did you?

22 A About the poem?

23 Q Right.

24 A When I reconstructed this, I used my list of
25 questions that I went over with my mother. I have

1 that here today if you want to look at it. And if I
2 had that before me I could specifically answer to you
3 what I did and did not ask each of the witnesses.
4 But I am not comfortable answering that question
5 without my list.

6 MS. GOODE: Objection, Your Honor. What she
7 asked of the other witnesses is irrelevant to the
8 reconstruction of Ms. Mann's testimony.

9 THE COURT: Okay, overruled.

10 Anything else, Mr. Clarkson?

11 MR. CLARKSON: Nothing further.

12 EXAMINATION

13 BY THE COURT:

14 Q Ms. Mann, in your memorandum, you say that among
15 other things that in the first trial that Mr. Thomas
16 was your lawyer?

17 A That's correct.

18 Q That he did not elicit testimony related to the
19 defamation cause of action, focusing instead on the
20 circumstances surrounding Appellant's arrest and the
21 damages resulting from the arrest. Now, is
22 Mr. Thomas going to be here today to say that was a
23 decision he made?

24 A No, Mr. Thomas is not going to be here.

25 Q Okay.

1 A May I point out that I had no influence from him
2 during the second trial, that all the questions I
3 asked of--

4 Q I didn't ask you that.

5 A Okay.

6 THE COURT: Okay, you can step down.

7 Okay, Ms. Goode.

8 MS. GOODE: Call Susan Rice.

9 THE CLERK: Place your left hand on the Bible,
10 raise your right hand.

11 SUSAN RICE, after being duly sworn, testified as
12 follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Susan Rice.

15 THE CLERK: Thank you, please be seated.

16 DIRECT EXAMINATION

17 BY MS. GOODE:

18 Q Ms. Rice.

19 A Yes.

20 Q What's your relationship to Ms. McBride?

21 A I'm her cousin.

22 Q Did you attend the trial of her action against the
23 school district that occurred in June 2011?

24 A I did, I assisted her in paper work, things like
25 that.

1 Q You were present for the entire trial?

2 A Yes.

3 Q Okay. You were present during the testimony of her
4 mother, Nancy Mann?

5 A Yes.

6 Q Do you remember the substance of Ms. Mann's
7 testimony?

8 A I do.

9 Q Can you tell the Court what you recall her testifying
10 concerning?

11 A Sure--

12 MR. CLARKSON: Objection.

13 THE COURT: I understand and your objection will
14 continue.

15 MR. CLARKSON: Thank you, Your Honor.

16 THE WITNESS: She testified how close her and
17 Sherri have always been, how they were always in contact.
18 That Sherri was really worried about having to go back to
19 work under Mr. Roach considering the bad blood between
20 them. But there was a hiring freeze so she couldn't get
21 out of that. How upset Sherri was after she was arrested.
22 And all of the attacks kept coming from Mr. Roach as
23 reported by the other teachers and people who still worked
24 at Berea. Including the lies about having stolen school
25 property. And making fun of her in the poem at the end of

1 the year.

2 Q And you specifically remember her addressing the poem
3 and what people reported Mr. Roach was saying about
4 her?

5 A Yes, I do.

6 Q In her trial testimony?

7 A Yes.

8 Q Have you reviewed the written reconstruction that
9 Ms. McBride has prepared?

10 A Yes, I did.

11 Q Is that in keeping with your recollection?

12 A It is.

13 Q Of the testimony of Ms. Mann?

14 A It is. She particularly wanted to go into how Leslie
15 Lambert, Officer Lambert, refused to listen to the
16 facts of what happened when Josh ran away. Refused
17 to acknowledge that Officer O instructed Ms. Mann,
18 Sherri Mann, on the course of action when Josh showed
19 up at her house. And Sherri did that. And yet the
20 next week she was arrested for aiding a run away. It
21 made no sense. And Aunt Nancy tried to explain that
22 at the time and she reported that in her testimony.
23 But officer Lambert wouldn't listen.

24 MS. GOODE: Nothing further.

25 THE COURT: Any questions?

1 MR. CLARKSON: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. CLARKSON:

4 Q You were very much involved in the first trial,
5 weren't you?

6 A Yes.

7 Q You were involved in everything that went on
8 pre-trial and you were very much interested in that
9 trial, weren't you?

10 A Well I've been assisting in the case for a year, yes.

11 Q And you assisted Mr. Thomas throughout that first
12 trial?

13 A Yes.

14 Q And then you attended the second trial?

15 A Yes.

16 Q And you want Ms. Mann to win, don't you?

17 A Well, I want her to get justice. I don't know if
18 winning is possible at this point.

19 MR. CLARKSON: That's all, thank you.

20 THE COURT: Thank you, you can step down.

21 THE WITNESS: Thank you.

22 MS. GOODE: I call Josh F [REDACTED].

23 THE CLERK: Place your left hand on the Bible,
24 raise your right hand.

25 JOSH F [REDACTED], after being duly sworn, testified

1 as follows:

2 THE CLERK: State your name, please.

3 THE WITNESS: Joshua F [REDACTED].

4 THE CLERK: Thank you, please be seated.

5 DIRECT EXAMINATION

6 BY MS. GOODE:

7 Q Josh, would you -- you were a witness in the trial of
8 this action, were you not?

9 A I was.

10 Q And you were in the courtroom when Ms. Mann testified
11 in 2011, is that correct?

12 A That is correct.

13 Q Do you recall Ms. Mann's testimony?

14 A Yes, I do.

15 Q Would you tell the Court what you recall of her
16 testimony?

17 A She spoke to the emotional distress that the whole
18 situation had caused Ms. McBride. She talked about
19 the poem that was written. The things that Bill
20 Roach had said about her that had been reported back
21 to her. And just the way that everything had
22 destroyed her. And she just talked about the depth
23 of the emotional toll it took on her, the financial
24 toll. And just, you know, the burden that the whole
25 entire situation had caused.

1 Q But you specifically remember that she testified
2 concerning the statements Mr. Roach made that were
3 being reported to them?

4 A She did. She --

5 MR. CLARKSON: Objection.

6 THE COURT: Subject to your objection.

7 THE WITNESS: She even indicated the name of
8 several witnesses that had said that. And I do remember
9 Ms. Cochran being one of those.

10 BY MS. GOODE:

11 Q And you specifically remember that she discussed in
12 her testimony a poem that Mr. Roach had read at the
13 school that was reported to them as well?

14 A Yes, ma'am, she did. And it was a poem that made
15 reference to an arrest happening in September which
16 was when Sherri was arrested.

17 Q And have you reviewed the written reconstruction that
18 Ms. McBride has prepared?

19 A Yes, ma'am, I have.

20 Q Is there anything in there that you don't recall
21 being part of Ms. Mann's testimony?

22 A No, ma'am, I feel it is accurate.

23 MS. GOODE: Thank you.

24 THE COURT: Okay. Any questions, Mr. Clarkson?

25 MR. CLARKSON: No questions.

1 THE COURT: Thank you, you can step down.

2 Okay, Ms. Goode, anything?

3 MS. GOODE: That's all I have, Your Honor.

4 THE COURT: All right, Mr. Clarkson.

5 MR. CLARKSON: We call Bill Roach.

6 THE COURT: All right, come around.

7 THE CLERK: Place your left hand on the Bible.

8 BILL ROACH, after being duly sworn, testified as
9 follows:

10 THE CLERK: State your name, please.

11 THE WITNESS: Bill Roach.

12 THE CLERK: Thank you, please be seated.

13 DIRECT EXAMINATION

14 BY MR. CLARKSON:

15 Q Mr. Roach, what is your occupation?

16 A I am a Principal Executive Director of Greenville
17 College.

18 Q And were you present during the entire trial of this
19 case at the last trial?

20 A I was.

21 Q And, in fact, you were present during the first trial
22 of this case, is that correct?

23 A Yes, sir.

24 Q You sat at counsel table?

25 A I did.

1 Q You were present for each and every witness that
2 testified in front of the jury?

3 A Yes, sir.

4 Q Those witnesses included Nancy Mann, is that correct?

5 A That's correct.

6 Q At the first trial?

7 A Yes.

8 Q And at the second trial?

9 A Yes, sir.

10 Q You have heard some of the testimony of the witnesses
11 who have been presented by the Plaintiff. Let me ask
12 you, do you recall Nancy Mann testifying anything
13 about a poem?

14 A Again, I don't remember a whole lot of what she
15 talked about. I do remember her relationship with
16 her daughter, as you would suspect any mother would.

17 Q So you don't have any recollection of her testifying
18 about any sort of poem?

19 A I don't recall. Like I said, I just don't remember.

20 Q All right. Did you write a poem at one time?

21 A I did.

22 Q Did you ever distribute it to anybody?

23 A No. Not until it was asked for in court.

24 Q In this case?

25 A Yes.

1 Q As part of discovery in this case?

2 A Yes.

3 Q Would it have been possible for Nancy Mann to have
4 ever seen a poem that you wrote?

5 A Not unless it was provided through counsel.

6 Q Do you recall Ms. Mann ever testifying to any
7 telephone call she may have received from school
8 employees?

9 A That was in the court case but I don't remember if
10 she specifically testified to that.

11 Q So as far as you know she didn't say anything about
12 telephone calls in the court case?

13 A I have no recollection.

14 Q All right. Do you recall Ms. Mann ever testifying
15 about the events leading up to the Plaintiff's
16 arrest?

17 A I do remember her saying something about Officer
18 Lambert but I don't remember specifics. I just
19 remember her kind of going through that.

20 MR. CLARKSON: Those are all the questions I
21 have, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. GOODE:

24 Q You have no personal knowledge whether Nancy Mann
25 ever saw a poem that you wrote, is that correct?

1 A I didn't distribute it so for her to have seen it
2 from me, it would be impossible. But she could have
3 seen it through the court case.

4 MS. GOODE: Okay. Thank you.

5 THE COURT: Thank you, you can step down.

6 MR. CLARKSON: Your Honor, we call Doug Webb to
7 the stand.

8 DOUG WEBB, after being duly sworn, testified as
9 follows:

10 THE CLERK: State your name, please.

11 THE WITNESS: Doug Webb.

12 THE CLERK: Thank you, please be seated.

13 DIRECT EXAMINATION

14 BY MR. CLARKSON:

15 Q Mr. Webb, can you state your occupation, please?

16 A I am the General Counsel Attorney for the School
17 District of Greenville County.

18 Q And were you present during the second trial in this
19 case?

20 A Most of it.

21 Q Were you present for Ms. Mann's testimony?

22 A Yes.

23 Q Approximately how long did she testify for?

24 A Approximately for both direct and cross-examination,
25 between 30 minutes to 45 minutes.

1 Q Okay. What do you recall? And you heard her
2 testimony in total, is that right?

3 A I did.

4 Q What do you recall her testifying about?

5 A From my recollection, I heard her discuss her
6 relationship with the Plaintiff. Talked about -- she
7 testified regarding the Plaintiff living with her, I
8 believe in her basement. I believe she testified to
9 the fact that the Plaintiff no longer went out to
10 dinner as often as she once did. But most of the
11 testimony consisted about their relationship and how
12 much that the witness cared for the Plaintiff.

13 Q Did Nancy Mann offer any testimony about telephone
14 calls that she had ever received concerning
15 statements by alleged school employees?

16 A I do not remember the discussion of telephone calls.
17 I do remember evidence trying to be presented through
18 the Plaintiff, in which, I believe, Mr. Clarkson
19 objected under the grounds of hearsay.

20 Q But you don't recall any such evidence or testimony
21 coming in through Nancy Mann, is that right?

22 A Regarding telephone calls?

23 Q Yes.

24 A Not through Nancy Mann, no.

25 Q What about a poem, do you remember Nancy Mann

1 testifying about any sort of poem that may have been
2 allegedly prepared by Bill Roach.

3 A I believe the testimony regarding the poem with
4 regard to other witnesses testifying, the Plaintiff.
5 And or the -- or Mr. Roach but I do not remember
6 Ms. Mann testifying with regard to the poem.

7 Q Okay. So as far as you know she didn't testify
8 regarding the poem?

9 A She did not.

10 Q Do you recall Linda Cochran testifying about any sort
11 of poem?

12 MS. GOODE: Objection, Your Honor, we're not
13 here to reconstruct the testimony of other witnesses,
14 we're here concerned about what Ms. Mann testified about.

15 THE COURT: I sustain the objection to that
16 question.

17 MR. CLARKSON: No other questions, Your Honor.

18 THE COURT: All right, Ms. Goode.

19 CROSS-EXAMINATION

20 BY MS. GOODE:

21 Q It's your testimony that you simply don't recall
22 whether she testified about phone calls or a poem, is
23 that correct?

24 A No, I wouldn't say that. I would say that I
25 specifically believe that she did not testify with

1 regards to the poem. And I do not -- my recollection
2 is she never testified to the telephone calls. I
3 specifically remember the poem never being discussed
4 during her testimony.

5 Q Did you take notes of her testimony?

6 A I do not believe so.

7 MS. GOODE: No further questions.

8 THE COURT: Thank you, you can step down.

9 MR. CLARKSON: Your Honor, other than our
10 testimony, we have nothing else to add. Ours would be
11 cumulative to the two witnesses that that testimony, we
12 never heard it.

13 THE COURT: Anything else, Ms. Goode?

14 MS. GOODE: I don't have any further witnesses.
15 I would simply like to point out that the transcript of
16 Ms. Mann's 2007 testimony was submitted to the Court. It
17 is not identical to the 2011 testimony. And we have three
18 witnesses that specifically recall her going into matters
19 that are at the heart of the defamation cause of action.
20 And I would urge the Court to adopt the written
21 reconstruction that we've presented as an Exhibit to the
22 Court as the reconstruction of her testimony.

23 I would also note that no one has gotten into
24 her cross-examination. If you look at the passage from
25 the original trial and where the Court Reporter resumed

1 taking down her testimony in the second trial, the first
2 question of the cross-examination that's reflected in the
3 second trial appears to be the first question of the
4 cross-examination of the first trial. So I think that a
5 comparison of those, it looks as though the only part of
6 her testimony that was missing was the direct examination.
7 And I would submit the written reconstruction of
8 Ms. McBride is what the Court should adopt as its
9 reconstruction. Thank you.

10 MR. CLARKSON: Just one final point, Your Honor,
11 this reconstructive testimony is nothing other than a
12 self-serving document replete with misstatements and
13 double and triple hearsay. And I don't believe that, Your
14 Honor, would have allowed such testimony at the second
15 trial even if we didn't object to some double and triple
16 hearsay and total misstatements about who was accusing who
17 what. So I submit that this is not the proper or correct
18 testimony that was presented at the second trial.

19 MS. GOODE: May I respond, Your Honor?

20 THE COURT: Sure.

21 MS. GOODE: Ms. McBride, through no fault of her
22 own, does not have a complete record of the trial for
23 purposes of her appeal. The district is charging her with
24 creating the self-serving document. She is simply trying
25 to recreate what she recalls her mother saying on the

1 witness stand so that the Court can actually review her
2 appellate issues with meaningful review. I submit that
3 this is not self-serving. It is the only method to
4 create -- to undo the damage that has been done by the
5 absence of the record of that testimony.

6 And I submit the Court does have the authority
7 to base its reconstruction on hearsay. That is exactly
8 what is contemplated in the -- in cases in which summaries
9 of testimony were given. The Dolive case is an example.
10 The board chairman gave a summary of what the witness'
11 testimony had been. I don't know how it can be
12 contemplated not to rely on what people recall a witness
13 saying if you're going to reconstruct that witness'
14 testimony. And I submit that the Court of Appeals has
15 endorsed that, the Court of Appeals remanded the case for
16 that purpose. And it is appropriate for you to rely on
17 these witnesses recollections of the testimony.

18 THE COURT: How can I do that when their
19 testimony is in conflict as to what was said and not said?

20 MS. GOODE: Well I submit--

21 THE COURT: How can I when the evidence is
22 disputed? How can I adopt what the Plaintiff in the case
23 says her mother said?

24 MS. GOODE: I believe that there were people
25 specifically recalling certain testimony, that is

1 different from somebody simply not recalling that
2 testimony. And I think the Court can rely on specific
3 recollection of these witnesses and adopt that
4 reconstruction.

5 THE COURT: Were there other witnesses during
6 the trial who testified as to what you allege Ms. Mann
7 said or didn't say? I mean, is the other--

8 MS. GOODE: I don't think anybody else would
9 have testified about what Ms. Mann said. Because Ms. Mann
10 was there to testify--

11 THE COURT: I'm talking about were there other
12 witnesses in the case who gave testimony as to defamation
13 and to damages?

14 MS. GOODE: There was one witness who testified
15 specifically about having heard Mr. Roach state that
16 Ms. McBride had cleaned them out. There were witnesses
17 that testified about a poem that he read at a school
18 function. This testimony is critical because the
19 publication of those statements to others at the school is
20 at the heart of the defamation cause of action. And I
21 submit that the Court can, based on witnesses recollection
22 of Ms. Mann's testimony, find that written reconstruction
23 to be a representation of her testimony.

24 THE COURT: I noted in granting the motion for a
25 directed verdict, I made the comment that your only

1 witness testified that she didn't believe it and it didn't
2 make any difference to her, that you were a good person as
3 far as she was concerned. Now I said she was the only
4 witness. I mean, were there not?

5 MS. GOODE: And I believe that the Plaintiff
6 argued in response that there were others that heard it.
7 And that is the reason that Ms. Mann's testimony is
8 critical. Ms. Mann testified, based on the recollection
9 of these witnesses, that other--

10 THE COURT: Who are those witnesses? Who were
11 those witnesses?

12 MS. GOODE: Based on the testimony of the
13 witnesses I have here today, Ms. Mann testified--

14 THE COURT: I'm talking about witness in the
15 trial. Fact witnesses. Not somebody who sat in the
16 courtroom and heard somebody testify.

17 MS. GOODE: In the reconstructed testimony of
18 Ms. Mann, Ms. McBride has reported that Ms. Mann stated
19 that multiple people, and this is on the next to the last
20 page near the top, that Linda Cochran, Lynn Fox and a
21 couple other people had called them to report the
22 statements that Mr. Roach was making. That testimony goes
23 to the publication and the damages elements of the
24 defamation cause of action. And it is crucial that it be
25 reconstructed.

1 THE COURT: Okay, all right.

2 MR. HARJEHAUSEN: Your Honor, just a few brief
3 comments. First, I think that the China vs. Parrot case
4 and the Dolive case are distinguishable to the point that
5 in those cases you didn't have a prior record to go back
6 and look at to reconstruct the testimony. Whereas in this
7 case you do, you have the first trial. So the Dolive case
8 and also the Parrot case, there was nothing to go back and
9 look at. But you do have that here. You have a couple of
10 things. You got the first trial's testimony, you got the
11 Court's Order on directed verdict, which the Court has
12 pointed out.

13 One of the questions in my mind that cause
14 incredibility in this reconstructed testimony, is that
15 there's a suggestion that Ms. Mann testified that others
16 like Linda Cochran and Lynn Fox told her about stuff she
17 had heard. Well the Plaintiff had the opportunity to
18 testify in her case in chief about that if that, in fact,
19 happened. But we have the transcript and she didn't.
20 Linda Cochran testified in the trial but she was never
21 asked about that. We have the transcript and she didn't.
22 Lynn Fox was present at trial, I believe, I'm not sure
23 about Lynn Fox but she testified, I believe, in the first
24 trial, we have the transcript, and she didn't.

25 So we believe that that calls into question the

1 credibility of the testimony that Ms. Mann, through these
2 other witnesses, through hearsay, supposedly testified
3 about these communications. The Plaintiff had the
4 opportunity to present that testimony, if it was actually
5 presented, through direct witnesses. It's simply not
6 credible to believe that Mr. Clarkson or myself would not
7 have objected to hearsay when those witnesses, that could
8 have testified directly as to hearing those statements,
9 could have been presented by the Plaintiff. But she
10 apparently didn't.

11 THE COURT: All right, thank you.

12 All right, anything else?

13 MS. GOODE: No, Your Honor.

14 THE COURT: Thank you.

15 April, you got the Exhibit?

16 THE COURT REPORTER: Yes, sir.

17 THE COURT: All right, we'll stand adjourned.

18 I'll see what I can do to get something out to you as soon
19 as possible.

20 (WHEREUPON, the proceedings were concluded.)

21

22

23

24

25

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF GREENVILLE

4
5 SHERRIE MANN McBRIDE :

6 :

7 -vs-

:

TRANSCRIPT OF RECORD

8 :

VOLUME II

9 THE SCHOOL DISTRICT OF :

10 GREENVILLE COUNTY :

11
12 October 30-November 1, 2007

13 Greenville, South Carolina

14
15 B E F O R E:

16 HONORABLE LARRY R. PATTERSON, Judge.

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

18 DAVID L. THOMAS, ESQ.

19 Attorney for the Plaintiff

20 N. HEYWARD CLARKSON, III, ESQ.

21 JOHN D. HARJEHAUSEN, ESQ.

22 Attorneys for the Defendant

23
24 MARY E. DIGIROLAMO

25 Court Reporter

1 right?

2 A Correct.

3 Q Now, I see throughout, at the beginning and end of
4 paragraphs, JLF, is that your initials?

5 A Yes, they are.

6 Q And did you write them on there?

7 A Yes, I did.

8 MR. CLARKSON: Thank you. That's all the questions,
9 Your Honor. And I would move that the sworn testimony
10 from the school board hearing be made an exhibit in this
11 case.

12 MR. THOMAS: I have no objection to that, Your
13 Honor.

14 THE COURT: Okay.

15 (Defendant's Exhibit Number 10 was marked and
16 filed.)

17 THE COURT: Okay.

18 MR. THOMAS: Your Honor, at this time we would call
19 Nancy Mann.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand.

22 NANCY MANN

23 Having been first duly sworn, testified as follows:

24 THE CLERK: State your full name, please.

25 THE WITNESS: Nancy Mann.

1 THE CLERK: Thank you. Be seated.

2 DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q All right. Ms. Mann, state your name again for the
5 jury?

6 A Nancy Mann.

7 Q And where do you live, ma'am?

8 A I live at 45 Viewpoint Drive in Greenville.

9 Q All right. Who lives with you?

10 A My daughter, Sherrie Mann.

11 Q Where does she live in the house?

12 A She lives in the basement. I have an apartment
13 basement.

14 Q And when did she begin living there?

15 A This was in 2003.

16 Q What prompted her moving into the basement of your
17 home?

18 A Well, once she had been falsely accused and lost her
19 job, she had nowhere to go. And so I had this apartment,
20 and I let her know she was welcome to be there.

21 Q All right. Could move the microphone a little
22 closer to you, to you -- or -- there you are. You move
23 closer to it.

24 A Okay.

25 Q Describe for the jury her condition when she came

1 into your home, and I mean emotional condition at this
2 point?

3 A She was a real basket case. She was not at all the
4 same person she had always been, so vibrant, so outgoing.
5 All of a sudden she won't go in public. I had to buy a
6 wig before she would even go outside. It was just -- she
7 had just been totally destroyed after she was flashed all
8 over the news. It was totally embarrassing for her. And
9 it's just been a nightmare for our family. It's been
10 really bad.

11 Q Are you aware of -- or describe to the jury anything
12 that you might could tell the jury about her personal
13 activities? How she conducts her life?

14 A Well, she was sort of a born teacher, you know. She
15 really kind of kept going back to school. She always was
16 a school person. And then my son was opposite of that.
17 He didn't want to go to school. And so I had told her,
18 you know, one day, I said, why don't you just think about
19 teaching. And she did. She loved it. And she was just
20 kind of like a natural born teacher. And the kids loved
21 her. So it's really destroyed her. She doesn't have any
22 confidence in herself any more. It's just like she's a
23 different person.

24 Q Has she -- has she -- prior to -- prior to 2003 and
25 the arrest in 2003, give a very brief description, if you

1 would please, of -- you mentioned a few things, would --
2 tell us a little bit about whether or not she would go
3 out, whether or not she would go to church, just various
4 things about her personality prior to 2003?

5 A Oh, yes, she was very out going, you know, prior to
6 this. She was always involved in everything. She was
7 always helping everybody on every project and just happy,
8 go lucky. You know, just a very happy person and always
9 interested in everybody, and was kind of like, you know,
10 she would encourage you if you felt like you couldn't do
11 something she would encourage you that you could. You
12 know, she really gave you that special feeling that you
13 could do it.

14 Q All right. Since that time you said you perceived a
15 change. Relative to those positive things the change
16 that you have seen then is what?

17 A Well, she's put on all this weight and she is just
18 not happy with herself any more. She does not meet
19 people well. She just wants to avoid people. She wants,
20 you know, to be with me, you know, but other than that,
21 she doesn't really care about being in public.

22 Q Does she -- when she goes go out can she go out by
23 herself, does she ---

24 A No, no, she always goes with me always. And
25 sometimes my niece.

1 Q Well, is that at your insistence?

2 A No. Oh, no, no, not at all.

3 Q How does that happen?

4 A Well, wherever she goes she just wants me to be
5 there with her. She'll ask me will I come with her.

6 Q Does she date?

7 A No, no.

8 Q Does she go to church?

9 A No, not any more.

10 Q What kind of social life does she have?

11 A None really.

12 Q Does she have any pets, dogs, cats, anything like
13 that?

14 A Yeah, she does have a dog, you know. I have a dog.
15 She had a dog and she is very close with both of them.

16 Q All right. She has a dog and ---

17 A She has a Nakita.

18 Q A Nakita?

19 A Right.

20 Q All right. Does she -- she has her own car?

21 A She does but she ---

22 Q Does she have a source of income?

23 A No, no.

24 Q She makes no money anywhere?

25 A No.

1 Q Now, she helps you some with some of your rental
2 property. Tell us about that. What kind of help has she
3 been to you?

4 A Well, when we get in a real bind, you know, we need
5 something quick, she'll go with me and help me get
6 something, you know, faster. Somebody ---

7 Q All right. She's capable of doing some things then,
8 right?

9 A Yeah, she -- yeah, she is definitely capable.

10 Q Would you say over the four year period from 2003 to
11 currently, four and a half years, has she been improving
12 any at all?

13 A Well, yeah, it's definitely better than it was right
14 after it first happened. And after all this first
15 happened it was splattered all over the news and then you
16 know, she begged of the school to, you know, give her a
17 chance. They didn't even do an investigation. And it
18 was kind of like a slap in the face that they would not
19 let her tell her story. And I mean, it was just like,
20 you know, everybody was against her, you know. And so --
21 but yeah, I would definitely say it's -- things are
22 better than that now. I mean ---

23 Q All right. Can she -- can she conduct basic
24 interaction with people?

25 A Yeah, yeah, really she can. She can.

1 Q All right. Do you have hopes that some day she'll
2 be able to be productively employed again?

3 A Oh, yeah, definitely, I do. I look forward to that
4 day.

5 Q All right. Okay.

6 A Very.

7 Q All right. What kind of things might she be able to
8 do, do you think possibly if she continues to improve?

9 A Well, I don't think she'll ever be able to go back
10 in the class room again. I mean, she would not have the
11 confidence and she would always be afraid, fear, you
12 know. She does like to do scrapbooking. She might do
13 something like that, like a store or something on that
14 order, maybe some kind of hobbies, you know, that she
15 could help people with.

16 Q Do you think she certainly could be doing clerical
17 at least?

18 A I would think so, yes.

19 Q All right. So there's some ---

20 A She's very intelligent, yeah.

21 Q Okay. So you have hopes there's something that
22 she's going to be able to do some day?

23 A Right, right, I do.

24 Q All right. And let me -- it's kind of related,
25 emotionally is she improving from four and a half years

1 ago?

2 A Well, yeah. I'm not a doctor but I think she is
3 better to some extent than she was.

4 Q Okay.

5 A I mean, it was so devastating to start with you'd
6 have to be better now, you know.

7 Q Okay. Are you in any way familiar with Officer
8 Oslager?

9 A Yeah, I knew him from the school.

10 Q Are -- do you have any personal knowledge of the
11 date of the arrest?

12 A Well, I knew that -- I was aware the week before
13 when Josh -- well, I had met -- first met Josh ---

14 Q Well, that's not my question. Let me back up here.
15 Your Honor, I've got just one question I may not even --
16 I might withdraw it. Do you have personal knowledge of
17 the day of the arrest of any incident that took place?
18 Were you called about her arrest?

19 A I was and I tried to tell Officer Lambert, you know,
20 that if she would get with Oslager that he could clear
21 this up because he was aware of the weekend before that
22 when Josh had run away and she had called immediately and
23 done what she was supposed to do reporting it.

24 Q Who is Officer Lambert?

25 A She was the lady officer that had called me. She

1 works with -- around all the schools. Apparently she's
2 connected, you know. That's somebody they bring in
3 when ---

4 Q And how did you have an opportunity to talk to
5 Officer Lambert?

6 A Well, actually she called me to tell me that she,
7 you know, was talking to my daughter and she kept -- she
8 wouldn't really make herself clear. So I just come out
9 and asked her, are you trying to tell me that you're
10 arresting my daughter. And she said, well, well, no,
11 like I said, we're just talking and she's on the phone.
12 And so -- and I was at my son's office, so my
13 daughter-in-law and I just locked the office and we went
14 to the law enforcement center to find out what was going
15 on, because she was playing games with us and ---

16 Q All right. You don't have to comment. Tell me who
17 you saw at the law enforcement center?

18 A My daughter.

19 Q All right. How did you see her?

20 A She was handcuffed with her hands behind her ---

21 Q Where was she handcuffed?

22 A She was in one of the magistrate's offices there.

23 Q All right. At the law enforcement center?

24 A At the law enforcement center.

25 Q All right. Did she -- was she aware of your

1 presence?

2 A Well, I don't think at first she knew I walked up
3 there because I was just standing there waiting because
4 everybody was talking. And I think actually that the
5 judge noticed I was there first and ---

6 Q All right. And did finally you two make eye
7 contact?

8 A We did.

9 Q All right. Was her condition then?

10 A She was devastated. I mean, she and I both, I mean,
11 we could not believe something like this was happening.
12 It was a nightmare.

13 Q All right. One last question. Did you finally get
14 to talk Officer Lambert, in person.

15 A The judge, the lady judge, I can't think of her
16 name, she told her to get out there and talk to me and
17 explain to me what was going on.

18 Q All right. And your response was to please go to
19 Officer Oslager because he ---

20 A Yeah, I did. She opened the door -- well, first of
21 all --

22 Q Okay. That's all right. I just want to know if
23 you talked to her concerning Officer Oslager's
24 knowledge?

25 A I did. Yes, sir.

1 MR. THOMAS: Okay. That's all the questions I
2 have.

3 CROSS-EXAMINATION

4 BY MR. HARJEHAUSEN:

5 Q Ms. Mann, just a couple questions.

6 A Yes, sir.

7 Q At the time that your daughter was arrested, she
8 was estranged from her husband at that time, is that
9 right?

10 A Well, yeah, actually I guess it just really, you
11 know -- yeah, because she was ---

12 Q And at that time she was already living at your
13 house?

14 A Well, she was staying there several nights a week.
15 It wasn't a permanent move at that time, but she was
16 staying there. She had been there probably a couple
17 nights before this happened.

18 MR. HARJEHAUSEN: No other questions, Your Honor.
19 Thank you.

20 THE COURT: Thank you, ma'am.

21 MR. THOMAS: Your Honor, we have witnesses coming.
22 I have Ms. Gibbs here, but based on the -- to testify,
23 but based on your determination to try to keep very
24 narrow focus, I don't believe that probably would help us
25 with the probable cause issue. I have clients -- excuse



Reconstructed Transcript

Nancy L. Mann

Sherrie Mann: Please state your name for the court.

Nancy Mann: Nancy L. Mann

Sherrie Mann: And what is your relationship to me?

Nancy Mann: I am your mother.

Sherrie Mann: Are we close.....would you say we have a close relationship?

Nancy Mann: Yes...very close. Best friends....she (pointing to Sherrie Mann) is my best friend and always has been. We spend a lot of time together, and on the phone throughout the day....always have been very close...her whole life.

Sherrie Mann: Would you say that you know me better than anyone?

Nancy Mann: Yes, I would.

Sherrie Mann: Well, you know what these folks over here (gesturing to the Defense) are accusing me of....Contributing to the delinquency of a minor and enticing an enrolled minor from school....right?

Nancy Mann: Yes, right.

Sherrie Mann: So what do you have to say....do you think that your daughter did those things?

Nancy Mann: Absolutely not.

Sherrie Mann: Am I capable of these crimes?

Nancy Mann: No way...never broke a law in your life.

Sherrie Mann: Never broke a law....Right? Always been a law abiding citizen?

Nancy Mann: Yes. Right. Always.

Sherrie Mann: Always had utmost respect for authority?

Nancy Mann: Absolutely.

Sherrie Mann: Okay, Mother....going to the events of September 25, 2003, could you tell the jury what took place on the afternoon of September 25th?

Nancy Mann: Yes. I received a call from Police Officer Leslie Lambert. She said that she had my daughter, Sherrie. I said, you mean you have arrested my daughter? She said, "I am only saying that I have your daughter and she will call you later" that is all that she would say. I tried to ask more questions like "why" and "where", but she said she was saying nothing else and hung up the phone.

Sherrie Mann: So what did you do?

Nancy Mann: Well, I was at the office, our rental office, with my daughter-in-law, Julie Mann. I told her what the officer said and she grabbed her purse and said, "come on let's go". And, so we went to the detention center to hunt you.

Sherrie Mann: And, did you find me?

Nancy Mann: Yes, you were in cuffs...handcuffs, in the judge's chambers...judge's office.

Sherrie Mann: Then what happened?

Nancy Mann: The judge sent Officer Lambert out to speak with us....me and Julie.

Sherrie Mann: And, what did she say?

Nancy Mann: She told me that you were arrested because you had assisted a runaway...that they were charging you with contributing to the delinquency of a minor and enticing a student from school. I tried to tell her "No"... Officer O could clear all that up...that the boy did come to your house as a runaway... but that you had reported it and the police came and got him. I begged for her to call Officer O and she said "No"...that she and Officer O did their investigation and together

determined that you were guilty of those charges. Julie also tried to talk to her, but she wouldn't listen. She insisted that we were wrong and walked away.

Sherrie Mann: How did you know about the boy, Josh F [REDACTED]s, running away from home?

Nancy Mann: You told me. We were on the phone several times that day. The Saturday before you were arrested....when Josh came to your house.....he ran away and came to your house. You were so upset about it. You called Officer O to find out what to do. The police came....they took him away....when you called them like Officer O told you to do. Officer O told you to call the Sheriff's Office and that's what you did. And, it was a very emotional day, you were so upset for the boy....for Josh.

Sherrie Mann: Are you familiar with Bill Roach?

Nancy Mann: Yes. He was the Principal then.

Sherrie Mann: What do you know about his and my relationship?

Nancy Mann: That he really didn't like you because you would tell on him for all the things he did against the students. He really had it in for you... and you tried your best not to work for him when he was named principal. But there was a hiring freeze that summer and you couldn't get out of working at Berea High when school started back that year.

Sherrie Mann: Okay, so, Mamma, moving along until after all the events of September 25th could you tell the jury about things that happened after I was arrested and fired...for instance a poem that was written about me and rumors that I had stolen school property?

Nancy Mann: Even after you were fired from the District, the teachers...your friends who were teachers at Berea kept you informed of what was going on at the school....things about you. They called the house, our house, to tell you all the horrible things being said about you at that school.

Sherrie Mann: What things?

Nancy Mann: Like how Bill Roach was running around telling other teachers that you had cleaned out the school, meaning you had stolen things when you cleaned out your classroom after you were fired.

Sherrie Mann: Who called our home, yours and mine, to report this to me?

Nancy Mann: Linda Cochran, Lynn Foxx, and a couple others, like there was a guidance counselor who called you.

Sherrie Mann: And how did I react to this?

Nancy Mann: Fell apart....you were completely devastated!

Sherrie Mann: Is that all they told me?

Nancy Mann: No.....several teachers called to tell you that Roach had written a poem about you and was making fun at having you arrested and hauled off to jail....read the poem at a faculty BBQ....was really trying to get a good laugh about what he did to you.

Sherrie Mann: And how did I react to that?

Nancy Mann: Very upset....it was so hard for you to take all this. You kept saying he ruined your life and told lies about you and still it all wasn't enough; that, now he was even making a mockery of you, too. He really made life as hard as he could for you.

Sherrie Mann: Okay Momma, one last thing....how would you say that all of this, the arrest, their firing me, everything they put in the news, has affected me and our family?

Nancy Mann: It has been devastating. You were devastated by what they did to you. You could not function anymore....like a nervous break-down and wouldn't,... couldn't leave the house for months....and even after all these years, you avoid Berea, the restaurants, the football games, stuff like that...anywhere you might see people from Berea. It is so terrible and so sad.

Sherrie Mann: So what have I been doing since?

Nancy Mann: Nothing...you will never teach again....won't work with kids at all ...not able to work with people. It changed your whole personality.

Sherrie Mann: How was I before?

Nancy Mann: Carefree and fun-loving....never met a stranger....your whole life and now you live like a hermit. Never been the same person since.

Sherrie Mann: So was affected mentally and emotionally. How about financially?

Nancy Mann: Yes! You lost everything you owned. The house...the car....all kinds of things. The money spent on legal fees to clear your good name and fight the lies they've told about you has cost you everything. You were..and still are financially ruined.

Sherrie Mann: And, how about you....how were you affected?

Nancy Mann: It's been a horrible experience for all these years now....destroyed us....has caused ongoing stress, year after year for everyone in the family.

Sherrie Mann: Okay. Thank you. I have nothing else.