

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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

RECEIVED
MAY 23 2019
SC Court of Appeals

Darris Hassell, ... Respondent,

v.

The City of Columbia, ... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DARRIS HASSELL

PLAINTIFF

v.

THE CITY OF COLUMBIA

DEFENDANT

IN THE COURT OF COMMON PLEAS
DOCKET #: 16 CP 40 0910

VERDICT FORM

On the cause of action for false arrest, we the jury unanimously find for:

Check one:

The Plaintiff ☒

The Defendant ☐

On the cause of action for malicious prosecution, we the jury unanimously find for:

Check one:

The Plaintiff ☒

The Defendant ☐

On the cause of action for negligent supervision, we the jury unanimously find for:

Check one:

The Plaintiff ☒

The Defendant ☐

We the jury find for the Plaintiff in the amount of \$ 200,075.00 \$()

ACTUAL DAMAGES

Richard J. Jager
FOREPERSON

RICHLAND COUNTY
FILED
2017 MAY 19 AM 11:15
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4000910**

Darris Hassell

City Of Columbia

PLAINTIFF(S)

City Of Columbia Police Department

DEFENDANT(S)

Submitted by: Natalie Ham

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Defendant's Motion for a new trial has been denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge Paul L. Reeves

Judge Code 2061

Date 6-16-17

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of June, 2017, and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of June, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Paul L. Reeves

Natalie Armstrong Ham

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

RECEIVED

SCRCP Form 4C (10/2011)

AUG 18 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2016 -CP-40-0910
	)	
Darriss Hassell,	)	
	)	
Plaintiff,	)	
	)	ORDER
vs.	)	
	)	
City of Columbia,	)	
	)	
Defendant.	)	

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

PROCEDURAL HISTORY

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

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

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

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

LEGAL ANALYSIS

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

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

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

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

Id. at 391, 157.

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

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

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

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

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

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

Id. at 286, 895. [Emphasis added]

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

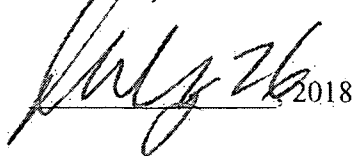
Based upon the presentation by the City and the Plaintiff, this Court makes the following findings of fact based upon a preponderance of evidence:

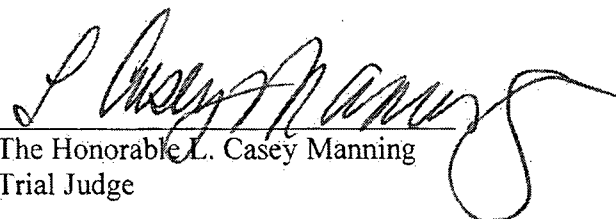
1. The City has the burden of proof as to the showing juror misconduct as set forth in *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989).
2. The City did not have Trial Counsel of record present at the hearing and she produced no evidence by affidavit;
3. Mr. Hewitt has not properly appeared as Counsel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

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

AND IT IS SO ORDERED.

Columbia, South Carolina

 2018


The Honorable L. Casey Manning
Trial Judge

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

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

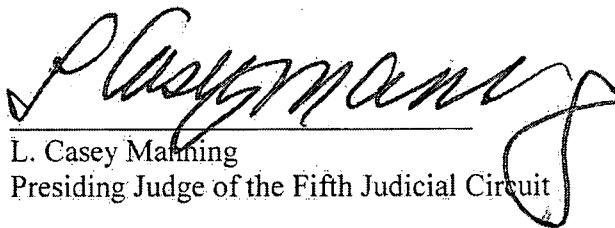
C/A NO.: 2016-CP-40-0910

ORDER TO CORRECT FILING

It appears that on July 27, 2018, the Order denying Defendant's Motion for a New Trial was filed. Subsequent to the filing of this Order, the parties alerted the Court that page nine (9) was erroneously omitted during the filing.

Pursuant to Rule 60(a), SCRCP, the Court files the attached amended Order correcting the omission of page nine (9).

AND IT IS SO ORDERED.


L. Casey Manning
Presiding Judge of the Fifth Judicial Circuit

Columbia, South Carolina
August 21, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2016 -CP-40-0910
	)	
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LEGAL ANALYSIS

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Id. at 391, 157.

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

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

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

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

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

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

Id. at 286, 895. [Emphasis added]

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

new trial under Rule 59(b). S.C.R.Civ.P. 59(b)). *Bryant* holds that the moving party could not have known about the grounds for the alleged misconduct prior to the verdict. *Gray* at 288, 896.

Plaintiff pointed out that the information regarding John Doe was available to anyone with an internet connection. John Doe's interaction with the City was available via the Richland County Public Records Index, using only the information set forth on the Clerk of Court's juror list. The Plaintiff pointed out the use of Public Index is easily accessible and free of costs. The City did not refute this assertion with any evidence. This Court is left with little or no evidence upon which to find the City could not have known about this juror's alleged misconduct prior to the verdict.

3. The City was negligent in failing to learn of the alleged misconduct before the verdict.

The City has the burden of proving each of the elements required by *Gray*. The City did not have Trial Counsel present for this hearing to show what, if anything, the City did regarding the due diligence performed by the City regarding the issues surrounding juror John Doe. There are no affidavits and no documentary evidence from any source or witness that touch on why the City could not have known of the juror's misconduct. The City found the documents related to the juror; however, the City failed to show why these documents could not have been found prior to, during, or within ten days after the verdict. The City has failed to provide sufficient evidence that would show the City was not negligent in failing to know of the misconduct. The Court makes this finding for the reasons and basis set forth in Number Two above.

The City failed to perform due diligence in discovering juror misconduct and now attempts to have this Court grant relief for the City's negligence in inadequately defending this matter. The City failed to adequately review the abundant, public information relevant to prospective jurors

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

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

CONCLUSION

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

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

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

AND IT IS SO ORDERED.

The Honorable L. Casey Manning
Trial Judge

Columbia, South Carolina

_____, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET #: _____

DARRIS HASSELL)

PLAINTIFF)

v.)

THE CITY OF COLUMBIA AND)
THE CITY OF COLUMBIA)
POLICE DEPARTMENT)

DEFENDANTS)

COMPLAINT
(JURY TRIAL REQUESTED)

RICHLAND COUNTY
FILED
2016 FEB 11 PM 3:45
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO: THE DEFENDANTS AND THEIR COUNSEL OF RECORD:

The Plaintiff would respectfully show unto this court the following:

FACTS

1. The Plaintiff is a citizen and resident of Richland County, South Carolina. The Defendant City of Columbia is a municipal entity and governmental subdivision organized and is situated in Richland County, South Carolina.
2. The City of Columbia Police Department is a law enforcement agency and subdivision of the City of Columbia and is situated in Richland County, South Carolina.
3. On February 19, 2014, the Plaintiff was studying at the Thomas Cooper Library on the campus of the University of South Carolina.
4. The Plaintiff is a languages professor at the University of South Carolina and teaches foreign languages at the University of South Carolina – Lancaster Campus, located in Lancaster, South Carolina.
5. On February 19, 2014, the Plaintiff left the Thomas Cooper Library to travel to a

local restaurant.

6. The Plaintiff left the library and traveled to an eatery on Elmwood Avenue. After purchasing a meal, Plaintiff left the premises with the intention to return to his home.

7. Plaintiff drove his vehicle to travel to his home. At the intersection with Taylor and Sumter, Plaintiff made a left turn. After he had completed the turn he noticed a vehicle with blue lights flashing coming from behind him and pull in closely behind his car.

8. Plaintiff immediately pulled over, near the outside entrance to the emergency department for Palmetto Baptist Hospital.

9. The Defendants agent and servant, (hereinafter referred to as the "arresting officer") approached Plaintiff's car and asked "Do you know why I stopped you?" The Plaintiff responded "no". The arresting officer then said "You made an improper turn". The Plaintiff denied making an improper turn.

10. The Plaintiff did not make an improper turn. The Plaintiff used his signal and turned from his appropriate lane of travel to the next appropriate lane of travel, all lawfully completed.

11. The arresting officer demanded Plaintiff's driver's license and insurance information.

12. Without any probable cause or justification, the officer then demanded that the Plaintiff step from his vehicle because the officer stated that the Plaintiff appeared to have been driving under the influence. The Plaintiff gave no such appearance. Plaintiff had consumed no alcohol prior to the arresting officer detaining him.

13. The Plaintiff immediately responded that he was not under the influence of any alcohol or drugs. He told the arresting officer that he never drank and that he had taken no drugs that would have impaired him.

14. The arresting officer then ordered the Plaintiff to submit to sobriety "tests". The arresting officer appeared to not know the procedures for the sobriety test and was attempting to

instruct the Plaintiff about the sobriety test by reading from what appeared to be a small manual or book. The arresting officer had to make constant reference to the book in order to give Plaintiff instructions. It was obvious to the Plaintiff that the arresting officer was not familiar with the procedures of administering the sobriety test and was not familiar with how to go about appropriately testing the Plaintiff for any signs of impairment. The arresting officer paid more attention to the manual or book than he did to Plaintiff.

15. The Plaintiff gave his best efforts and believes that he successfully completed these "tests" even though the arresting officer had an almost impossible time in explaining to the Plaintiff what he wanted the Plaintiff to do. The arresting officer was completely unfamiliar with the procedures and instructions and stumbled through the instructions sometimes repeating the instructions numerous times, not because of the Plaintiff's inability to understand but because of the arresting officer's apparent lack of ability to instruct the Plaintiff about what the arresting officer wanted to him to do.

16. During one of the tests, a second City of Columbia police officer arrived at the scene. The two officers exchanged conversation, with the arresting officer stating more than once that he thought he was okay and that he "believed" that he was investigating the case in the right manner. The arresting officer did not share with the second arresting officer how difficult it had been for the arresting officer to simply get through the sobriety test.

17. The second officer departed from the scene. The second officer did not identify himself nor did he speak directly with the Plaintiff.

18. The arresting officer then told the Plaintiff that he needed to accomplish one additional test. Actually it was not a test at all, it was ruse to have the Plaintiff place his arms in a position to be handcuffed by the arresting officer.

19. Upon being handcuffed by the arresting officer, the Plaintiff insisted that the arresting

officer was wrong about the Plaintiff because Plaintiff did not drink and certainly had not consumed anything on that particular day. The Plaintiff requested the arresting officer to call the Plaintiff's nephew who was at the time, employed as a City of Columbia police officer to verify that the Plaintiff was not a person who consumed alcohol. The arresting officer declined to call anyone.

20. At this point, the arresting officer became much more firm with the Plaintiff, handling him in a rough manner.

21. The Plaintiff continued to beg the arresting officer to reconsider his decision because Plaintiff had not consumed any alcohol, was one to never consume alcohol and had not consumed anything that would have caused him to be impaired.

22. The arresting officer took the Plaintiff to the Defendants' Washington Street location for a Datamaster test.

23. The Plaintiff complied with the Datamaster test. The Datamaster test read, according to the arresting officer and documents that Plaintiff saw that night a reading of "0.0" percent presence of alcohol.

24. The arresting officer was dumbfounded and insisted that the Plaintiff now had consumed drugs as a reason for Plaintiff's "impairment."

25. The Plaintiff reiterated that he was not impaired, had successfully accomplished the sobriety "test" and that he had consumed no alcohol or drugs. The Plaintiff also pointed out that the arresting officer had originally indicated that the Plaintiff smelled of alcohol and that the Datamaster test was conclusive proof that he had not consumed alcohol. The arresting officer brushed this aside and now claimed the Plaintiff had consumed drugs.

26. The Plaintiff was then forced to be taken to Palmetto Health for additional test.

27. The Plaintiff was hauled through the emergency room in handcuffs and with the arresting officer's hand physically on the Plaintiff's body. This action was in plain view of those

other persons, medical staff and personnel, and patients.

28. The arresting officer was completely unfamiliar with what to do once they arrived at the emergency department. The arresting officer insisted on walking into the bathroom and required Plaintiff to urinate in front of him. The Plaintiff was mortified that he had to urinate in front of the arresting officer.

29. The arresting officer did not understand the process and was unclear and uncertain as to how to follow through with gaining the urine sample. The arresting officer did not know what to do with the sample.

30. The arresting officer called his supervisor and asked what he was to do with the urine sample. Based on the arresting officer's comments, the urine sample was to be taken to Sled and that the Plaintiff was to receive a sample.

31. At that point the arresting officer removed the Plaintiff from the emergency department, again parading Plaintiff through the area in plain sight of third parties while in hand cuffs and with the arresting officer's hand upon him, and placed him back in the arresting officer's vehicle. The Plaintiff again begged the arresting officer to reconsider his position because the Plaintiff was not impaired, had not consumed any alcohol and had not taken any substance to cause him to be impaired. The arresting officer ignored the Plaintiff's pleas.

32. The arresting officer then took Plaintiff to another location where he was transferred to a transport wagon. Upon entering the transport wagon, Plaintiff had a discussion with another officer who asked him why he had been arrested. That police officer indicated that he could not believe that the Plaintiff was being arrested because the Plaintiff appeared to be sober, the Datamaster results were zero and he exhibited no other behavior indicative of someone who was impaired.

33. The officer expressed surprise that the arresting officer had continued to subject the

Plaintiff through the arrest process.

34. The Plaintiff begged the officer to help him but the officer indicated that he had no control over the arresting officer and that he could not help the Plaintiff.

35. The Plaintiff was taken to the Alvin S. Glenn Detention Center where he was booked at 10:00 on the morning of February 19, 2014. Plaintiff was entered into the detention center without his permission and consent.

36. The Plaintiff was held against his will until February 20, 2014, when he was released.

37. At all times relevant, Plaintiff did not consent to his arrest and imprisonment and objected thereto on numerous occasions.

38. Due to the acts and omissions, including any intentional acts, of the Defendants and each of them, the Plaintiff has and will in the future suffer pain, suffer fear, anxiety, loss of enjoyment of life, loss of quality of life, has and will in the future need medical care and incur medical expenses, has and will in the future suffer from embarrassment, shame and humiliation.

39. Plaintiff would allege that he is entitled to actual damages in an amount to be determined by a jury.

FOR A FIRST CAUSE OF ACTION
(FALSE ARREST)

40. The plaintiff would re-allege his previous allegations as if fully set forth herein.

41. Beginning at the time the arresting officer activated his blue lights and up through and including the time of the Plaintiff's release from the detention center, the Defendants restrained the plaintiff and imprisoned him.

42. The restraint of the Plaintiff by the Defendants was intentional.

43. The restraint of the Plaintiff by the Defendants was unlawful, as there was no

probable cause or justification for the Defendants to restrain the plaintiff, imprison the plaintiff and hold him against his will.

44. As a result of the Defendants' unlawful restraint without the consent of the Plaintiff, the Plaintiff believes that he is entitled to actual damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(MALICIOUS PROSECUTION)

45. The Plaintiff re-alleges his previous allegations as if fully set forth herein.

46. Upon his release from the Alvin S. Glenn Detention Center, the Plaintiff was ordered to appear at the Municipal Court of the City of Columbia at 811 Washington Street, Courtroom 1 on April 29, 2014 at 1:00 p.m. Plaintiff was warned if he did not appear the Defendants would exact consequences upon the Plaintiff.

47. On April 29, 2014, the Plaintiff, under order to do so by the Defendants, appeared at the City of Columbia Municipal Court.

48. Upon appearing at the Court, the Plaintiff consulted with the arresting officer. The arresting officer indicated his want to go forward with the case in spite of there being absolutely no credible relevant evidence to indicate the Plaintiff was guilty of the charge of driving under the influence first offense and improper turn.

49. Upon hearing this from the arresting officer, Plaintiff then requested a jury trial on the DUI ticket (Ticket No. 97415GS) and improper turn ticket (Ticket No. 97416GS). Plaintiff entered a written jury trial request form with the Defendants' Municipal Court.

50. Defendants subsequently received a court date for Plaintiff to appear. Plaintiff appeared at the designated time and date. At that time, the arresting officer indicated to plaintiff that he wanted to dismiss the charges. The charges were dismissed in the favor of the Plaintiff.

51. The Defendants instituted and continued judicial proceedings against the Plaintiff

under the above-referenced ticket numbers alleging the Plaintiff was guilty of criminal acts.

52. The institution and continuation of the original judicial proceedings was by or at the instance of the Defendants.

53. The original judicial proceedings against the Plaintiff were terminated in the Plaintiff's favor.

54. That the institution and continuation of the original judicial proceedings against the Plaintiff by the Defendants was accompanied by malice and that the Defendants and each of them harbored malice against the Plaintiff in issuing such proceedings.

55. The Defendants instituted the proceedings based upon malice because the Defendants knew or should have known that there was not one piece of credible, relevant evidence to indicate the Plaintiff was guilty of either of the charges that had been brought against him by the Defendants.

56. The Defendants and each of them lacked probable cause to charge the Plaintiff for any crime including the crimes as alleged in the above-referenced ticket numbers. The Defendants had no probable cause to arrest the Plaintiff for any charge.

57. As a result of the Defendants unlawfully and maliciously charging the Plaintiff with crime that he did not commit, the Plaintiff has suffered injury and damage including but not limited to present and future medical expenses, present and future anxiety, fear, loss of quality of life, loss of freedom, pain, suffering, mental anguish, mental pain, deprivation, fear and shame, pain and suffering.

58. As a result of the acts and omissions of the Defendants and each of them, the Plaintiff is entitled to actual damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(DEFAMATION)

59. The Plaintiff re-alleges previous allegations as if fully set forth herein.

60. The Defendants, through their agent and servant, the arresting officer, ordered the Plaintiff to undergo urine analysis.

61. The Defendants do not have the capability to collect and analyze a urine sample. Therefore, the Defendants ordered the Plaintiff to appear, against his will, at Palmetto Baptist Medical Center to provide a urine sample.

62. The Plaintiff, in handcuffs, was paraded through the emergency room of Palmetto Baptist Medical Center in front of numerous patients, family members of the patients, doctors, nurses, medical providers and personnel, while the Plaintiff was handcuffed and under the supervision of the arresting officer. The arresting officer had his hand on the Plaintiff's body at all times.

63. The Plaintiff, having appeared in handcuffs, before the persons outlined above, would have been construed by any reasonable person to have been under arrest and under the custody of a police arresting officer.

64. The Defendants' actions in parading the Plaintiff through the emergency room in handcuffs under the authority of the police arresting officer defamed the Plaintiff.

65. The Defendants ordering the Plaintiff to walk through the Emergency Department while in handcuffs and under the supervision of a uniformed police arresting officer, was publication to third parties and that this publication was done with actual and/or implied malice, as any reasonable person would have gathered that the Plaintiff had been charged with a crime and was under arrest by the arresting officer.

66. The defamatory accusations, publications and implications were false, in that the Plaintiff had committed no crime, there was no probable cause to believe the Plaintiff had committed a crime and yet the Defendants paraded the Plaintiff through the Emergency Department in handcuffs under the authority of a uniformed police arresting officer.

67. The defamatory meaning, message, publication and insinuation concerned specifically the Plaintiff, as the Plaintiff was the one who was paraded through the Emergency Department in handcuffs and under the supervision of a uniformed police arresting officer.

68. The Plaintiff would allege that he has actual damages and/or special damages for at least the reason that the Plaintiff was accused of a crime and was presented as a person who was under arrest as he was paraded through the Emergency Department. The Defendants paraded him through the Emergency Department in front of third parties in handcuffs under the supervision of a uniformed police arresting officer.

69. Due to the Defendants' acts and omissions and defamation, the Plaintiff is entitled to actual damages for the shame, humiliation, deprivation of rights, false accusations, presenting the Plaintiff in a false light, showing the Plaintiff to be a criminal when he was not, showing the Plaintiff to have been under arrest when there was no probable cause to place him under arrest, all of these acts having been committed with complete disregard for the Plaintiff's rights and with malice by the Defendants.

70. The Plaintiff is entitled to actual damages because of the acts and omissions and defamation by the Defendants.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENT SUPERVISION)

71. The Plaintiff would re-allege his previous allegations as if fully set forth herein.

72. The arresting officer did not have the appropriate training, experience, and instructions because as the arresting officer interacted with the Plaintiff, it became obvious to the Plaintiff that the arresting officer was unfamiliar with the manner in which to investigate an allegation of improper turn and driving under the influence, constantly had to seek information from a manual or book in his possession, called supervision on more than one occasion in order to find

out "what to do," was completely unfamiliar with obtaining a lawful urine analysis and was completely unfamiliar with the rules, regulations, codes and statutes that the arresting officer alleged Plaintiff had violated, and failed to discern that there was no probable cause to support the Plaintiff arrest.

73. The arresting officer was at all times acting within the scope of his employment by the Defendants during his interaction with the Plaintiff.

74. The Defendants had a duty to properly train the arresting officer in the proper and appropriate way to investigate whether or not there is probable cause to arrest an individual for an improper turn and for driving under the influence.

75. The Defendants were grossly negligent, willful, wanton in one or more of the following particulars:

- a. In failing to properly hire and retain the arresting officer.
- b. In failing to properly train the arresting officer.
- c. In failing to properly supervise the arresting officer
- c. In retaining the arresting officer when the Defendants knew or should have known that the arresting officer was ill trained and not competent for his duties because he was not trained, did not have the requisite knowledge and experience within which to investigate a matter involving an allegation of driving under the influence.
- d. Failed to monitor the arresting officer.
- e. Failed to enforce its own codes and regulations and training manuals and procedures.

All of which were the direct and proximate cause of the Plaintiff's injuries and damages alleged herein.

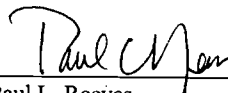
76. As a result of the Defendants' acts and omissions, the Plaintiff is entitled to actual

damages in an amount to be determined by a jury.

WHEREFORE, having set forth his complaint and the facts underlying his complaint, the Plaintiff would pray that this Court grant him actual damages, costs and expenses, attorneys' fees and for such other relief that this Court may deem just and proper.

Respectfully Submitted,

Reeves Law Firm, LLC



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paul@plrlawfirm.com

Attorney for Plaintiff

Columbia, South Carolina

February 11, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET #: 2016-CP-40-0910

DARRIS HASSELL)

PLAINTIFF)

v.)

THE CITY OF COLUMBIA)

DEFENDANT)

**AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

RICHLAND COUNTY
FILED
2016 MAR 23 PM 3:23
JEANETTE W. HOBBS
CLERK, S.C.

TO: THE DEFENDANTS AND THEIR COUNSEL OF RECORD:

The Plaintiff would respectfully show unto this court the following:

FACTS

1. The Plaintiff is a citizen and resident of Richland County, South Carolina. The Defendant City of Columbia is a municipal entity and governmental subdivision organized and is situated in Richland County, South Carolina. This Defendant provides law enforcement for its jurisdiction in situated in Richland County, South Carolina.

2. On February 19, 2014, the Plaintiff was studying at the Thomas Cooper Library on the campus of the University of South Carolina.

3. The Plaintiff is a languages professor at the University of South Carolina and teaches foreign languages at the University of South Carolina – Lancaster Campus, located in Lancaster, South Carolina.

4. On February 19, 2014, the Plaintiff left the Thomas Cooper Library to travel to a local restaurant.

5. The Plaintiff left the library and traveled to an eatery on Elmwood Avenue. After

purchasing a meal, Plaintiff left the premises with the intention to return to his home.

6. Plaintiff drove his vehicle to travel to his home. At the intersection with Taylor and Sumter, Plaintiff made a left turn. After he had completed the turn he noticed a vehicle with blue lights flashing coming from behind him and pull in closely behind his car.

7. Plaintiff immediately pulled over, near the outside entrance to the emergency department for Palmetto Baptist Hospital.

8. The Defendants agent and servant, (hereinafter referred to as the "arresting officer") approached Plaintiff's car and asked "Do you know why I stopped you?" The Plaintiff responded "no". The arresting officer then said "You made an improper turn". The Plaintiff denied making an improper turn.

9. The Plaintiff did not make an improper turn. The Plaintiff used his signal and turned from his appropriate lane of travel to the next appropriate lane of travel, all lawfully completed.

10. The arresting officer demanded Plaintiff's driver's license and insurance information.

11. Without any probable cause or justification, the officer then demanded that the Plaintiff step from his vehicle because the officer stated that the Plaintiff appeared to have been driving under the influence. The Plaintiff gave no such appearance. Plaintiff had consumed no alcohol prior to the arresting officer detaining him.

12. The Plaintiff immediately responded that he was not under the influence of any alcohol or drugs. He told the arresting officer that he never drank and that he had taken no drugs that would have impaired him.

13. The arresting officer then ordered the Plaintiff to submit to sobriety "tests". The arresting officer appeared to not know the procedures for the sobriety test and was attempting to instruct the Plaintiff about the sobriety test by reading from what appeared to be a small manual or book. The arresting officer had to make constant reference to the book in order to give Plaintiff

instructions. It was obvious to the Plaintiff that the arresting officer was not familiar with the procedures of administering the sobriety test and was not familiar with how to go about appropriately testing the Plaintiff for any signs of impairment. The arresting officer paid more attention to the manual or book than he did to Plaintiff.

14. The Plaintiff gave his best efforts and believes that he successfully completed these "tests" even though the arresting officer had an almost impossible time in explaining to the Plaintiff what he wanted the Plaintiff to do. The arresting officer was completely unfamiliar with the procedures and instructions and stumbled through the instructions sometimes repeating the instructions numerous times, not because of the Plaintiff's inability to understand but because of the arresting officer's apparent lack of ability to instruct the Plaintiff about what the arresting officer wanted to him to do.

15. During one of the tests, a second City of Columbia police officer arrived at the scene. The two officers exchanged conversation, with the arresting officer stating more than once that he thought he was okay and that he "believed" that he was investigating the case in the right manner. The arresting officer did not share with the second arresting officer how difficult it had been for the arresting officer to simply get through the sobriety test.

16. The second officer departed from the scene. The second officer did not identify himself nor did he speak directly with the Plaintiff.

17. The arresting officer then told the Plaintiff that he needed to accomplish one additional test. Actually it was not a test at all, it was ruse to have the Plaintiff place his arms in a position to be handcuffed by the arresting officer.

18. Upon being handcuffed by the arresting officer, the Plaintiff insisted that the arresting officer was wrong about the Plaintiff because Plaintiff did not drink and certainly had not consumed anything on that particular day. The Plaintiff requested the arresting officer to call the Plaintiff's

nephew who was at the time, employed as a City of Columbia police officer to verify that the Plaintiff was not a person who consumed alcohol. The arresting officer declined to call anyone.

19. At this point, the arresting officer became much more firm with the Plaintiff, handling him in a rough manner.

20. The Plaintiff continued to beg the arresting officer to reconsider his decision because Plaintiff had not consumed any alcohol, was one to never consume alcohol and had not consumed anything that would have caused him to be impaired.

21. The arresting officer took the Plaintiff to the Defendants' Washington Street location for a Datamaster test.

22. The Plaintiff complied with the Datamaster test. The Datamaster test read, according to the arresting officer and documents that Plaintiff saw that night a reading of "0.0" percent presence of alcohol.

23. The arresting officer was dumbfounded and insisted that the Plaintiff now had consumed drugs as a reason for Plaintiff's "impairment."

24. The Plaintiff reiterated that he was not impaired, had successfully accomplished the sobriety "test" and that he had consumed no alcohol or drugs. The Plaintiff also pointed out that the arresting officer had originally indicated that the Plaintiff smelled of alcohol and that the Datamaster test was conclusive proof that he had not consumed alcohol. The arresting officer brushed this aside and now claimed the Plaintiff had consumed drugs.

25. The Plaintiff was then forced to be taken to Palmetto Health for additional test.

26. The Plaintiff was hauled through the emergency room in handcuffs and with the arresting officer's hand physically on the Plaintiff's body. This action was in plain view of those other persons, medical staff and personnel, and patients.

27. The arresting officer was completely unfamiliar with what to do once they arrived

at the emergency department. The arresting officer insisted on walking into the bathroom and required Plaintiff to urinate in front of him. The Plaintiff was mortified that he had to urinate in front of the arresting officer.

28. The arresting officer did not understand the process and was unclear and uncertain as to how to follow through with gaining the urine sample. The arresting officer did not know what to do with the sample.

29. The arresting officer called his supervisor and asked what he was to do with the urine sample. Based on the arresting officer's comments, the urine sample was to be taken to Sled and that the Plaintiff was to receive a sample.

30. At that point the arresting officer removed the Plaintiff from the emergency department, again parading Plaintiff through the area in plain sight of third parties while in hand cuffs and with the arresting officer's hand upon him, and placed him back in the arresting officer's vehicle. The Plaintiff again begged the arresting officer to reconsider his position because the Plaintiff was not impaired, had not consumed any alcohol and had not taken any substance to cause him to be impaired. The arresting officer ignored the Plaintiff's pleas.

31. The arresting officer then took Plaintiff to another location where he was transferred to a transport wagon. Upon entering the transport wagon, Plaintiff had a discussion with another officer who asked him why he had been arrested. That police officer indicated that he could not believe that the Plaintiff was being arrested because the Plaintiff appeared to be sober, the Datamaster results were zero and he exhibited no other behavior indicative of someone who was impaired.

32. The officer expressed surprise that the arresting officer had continued to subject the Plaintiff through the arrest process.

33. The Plaintiff begged the officer to help him but the officer indicated that he had no

control over the arresting officer and that he could not help the Plaintiff.

34. The Plaintiff was taken to the Alvin S. Glenn Detention Center where he was booked at 10:00 on the morning of February 19, 2014. Plaintiff was entered into the detention center without his permission and consent.

35. The Plaintiff was held against his will until February 20, 2014, when he was released.

36. At all times relevant, Plaintiff did not consent to his arrest and imprisonment and objected thereto on numerous occasions.

37. Due to the acts and omissions, including any intentional acts, of the Defendants and each of them, the Plaintiff has and will in the future suffer pain, suffer fear, anxiety, loss of enjoyment of life, loss of quality of life, has and will in the future need medical care and incur medical expenses, has and will in the future suffer from embarrassment, shame and humiliation.

38. Plaintiff would allege that he is entitled to actual damages in an amount to be determined by a jury.

FOR A FIRST CAUSE OF ACTION
(FALSE ARREST)

39. The plaintiff would re-allege his previous allegations as if fully set forth herein.

40. Beginning at the time the arresting officer activated his blue lights and up through and including the time of the Plaintiff's release from the detention center, the Defendants restrained the plaintiff and imprisoned him.

41. The restraint of the Plaintiff by the Defendants was intentional.

42. The restraint of the Plaintiff by the Defendants was unlawful, as there was no probable cause or justification for the Defendants to restrain the plaintiff, imprison the plaintiff and hold him against his will.

43. As a result of the Defendants' unlawful restraint without the consent of the Plaintiff, the Plaintiff believes that he is entitled to actual damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(MALICIOUS PROSECUTION)

44. The Plaintiff re-alleges his previous allegations as if fully set forth herein.

45. Upon his release from the Alvin S. Glenn Detention Center, the Plaintiff was ordered to appear at the Municipal Court of the City of Columbia at 811 Washington Street, Courtroom 1 on April 29, 2014 at 1:00 p.m. Plaintiff was warned if he did not appear the Defendants would exact consequences upon the Plaintiff.

46. On April 29, 2014, the Plaintiff, under order to do so by the Defendants, appeared at the City of Columbia Municipal Court.

47. Upon appearing at the Court, the Plaintiff consulted with the arresting officer. The arresting officer indicated his want to go forward with the case in spite of there being absolutely no credible relevant evidence to indicate the Plaintiff was guilty of the charge of driving under the influence first offense and improper turn.

48. Upon hearing this from the arresting officer, Plaintiff then requested a jury trial on the DUI ticket (Ticket No. 97415GS) and improper turn ticket (Ticket No. 97416GS). Plaintiff entered a written jury trial request form with the Defendants' Municipal Court.

49. Defendants subsequently received a court date for Plaintiff to appear. Plaintiff appeared at the designated time and date. At that time, the arresting officer indicated to plaintiff that he wanted to dismiss the charges. The charges were dismissed in the favor of the Plaintiff.

50. The Defendants instituted and continued judicial proceedings against the Plaintiff under the above-referenced ticket numbers alleging the Plaintiff was guilty of criminal acts.

51. The institution and continuation of the original judicial proceedings was by or at the

instance of the Defendants.

52. The original judicial proceedings against the Plaintiff were terminated in the Plaintiff's favor.

53. That the institution and continuation of the original judicial proceedings against the Plaintiff by the Defendants was accompanied by malice and that the Defendants and each of them harbored malice against the Plaintiff in issuing such proceedings.

54. The Defendants instituted the proceedings based upon malice because the Defendants knew or should have known that there was not one piece of credible, relevant evidence to indicate the Plaintiff was guilty of either of the charges that had been brought against him by the Defendants.

55. The Defendants and each of them lacked probable cause to charge the Plaintiff for any crime including the crimes as alleged in the above-referenced ticket numbers. The Defendants had no probable cause to arrest the Plaintiff for any charge.

56. As a result of the Defendants unlawfully and maliciously charging the Plaintiff with crime that he did not commit, the Plaintiff has suffered injury and damage including but not limited to present and future medical expenses, present and future anxiety, fear, loss of quality of life, loss of freedom, pain, suffering, mental anguish, mental pain, deprivation, fear and shame, pain and suffering.

57. As a result of the acts and omissions of the Defendants and each of them, the Plaintiff is entitled to actual damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(DEFAMATION)

58. The Plaintiff re-alleges previous allegations as if fully set forth herein.

59. The Defendants, through their agent and servant, the arresting officer, ordered the Plaintiff to undergo urine analysis.

60. The Defendants do not have the capability to collect and analyze a urine sample. Therefore, the Defendants ordered the Plaintiff to appear, against his will, at Palmetto Baptist Medical Center to provide a urine sample.

61. The Plaintiff, in handcuffs, was paraded through the emergency room of Palmetto Baptist Medical Center in front of numerous patients, family members of the patients, doctors, nurses, medical providers and personnel, while the Plaintiff was handcuffed and under the supervision of the arresting officer. The arresting officer had his hand on the Plaintiff's body at all times.

62. The Plaintiff, having appeared in handcuffs, before the persons outlined above, would have been construed by any reasonable person to have been under arrest and under the custody of a police arresting officer.

63. The Defendants' actions in parading the Plaintiff through the emergency room in handcuffs under the authority of the police arresting officer defamed the Plaintiff.

64. The Defendants ordering the Plaintiff to walk through the Emergency Department while in handcuffs and under the supervision of a uniformed police arresting officer, was publication to third parties and that this publication was done with actual and/or implied malice, as any reasonable person would have gathered that the Plaintiff had been charged with a crime and was under arrest by the arresting officer.

65. The defamatory accusations, publications and implications were false, in that the Plaintiff had committed no crime, there was no probable cause to believe the Plaintiff had committed a crime and yet the Defendants paraded the Plaintiff through the Emergency Department in handcuffs under the authority of a uniformed police arresting officer.

66. The defamatory meaning, message, publication and insinuation concerned specifically the Plaintiff, as the Plaintiff was the one who was paraded through the Emergency

Department in handcuffs and under the supervision of a uniformed police arresting officer.

67. The Plaintiff would allege that he has actual damages and/or special damages for at least the reason that the Plaintiff was accused of a crime and was presented as a person who was under arrest as he was paraded through the Emergency Department. The Defendants paraded him through the Emergency Department in front of third parties in handcuffs under the supervision of a uniformed police arresting officer.

68. Due to the Defendants' acts and omissions and defamation, the Plaintiff is entitled to actual damages for the shame, humiliation, deprivation of rights, false accusations, presenting the Plaintiff in a false light, showing the Plaintiff to be a criminal when he was not, showing the Plaintiff to have been under arrest when there was no probable cause to place him under arrest, all of these acts having been committed with complete disregard for the Plaintiff's rights and with malice by the Defendants.

69. The Plaintiff is entitled to actual damages because of the acts and omissions and defamation by the Defendants.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENT SUPERVISION)

70. The Plaintiff would re-allege his previous allegations as if fully set forth herein.

71. The arresting officer did not have the appropriate training, experience, and instructions because as the arresting officer interacted with the Plaintiff, it became obvious to the Plaintiff that the arresting officer was unfamiliar with the manner in which to investigate an allegation of improper turn and driving under the influence, constantly had to seek information from a manual or book in his possession, called supervision on more than one occasion in order to find out "what to do," was completely unfamiliar with obtaining a lawful urine analysis and was completely unfamiliar with the rules, regulations, codes and statutes that the arresting officer alleged

Plaintiff had violated, and failed to discern that there was no probable cause to support the Plaintiff arrest.

72. The arresting officer was at all times acting within the scope of his employment by the Defendants during his interaction with the Plaintiff.

73. The Defendants had a duty to properly train the arresting officer in the proper and appropriate way to investigate whether or not there is probable cause to arrest an individual for an improper turn and for driving under the influence.

74. The Defendants were grossly negligent, willful, wanton in one or more of the following particulars:

- a. In failing to properly hire and retain the arresting officer.
- b. In failing to properly train the arresting officer.
- c. In failing to properly supervise the arresting officer
- c. In retaining the arresting officer when the Defendants knew or should have known that the arresting officer was ill trained and not competent for his duties because he was not trained, did not have the requisite knowledge and experience within which to investigate a matter involving an allegation of driving under the influence.
- d. Failed to monitor the arresting officer.
- e. Failed to enforce its own codes and regulations and training manuals and procedures.

All of which were the direct and proximate cause of the Plaintiff's injuries and damages alleged herein.

75. As a result of the Defendants' acts and omissions, the Plaintiff is entitled to actual damages in an amount to be determined by a jury.

WHEREFORE, having set forth his complaint and the facts underlying his complaint, the

Plaintiff would pray that this Court grant him actual damages, costs and expenses, attorneys' fees and for such other relief that this Court may deem just and proper.

Respectfully Submitted,

Reeves Law Firm, LLC

A handwritten signature in dark ink, appearing to read "Paul L. Reeves", is written over a horizontal line.

Paul L. Reeves

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Columbia, South Carolina 29211

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Attorney for Plaintiff

Columbia, South Carolina
March 23, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Darris Hassell,)
Plaintiff,)

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

vs.)

ANSWER TO AMENDED COMPLAINT

The City of Columbia,)
Defendant.)

The Defendant City of Columbia ("City") answers the Complaint by alleging that

FOR A FIRST DEFENSE

1. Every allegation of the Complaint is denied unless hereinafter specifically admitted.

2. As to the allegations of Paragraph 1, the Defendant lacks sufficient information to form a belief as to the truth or falsity as to whether or not Plaintiff is a resident of Richland County, South Carolina. The Defendant acknowledges that it is a municipality established under the laws of the State of South Carolina and it situated in Richland County, South Carolina, however, no immunities available under the South Carolina Tort Claims Act are waived by this admission and all immunities applicable are hereby preserved. The Defendant admits that it provides law enforcement for its jurisdiction and is situated in Richland County, South Carolina.

3. The Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraphs 2 through 38 and therefore denies the same and demands strict proof thereof.

4. Paragraph 39 merely re-alleges the previous allegations as if fully set forth herein and does not require a response.

5. The Defendant City of Columbia lacks sufficient information to form a belief as to the truth or falsity of Paragraph 40 through 43 and therefore denies the same and demands strict proof thereof.

6. Paragraph 44 merely re-alleges the previous allegations as if fully set forth herein and does not require a response.

7. The Defendant City of Columbia lacks sufficient information to form a belief as to the truth or falsity of Paragraphs 45 through 57 and therefore denies the same and demands strict proof thereof.

8. Paragraph 58 merely re-alleges previous allegations as if fully set forth herein and does not require a response.

9. The Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraphs 59 through 69 and therefore denies the same and demands strict proof thereof.

10. Paragraph 70 merely re-alleges the previous allegations as if fully set forth herein and does not require a response.

11. The Defendant City of Columbia lacks sufficient information to form a belief as to the truth or falsity of Paragraphs 71 through 75 and therefore denies the same and demands strict proof thereof.

FOR A SECOND DEFENSE

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

FOR A THIRD DEFENSE

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

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

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

FOR A FOURTH DEFENSE

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

FOR A FIFTH DEFENSE

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

FOR A SIXTH DEFENSE

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

FOR A SEVENTH DEFENSE

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

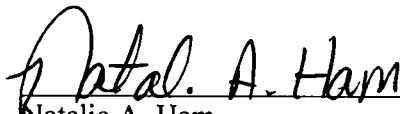
FOR AN EIGHTH DEFENSE

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

FOR A NINTH DEFENSE

21. The Plaintiff may not recover punitive damages or attorney's fees against this Defendant. The Defendant pleads sovereign immunity as a defense to some or all of the relief that may be requested.

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



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Attorney for the Defendant
City of Columbia

Columbia, South Carolina
April 25, 2016

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

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

MOTION FOR A NEW TRIAL

RICHLAND COUNTY
FILED
2017 MAY 30 PM 4:07
JENNIFER W. HOSCHKE
C.C.P. & C.S.

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

The trial of this matter was held during the term of court the week of May 15, 2017. Natalie Ham appeared as counsel for the defendant, City of Columbia and Paul Reeves appeared as counsel for the plaintiff, Darris Hassell. On Thursday, May 18, 2017, the jury found for the Plaintiff and awarded \$200,075.00 in damages. The City comes now asking the court to grant a new trial based on the following issues listed below.

I. Failure to charge Discretionary Immunity

Plaintiff requested a jury charge of discretionary immunity be read to the jury. The Tort Claims Act specifically states that a “governmental entity is not liable for a loss resulting from the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.” S.C. Code Ann. § 15-78-60(5). If proven, discretionary immunity is a complete defense. Although there was evidence in the record that demonstrated the City’s officer exercised discretion in deciding to arrest Plaintiff, the Court refused to charge the jury as to the law.

II. Verdict was Punitive

There is to be no award for punitive damages. S.C. Code Ann § 15-78-120(b). Plaintiff had no physical damages, did not lose his job nor was he disciplined, he didn’t miss any opportunities for advancement, his medical condition was not adversely affected and his peers and friends still respect him as much as they always did. Plaintiff’s only damage was the time he spent in jail. Although the term punitive was not specifically used, the amount of the verdict was clearly an attempt to punish the city for the former employee’s actions. The language used by Plaintiff’s attorney in closing arguments implied that the jury should punish the City of Columbia. In indicating that the City is not listening, not apologetic and that the jury should in essence make them listen, the City contends this is a request for punitive damages. Most certainly once Plaintiff’s attorney addressed the jury in reply to the City’s closing argument and indicated again that the City was not

listening and increased his demand amount to the jury is an implication of the need for punitive damages.

III. Master Servant charge was improper

There was a master-servant charge given to the jury. While the City is liable for the negligent acts of its employees, the master-servant charge was improper. Since the Defendant is a governmental entity, the relevant statutes of the Tort Claims Act, S.C. Code Ann. § 15-78-50, should have been given to the jury instead of a general master-servant charge. The trial court must charge the current and correct law. McCourt by and through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995). Here that was not done and the given charge eliminated any immunities the City may have been entitled to under the Act.

IV. Failure to request a specific determination on malice

The jury was instructed on the elements of malicious prosecution; however, there should have been a special interrogatory on the verdict form inquiring as to whether or not the jury found that the City's employee acted with malice. A specific finding was necessary to determine whether or not the City could be held liable for malicious prosecution. If there was malice by the officer, then the cause of action is correct, but the City cannot be liable for the employee's actions under the provisions of Tort Claims Act. Alternatively, if there was no malice, then the City could theoretically be liable under the Tort Claims Act, but malicious prosecution wouldn't lie because malice is a necessary element of the cause of action.

V. Failure to request a specific determination on probable cause

The jury was instructed as to the definition of probable cause; however, there should have been a special interrogatory on the verdict form inquiring as to whether or not the jury found that the city's former officer acted as an ordinarily prudent person would have acted in the same circumstances in having a good faith belief that plaintiff was guilty of a crime. If the jury determined that he did act as such then the defendant could not be liable for false arrest.

VI. Damages award was grossly excessive

The trial court has the power to grant a new trial *nisi remittitur* or a new trial absolute when he finds the amount of the verdict to be excessive. Chapman v. Upstate RV & Marine, 364 S.C. 82, 89 (Ct. App. 2005). The consideration for a motion for a new trial requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. We believe the amount of the verdict is grossly excessive so as to be the result of passion, punitives, caprice, prejudice or some other influence outside the evidence. If the amount of the verdict is so excessive as to shock the conscience of the court and clearly be resulting from one of the above reasons and not the evidence presented, the trial judge must grant a new trial *nisi remittitur* or a new trial absolute. Id.

VII. Negligent Supervision should not have gone to the jury

Under the South Carolina Tort Claims Act, the defendant is liable for the negligence of its employees when the employee is acting within the scope of his or her employment. S.C. Code Ann. § 15-78-50. Additionally, the SCTCA also states that governmental entities are not negligent if an employee acts with "intent to harm." Hamilton v.

Charleston County Sheriff's Department, 399 S.C. 252 (2012); Degenhart v. Knights of Columbia, 309 S.C. 114, 116-117, 420 S.E.2d 495, 496 (1992) (quoting Restatement (Second) of Torts § 317 (1965)). The City is not liable for "a loss resulting from responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." Hamilton citing S.C. Code Ann. § 15-78-60(25) (2005). Under this premise, governmental entities could in effect "hide" behind the behavior of the employee and allege that it was intentional to absolve itself from liability. This is why a negligent supervision right of action was created. Negligent supervision does not allow the governmental entity to escape liability if it knew or should have known that the employee was incompetent, unfit or would create an unreasonable risk of harm to another and failed to properly supervise them. Negligent supervision only attaches when the conduct by the employee is deemed to have been intentional. Id. "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." Jackson v. SC. Dep't of Corrs., 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct.App.1989). Gross negligence involves an intentional, conscious failure to do something which it is incumbent upon one to do or the intentional doing of a thing one ought not do. Hollins v. Richland Cty. Sch. Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993); Clyburn v. Sumter Cty. Sch. Dist. 17, 311 S.C. 521, 429 S.E.2d 862 (Ct.App.1993); Grooms v. Marlboro Cty. Sch. Dist., 307 S.C. 310, 414 S.E.2d 802 (Ct.App. 1992). There was no evidence presented or offered as to defendant's former employee acting intentionally or with gross negligence. If the City's employee did not

intend to harm the Plaintiff, negligent supervision does not lie. Instead, the employee's conduct is the basis of the liability. This cause of action should not have been presented to the jury. At a minimum, a special interrogatory should have inquired as to whether or not the jury believed the employee to have acted intentionally. If the employee acted intentionally, then negligent supervision may have appropriately been submitted for jury consideration. But, as it in this case, there was no finding of intentional conduct, then negligent supervision is not to be considered by the jury.

VIII. Not harmless error

An alleged error is "harmless" only if the court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict. The City believes that, after reviewing the entire record, the court would find error(s) that could reasonably have affected the result of the trial. When reviewing a jury instruction for alleged error, the court must consider the instruction as a whole in light of the evidence and issues presented at trial. Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999). The Plaintiff carried the burden of proving that the City's employee acted with intent to harm as required for the negligent supervision cause of action to stand. Hamilton at 255. That burden was not met by any testimony or evidence presented at trial. Instructing the jury on this cause of action rises to the level of reversible error. Since it is not possible to differentiate which damages are attributable to negligent supervision versus the other causes of action, this could not be considered harmless error.

WHEREFORE, Defendant prays for an Order granting Defendant a new trial absolute or in the alternative a new trial *nisi remittitur*.



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Attorney for Defendant City of Columbia

May 30, 2017
Columbia, South Carolina

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

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

**AMENDED MOTION FOR
NEW TRIAL**

2017 MAY 31 PM 12:20
JEANETTE W. HOSKINS
C.C.P. & G.S.

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Plaintiff requested a jury charge of discretionary immunity be read to the jury. The Tort Claims Act specifically states that a "governmental entity is not liable for a loss resulting from the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5). If proven, discretionary immunity is a complete defense. Although there was evidence in the record that demonstrated the City's officer exercised discretion in deciding to arrest Plaintiff, the Court refused to charge the jury as to the law.

II. Verdict was Punitive

There is to be no award for punitive damages. S.C. Code Ann § 15-78-120(b). Plaintiff had no physical damages, did not lose his job nor was he disciplined, he didn't miss any opportunities for advancement, his medical condition was not adversely affected and his peers and friends still respect him as much as they always did. Plaintiff's only damage was the time he spent in jail. Although the term punitive was not specifically used, the amount of the verdict was clearly an attempt to punish the city for the former employee's actions. The language used by Plaintiff's attorney in closing arguments implied that the jury should punish the City of Columbia. In indicating that the City is not listening, not apologetic and that the jury should in essence make them listen, the City contends this is a request for punitive damages. Most certainly once Plaintiff's attorney addressed the jury in reply to the City's closing argument and indicated again that the City was not listening and increased his demand amount to the jury is an implication of the need for punitive damages.

III. Master Servant charge was improper

There was a master-servant charge given to the jury. While the City is liable for the negligent acts of its employees, the master-servant charge was improper. Since the Defendant is a governmental entity, the relevant statutes of the Tort Claims Act, S.C. Code Ann. § 15-78-50, should have been given to the jury instead of a general master-servant charge. The trial court must charge the current and correct law. McCourt by and through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995). Here that was not done and the given charge eliminated any immunities the City may have been entitled to under the Act.

IV. Failure to request a specific determination on malice

The jury was instructed on the elements of malicious prosecution; however, there should have been a special interrogatory on the verdict form inquiring as to whether or not the jury found that the City's employee acted with malice. A specific finding was necessary to determine whether or not the City could be held liable for malicious prosecution. If there was malice by the officer, then the cause of action is correct, but the City cannot be liable for the employee's actions under the provisions of Tort Claims Act. Alternatively, if there was no malice, then the City could theoretically be liable under the Tort Claims Act, but malicious prosecution wouldn't lie because malice is a necessary element of the cause of action.

V. Failure to request a specific determination on probable cause

The jury was instructed as to the definition of probable cause; however, there should have been a special interrogatory on the verdict form inquiring as to whether or not the jury

found that the city's former officer acted as an ordinarily prudent person would have acted in the same circumstances in having a good faith belief that plaintiff was guilty of a crime. If the jury determined that he did act as such then the defendant could not be liable for false arrest.

VI. Damages award was grossly excessive

The trial court has the power to grant a new trial *nisi remittitur* or a new trial absolute when he finds the amount of the verdict to be excessive. Chapman v. Upstate RV & Marine, 364 S.C. 82, 89 (Ct. App. 2005). The consideration for a motion for a new trial requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. We believe the amount of the verdict is grossly excessive so as to be the result of passion, punitives, caprice, prejudice or some other influence outside the evidence. If the amount of the verdict is so excessive as to shock the conscience of the court and clearly be resulting from one of the above reasons and not the evidence presented, the trial judge must grant a new trial *nisi remittitur* or a new trial absolute.

VII. Negligent Supervision should not have gone to the jury

Under the South Carolina Tort Claims Act, the defendant is liable for the negligence of its employees when the employee is acting within the scope of his or her employment. S.C. Code Ann. § 15-78-50. Additionally, the SCTCA also states that governmental entities are not negligent if an employee acts with "intent to harm." Hamilton v. Charleston County Sheriff's Department, 399 S.C. 252 (2012); Degenhart v. Knights of Columbia, 309 S.C. 114, 116-117, 420 S.E.2d 495, 496 (1992) (quoting Restatement (Second) of Torts § 317 (1965)). The City is not liable for "a loss resulting from

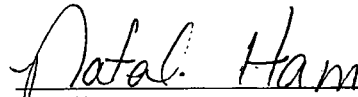
responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” Hamilton citing S.C. Code Ann. § 15-78-60(25) (2005). Under this premise, governmental entities could in effect “hide” behind the behavior of the employee and allege that it was intentional to absolve itself from liability. This is why a negligent supervision right of action was created. Negligent supervision does not allow the governmental entity to escape liability if it knew or should have known that the employee was incompetent, unfit or would create an unreasonable risk of harm to another and failed to properly supervise them. Negligent supervision only attaches when the conduct by the employee is deemed to have been intentional. Id. “A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing.” Jackson v. SC. Dep’t of Corrs., 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct.App.1989). Gross negligence involves an intentional, conscious failure to do something which it is incumbent upon one to do or the intentional doing of a thing one ought not do. Hollins v. Richland Cty. Sch. Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993); Clyburn v. Sumter Cty. Sch. Dist. 17, 311 S.C. 521, 429 S.E.2d 862 (Ct.App.1993); Grooms v. Marlboro Cty. Sch. Dist., 307 S.C. 310, 414 S.E.2d 802 (Ct.App. 1992). There was no evidence presented or offered as to defendant’s former employee acting intentionally or with gross negligence. If the City’s employee did not intend to harm the Plaintiff, negligent supervision does not lie. Instead, the employee’s conduct is the basis of the liability. This cause of action should not have been presented to the jury. At a minimum, a special interrogatory should have inquired as to whether or

not the jury believed the employee to have acted intentionally. If the employee acted intentionally, then negligent supervision may have appropriately been submitted for jury consideration. But, as it in this case, there was no finding of intentional conduct, then negligent supervision is not to be considered by the jury.

VIII. Not harmless error

An alleged error is "harmless" only if the court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict. The City believes that, after reviewing the entire record, the court would find error(s) that could reasonably have affected the result of the trial. When reviewing a jury instruction for alleged error, the court must consider the instruction as a whole in light of the evidence and issues presented at trial. Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999). The Plaintiff carried the burden of proving that the City's employee acted with intent to harm as required for the negligent supervision cause of action to stand. Hamilton at 255. That burden was not met by any testimony or evidence presented at trial. Instructing the jury on this cause of action rises to the level of reversible error. Since it is not possible to differentiate which damages are attributable to negligent supervision versus the other causes of action, this could not be considered harmless error.

WHEREFORE, Defendant prays for an Order granting Defendant a new trial absolute or in the alternative a new trial *nisi remittitur*.



Natalie A. Ham

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Attorney for Defendant City of Columbia

May 31, 2017
Columbia, South Carolina

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

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

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

2017 JUN 30 AM 11:29
JEROME M. MORRIS
P. & G.S.
RICHLAND COUNTY
FILED

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

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

I. Juror Misconduct

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

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

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

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

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

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

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

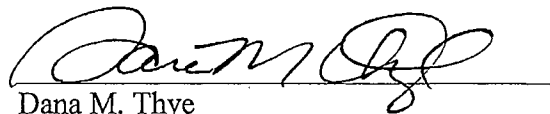
State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001). (Attached.)

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

jt

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

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



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(803)737-4250 Fax

Attorney for Defendant City of Columbia

June 30, 2017
Columbia, South Carolina

EXHIBIT 1

Columbia Police Department SC0400100		INCIDENT REPORT		INFORMATION ONLY ☐		CASE NUMBER 160015996		NCIC INQ. INTD.			
EVENT	INCIDENT TYPE					COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
	1. 56-01-20 No Drivers License ALL OTHER OFFENSES					☒ YES ☐ NO	☐ YES ☒ NO	HIGHWAY/ROAD/ALLEY		☐ Individual ☐ Business ☐ Financial Inst ☐ Government ☒ Relg. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
	2. 56-5-6520 SEATBELT VIOLATION 90Z ALL OTHER OFFENSES					☒ YES ☐ NO	☐ YES ☒ NO	HIGHWAY/ROAD/ALLEY			
	3.					☐ YES ☐ NO	☐ YES ☐ NO				
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 3000 N BELTLINE BLVD, COLUMBIA, SC							ZIP CODE 29204-0000	WEAPON TYPE NONE		
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK DISP. DATE DISP. TIME TIME ARRIVED DEPART. TIME	LOCATION NO.				
	05/20/2016	09:41		05/20/2016	09:42	05/20/2016 09:41 09:42 11:00	327				
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) RHINEHART, TONY			RELATIONSHIP TO SUBJECT #1 ST #2 #3		RESIDENT J	RACE B SEX M AGE 54 ETH N	DAYTIME PHONE 803-545-3500	EVENING PHONE 803-545-3500		
	ADDRESS 1 JUSTICE SQ			CITY COLUMBIA		STATE SC	ZIP CODE 29201-0000	LOCATION NO. 2212			
	VICTIM'S NAME (LAST, FIRST, MIDDLE) CITY OF COLUMBIA			RELATIONSHIP TO SUBJECT #1 ST #2 #3		RESIDENT J	RACE B SEX M AGE 54 ETH N	DAYTIME PHONE 803-545-3500	EVENING PHONE 803-545-3500		
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
ADDRESS 1 JUSTICE SQ			CITY COLUMBIA		STATE SC	ZIP CODE 29201-0000	LOCATION NO. 212				
VICTIM INJURY (VICT. 1) ☐ YES NO ☒ EXPLAIN- COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES NO ☒											
VICTIM (NO. 1) USING: ☐ YES NO ☒ UNK. ☐ DRUGS: ☐ YES NO ☒ UNK. ☐ TYPE:											
TWO MAN VEH. ☐ ONE MAN VEH. ☐ DETECTIVE PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ *J-This Jurisdiction. S-State. O-Out of State. U-Unknown.											
SUBJECT NO.	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) TAYLOR, RICHARD, TIERS				RACE W SEX M AGE 54 ETH N	DATE OF BIRTH	HEIGHT 602	WEIGHT 220	HAIR BRO EYES BLU	
	☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				RELATED OFFENSE(S) 90Z 90Z		DAYTIME PHONE	EVENING PHONE		
	☐ WANTED	ADDRESS				CITY COLUMBIA	STATE SC	ZIP CODE 29209-0000	LOCATION NO. 641		
	☐ WARRANT	SUBJECT (NO. 1) USING ALCOHOL ☐ YES NO ☒ UNK. ☐				ARRESTED NEAR OFFENSE SCENE ☒ YES NO ☐		DATE/TIME OF OFFENSE 5/20/2016 9:41:00 AM		DATE/TIME OF ARREST 5/20/2016 9:42:00 AM	
	☒ ARREST	DRUGS: ☐ YES NO ☒ UNK. ☐ TYPE				TOTAL # ARRESTED 01					
	☐ JAIL	DAY OF THE WEEK				HOW REPORTED		A= OFFICER DISPATCHED ON CALL D= COMPLAINT WRITTEN IN		DIFF. FACTOR	
	☐ SUMMONS	S M T W T F S UNK				B= REPORT TAKEN BY PHONE C= COMPLAINANT WALKED IN		F= OTHER		A= RESISTANCE/HOSTILITY B= WEAPONS C= UNFOUNDED CALLS D= MENTAL SUBJECT E= COMPLAINANT FREQUENTLY INTOXICATED F= DOMESTIC N= NORMAL	
	AT THE ABOVE DATE AND TIME, REPORTING OFFICER OBSERVED THE LISTED SUBJECT DRIVING THE LISTED VEHICLE WESTBOUND AT THE ABOVE INCIDENT LOCATION. R/O OBSERVED THE LISTED SUBJ. DRIVING WITHOUT HIS SEATBELT ON. R/O CONDUCTED A TRAFFIC STOP AND ACCORDING TO NCIC AND UNIT 720 THE LISTED VEHICLE LICENSE WAS STOLEN OUT OF THE CITY AND ACCORDING TO SCDMV THE LISTED SUBJ. DRIVERS LICENSE WAS SUSPENDED FOR CHILD SUPPORT, FAILURE TO PAY AND NO INSURANCE. THE LISTED SUBJ. WAS PLACED UNDER ARREST AND THE SUBJ. VEH. WAS TOWED BY COLLISION (1). THE VEH. LICENSE WAS REMOVED BY R/O AND RETURNED TO SCDMV ON SHOP RD. ACCORDING TO LIBERTY MUTUAL INSURANCE THE INSURANCE WAS CANCEL. THE VEH. THE SUBJ. DRIVERS LICENSE WAS SUSPENDED FOR ALMOST 1.5 YEARS AND HAS NOT BEEN RETURNED TO SCDMV. THE SUBJ. DL WAS TAKEN BY R/O AND										
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
	TYPE (GROUP)										TOTAL VALUE
STOLEN											
DAMAGED											
BURNED											
RECOVERED											
SEIZED											
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S. F. CN	☒ ACTIVE ☐ ADM. CLOSED	☒ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18		☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE		1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION PROSECUTION		3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECEASED COOPERATION		5. ☐ JUVENILE NO CUSTODY					
REPORTING OFFICER(S) RHINEHART TONY		DATE 5/20/2016 2:00:00 PM		UNIT NUMBER 11177	APPROVING OFFICER UHALL ROBERT J		DATE 5/30/2016 11:57:49 AM		UNIT NUMBER 20019		
FOLLOWUP INVESTIGATION ☐ YES NO ☒ OFFICER											

ADDITIONAL NARRATIVE

Agency Name:	Columbia Police Department	ORI #:	SC0400100	Report Date/Time:	05/20/2016 09:41	OCA #:	160015996

RETURNED TO SCDMV ON SHOP.THE SUBJ. WAS LATER TRANSPORTED TO ASGDC FOR BOOKING. THE VEHICLE LICENSE WAS UNDER \$1,000.00. THE CORRECT VEHICLE LICENSE FOR THE LISTED VEHICLE IS SC FEZ 274 (15).THE SUBJ. STATED HAD PURCHASED THE VEH. ABOUT (2) MONTHS AGO OFF CRAIGSLIST.

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

ADDITIONAL VEHICLES

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

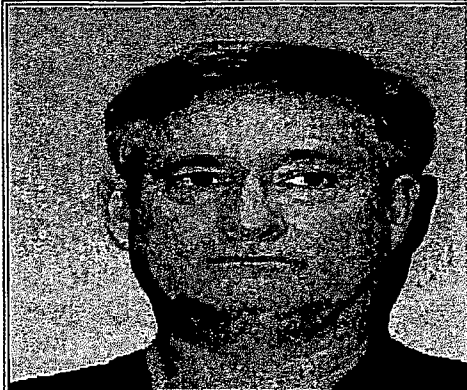
Thye, Dana

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

Alvin S. Glenn Detention Center

6/26/2017 4:22:14 PM

Offender is not currently detained

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

Current Charges Criminal History Image History

Warrant Code	Bond	BondType	BondCourt	TrialCt	BookingDt	ReleaseDt	Cl
37517HB		PR	CITY	CITY	5/20/2016 11:45:00 AM	5/21/2016 2:07:35 PM	Tr
37521HB		PR	CITY	CITY	5/20/2016 11:45:00 AM	5/21/2016 2:07:35 PM	Tr

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

EXHIBIT 2

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2016-CP-40-00910

Darris Hassell,)
Plaintiff,)
Vs.) Transcript of Record
City of Columbia,)
Defendant.)
_____)

May 15, 2017
Columbia, South Carolina

B e f o r e:

The Honorable Casey Manning, Judge

A p p e a r a n c e s:

Paul Reeves, Esquire
Todd Lyle, Esquire
Attorneys for the Plaintiffs

Natalie Ham, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NUMBER

Voir Dire of Jury Panel

4

Certificate Page

24

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

(No response.)

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

(No response.)

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

(Juror stands.)

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

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

THE COURT REPORTER: Your juror number, please?

THE JUROR: 183.

THE COURT: And that was question No. 2.

THE JUROR: Right.

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

THE JUROR: No.

THE COURT: Oh, you don't.

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

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

**MEMORANDUM IN OPPOSITION
TO DEFENDANTS MOTION FOR A
NEW TRIAL**

FACTS

On June 30, 2017, the Defendant City of Columbia, motioned for a new trial on the grounds of juror misconduct. A jury had rendered a verdict against the City on May 18, 2017. The City moves for a new trial based upon the City's allegation that it came upon "after discovered evidence" of juror misconduct that could not have been known at or near the time of the seating of the juror or during the trial.

Attached to the City's motion was is a copy of a record from the Alvin S. Glenn Detention Center showing an incarceration of juror John Doe¹ in May of 2016. Secondly, the City provided copies of records from its own municipal court showing an incident report from May of 2016 showing the arrest of the same juror. Both records show that John Doe had been arrested by the City months prior to the juror selection process of the instant case. These records were available from information available to the public.

¹ Plaintiff has chosen to identify the juror as John Doe.

The City's motion for a new trial on the grounds of juror misconduct was not made during the trial or within ten days after the verdict. The City's first reference to juror misconduct was forty-four (44) days after the verdict.

LEGAL ANALYSIS

Generally, the denial of a new trial motion will be disturbed only upon a showing of an abuse of discretion. *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). Where a new trial motion is based upon allegations that a juror gave misleading and incomplete answers on voir dire, the trial court's denial of that motion will be affirmed absent a prejudicial abuse of discretion. *State v. Kelly*, 331 S.C. 132, 145, 502 S.E.2d 99, 106 (1998). A denial of a new trial based on alleged jury misconduct is also reviewed for an abuse of discretion. *Knowlton v. Greenwood Indep. Sch. Dist.*, 957 F.2d 1172, 1177 (5th Cir.1992). The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627–28 (2000). The trial court is in the best position to determine the credibility of the jurors; therefore, the appellate Courts grant broad deference on this issue. *Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc.*, 384 S.C. 441, 446, 682 S.E.2d 489, 492 (S.C. 2009).

It is the duty of the trial Judge to ascertain the qualifications of the jurors, and when the discharge of this responsibility is thwarted by mischance, or otherwise, it is within the Court's inherent power to remedy the situation, when brought to his attention, even after *sine die* adjournment of court, by the granting of a new trial, if, in its discretion, necessary. *Smith v. Quattlebaum*, 76 S.E.2d 154, 157 (S.C. 1953). In this case the Court quoted the trial judge as he considered the motion for new trial:

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

Id. at 391, 157.

The *Smith* Court went on to state “[I]f respondent's right to a verdict was a close issue, or questionable, then undoubtedly Judge Pruitt would have ordered a new trial, even though he concluded the juror was impartial. It does not always follow, as a rule of law, that a new trial should be granted when after trial there is discovered the presence of a relative on the jury. There would be no room for the exercise of discretion if a new trial followed as a matter of law.” *Id.*

In a civil matter a defeated party is not entitled to a new trial for every act of misconduct by or affecting the jury, as such misconduct . . . does not *ipso facto* justify the grant of a new trial; but in order that a new trial may be granted on such ground the misconduct of the jury must relate to a material matter in dispute and must be such as to indicate an influence of bias or prejudice in the minds of the jurors. *Vestry* at 447, 493. (S.C. 2009).

A party seeking a new trial based upon the disqualification of a juror must show: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict. *Gray v. Bryant*, 379 S.E.2d 894, 896 (S.C. 1989). The burden is on the moving party. *Id.*

Rules 59 and 60(b) S.C.R.Civ.P. are also relevant to the analysis of the timeliness of the City's position. Rule 59, S.C.R. Civ.P., requires that a motion for a new trial be made no later than ten days after entry of judgment. Rule 59 does not provide any procedure by which a party can amend a motion for a new trial or add new grounds after the expiration of the ten-day period.

Id. at 286, 895. *Gray* holds that Rules 59 and 60(b) must be read together, as Rule 60(b), S.C.R. Civ.P., reads in pertinent part:

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

Id. at 286, 895. [Emphasis added]

DISCUSSION

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

The mere fact that John Doe had been arrested by the City at some point prior to the juror selection for this trial would not have excluded him from jury service. Assuming the juror heard and understood the question and answered that he had been arrested for a traffic ticket from the City, the Trial Judge would have followed with questions that would have determined whether the juror could remain impartial and render a fair verdict for both parties. If the juror voiced impartiality and lack of prejudice, the juror would have remained in the pool of prospective jurors. The decision to disqualify a juror is within the sound discretion of the trial judge. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d at 624 (there is no abuse of discretion for disqualifying jurors when the jurors have stated they are able to give the parties a fair trial).

It is important to note that the Trial Judge swore the jurors after jury selection and prior to the trial and each juror took an oath to render a fair and just verdict. John Doe was not disqualified by virtue of his prior history and affirmed under oath his duty to render a just verdict. *Wilson v. Childs* 315 S.C. 431, 434 S.E.2d 286 (S.C. App. 1993) ("Moreover, in response to a voir dire

question, [the juror in question] stated he could give both parties an impartial trial.... *Wilson* at 436, 290)

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

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

The first exhibit to the City's motion was a document which appears to be from the Alvin S. Glenn Detention Center showing information regarding the detention of the John Doe. This information appears to have been created at or near the time of the arrest of the juror, on or about May 21, 2016. The information is presented as a screen shot from an internet source. Secondly, the information contained within the exhibit is more than sufficient to identify the juror. The identifying information would have led a reasonable attorney to determine that the juror and the arrestee were one and the same, had the City exercised reasonable diligence in reviewing the jury. If the City found this document as a basis for this motion, then the same information was available

almost one year prior to jury selection. *Bryant* holds and requires that the moving party could not have known about the grounds for the alleged misconduct prior to the verdict. *Gray* at 288, 896.

The second exhibit to the City's motion is the incident report from the arrest of the juror. Again, the information presented is more than sufficient to identify the juror. Again, the identifying information would have led a reasonable attorney to determine that the juror and the arrestee were one and the same, had the City exercised reasonable diligence in reviewing the jury. This information came from the City's **own records**, contained within the City of Columbia Municipal Court records and the Police Department records. If the City found these records for purposes of this motion, then the same information was available prior to and during jury selection. *Id.* See also S.C.R.Civ.P. 59(b) (Rule 59(b) requires that any "after discovered evidence" must newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b). S.C.R.Civ.P. 59(b)). The incident report was available to the City, within its own records, readily available to the City for almost one year prior to jury selection.

Thirdly, the information regarding John Doe was available to anyone with an internet connection. John Doe's interaction with the City was available via the Public Records Index, using only the information on the list of all jurors. See Exhibit One.

The City's exhibits defeat its allegations that the information regarding John Doe could not have been known in the time frame required. The failure of the City to review its own records and the Public Index for information regarding prospective jurors is inexcusable and clear can convincing evidence of the failure to perform due diligence.

3. The City was negligent in failing to learn of the alleged misconduct before the verdict.

The City had at least two sources of information about the juror in question and every other juror, as all of the jurors were domiciled in Richland County. The City's exhibits prove this fact. The City had access to information from the Alvin S. Glenn Detention Center and from the City's municipal court records to evaluate the jury pool and the juror in question. The City failed to access the Public Records Index, available to anyone with an internet access.

The City failed to perform due diligence and now attempts to have this Court grant relief for the City's negligence in inadequately defending this matter. The City failed to adequately review the abundant, public information relevant to prospective jurors and now claims prejudice even though such prejudice was brought about by its own negligence. *Gray* at 288, 896.

CONCLUSION

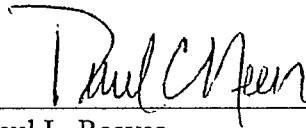
The City has failed to meet the three elements set forth in *Gray*. The City has failed to show that the juror was or would have been disqualified; however, even if the juror is found to be unqualified, the City cannot overcome the remaining two requirements of *Gray*. The City has failed to show that it could not have known of the juror's alleged misconduct. The City's attachments to its filings prove that it could have known of the juror's background. Both records were from public access sites and one of the records, the incident report, was authored, maintained and preserved by the City within **two** of its departments- the Columbia Police Department and the City of Columbia Municipal Court. These documents, had they been timely accessed, showed sufficient information to lead a reasonable attorney to inquire further about the juror's background. The City has failed to meet the three elements set forth in *Gray* and its motion should be dismissed.

The Plaintiff respectfully ask this Court to make the following findings of fact:

1. The City has failed to present appropriate and sufficient evidence to support its allegations that the juror should be disqualified;
2. The City failed to prove that the facts underlying the juror's misconduct could not have been known to the City prior to, during and within a reasonable time after the verdict; and,
3. The City was negligent in failing to know of the information about the juror as it failed to diligently search its own records and those records within the public domain, including the Public Records Index.

Respectfully Submitted,

REEVES & LYLE, LLC

A handwritten signature in black ink, appearing to read "Paul L. Reeves", is written over a horizontal line.

Paul L. Reeves
PO Box 11126
Columbia, South Carolina 29211
Office: 803-929-0001
Facsimile: 803-929-0927
paul@reevesandlyle.com

Attorney for Plaintiff

Columbia, South Carolina

June 27, 2018

Exhibit 1

1. Access the South Carolina Judicial Department website: www.sccourts.org (Exhibit A). On the right side of the page, under quick links, click on "Records Search";
2. The next screen will be labeled "Case Records Search" (Exhibit B) and show a South Carolina County map. Click on Richland County on the map;
3. On the Public Index Search page (Exhibit C), I only completed the information available on the Juror List provided to me by the Richland County Clerk of Court which was "Richard T Taylor."
4. Click "search";
5. There are four (4) entries that appear for this search (Exhibit C);
6. All of the four (4) entries relate to a Richard T. Taylor that fit the same age requirement;
7. The report indicates the arrest was made by the City of Columbia Police Department.



South Carolina JUDICIAL DEPARTMENT

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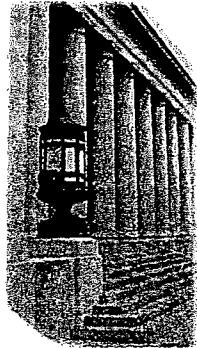
- E-Filing Pilot Program to Expand to Orangeburg County on July 17, 2018 (06-20-2018)
- Best Legal Practices in Child Abuse and Neglect Cases (05-31-2018)
- Closing of the Probate Courts (05-22-2018)
- E-Filing Pilot Program to Expand to Dorchester County on June 19, 2018 (05-17-2018)
- ...more



Charleston County Courthouse

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Case Records Search



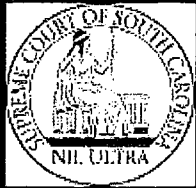
The case records search is currently available for all counties in South Carolina:

Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, York

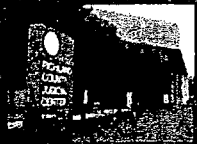
NOTE: Use of a web browser that supports Cookies and Javascript, and enabling such features, is a requirement for searching public case records.

Go to the Public Index search page by clicking on the the map.

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Search By...	Court Type	All Courts	Court Agency	All Agencies			
Case #	Case Type	All Case Types	Case SubType	All Case Sub-Types			
Last Name/Business	taylor	First	richard	Middle	t	Suffix	
Party Type	All						
Action Type	All Actions						
Date Type		Beginning		Ending			
Tax Map#	From		Through				
Only for Civil Cases... Index Search ☒ All ☐ Lis Pendens ☐ Judgments Cross Index Search ☒ All ☐ Judgment For ☐ Judgment Against							
Search		Reset Search Fields		Name Search Option ☒ Begins With ☐ Contains			

Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Taylor, Richard T	Defendant	26308GT	08/21/2014	Disposed	09/19/2014	Traffic			Columbia Municipal Court
Taylor, Richard T	Defendant	35719HB	05/21/2016	Scheduled		Traffic	Bond-Richland		Columbia Municipal Court
Taylor, Richard T	Defendant	37517HB	05/21/2016	Disposed	10/27/2016	Traffic	Bond-Richland		Columbia Municipal Court
Taylor, Richard T	Defendant	37521HB	05/21/2016	Disposed	10/27/2016	Traffic	Bond-Richland		Columbia Municipal Court



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State of South Carolina vs Richard T Taylor

Case Number:	26308GT	Court Agency:	Columbia Municipal Court	Filed Date:	08/21/2014
Case Type:	Traffic	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Turner, Dana D.	Disposition Judge:	Jenkins, Lincoln C. III
Disposition:	TIA Guilty Bench Trial Fine Only				
Disposition Date:	09/19/2014	Date Received:		Arrest Date:	
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Manning, Ronald W Jr	Columbia Police Department #1 Justice Square Columbia SC 29201				Officer		08/21/2014
Taylor, Richard T	[REDACTED] Columbia SC 29204	White	M	1961	Defendant		05/24/2016

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Taylor, Richard T	2519-Traffic / Driving vehicle at greater speed than is reasonable under conditions	2519-Traffic / Driving vehicle at greater speed than is reasonable under conditions	09/19/2014

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
Or	Fine or Jail Time	30	Days				

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Taylor, Richard T	Criminal/Traffic Court	Event		09/19/2014-08:15	09/22/2014-08:17	

Financials

Summary

Fine/Costs:	\$133.75	Total Paid for fine/costs:	\$133.75	Balance Due:	\$0.00
Costs					
Description	Cost Code	Amount	Charge Action	Disbursed Amount	

Fine to General Fund	AFNEGF	\$50.00		\$50.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$6.00		\$6.00
Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$25.00
SC Criminal Justice Academy Training	SCCJAT	\$5.00		\$5.00
State Assessment	STAASM	\$47.75		\$47.75
Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
05/24/2016	81434	C40QGRIFFI	PD	\$133.75

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State of South Carolina vs Richard T Taylor

Case Number:	35719HB	Court Agency:	Columbia Municipal Court	Filed Date:	05/21/2016
Case Type:	Traffic	Case Sub Type:	Bond-Richland		
Status:	Scheduled	Assigned Judge:	Turner, Dana D.	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:		Arrest Date:	
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Rhinehart, Tony	Columbia SC				Officer		05/21/2016
☒ Taylor, Richard T	Columbia SC		M		Bond Entity		05/21/2016
☒ Taylor, Richard T	Road Columbia SC	White	M	1961	Defendant		07/06/2016

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Taylor, Richard T	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Taylor, Richard T	Bond Hearing	Event		05/21/2016-09:00		
Taylor, Richard T	Checklist City of Columbia	Filing		05/21/2016-00:00		

Financials

Summary

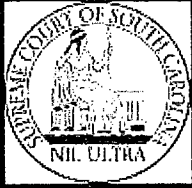
Fine/ Costs:	\$647.50	Total Paid for fine/costs:	\$0.00	Balance Due:	\$647.50

Costs

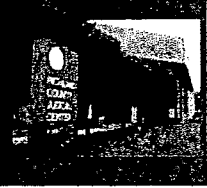
Description	Cost Code	Amount	Charge Action	Disbursed Amount
Fine to General Fund	AFNEGF	\$200.00		\$0.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$36.00		\$0.00
DUS Pullout \$100	DUSDPS	\$100.00		\$0.00
Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$0.00
State Assessment	STAASM	\$286.50		\$0.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount				
None								
Bonds								
Bond Information								
Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
2016BD4021603159	05/21/2016		Goldberg	Personal Recognizance	\$652.50	Personal Recognizance	\$652.50	
Post Information								
Bond Id	Bond Type	Amount	Date Posted	Posted By				
2016BD4021603159	Personal Recognizance	\$652.50	05/21/2016	Taylor, Richard T				



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State of South Carolina vs Richard T Taylor

Case Number:	37517HB	Court Agency:	Columbia Municipal Court	Filed Date:	05/21/2016
Case Type:	Traffic	Case Sub Type:	Bond-Richland		
Status:	Disposed	Assigned Judge:	Turner, Dana D.	Disposition Judge:	Porter, Susan Olmert
Disposition:	Pled Guilty				
Disposition Date:	10/27/2016	Date Received:		Arrest Date:	
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Leventis, Jim J.	Jim Leventis PO Box 11067 Columbia SC 29211				Defendant Attorney		06/16/2016
☐ Rhinehart, Tony	██████████ Columbia SC				Officer		05/21/2016
☒ Taylor, Richard T	██████████ Columbia SC		M		Bond Entity		05/21/2016
☒ Taylor, Richard T	██████████ Columbia SC	White	M	1961	Defendant		11/09/2016

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Taylor, Richard T	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	10/27/2016

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	Fine		Amount				

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Taylor, Richard T	Criminal/Traffic Jury Trial Day Certain	Event		10/27/2016-08:00	10/27/2016-08:01	
Taylor, Richard T	Criminal/Traffic Jury Trial Roster/Jury Term	Event		10/18/2016-08:00	10/27/2016-08:01	
Taylor, Richard T	Criminal/Traffic Court	Event		06/16/2016-13:00	06/16/2016-13:01	
Taylor, Richard T	Jury Trial Requested	Filing		06/16/2016-12:12	10/18/2016-12:12	
Taylor, Richard T	Bond Hearing	Event		05/21/2016-	06/16/2016-	

				09:00	09:01	
Taylor, Richard T	Checklist City of Columbia	Filing		05/21/2016-00:00	10/18/2016-00:00	

Financials

Summary					
Fine/Costs:	\$25.00	Total Paid for fine/costs:	\$25.00	Balance Due:	\$0.00

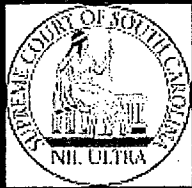
Costs				
Description	Cost Code	Amount	Charge Action	Disbursed Amount
Fine to General Fund	AFNEGF	\$25.00		\$25.00

Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
11/09/2016	87835	C40RWESTON	PD	\$25.00

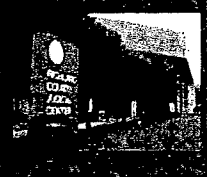
Bonds

Bond Information								
Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
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Post Information				
Bond Id	Bond Type	Amount	Date Posted	Posted By
2016BD4021603149	Personal Recognizance	\$25.00	05/21/2016	Taylor, Richard T



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State of South Carolina vs Richard T Taylor

Case Number:	37521HB	Court Agency:	Columbia Municipal Court	Filed Date:	05/21/2016
Case Type:	Traffic	Case Sub Type:	Bond-Richland		
Status:	Disposed	Assigned Judge:	Turner, Dana D.	Disposition Judge:	Porter, Susan Olmert
Disposition:	Pled Guilty Jail Time Served				
Disposition Date:	10/27/2016	Date Received:		Arrest Date:	
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Leventis, Jim J.	Jim Leventis PO Box 11067 Columbia SC 29211				Defendant Attorney		06/16/2016
Rhinehart, Tony	██████████ Columbia SC				Officer		05/21/2016
☒ Taylor, Richard T	██████████ Columbia SC		M		Bond Entity		05/21/2016
☒ Taylor, Richard T	██████████ Columbia SC	White	M	1961	Defendant		10/28/2016

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Taylor, Richard T	0701-Traffic / Driving without a license - 1st offense	0701-Traffic / Driving without a license - 1st offense	10/27/2016

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	Time Served		Days				

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Taylor, Richard T	Criminal/Traffic Jury Trial Day Certain	Event		10/27/2016-08:00	10/27/2016-08:01	
Taylor, Richard T	Criminal/Traffic Court	Event		06/16/2016-13:00	06/16/2016-13:01	
Taylor, Richard T	Jury Trial Requested	Filing		06/16/2016-12:15	10/27/2016-12:15	
Taylor, Richard T	Bond Hearing	Event		05/21/2016-09:00	06/16/2016-09:01	

Taylor, Richard T	Checklist City of Columbia	Filing		05/21/2016-00:00	10/27/2016-00:00

Bonds

Bond Information								
Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
2016BD4021603150	05/21/2016		Goldberg	Personal Recognizance	\$237.50	Personal Recognizance	\$237.50	

Post Information				
Bond Id	Bond Type	Amount	Date Posted	Posted By
2016BD4021603150	Personal Recognizance	\$237.50	05/21/2016	Taylor, Richard T

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2016 -CP-40-0910
	)	
Darriss Hassell,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR ATTORNEYS FEES
vs.	)	
	)	
City of Columbia,	)	
	)	
Defendant.	)	
	)	

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

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

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

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

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

Respectfully Submitted,

REEVES & LYLE, LLC

s/Paul L. Reeves

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Attorney for the Plaintiff

August 16, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	C/A No. 2016-CP-40-0910
Darris Hassell,	)	
	)	
Plaintiff,	)	
	)	RESPONSE TO PLAINTIFF'S MOTION
v.	)	FOR ATTORNEY'S FEES AND COSTS
	)	
City of Columbia,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

The plaintiff has filed a motion for attorney's fees and costs. Plaintiff contends the City of Columbia's motion for a new trial based on a juror's failure to give an accurate response during voir dire lacked evidentiary foundation and was deficient because the City's trial counsel did not appear at the hearing.

First, the plaintiff's motion violates Rule 11, SCRCP, as it does not contain a certification that Plaintiff's counsel consulted with opposing counsel, that consultation with opposing counsel would not have served a useful purpose, or that consultation could not be timely held. Rule 11 exempts certain motions from the consultation requirement. A motion for fees and costs is not included in that list of exemptions. There was no consultation regarding the motion.

The penalty for non-compliance with Rule 11 is for the motion to be stricken unless the filing is promptly amended. *Jackson v. Speed*, 326 S.C. 289, 310, 486 S.E.2d 750, 761 (1997). Plaintiff's counsel has informed the City that the plaintiff will amend the motion. This response is nevertheless filed in the event the motion is not amended.

Second, Plaintiff's motion does not cite a legal basis for costs and fees to be awarded, and the motion would be plainly untimely if based on the Frivolous Civil Proceedings Sanctions Act.

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

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

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

Respectfully submitted,

September 17, 2018

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Attorneys for Defendant

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

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

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

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

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

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

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

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

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

Respectfully Submitted,
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s/Paul L. Reeves

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Attorney for the Plaintiff

September 14, 2018
Columbia, South Carolina

Darris Hassell,
Plaintiff,
Vs.
City of Columbia,
Defendant.

May 15 - 18, 2017
Columbia, South Carolina

B e f o r e:

The Honorable Casey Manning, Judge

A p p e a r a n c e s:

Paul Reeves, Esquire
Todd Lyle, Esquire
Attorneys for the Plaintiffs

Natalie Ham, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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E X H I B I T S

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1 (On the record at 11:55 a.m.)

2 THE BAILIFF: Your Honor, the jury's present.

3 THE COURT: Welcome, members of this jury panel.

4 First of all, I tell you Judge Hood, Judge Robert Hood
5 qualified you all this morning a couple of hours ago. And
6 I'm Judge Casey Manning and it's my pleasure to preside
7 over this case. With the help of about 13 of you, I
8 reckon, ladies and gentlemen.

9 We're going to select a jury right now in the case of
10 Darris Hassell, Plaintiff, vs. City of Columbia, the
11 defendant.

12 Now, members of the jury, I'll tell you a little bit
13 about this case. Darris Hassell, the plaintiff, alleges
14 that the City of Columbia, through its agent and servant,
15 Officer Cameron Duecker, wrongfully arrested him back on
16 February the 19th of 2014. And he alleges the following
17 harm and causes of action: False arrest, malicious
18 prosecution, defamation, and negligent supervision. These
19 are some of the issues that you'll be required to look at
20 in this particular case, ladies and gentlemen.

21 Now, first of all, I'm going to take the opportunity
22 to introduce Mr. Hassell to you, Darris Hassell. He's the
23 plaintiff in this case.

24 Mr. Hassell, will you please stand up and face the
25 jury panel so they can get a good look at you.

1 (Mr. Hassell complies.)

2 THE COURT: Thank you, Mr. Hassell.

3 And the City of Columbia, obviously, is a governmental
4 entity, but I think we have here representing the city --
5 it will be Officer Duecker.

6 MS. HAM: No, Your Honor.

7 THE COURT: He's not here?

8 MS. HAM: He's not here.

9 THE COURT: Okay. All right. Well, ladies and
10 gentlemen, what I'm going to do -- any member of this jury
11 panel related by blood or connected by marriage, or are you
12 a close personal acquaintance of Mr. Darris Hassell, the
13 plaintiff in this case. Do you know Mr. Hassell in any
14 way, shape, or form?

15 (No audible response.)

16 THE COURT: Now, of course, the allegations, as I
17 said, that have been made by Mr. Hassell, that is false
18 arrest, malicious prosecution, defamation, and negligent
19 supervision, the City of Columbia has denied these. They
20 said, "We didn't do anything wrong," basically, what it
21 boils down to. So this is what the case will be about.

22 And what I need to do now is read out a list of
23 potential witnesses in this case. And it's -- it's long.
24 I'm not sure everybody's going to appear. But we need to
25 know from you whether or not you know anyone that may

1 appear as a witness in this case.

2 And I'll go over them once and probably repeat myself
3 to make sure. Of course, you already met Mr. Hassell, the
4 plaintiff.

5 Also we'll hear by way of deposition -- and I'll
6 explain that to you later on -- deposition excerpt from
7 Deputy Chief Melron Kelly, for the City of Columbia. Also
8 the arresting officer, Cameron Duecker; Officer George
9 Drafts, City of Columbia; Dr. Weissman, a physician who has
10 treated the plaintiff; Rhonda Sims.

11 That cover everybody? I'm missing somebody, aren't I?

12 MR. REEVES: Christopher Harris.

13 THE COURT: Beg pardon?

14 MR. REEVES: Christopher Harris is an additional
15 witness, as well as Ron Cox and Fran Gardner.

16 THE COURT: Are these all listed in your voir dire,
17 Mr. Reeves?

18 MR. REEVES: Yes, sir.

19 THE COURT: All right. Let me back up a minute. Oh,
20 yeah. I see it. I was on the wrong page.

21 Mr. Reeves -- I'll introduce him in a moment --
22 mentioned a gentleman by the name of Christopher Harris.
23 He's a student of the plaintiff. He's a professor.

24 Ron Cox, who supervises Mr. Hassell; and Fran Gardner,
25 supervises the plaintiff.

1 Now, I'm going to repeat those names, but the question
2 is: Do you know any of these people in any way, shape, or
3 form, that is, are you personally acquainted with them or
4 you live in the same neighborhood, things like that? Do
5 you know them?

6 So let me repeat those names one more time for you.
7 These are potential witnesses in this case, ladies and
8 gentlemen. And once again, if I can keep all this
9 straight, we have by way of deposition Chief Deputy Melron
10 Kelly; Cameron Duecker; Darris Hassell; George Drafts; Dr.
11 Weissman; Rhonda Sims; Christopher Harris; Ron Cox; and
12 Fran Gardner.

13 Now, in any way, shape, or form you think you know any
14 of those names I just called? If so, please stand.

15 (A juror stands.)

16 THE COURT: Yes, ma'am. Please tell me your name and
17 number.

18 JUROR: Sir, my name is Mae Hazel. My number's 122.

19 THE COURT: Yes, ma'am.

20 JUROR: This gentleman looks familiar to me, and I'm
21 not good with names. But I need to know if he's a relative
22 of Reverend Coleman?

23 (No audible response.)

24 JUROR: Okay. He -- he has come to our church before
25 and played music. So I know about him that way.

1 THE COURT: Okay. Okay. And how long have you known
2 him?

3 JUROR: I guess he's been coming for a few years since
4 I've been there at the church.

5 THE COURT: All right. Let me ask you this: The fact
6 that you know Mr. Hassell in the way you so described for
7 me, through church and all that, would that or could that
8 affect your ability to be a fair and impartial juror in the
9 trial of this case?

10 JUROR: No, sir.

11 THE COURT: You sure about that?

12 JUROR: Yes, sir.

13 THE COURT: Okay. There's a series of questions I've
14 got to ask each and every one of you. You may have a seat,
15 ma'am.

16 (The juror complies.)

17 THE COURT: And the idea is to pick a fair and
18 impartial jury for both sides, Mr. Hassell as well as the
19 City of Columbia.

20 So did y'all --- anybody recognize any of those names
21 I just called out?

22 (No response.)

23 THE COURT: Okay. Now, forgive me for being a bit
24 slow this morning. I'm sort of under the weather.

25 And I'll back up. Once again the question is: Are

1 you related by blood or marriage, or are you a close
2 personal acquaintance of anybody involved in this case?

3 Members of the jury, are you sensible or are you aware
4 of any bias or prejudice with respect to either party of
5 the subject matter of this lawsuit? The parties are, of
6 course, the plaintiff, Mr. Hassell, and the City of
7 Columbia, the defendant. Do you know of any reason why you
8 can not give both sides a fair and impartial trial based on
9 the law and the evidence to be presented? If there's any
10 reason you fell you'd be uncomfortable hearing a case that
11 I just described -- false arrest, malicious prosecution,
12 defamation, negligent supervision -- involving the City of
13 Columbia, please stand. Any reason you feel you not -- you
14 cannot be a fair juror in the case I just described, please
15 -- please stand.

16 (No response.)

17 THE COURT: And I have some more questions to ask, so
18 I ask for your patience.

19 Ladies and gentlemen, in this case, Mr. Hassell is
20 suing the City of Columbia because he says the police
21 department wrongfully arrested him, defamed him, and
22 maliciously prosecuted him. Now, is there any member of
23 the jury panel that is related by blood or marriage or has
24 a close personal or work relationship with any of the
25 parties, that is the City of Columbia or Mr. Hassell or any

1 of those witnesses I just called out? If so, please stand.

2 (No response.)

3 THE COURT: And is any member of this jury panel ever
4 been employed in any capacity by a law enforcement agency?
5 You ever worked for the City, the County, the State, or
6 anything like that? If so, please stand.

7 (A juror stands.)

8 THE COURT: Yes, sir. Your name and number, please.

9 THE JUROR: Chaz Tallant, 277. I work for the
10 University of South Carolina Police Department.

11 THE COURT: Are you still so employed?

12 THE JUROR: Yes, sir.

13 THE COURT: All right. How long have you been there?

14 THE JUROR: I started in August as a student worker,
15 and I was hired by school as a patrol officer.

16 THE COURT: Okay. Now, do you think that would impair
17 your ability to be a fair and impartial juror in the trial
18 of this case?

19 THE JUROR: No, sir.

20 THE COURT: You sure about that?

21 THE JUROR: Yes, sir.

22 THE COURT: What's your number again, please, sir?

23 THE JUROR: 277.

24 THE COURT: All right. Thank you, sir.

25 Now, is there any member of the jury panel that has

1 served in the military? If so, please stand.

2 (Jurors stand.)

3 THE COURT: All right. And yes, ma'am. What branch
4 of service did you --

5 THE JUROR: Army.

6 THE COURT: Army. For how long?

7 THE JUROR: 21 year and 4 months, sir. Retired Army.

8 THE COURT: I like that. 21 years, 4 months, and a
9 couple of hours, I imagine.

10 THE JUROR: Yes, sir.

11 THE COURT: The fact that you were so employed by or
12 in the military for that period of time, would that or
13 could that in any way affect your ability to be a fair and
14 impartial juror in the trial of this case?

15 THE JUROR: No, sir.

16 THE COURT: Okay. Thank you, ma'am.

17 Yes, sir ---

18 THE COURT REPORTER: Your Honor, for the record, could
19 she say her number?

20 THE COURT: What now?

21 THE COURT REPORTER: For the record, could she say her
22 number?

23 THE COURT: What's your number again, please?

24 THE JUROR: 122.

25 THE COURT: All right. You satisfied now, Ms. Kelly?

1 THE COURT: (No audible response.)

2 THE COURT: Thank you. Yes, sir. Your name and
3 number, please.

4 THE JUROR: My name is Maurice Wilson. My number is
5 315.

6 THE COURT: 315?

7 THE JUROR: 3-1-5.

8 THE COURT: 3-1-5. Wilson, you said.

9 THE JUROR: Yes, sir.

10 THE COURT: Were you in the military -- what branch?

11 THE JUROR: Yes, sir. United States Air Force, active
12 duty 11 years.

13 THE COURT: Okay. You're now retired?

14 THE JUROR: Yes, sir.

15 THE COURT: All right. What period of time did you
16 work for the Air Force?

17 THE JUROR: I worked from 2000 -- December, 2005, til
18 November 27, 2016.

19 THE COURT: All right. The fact that you worked in
20 the military, in the Air Force, as you described for me,
21 would that or could that affect your ability to be a fair
22 and impartial juror in this case?

23 THE JUROR: Negative.

24 THE COURT: You sure about -- negative. I like that.
25 Thank you, Mr. Wilson.

1 THE COURT: Yes, sir. Your name and number, please.

2 THE JUROR: 115, Mike Harper.

3 THE COURT: Harper?

4 THE JUROR: Yes, sir.

5 THE COURT: Yes, Mr. Harper.

6 THE JUROR: H-a-r-p-e-r. I served in the U.S. Navy
7 for six years.

8 THE COURT: All right. And what period -- when was
9 that?

10 THE COURT: '85 to '91.

11 THE COURT: All right. Now, would your service in the
12 Navy in any way affect your ability to be a fair juror in
13 this case?

14 THE JUROR: No, sir.

15 THE COURT: And what's your number once again?

16 THE JUROR: 1-1-5.

17 THE COURT: Thank you, sir.

18 Yes, ma'am. Your name and number, please.

19 THE JUROR: My name is Willie Stokes. My number is
20 273.

21 THE COURT: Stokes, you said?

22 THE JUROR: Yes, sir.

23 THE COURT: And who did you serve with, Ms. Stokes?

24 THE JUROR: U.S. Army Reserves.

25 THE COURT: What?

1 THE JUROR: Army Reserves.

2 THE COURT: Okay. For -- are you still in the
3 Reserves?

4 THE JUROR: No, sir. From 1962 to 2004.

5 THE COURT: All right. Now, would that experience in
6 the Reserves in any way affect your ability to be a fair
7 juror in this case?

8 THE JUROR: No, sir.

9 THE COURT: All right. Thank you, ma'am.

10 You want me to ask the duties, what they actually did?
11 Is that necessary, Mr. Reeves? You want me to?

12 MR. REEVES: No, sir.

13 THE COURT: That's fine. Now, is any member of this
14 jury panel who is related by blood or marriage or in a
15 close personal relationship to someone who has been
16 employed in any capacity by a law enforcement agency? You
17 married to someone, dated someone who works as a highway
18 patrolmen, city policemen, deputy sheriff, or the FBI? If
19 so, please stand.

20 (No response.)

21 THE COURT: Now, is any member of this jury panel, or
22 your parent or spouse or child, ever applied for a job with
23 law enforcement? If so, please stand. If you ever wanted
24 to be a policeman -- if you have, it's okay -- these are
25 fair ...

1 (A juror stands.)
2 THE COURT: Yes, sir. Your name and number, please.
3 THE JUROR: Yeah. Eric Valovcin, 290.
4 THE COURT: You said "Wilkins"?
5 THE JUROR: Valovcin.
6 THE COURT: Did you try or a member of your family or
7 who was it?
8 THE JUROR: Yes, I did. In 2004.
9 THE COURT: Beg pardon?
10 THE JUROR: In 2004, I applied.
11 THE COURT: Okay. Were you accepted?
12 THE JUROR: No, I was not.
13 THE COURT: Okay. Having applied, would that affect
14 your ability in any way to be a fair juror in this case?
15 THE JUROR: No, it will not.
16 THE COURT: Thank you, sir.
17 MS. HAM: Can we ask him where he applied?
18 THE COURT: What now?
19 MS. HAM: Can we ask him where he applied to?
20 THE COURT: I can't -- what did she say?
21 (The law clerk and the Court confer briefly.)
22 THE COURT: Okay. Where did you apply?
23 THE JUROR: City of Columbia.
24 THE COURT: Okay. City of Columbia. All right.
25 Thank you, sir.

1 Now, does any member of this jury panel believe that
2 the testimony of a police officer should be given more
3 weight than that of an ordinary citizen just by virtue of
4 the fact that he or she is a police officer? If so, please
5 stand.

6 (No response.)

7 THE COURT: Would you be more inclined to believe the
8 police in their testimony simply because they are police?
9 If so, please stand.

10 (No response.)

11 THE COURT: Now, does any member of this jury panel
12 feel uncomfortable where trying to decide, after the fact,
13 whether a police officer had a good reason to arrest and
14 detain an individual? That's sort of a long question. Do
15 you understand it? I'll repeat it: does any member of the
16 jury panel feel uncomfortable with trying to decide, after
17 the fact, whether a police officer had a good reason to
18 arrest or detain an individual? If so, please stand.

19 (No response.)

20 THE COURT: Now, does any member of this jury panel
21 have any problem with the idea of an ordinary citizen suing
22 a police department because of the actions of an officer
23 while he or she was in the line of duty? Y'all understand
24 that question?

25 (No response.)

1 THE COURT: Okay. Do I need to repeat it? The answer
2 is "no" from all of you so far? Is that correct?

3 (No response.)

4 THE COURT: Okay. Does any member of this jury panel
5 agree that the price we pay to have -- the price we have to
6 pay for police protection is that sometimes police make
7 mistakes and arrest the wrong person or uses more force
8 than necessary? Let me repeat that: Does any member of
9 this jury panel agree that the price we have to pay for
10 police protection is that sometimes police make mistakes
11 and arrest the wrong person or use more force than
12 necessary?

13 THE JUROR: I just don't understand.

14 THE COURT: Beg pardon?

15 THE JUROR: What ---

16 THE COURT: Stand up and tell me your name, please.

17 THE JUROR: I just -- I'm Linda Wallace. I just don't
18 understand the -- the statement.

19 THE COURT: Well, I -- I can try to clarify it a
20 little bit. I'm reading what's been written. Hold on a
21 minute.

22 THE COURT REPORTER: Ms. Wallace, your juror number,
23 please?

24 THE JUROR: 298.

25 (Brief pause.)

1 THE COURT: Can I see y'all for a minute up here, Mr.
2 Reeves, Ms. Ham?

3 (Bench conference.)

4 THE COURT: Let me try to answer your question now.
5 The bottom line is this: Sometimes police officers make
6 mistakes. Do you think the price we pay, as a community,
7 has anything to do with a policeman using more force than
8 necessary in effecting an arrest? Does that make sense to
9 you?

10 (No response.)

11 THE COURT: All right. I might clear that up a little
12 bit later on.

13 THE JUROR: Thank you.

14 THE COURT: Are you satisfied with that?

15 THE JUROR: Yes, Your Honor.

16 THE COURT: I just want to make -- okay.

17 And some of these questions might seem a little bit
18 awkward. The idea to ask a question to be aloud so that
19 both the City of Columbia and the plaintiff might select
20 their fair jury. Does that make sense to you? Of course
21 it does. Thank you.

22 Now, is any member of the jury panel or a close family
23 member had a personal experience with a police officer --
24 officer that might cause you to favor the police in a
25 situation like this one? And I'll repeat that: Has any

1 member of this jury panel or member -- or close family
2 member had a personal experience with a police officer that
3 might cause you to favor the police in a situation like
4 this? Is there any reason you feel that you be -- lean
5 more towards the police than towards the plaintiff for any
6 reason? If so, please stand.

7 (No response.)

8 THE COURT: This is a "down the middle" proposition,
9 ladies and gentlemen. There's nobody to punish, nobody to
10 reward, if that makes sense. And I think you all
11 understand that.

12 (No response.)

13 THE COURT: Does any member of the jury panel believe
14 police deserve more support from the community? If so,
15 please stand.

16 (No response.)

17 THE COURT: Does any member of the jury panel believe
18 that the City of Columbia Police Department should not be
19 sued? That's just more direct question. Any member of
20 this jury panel feel like the police should not be sued?
21 If so, please stand.

22 (No response.)

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

1 (No response.)

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

6 (Juror stands.)

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

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

12 THE COURT REPORTER: Your juror number, please?

13 THE JUROR: 183.

14 THE COURT: And that was question No. 2.

15 THE JUROR: Right.

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

18 THE JUROR: No.

19 THE COURT: Oh, you don't.

20 THE JUROR: No, I don't.

21 THE COURT REPORTER: It was "ever been arrested."

22 THE COURT: The one about arrested?

23 THE JUROR: Yes.

24 THE COURT: Was it you or a family member?

25 THE JUROR: It was a family member.

1 THE COURT: Who was the family member?

2 THE JUROR: My son.

3 THE COURT: Son?

4 THE JUROR: Yes.

5 THE COURT: And how long ago was that?

6 THE JUROR: He was arrested by the County and the
7 City. So I'm not ---

8 THE COURT: All right.

9 THE JUROR: --- sure. Probably was a few years ago.

10 THE COURT: All right. Let me ask you this: What you
11 just told me, would that or could that affect your ability
12 to be a fair juror in this case?

13 THE JUROR: No.

14 THE COURT: You sure about that?

15 THE JUROR: Yes.

16 THE COURT: Okay. Y'all good with that? Is that ...

17 MS. HAM: Uh-huh.

18 THE COURT: Okay. Thank you.

19 WHEREUPON the Court and counsel
20 return to their seats.

21 THE COURT: Okay. Do you have any personal issues
22 with the City of Columbia Police Department or law
23 enforcement in general? Does any member of this jury panel
24 have any issues with the Columbia Police Department or any
25 law enforcement agency in general? If so, please stand.

1 (No response.)

2 THE COURT: The bottom line, members of the jury, is
3 that you need to be able to sit as fair and impartial
4 jurors, and that's the reason why I ask those questions in
5 the manner that I did.

6 Now, the plaintiff, Darris Hassell, in this case is
7 being represented by Mr. Todd Lyle and Mr. Paul Reeves.
8 Would you gentlemen stand up please?

9 (Mr. Reeves and Mr. Lyle comply.)

10 THE COURT: You got Mr. Lyle on the right, Mr. Reeves
11 on the left. Okay.

12 The question I need to ask you members of the panel is
13 this: Have you or any members of your immediate family
14 ever been represented by Mr. Paul Reeves or Mr. Todd Lyle?
15 If so, please stand.

16 (No response.)

17 THE COURT: Likewise, have you or any members of your
18 immediate family ever been on the other side of a case
19 involving the Law Firm of Reeves and Lyle? If so, please
20 stand.

21 (No response.)

22 THE COURT: Now, the City of Columbia is being
23 represented in this case by Ms. Dana Thye and Ms. Natalie
24 Ham. Am I right so far?

25 (Ms. Ham and Ms. Thye stand.)

1 MS. HAM: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. THYE: I'm just here to assist. I -- I'm ---

4 THE COURT: Well, they ---

5 MS. THYE: I'm here ---

6 THE COURT: They're lawyers that work for the City of
7 Columbia. Y'all may sit down, ladies.

8 And the question is this: Have you or any members of
9 your immediate family ever had any contact or been
10 prosecuted, for example, by the City of Columbia, by way of
11 Ms. Thye or Ms. Ham? If so, please stand.

12 (No response.)

13 THE COURT: Or the other side of that question is
14 this: Have you or any members of your immediate family
15 ever been on the other side of a case involving the City of
16 Columbia, specifically Ms. Thye -- Ms. Thye and Ms. Ham?
17 If so, please stand.

18 (No response.)

19 THE COURT: I think I generally covered everything I
20 wanted to cover for both sides, but it might have come out
21 a little awkwardly, ladies and gentlemen. But the bottom
22 line throughout all this is: Can you be a fair and
23 impartial juror in the trial of this case? If you cannot
24 for any reason whatsoever, you need to stand up and let me
25 know now.

1 (No response.)

2 THE COURT: Okay. Any additional voir dire on behalf
3 of the plaintiff, Mr. Reeves, Mr. ---

4 MR. REEVES: No, sir. Thank you.

5 THE COURT: Ms. Ham? Ms. Thye?

6 MS. HAM: No, sir.

7 THE COURT: Any further? Very well. The strikes will
8 be four and four, with the Plaintiff going first. Please
9 strike the number to the left of the name. Mr. Reeves?

10 MR. REEVES: Number 6.

11 THE COURT: 6?

12 COURT CLERK: Plaintiff strikes No. 6.

13 MS. HAM: Number 16.

14 THE COURT: 16?

15 COURT CLERK: Defendant strikes No. 16.

16 MR. REEVES: Number 2.

17 COURT CLERK: Plaintiff Strikes No. 2.

18 MS. HAM: Number 26.

19 COURT CLERK: 1 through 20.

20 THE COURT: 1 through 20, yes.

21 MS. HAM: Number 1.

22 COURT CLERK: Defendant strikes No. 1.

23 MR. REEVES: Number 3.

24 COURT CLERK: Plaintiff strikes No. 3.

25 MR. REEVES: I'm sorry. I'm sorry. Number 7. I'm

1 sorry.

2 THE COURT: Number 7?

3 MR. REEVES: I'm sorry.

4 COURT CLERK: Plaintiff strikes No. 7.

5 MS. HAM: Number 11.

6 COURT CLERK: Defendant strikes No. 11.

7 MR. REEVES: Number 15.

8 COURT CLERK: Plaintiff strikes No. 15.

9 MS. HAM: Number 4.

10 COURT CLERK: Defendant strikes No. 4.

11 THE COURT: And we'll select one alternate between 21
12 and 23. The plaintiff going first, Mr. Reeves.

13 MR. REEVES: 23. I'm sorry. Yes. 23.

14 COURT CLERK: Plaintiff strikes No. 23.

15 MS. HAM: 21.

16 COURT CLERK: Defendant strikes No. 21.

17 Parties, let me review your strikes with you. The
18 plaintiff has struck No. 6, 2, 7, 15, and 23.

19 MR. REEVES: That's correct.

20 COURT CLERK: Thank you. The defense has struck No.
21 16, 1, 11, 4, and 21.

22 MS. HAM: That is correct.

23 COURT CLERK: Thank you.

24 THE COURT: All right. Bring them up.

25 COURT CLERK: Yes, Your Honor. Ladies and gentlemen

1 of the jury, if I call out your name, please come forward,
2 be seated in the jury box as directed by the bailiff here.
3 If you have any books, coats, umbrellas, etc., bring those
4 with you if I call out your name.

5 First juror, No. 273, Willie Stokes.

6 (A black female comes forward.)

7 COURT CLERK: Number 250, Katherine Shepard.

8 (A white female comes forward.)

9 COURT CLERK: Number 55, Vasa Cate.

10 (A white male comes forward.)

11 COURT CLERK: 214, Donovan Palmer.

12 (A black male comes forward.)

13 COURT CLERK: 163, Monica Lineberger.

14 (A white female comes forward.)

15 COURT CLERK: 280, Richard Taylor.

16 (A white male comes forward.)

17 COURT CLERK: 275, Anne Sumwalt.

18 (A white female comes forward.)

19 COURT CLERK: 115, Michael Harper.

20 (A white male comes forward.)

21 COURT CLERK: 187, Markisha McKnight.

22 (A black female comes forward.)

23 COURT CLERK: 239, Robert Russell.

24 (A white male comes forward.)

25 COURT CLERK: 234, Sakoryah Richardson.

1 (A black female comes forward.)

2 COURT CLERK: 236, Virginia Robison.

3 (A white female comes forward.)

4 COURT CLERK: 107, Cara Goodlett, will be the
5 alternate.

6 (A black female comes forward.)

7 THE COURT: 13, Your Honor.

8 THE COURT: All right. Now, are there any matters
9 that need to be taken up at this time in connection with
10 the selection of this jury? Anything from the Plaintiff?

11 MR. REEVES: Nothing from the Plaintiff, Your Honor.

12 THE COURT: Ms. Ham, anything from the City of
13 Columbia?

14 MS. HAM: Nothing from the City, Your Honor.

15 THE COURT: All right. To the remaining members of
16 the panel, I take this opportunity to thank you for your
17 patriotic service in participating in this process. You
18 know, government of the people, by the people, and for the
19 people cannot operate or exist without the people and needs
20 the participation of each -- each one of you good citizens
21 from Richland County.

22 I wish I felt a lot better. I'm a little bit under
23 the weather today, but I hope y'all -- I'll feel better
24 later on in the week and I hope y'all have a pleasant week.

25 And as a result of your presence this week, I can tell

1 you without any hesitation that you have the thanks and
2 appreciation of a grateful nation. So good luck to each
3 and every one of you. You can go back downstairs to the
4 jury assembly room to await further instructions.

5 (Remaining jury panel exits the courtroom.)

6 THE COURT: Can I see y'all up here for just a second?

7 (Bench conference.)

8 THE COURT: Now, to members of this particular jury,
9 obviously, I was talking to the lawyers about some things,
10 and it was a starting time. I will ask you to be back in
11 the jury room tomorrow morning at ten o'clock in the
12 morning, ten o'clock in the morning.

13 Now, what's important, members of the jury, is that no
14 talking about this case in any way, shape, or form. I will
15 tell you this over and over again. The time to discuss
16 this case -- among yourselves or with anybody else -- will
17 be at the conclusion of the case, once you've heard all the
18 evidence.

19 And I ask that you have a completely open mind about
20 everything and you don't need to try to even think about
21 making up your mind until you hear the presentations from
22 the Plaintiff, when you hear the presentation from the City
23 of Columbia, and after I tell you what the law is that
24 applies to this particular case. Only then should you
25 discuss this case, at the very end. This system has worked

1 well over all these years and I'm sure you can understand
2 why. Have an open mind.

3 So I'll ask that you be back in the jury room -- the
4 bailiffs will show you how you get in out -- at ten o'clock
5 in the morning. Okay.

6 Thank you all so very much.

7 (Jury exits the courtroom at 12:42 p.m.)

8 THE COURT: All right. Any additions or exceptions to
9 anything that's been said so far?

10 (No audible response.)

11 THE COURT: I know you're not going to call all these
12 witnesses. Somebody suggested to me it'd take about a day
13 and a half -- is that about accurate -- how long will the
14 case should take, I mean?

15 MS. HAM: That's correct, Your Honor. I do want to
16 let you know that Deputy Chief Melron Kelly will be
17 testifying live and -- I guess in addition to the
18 designation ---

19 THE COURT: I think you said actually excerpts of the
20 deposition. But he's gonna ---

21 MR. REEVES: If he's available, we'll call him, Your
22 Honor. That's fine.

23 THE COURT: Okay. There was some motion, I think,
24 pre-trial motions y'all had. Want to make it now or ...

25 MR. REEVES: Judge, I don't mind doing them in the

1 morning. If you don't feel good, I don't mind doing them
2 in the morning. It's not gonna take very long. I could --
3 we could be here at 9:45 and be done.

4 THE COURT: All right. Well, let's do that. I
5 apologize to you. But I learned a long time ago, if you
6 don't feel good, you don't want to be in a position to make
7 a decision that will affect other people's lives. So I
8 hope I feel better tomorrow.

9 And I didn't swear the jury for that -- for a lot of
10 different reasons.

11 But can I see y'all in chambers before we --

12 MR. REEVES: Yes, sir.

13 THE COURT: -- send you home for the day. All right.

14 (Off the record at 12:44 p.m.)

15 DAY 2

16 (On the record at 9:55 a.m.)

17 THE COURT: For the record, Mr. Reeves, I think you
18 had a motion regarding the lost video service.

19 (To the court reporter) Put this on the record.

20 MR. REEVES: Yes, sir, Your Honor. I just spoke to
21 Ms. Ham, and what I'm willing to do, Your Honor, is to
22 withdraw that motion if she will agree to and stipulate to
23 a spoliation charge on the video, where the inference is
24 since they've lost the video, what was on the video was
25 helpful -- would have been -- given an inference it was

1 helpful to us and not to them. And I'll withdraw the
2 motion and she's agreed to stipulate to that.

3 THE COURT: That -- that's fair enough.

4 MS. HAM: Yes, sir. I agree to that.

5 THE COURT: All right. So -- and I think probably
6 there's enough -- there's a factual basis for giving a
7 spoliation charge anyway.

8 And I think, Ms. Ham, you have some additional
9 motions?

10 MS. HAM: I do, Your Honor. My first motion is very
11 simple. Under Tort Claims Act it states that there are no
12 punitive damages in this case. I just want to make sure
13 that you give an instruction to the Plaintiffs counsel that
14 there's no testimony with regards to punitive damages in
15 this matter; especially using language that's commonly used
16 with regards to punitive damages like "to punish" or "to
17 send a message" or things of that nature.

18 THE COURT: All right. Mr. Reeves?

19 MR. REEVES: No objection.

20 THE COURT: Okay. Y'all get along so well. I can't
21 believe this.

22 Anything additional we need to take up?

23 MS. HAM: I do. I have another motion, Your Honor.
24 And this one is a little bit different. It -- it just
25 occurred to me in my research of this case last night that

1 with regards to Plaintiff's causes of action, there -- he's
2 pled to that -- or he's pled some causes that really can't
3 stand together.

4 Under the South Carolina Tort Claims Act, the City is
5 liable for the negligence of its employees because they're
6 acting within the scope of their employment, you know,
7 we're liable for their negligent bad acts.

8 False arrest and malicious prosecution fall under that
9 realm and we understand that and those things are based on
10 the negligent bad act of the employee. The Tort Claims Act
11 also says that the City is not negligent for employee's act
12 if the employee acted intentionally.

13 And as a matter of policy, so that governmental
14 entities don't always say, "Hey, my employee acted
15 intentionally. It's not our fault," negligent supervision
16 was created.

17 But you don't get to negligent supervision without the
18 intent of the -- the intent level of the employee. So here
19 the employee's actions that are in question is Cameron
20 Duecker. And he can't be both negligent and intentful at
21 the same time.

22 THE COURT: All right. Mr. Reeves?

23 MR. REEVES: I have pled only torts, Your Honor.
24 There's no intentional acts alleged.

25 THE COURT: Beg pardon?

1 MR. REEVES: There's no intentional acts alleged. I
2 only pled torts. And Your Honor, as to that particular
3 motion, I ask the Court to hold in abeyance any rulings on
4 what has been proven til you hear our evidence and then
5 make a decision.

6 THE COURT: Election of remedies, that's what you're
7 saying?

8 MR. REEVES: Absolutely.

9 THE COURT: All right.

10 MS. HAM: Well, that makes it difficult for the City
11 to prepare its defense, Your Honor. Just --

12 THE COURT: Listen, we know testimony's going to be
13 "x, y, z." Okay. Unless there's some motion to exclude
14 any particular testimony, I think he has the right at the
15 end of the case to move for -- I mean, to elect the
16 remedies he might have.

17 Whatever is charged is going to be based on the facts
18 that's developed in this case. I don't know what they are
19 yet. But if you're worried about intentional, I think he
20 says he's not going to go there.

21 Is that right, Mr. Reeves?

22 MR. REEVES: I pled malicious prosecution and false
23 arrest which are contemplated by the Tort Claims Act.

24 THE COURT: Yeah.

25 MR. REEVES: I pled -- pled negligent supervision,

1 which is also contemplated by the Tort Claims Act, as well
2 as defamation. Those are all torts. There's no
3 intentional acts at all.

4 MS. HAM: I -- I have two Court of Appeals cases that
5 are directly on point to this. You don't get to negligent
6 intent -- negligent supervision without an intentional act
7 by the employee. So although you may not have pled it, the
8 -- the -- the law in South Carolina now states that you
9 don't get to negligent supervision unless there's an
10 intentional act by the employee. And I have copies of
11 those cases for both Plaintiff's counsel and Your Honor.

12 THE COURT: I found out a long time ago the best way
13 for me to make a decision is to hear the evidence.

14 MS. HAM: Okay.

15 THE COURT: And not ---

16 MS. HAM: And I'm not -- I'm not saying that it has to
17 be decided right now.

18 THE COURT: I understand.

19 MS. HAM: I just know it's on point ---

20 THE COURT: This is an argument that probably needs to
21 be made later on, after the facts in this case are
22 developed. And if there -- something comes up, I need to
23 take some testimony in camera --

24 MS. HAM: Sounds good to me.

25 THE COURT: -- at a particular time, I'll be happy to

1 do that. That's the way we always do it. Okay.

2 MS. HAM: Thank you, Your Honor.

3 MR. REEVES: Your Honor, I was provided no criminal
4 record of impeachable offenses, so therefore, I am assuming
5 and moving that we -- we -- there's no impeachable offenses
6 from Mr. Hassell.

7 THE COURT: I don't know anything about his record.

8 MS. HAM: I -- I don't ---

9 THE COURT: The matter of the Plaintiff's record,
10 correct?

11 MR. REEVES: That's correct. Yeah. And I don't --
12 there is -- I don't think there is any. I just didn't want
13 them to tell me something I didn't know.

14 MS. HAM: Oh, no. No. We don't plan on going into --

15 MR. REEVES: Thank you.

16 MS. HAM: --- going into Mr. Hassell's ---

17 MR. REEVES: Thank you, Your Honor.

18 THE COURT: All right. I'm not sure if all the jurors
19 are here or not. Are they?

20 THE BAILIFF: I'll check.

21 (Brief pause.)

22 (Jurors enter the courtroom at 10:14 a.m.)

23 THE BAILIFF: The jurors are present, Your Honor.

24 THE COURT: All right. Thank you, ma'am.

25 And for the benefit of the lawyers involved, I stuck

1 my head in the jury room to inquire some people are a
2 little late. They went downstairs, as I might have told
3 you earlier, instead of coming directly here. And I told
4 the jury I was responsible for them and I wanted to make
5 sure nobody had been involved in an accident. Is that fair
6 enough, members of the jury?

7 (No response.)

8 THE COURT: That's about what I said to y'all?

9 (No response.)

10 THE COURT: All right. Just to share it with
11 everybody.

12 With that in mind, Ms. Falcone, you may swear them.

13 COURT CLERK: Yes, Your Honor.

14 (The jury is sworn.)

15 THE COURT: Now, members of the jury, before this case
16 begins, I'd like to tell you a little bit about how matters
17 will proceed. Now, the first thing that will happen in
18 this case is the attorney for the Plaintiff -- and the
19 Plaintiff is Mr. Hassell. He brought this law suit -- will
20 make what is known as an opening statement; followed by a
21 similar statement on behalf of the City of Columbia, I
22 assume by Ms. Ham.

23 Now, members of the jury, these opening statements are
24 not arguments. The arguments will come at the conclusion
25 of this case. The purpose of opening statements is for

1 each party to outline his or her claims of the evidence
2 which they intend to present in support of these claims.

3 Following the opening statements, each side will
4 present its evidence, once again with the Plaintiff going
5 first.

6 Now, members of the jury, evidence may take many
7 forms. It may be testimonial, like somebody sit in that
8 chair over there and tell you what happened; or documents
9 or models or photographs.

10 Now, you should pay close attention to all of the
11 evidence which is presented by each party. You, the jury -
12 - jury, are the sole finders of the facts in this case, and
13 no one else will be permitted to weigh the evidence and to
14 render a verdict based upon the evidence.

15 Now, after all the evidence has been presented, the
16 attorneys will make their closing arguments. Unlike these
17 opening remarks you're about to hear, the final remarks
18 will be true arguments; that is each side will emphasize
19 certain portions of the evidence and try to persuade you to
20 agree with their version of the facts.

21 Now, after the arguments are finished, I will explain
22 to you the law that applies to this case. You'll then
23 retire back into the jury room, consider the facts and the
24 law; and once you have done so, you will return a verdict
25 in favor of one side or the other.

1 Now, members of the jury, although I may be the only
2 one who can tell you what the law is in this case, you are
3 the only ones who can determine what the facts are. I do
4 not have the right to indicate to you how I may feel about
5 the evidence and the testimony presented; and throughout
6 this trial, my intention will be to act impartially toward
7 all the parties involved.

8 Now, members of the jury, from time to time an
9 attorney will object to some bit of testimony or evidence
10 the other side is seeking to present. You can imagine,
11 like in business, sports, or any other structured activity,
12 there's certain rules that each side must obey in the
13 presentation of evidence. These rules have a definite
14 purpose. They ensure that the information you receive is
15 the most trustworthy and reliable available.

16 Now, an objection is a procedure we use for an
17 attorney to bring a possible violation of the rules of
18 presenting evidence to my attention; and for this reason,
19 you should not hold an objection against the lawyers, nor
20 should you hold an objection against their clients. In
21 addition, you should not conclude how I rule on an
22 objection that I favor one side or the other. My interest
23 in this case, members of the jury, is that I have no
24 interest in this case except to try to ensure that both
25 sides receive a fair trial, which is the exact same

1 interest you all have as jurors.

2 Now, for example, you've all watched T.V. and
3 everything. Somebody said "objection," if I say
4 "sustained," that means I agree with that objection and the
5 witness should not answer that question. If there's an
6 objection I say, "overruled," that means I disagree with
7 that objection and the witness should be allowed to answer
8 that question. But once again, how I rule on an objection
9 has nothing to do with the merits of this case one way or
10 another. It's just a procedure we use to keep things going
11 so to speak.

12 Now, finally I would ask that you not take notes in
13 this case. It's supposed to be a fairly simple and
14 straight-up case, members of the jury. There's a time line
15 of tradition in this state where jurors generally don't
16 take notes. The reason being that if you were to write
17 down a mistake or an error, it might be more detrimental
18 rather than helpful to you and of course your deliberation.

19 Each of you should listen individually as careful as
20 you can. That way at the end, collectively, you can make a
21 fair and just decision.

22 With that in mind, I'm going to invite -- Mr. Reeves,
23 I guess, or Mr. Lyle --

24 MR. REEVES: Please the Court, Your Honor.

25 THE COURT: -- make an opening statement, followed by

1 a similar statement by Ms. Ham. Mr. Reeves?

2 MR. REEVES: Good morning, ladies and gentlemen.
3 Thank you for being here. I know this is not what you
4 normally on Tuesday, and while you didn't have much choice
5 in this process, I really appreciate your service because
6 this would not resolve itself without you be here.

7 I represent Darris Hassell, who's the gentleman seated
8 there in the coat and tie. And I will tell you now that
9 he's sort of every man. You know, he's a son, an uncle, a
10 brother. He's a teacher. He grew up in Columbia, went to
11 Keenan High School. Went to Wofford College, got his
12 master's degree in Spanish from USC, and teaches at the
13 University of South Carolina's Lancaster campus in
14 Lancaster. And he's kind of an every guy.

15 What I also want you to know is I'm going to tell you
16 a story about why we're here. And one of the things as you
17 consider the story that I want you to know from the very
18 beginning is this: Darris has the burden of proof. It's
19 not really a burden, but we have the responsibility to
20 prove to you what we have alleged in the complaint, which
21 is what we filed when we said what happened.

22 Now, in a criminal case, the burden of proof is
23 extremely high. You have to remove every reasonable doubt,
24 and that's a bit burden. It's not the same here. In this
25 case, the judge will tell you at the end of the case in

1 similar words that at the beginning of the case, both
2 parties start off like those scales you see where there's -
3 - when things are equal, they're very much the same.
4 They're right on equal with each other.

5 Our responsibility to you to prove our story is to tip
6 those scales ever so slightly in our favor. It's called a
7 preponderance of the evidence. Very technical term, but
8 just remember this: Ever so slightly in our favor and our
9 story is proven, and then you will return a verdict for Mr.
10 Hassell.

11 Now, you have the complete control over what you deem
12 to be the true facts of this case. Here's the story. Mr.
13 Hassell is a Spanish instructor at USC. And on February
14 19, 2014, he was grading papers at the Thomas Cooper
15 Library on USC's campus here because his home computer was
16 not working and the students have until midnight to turn in
17 their exams. So he was there grading those papers as they
18 came in.

19 He stayed at Thomas Cooper until around 1 to 1:15 a.m.
20 And then he left there and he drove to McDonalds on Elmwood
21 Avenue, one of the few places that's open 24 hours. Bought
22 a meal and was heading back through Columbia and turned
23 onto Sumter Street to go home. He lives out off Shop Road.
24 And there were blue lights in his mirror -- or rearview
25 mirror, so he pulls over immediately. That's very

1 important.

2 At that time, Officer Duecker, who's seated at the
3 other table, blue shirt, approached his car. He asked for
4 license and registration. And at some point, very early in
5 that process, he tells Mr. Hassell, "I smell alcohol." And
6 Mr. Hassell's immediate response is, "No, sir. You can't.
7 I don't drink. Not just on this night, I never drink."

8 The officer disagreed, had him get out of the car. He
9 says that he smelled alcohol.

10 He then investigates this case further. Mr. Hassell
11 tells him more than once, "I haven't had anything to drink.
12 I'm not impaired." And the evidence will show you folks
13 that he hadn't had anything to drink and that he'd taken no
14 drugs or no prescriptions that would have impaired him.

15 Now, South Carolina law requires an officer making an
16 arrest for DUI to video tape what he's doing. And so you
17 may think, "Well, that's gonna make things easy. We can
18 just take a look at the video tape and determine if Mr.
19 Hassell's telling the truth or Mr. Duecker's telling the
20 truth, the City of Columbia. And that'd be great, but we
21 don't have a video. City of Columbia doesn't know where
22 the video is.

23 Mr. Hassell went to court on this case, no video.
24 Went to court again on this case, no video. Never saw the
25 video.

1 So one thing in this story that you're going to have
2 to consider is you can be arrested when you've done nothing
3 wrong. And the second thing you can consider is even when
4 you do your best, it might not be good enough.

5 Now, Mr. Hassell asked Officer Duecker, "Is there some
6 test I can take 'cause that will show I haven't been
7 drinking. It'll show I'm not impaired."

8 That there is. It's called a "Datamaster test" and
9 it's this machine -- I don't have a clue how it works, but
10 you blow into it and it gives a reading of your breath
11 sample and what alcohol is -- if any, is in your system.

12 So they go to the City of Columbia Police Department
13 where Mr. Hassell voluntary takes this test. And what's
14 interesting as he's waiting to take that test because
15 there's a mandatory waiting period of 20 minutes, the
16 officer cannot find Mr. Hassell's driver's license which he
17 needs to start the machine moving so they can employ the
18 test. And Mr. Hassell says, "Well, what are you missing?"
19 He says, "Your license." Mr. Hassell says, "Do you want my
20 number?" And then, from memory, recites his driver's
21 license number.

22 You'll be able to decide does that indicate impairment
23 or does it indicate not impaired?

24 Mr. Hassell complies with the machine, blows in the
25 machine, and the results are this: 0.00. The City of

1 Columbia admits in their depositions that that is
2 conclusive indication that there was no alcohol in this
3 case.

4 Mr. Hassell is elated because the machine has proven
5 what he tried to tell the officer for those first 40
6 minutes. He thinks he's going home. There's no alcohol,
7 just like I said. The City of Columbia's position: You
8 must be on drugs.

9 Mr. Hassell's like, "I'm not taking any drugs that
10 would impair me. There's some medication in the car. You
11 saw it. Those don't cause impairment."

12 "We're going to take you to the hospital. We're gonna
13 get a urine sample from you," because it's no longer about
14 alcohol 'cause guess what? We lose on that one.

15 So in handcuffs, he is taken to Palmetto Richland
16 Hospital and he's paraded through the emergency room in
17 handcuffs with Officer Dueker, and he consents to the urine
18 sample because he knows, guess what? The urine sample's
19 gonna prove exactly what the Datamaster machine showed:
20 I'm not taking anything that would impair me.

21 And now you're thinking well, that's good news because
22 we can all look at the urine test and we can determine what
23 the truth is from an independent sample that doesn't
24 require this gentleman to tell us what the facts are; and
25 it doesn't require the City of Columbia to tells us what

1 the facts are and that's right. They lost the urine
2 sample.

3 Nobody knows what happened to the urine sample. It
4 never even got to SLED, which per the City's own rules, is
5 where it was supposed to go. Because what SLED does is
6 they take the urine sample and then they give an
7 independent test and they tell you what the results are.
8 They tell him and they tell these folks. We don't have
9 that.

10 So Darris Hassell goes to jail. With a 0.00 and a
11 voluntary urine test, he still goes to jail. And he's
12 released about 6 p.m. the next day. That is what we're
13 here about.

14 Now, I want to add something else to this story.
15 Throughout this entire event -- and the City of Columbia
16 agrees with this -- Mr. Hassell never fussed with the
17 officer, never cursed him, never disrespected him, did
18 everything he was told to do, was a nice as he could be
19 even though he was angry that he was being charged and
20 prosecuted for something he didn't do. Never got in a
21 fight, never drew attention to either one of them because
22 during part of the City of Columbia's investigation, you
23 know, on Sumter Street -- it was right across the street
24 from the emergency room, Baptist Hospital -- people just
25 kind of came out. Because you know what blue lights do, if

1 it's not you, everybody kind of goes there and says,
2 "What's going on? What's happening?" So they got to watch
3 him, but Mr. Hassell never brought attention to himself.

4 He never even brought negative attention to the
5 officer. Never posted on social media, never went to
6 Facebook, never did anything. I'm gonna tell you why.
7 First of all, that's the kind of guy he is. Number 2,
8 somewhere down the road, he knew that even though his best
9 was not good enough that night, and even though he knew he
10 was being arrested for something he did not do, somebody
11 could fix it.

12 So he went to court on the day his ticket told him to
13 be there. No video, no urine sample, no urine results. So
14 he requested a jury trial on his own, didn't have a lawyer,
15 on his own. Because he knew somewhere down the road,
16 somebody was gonna fix this.

17 You'll hear testimony that later on that year, the
18 City of Columbia dismissed all these charges. Not one
19 single time during that months of waiting did anybody give
20 to him the two things that would have been able to show
21 objectively that what he said was true. Never got it.

22 So I want you to remember, as you hear this story,
23 that Darris Hassell did the right thing at the right time.
24 And now, he's come to the right place at the right time in
25 front of the right people to get justice.

1 At the end of this case, we're gonna ask you to return
2 a money verdict -- a money-damages verdict against the City
3 of Columbia because that's all they can do. They can't
4 take back those people who saw him in handcuffs which
5 defamed him, humiliated him. They cannot take back those
6 hours in jail.

7 Yesterday the Judge asked this jury panel whether or
8 not anybody had been arrested, and there were no hands. So
9 Darris Hassell experienced something we'll have to explain
10 because nobody else has experienced that. I haven't
11 experienced that. But you'll be asked to imagine that
12 evidence as you go through this case, and we believe that
13 you're the right people and that you're gonna do the right
14 thing.

15 And we're gonna ask you to do the right thing at the
16 end of this case. Thank you very much.

17 THE COURT: All right. Ms. Ham?

18 MS. HAM: Thank you. Please the Court?

19 THE COURT: Yes, ma'am.

20 MS. HAM: Good morning, ladies and gentlemen. I'm
21 Natalie Ham. Almost said Armstrong. Sorry. I got married
22 last year, so a little new to me.

23 (Indicates) This is Cameron Duecker. He was an
24 officer with the City of Columbia at the time of this
25 incident, and he'll be here with us for the duration of

1 this trial. And you'll hear testimony from him later.

2 I -- in addition to getting married last year, I had a
3 baby, and she is just a few months old now. And I have
4 what's called "mommy brain." I don't know if any of you
5 have children, but sometimes I forget things. So I made
6 myself some notes and I'm gonna pull this podium over here
7 just so that the court reporter can hear me properly and I
8 can address you without missing anything.

9 Today -- folks, honestly, a lot of what you heard Mr.
10 Reeves say to you with regard to this case is -- is true.
11 There's not a bunch of it that I disagree with, and you'll
12 hear the testimony and you'll get to decide that for
13 yourself.

14 We're basically here today because former Officer
15 Duecker -- and I'm gonna call him "Cameron." He's not an
16 officer with the City any more. So I'm gonna refer to him
17 as "Cameron." We're just gonna use his first name. I
18 think that will just be easier for everyone.

19 I think we're here today because he -- he made a
20 mistake and he's gonna tell you that he made a mistake. It
21 was an honest mistake, but he indeed made a mistake.

22 I'm gonna put him on the stand, and I'm gonna have him
23 tell you his version of the facts as to -- with regards to
24 what happened.

25 He's probably -- he's gonna tell you that on February

1 19 of 2014, he saw a car make an improper turn. It was
2 1:30 in the morning, that he stopped that car, that he
3 approached the vehicle. He spoke with who you come to find
4 out was Mr. Hassell, and that he smelled alcohol. He
5 smelled the scent that he thought smelled like alcohol.
6 And Mr. Hassell indicated that he doesn't drink, but
7 because Mr. -- because Cameron is charged with keeping the
8 streets safe, he decided to perform some field sobriety
9 tests.

10 He's gonna tell you about those tests. They're very
11 technical in nature, so I'm not gonna sit here and try to
12 explain them to you. But I will tell you this, that
13 because of the results of the tests, he decided to arrest
14 Mr. Hassell.

15 After the arrest, he was taken to do the Datamaster
16 machine, and of course, he blew a 0.00. That indeed is a
17 fact. You will hear that in testimony. The City does not
18 disagree with that.

19 But because of the results of the field sobriety
20 tests, Cameron was still under the impression that Mr.
21 Hassell was impaired. He did not want to allow Mr. Hassell
22 to continue to drive, hurt himself, or someone else. That
23 was the job that he took, so that's what he was trying to
24 do.

25 So he said, "Well, you know, because of the results of

1 this test, I'm gonna have you to submit a urine sample."

2 Mr. Hassell agreed to do so. He submitted a urine sample.

3 Now, this is probably where things take a turn because
4 this was Mr. -- this was Cameron's first time ever doing a
5 urine sample in a DUI case. He's never done that before.
6 He's never had to.

7 Usually, you know, he can forward with the alcohol
8 test, but since Datamaster was a 0.00 and the results of
9 his field sobriety test were inconsistent with the result -
10 - the results of the Datamaster, he decided to get a urine
11 test.

12 Cameron failed to properly execute getting the urine
13 sample. That is the mistake that he made here. He
14 honestly believed that he was supposed to put it into
15 evidence -- the evidence locker at the City of Columbia's
16 police department, and that someone else was supposed to
17 take it from that locker and go take it to SLED to get it
18 tested.

19 In actuality, the policy of the City of Columbia --
20 and you will hear testimony with regards to this -- is that
21 Cameron was supposed to take it there because it was after
22 hours that night; and then come back the next day, pick it
23 up, and take it to SLED himself. He was not aware of that.
24 He misunderstood the policy. He will tell you that he made
25 an honest mistake.

1 So ultimately, we do not have the -- the results of
2 the urine sample, and that is -- and Cameron will admit
3 that that is -- that is his fault.

4 He's gonna be upfront with you guys, he's gonna be
5 open and honest about things, and he -- we're not here to
6 hide anything.

7 You'll also hear from our Deputy Chief Melron Kelly.
8 He is the person that, in this case, will testify with
9 regards to the policies and procedures of the City of
10 Columbia. He is going to tell you what the policies are
11 and how they are -- how the officers are to proceed with
12 executing those policies.

13 He's gonna tell you that Cameron violated one of the
14 policies. He's gonna tell you that if Cameron -- even
15 today, if we -- if we had just found out about this
16 violation of policy, that Cameron would be -- would have to
17 go in front of Internal Affairs Board. He would be
18 disciplined.

19 He's gonna be also truthful and honest with you guys.
20 He doesn't have anything to hide. The City of Columbia
21 doesn't have anything to hide. There are things in this
22 case that -- that we believe occurred and that you should
23 know with regards to this case.

24 I think at the end of this case it's gonna come down
25 to what probable -- whether or not there was probable cause

1 to arrest Mr. Hassell. Probable cause is a very technical
2 legal term. The judge is gonna instruct you as to the law
3 with regards to what probable cause actually is. And I
4 want you to take his instruction over what I'm about to
5 tell you because he's the judge and -- and he's the law in
6 this case, for lack of a better explanation.

7 But I'm gonna read to you what I believe probable
8 cause is and what I have determined the definition of
9 probable cause to be. And I'm gonna read it just so I
10 don't get it wrong.

11 (As read) "Probable cause is defined as a good faith
12 belief that a person is guilty of a crime when that belief
13 would rest on grounds that would cause an ordinarily
14 prudent man, under the same circumstances, to believe
15 likewise."

16 Cameron had probable cause to arrest Mr. Hassell.
17 Why? Because of the things that I told you earlier. He
18 saw Cameron [sic] make an improper turn. It was 1:30 in
19 the morning. He approached the car to get license and
20 insurance, and he smelled a scent that he thought smelled
21 like alcohol. He performed field sobriety tests and the
22 results of that test, pursuant to his training, indicated
23 that Mr. Hassell was impaired.

24 Cameron want -- did not want for Mr. Hassell to hurt
25 himself or anyone else that night, so he was arrested.

1 And I would like you to understand that there is no
2 process under which -- under South Carolina law by which a
3 person can be un-arrested. Once you are arrested, you have
4 to go through the process. That may be unfortunate, you
5 may want to call your legislators, but that is a fact here.
6 There's no process by which a person can be un-arrested
7 once they are arrested.

8 Cameron -- Mr. Hassell was arrested based on the
9 probable cause that Cameron saw that night. And I think
10 you'll -- you'll find that in this case. And when you do,
11 it won't matter whether or not he was guilty of this crime.
12 This isn't a criminal trial. The facts of that have been
13 absolved. Mr. Hassell's record has been expunged. The
14 case -- the case against him has been dismissed.

15 Plaintiff is alleging a list of things in this --
16 against the City. You will agree that Cameron made an
17 honest mistake when you hear the testimony, and I believe
18 that you will find most, if not all, of those allegations
19 to be unfounded. And when you do, your ruling shall
20 reflect that. Thank you very much.

21 I'm gonna wheel this back over here.

22 (Brief pause to move the podium.)

23 THE COURT: All right. Mr. Reeves?

24 MR. REEVES: Please the Court, Your Honor. We call
25 Mr. Hassell to the stand.

1 THE COURT: Come around, sir.

2 DARRIS HASSELL, having been first
3 duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. REEVES:

6 Q Darris, where do you -- where do you live today?

7 A I live at [REDACTED], here in Columbia.

8 Q Who lives there with you?

9 A I live alone.

10 Q And where did you grow up?

11 A I grew up in Columbia. I grew up in Greenvview
12 neighborhood, off of North Main.

13 Q Where'd you go to high school?

14 A I went to Keenan High School.

15 Q And after high school, where'd you go next?

16 A After Keenan High School, I went to Wofford College in
17 Spartanburg.

18 Q What did you major in there?

19 A Majored in Spanish.

20 Q And when did you get the -- the bug, if you will, for
21 foreign language?

22 A I picked it up there at college.

23 Q Did you further your education after graduating from
24 Wofford?

25 A Yes, I did. I went to graduate school at USC.

1 Q And what was your graduate degree in?

2 A It was a Master of Arts in Spanish literature.

3 Q And at what point did you become employed with the
4 University's Lancaster campus?

5 A That began in 1997.

6 Q How'd that come about?

7 A I was a graduate assistant for my duration there at
8 USC in graduate school. And afterwards, I was hired as an
9 adjunct professor. And the University of South Carolina
10 Lancaster campus needed a Spanish instructor in the middle
11 of the semester when another professor had left. And they
12 contacted the department in Columbia and I went.

13 Q And became an instructor there?

14 A Yes.

15 Q How far is that commute for you?

16 A It's about 65 miles each way.

17 Q Okay. And are you currently teaching or are you out?

18 A Currently teaching, yes.

19 Q Okay. And ---

20 THE COURT REPORTER: Is that a "yes"?

21 THE WITNESS: Yes.

22 Q Don't just shake your head. She's ---

23 THE WITNESS: Sorry.

24 Q How long have you been teaching at USC?

25 A 20 years.

1 Q And throughout those 20 years, you commuted from
2 Columbia to Lancaster and back and forth.

3 A Yes, for 20 years.

4 Q Okay. All right. Darris, the night that this event
5 happened, would you tell the folks in the jury what you
6 were doing?

7 A Certainly. I was at the Thomas Cooper Library. I was
8 grading. It was online. The students have until midnight
9 as a deadline to submit their homework assignments. And my
10 computer was not internet ready at home at the time, so I
11 had to use the computer lab at the library to -- to check
12 their homework.

13 Since they have up to midnight to check it, I'm there
14 late because I'm there after midnight seeing who has
15 submitted their homework. And that's what I was doing that
16 night.

17 Q Do you recall -- well, first of all, had you had any
18 alcohol to drink that evening?

19 A No, sir. No alcohol.

20 Q What is your habit and custom about drinking alcohol,
21 if you have one?

22 A I don't drink at all.

23 Q All right.

24 A Never have.

25 Q Is there a reason for that?

1 A It's a personal choice of the desire to drink.

2 Q Had you ingested anything that would cause an
3 impairment or drunkenness of prohibited you from operating
4 a motor vehicle based on impairment?

5 A No, nothing at all.

6 Q Okay. When you left the library, where was it your
7 intent to go?

8 A I went to McDonald's first to get something to eat in
9 order to be able to take my night medicine and was heading
10 home from there.

11 Q All right. And when you left McDonald's, could you
12 walk the jury through the route you were taking back
13 through the city?

14 A Certainly so. I took Elmwood Avenue once I left
15 McDonald's, and I made a right turn on Marion Street and
16 took Marion Street all the way down to Taylor. And at
17 Taylor, I made a right turn onto Taylor Street and then a
18 left turn onto Sumter Street to go through USC campus to go
19 back to the southeast area of Columbia, Shop Road. And at
20 that left turn is where I encountered the officer.

21 Q What kind of car were you driving?

22 A It was a 2012 Nissan Altima.

23 Q And what -- how did you know the officer was pull --
24 was stopping you?

25 A Saw blue lights in my rearview mirror after the turn.

1 Q When you made the left-hand turn from Taylor to
2 Sumter, which lane were you in when you began the turn off
3 of Taylor Street?

4 A I was on the left or inside lane, closest to the
5 median.

6 Q And which lane did you drive into when you go on
7 Sumter Street?

8 A I turned into the lane closest to me on Taylor -- on
9 Sumter.

10 Q Closest to the median?

11 A Closest to the median.

12 Q I'm sorry. And did you -- before you saw the blue
13 lights, had you noticed the City of Columbia police car?

14 A No.

15 Q All right. And do you know where the police car was
16 parked or driving?

17 A I do not know. I only knew that he had to have been
18 somewhere behind me.

19 Q Okay. When you saw the blue lights, what did you do?

20 A I pulled over, pulled over to the right.

21 Q Where did you pull over?

22 A I pulled over to the curb, to the right-hand side,
23 right in front of the bus stop on Sumter Street across from
24 the emergency room entrance.

25 Q To Palmetto Baptist?

1 A To Palmetto Baptist.

2 Q Tell the jury what happened when the officer with the
3 City of Columbia came to your car.

4 A He approached my car and I let my window down, and I
5 began to ask him why I had been stopped. He asked for --
6 he said that he the reason to believe that I might have
7 been driving under the influence, that he smelled alcohol.

8 He then asked for my license and registration
9 information. I gave that to him.

10 Q What happened next?

11 A Afterwards, I had -- I tried to express to him that
12 there had to have been some mistake because I don't drink,
13 there couldn't possibly have been any smell of alcohol in
14 my car or any reason even to think that I was impaired. I
15 just don't drink.

16 Q Was there anything in your car -- was there any wine
17 in your car?

18 A No, sir.

19 Q Beer?

20 A No.

21 Q Liquor?

22 A No.

23 Q Any alcohol drink?

24 A No alcohol at all.

25 Q Had anybody spilled any of those three things in your

1 car?

2 A No, sir.

3 Q Did you have anything on your clothes that could have
4 been -- have been misconstrued as the smell of alcohol?

5 A No, sir.

6 Q Did your statement to him that you had not been
7 drinking, you don't drink -- what -- what effect, if any,
8 did it have on the City of Columbia police officer?

9 A It didn't convince him. He asked me to step outside
10 of the car. So I didn't convince him.

11 Q What was your demeanor toward him?

12 A Polite, respectful, compliant.

13 Q Okay. What was his demeanor toward you?

14 A Somewhat polite, but short.

15 Q Okay. He -- at the time, did you know you were being
16 video taped?

17 A No, sir.

18 Q All right. Did you find out later you'd been video
19 taped?

20 A Yes, sir.

21 Q When you got out of the car, where did you go?

22 A He asked me to step to the back of the car, to the
23 rear of my vehicle.

24 Q All right. Where was his car parked?

25 A His car was parked directly behind mine, but there was

1 space between them.

2 Q Okay. And did he ask you to do some strange tests?

3 A He did. He asked me to perform three -- three tests.
4 Three tests.

5 Q Let me ask you about those three tests.

6 A Okay.

7 Q Had you ever done anything like those three tests
8 before?

9 A Never.

10 Q Were any of those physical movements that you did
11 something that you'd normally do?

12 A No. None of them were.

13 Q All right. But did you perform the tests
14 satisfactorily?

15 A Yes, I did.

16 Q Did you make any mistakes on those tests?

17 A Not to my knowledge.

18 Q Okay. In fact, when you get to the room where the
19 machine is that you're gonna blow in, what did you ask
20 Officer Duecker when you got to that room? Did you ask him
21 which test that you might not have passed?

22 A I did. I asked for clarification on how I did.

23 Q What was your demeanor asking that question?

24 A Polite, respectful, compliant.

25 Q Do you recall what he told you?

1 A He gave the reason that -- the one where I was taking
2 the steps that he gave a certain number for steps that I
3 had missed or mis-stepped on. And he also mentioned the
4 one with the eye where I'm following the pen or pencil,
5 that he noticed some kind of delay in my reaction with my
6 eyes.

7 Q Okay. You wear glasses.

8 A I do.

9 Q Were you wearing glasses then?

10 A That night, no.

11 Q But you have a prescription glasses --

12 A I do.

13 Q Okay. Going back to the scene, what, if anything,
14 happened from across the street as the officer was making
15 you do these procedures out there in the street?

16 A I noticed that there were people gathered outside of
17 the emergency room entrance, directly across from where we
18 were.

19 Q Were they watching you?

20 A Yes.

21 Q Did you bring any attention to the circumstances that
22 you and the officer for the City of Columbia were involved
23 in?

24 A No, sir.

25 Q Okay. Once you completed the tests, what happened?

1 A He told me that there was one final test he had for me
2 after the third test. He asked me to turn around and face
3 my vehicle and put my hands out to my sides, and then the
4 fourth test, I guess, was the placing of the handcuffs.

5 Q It really wasn't a test at all.

6 A It wasn't a test, no.

7 Q So he says that, but then he just handcuffs you and
8 puts you in the back of his car.

9 A Right.

10 Q All right. Did you say anything to him at that time
11 about what was going on?

12 A I reaffirmed to him once again that this has to be
13 some kind of mistake. And I did offer my nephew as a
14 former city police officer, I offered for him to vouch for
15 me, like, "Contact him. He can vouch for me that I don't
16 drink."

17 But he told me that wouldn't be necessary.

18 Q And put you in the car.

19 A Yes.

20 Q Where did you go?

21 A I'm sorry. He checked my pockets and things before he
22 put me into the car.

23 Q Okay. I'm sorry. Where did you -- well, first of
24 all, how long -- if you recall -- were you on Sumter Street
25 with the City of Columbia officer who was investigating

1 this case? How long were you there?

2 A This would only be an estimate. Probably about 40/45
3 minutes.

4 Q Okay. Did you have to wait for somebody come and tow
5 your car?

6 A The car was not towed while I was there.

7 Q Okay. Was it later towed, though?

8 A Yes, it was.

9 Q Did you have to go pay to get the car out ---

10 A Yes, I did.

11 Q So after the events on Sumter Street -- first of all,
12 were you impaired at that particular time?

13 A No, sir, I was not.

14 Q Had you taken anything that would have impaired you?

15 A Nothing.

16 Q Have you ever met this City of Columbia police officer
17 before that night?

18 A Never before.

19 Q Had he had the -- so there'd been no opportunity for
20 that particular officer to -- to assess how you were under
21 normal conditions because he'd never met you; is that
22 correct?

23 A That is correct.

24 Q All right. So he -- you read his report. He said you
25 smelled of alcohol; is that correct?

1 A That's correct.

2 Q He said that you had slurred speech, correct?

3 A That is correct.

4 Q Did you have slurred speech?

5 A I did not.

6 Q Are you speaking today like you were speaking on
7 February 19, 2014, with the City of Columbia police
8 officer?

9 A Yes, I am.

10 Q There was another video that we do have that the South
11 Carolina Law Enforcement Division maintains, of you taking
12 the test; is that correct?

13 A That is correct.

14 Q That test was about 30 minutes after you were
15 arrested; is that correct?

16 A That's correct.

17 Q Does that video tape run on for about 20 to 24 --
18 about 30 minutes?

19 A Yes, it does.

20 Q And does it show you on that video?

21 A It does show me.

22 Q Does it show you slurring your speech?

23 A No, it does not.

24 Q Does it show you being unable to walk and maneuver
25 yourself and have control of your motor functions?

1 A It shows that I had control.

2 Q All right. Does it show you maneuvering around chairs
3 and ---

4 A Yes, it does.

5 Q --- getting up by yourself. Nobody's got their hand
6 on you, do they?

7 A No. Nobody.

8 Q All right. During that particular test, did there --
9 an issue come up with your driver's license?

10 A It did. I had to give the officer my number. He
11 didn't have my license physically on him. He left it in
12 the car, I believe.

13 Q Did you volunteer your driver's license number?

14 A I did.

15 Q Did you consent to take the test?

16 A I had requested the test, actually.

17 Q Why?

18 A I -- I knew that there had to be some kind of way to
19 prove that what I was saying was accurate other than just
20 his idea of how I operated on those tests on the street.

21 Q The City of Columbia, in their opening statements,
22 said that there's evidence that you failed those tests.
23 Did you fail those tests?

24 A I did not.

25 Q Did anybody give you any criteria as you were taking

1 those physical tests as to what was passing and failing?

2 A No one.

3 Q Did Mr. Duecker ever say to you at the scene, "Hey,
4 you did that wrong. You did ...". Did he ever tell you
5 anything?

6 A Never did.

7 Q He just arrested you.

8 A Yes.

9 Q When you -- you had to wait 20 minutes for the machine
10 to be set up; is that correct?

11 A That's correct.

12 Q All right. When you -- you were given an opportunity
13 -- you -- you take a big deep breath and you blow in that
14 machine, and somehow in the magic of all that, it comes up
15 with a number, correct?

16 A That is correct.

17 Q Did the officer -- or the City of Columbia officer
18 indicate that that machine was working properly that night?

19 A Yes, he did. He did a pre-test before my test.

20 Q All right. He also provided you with a number of
21 rights that you had, didn't he?

22 A That's correct.

23 Q And he went through a checklist, did he not?

24 A He did.

25 Q And he, at the end, asked you a question: "Do you

1 understand these rights;" is that correct?

2 A That is correct.

3 Q And you understood your rights.

4 A I did.

5 Q And you told him that.

6 A Yes, sir.

7 Q Those were fairly long rights and pretty complicated,
8 but you understood them.

9 A I did.

10 Q Okay. When he sat you down to begin this test, what
11 did he do with one of the handcuffs?

12 A He took my right hand out of the handcuff and my left
13 hand remained cuffed. And he connected that to a bar or a
14 pole to the side.

15 Q So as you're sitting there, your hand -- you -- you're
16 chained to the wall.

17 A Yes.

18 Q How'd that make you feel?

19 A Kind of embarrassing.

20 Q How did you feel when you were placed under arrest on
21 Sumter Street?

22 A I was flooded with emotions when I was placed under
23 arrest. I couldn't understand how things had progressed to
24 that point, actually.

25 Q Had you done your best to tell the truth to the

1 officer on the -- on the roadside?

2 A I did.

3 Q Were your thoughts that if the tests were demonstrate
4 what you had said was the truth that everything would be
5 okay?

6 A I was praying that it would be.

7 Q What happened when the results came back? How did you
8 find out about the results on the test?

9 A He handed me copies of my paperwork and it showed
10 there -- the readings showed no alcohol.

11 THE COURT: Mr. Hassell, could you speak up just a
12 little bit, please.

13 THE WITNESS: I'm sorry.

14 THE COURT: Turn the microphone toward you, sir.

15 A He handed my paperwork that prints out as a result of
16 the test, a copy of the paperwork. And it showed the same
17 results.

18 Q What were the test results?

19 A 0.00.

20 Q What was the City of Columbia's officer reaction that
21 you observed when those numbers came back?

22 A He didn't quite want to accept what the papers were
23 showing.

24 Q At that point, what did you think after you saw the
25 numbers?

1 A I thought it was going to be over, that I would be
2 released.

3 Q Did the numbers confirm what you had told him earlier?

4 A They did.

5 Q Did you tell him that again at the Datamaster room?

6 A I did.

7 Q What was his response?

8 A Well, he says there's another test, the urinalysis.

9 And would I agree to doing that, to test mine urine sample

10 Q Why did he want to do an urinalysis test? What did he
11 tell you about why he wanted to do that?

12 A He said if it was not alcohol, there had to be
13 something that was causing me to be impaired, probably
14 drugs.

15 Q Probably drugs. Had you taken any drugs?

16 A No, sir.

17 Q You mentioned a moment ago about some prescriptions
18 that you had.

19 A Yes.

20 Q And how long have you had those prescriptions?

21 A I've been taking those medicines since the mid 90's.

22 Q And do those medicines cause you to be drowsy?

23 A None of them do.

24 Q Do they cause you to slur your speech?

25 A None of them do.

1 Q Do they cause you to be impaired in any manner
2 whatsoever?

3 A None of them do.

4 Q Darris, other than the 0.00, do you have knowledge of
5 any other reason why the City of Columbia would have turned
6 from the alcohol focus to the drug focus?

7 A I have no rationale of that at all.

8 Q Had your behavior in any way changed at the Datamaster
9 video that was recorded, from the time that you were
10 arrested, when the officer was doing his investigations?

11 A No. I -- I tried to remain the same the whole time.

12 Q The video of the Datamaster, when -- does it show you
13 exit after being unchained from the wall?

14 A I don't recall.

15 Q Okay.

16 A I don't recall.

17 Q After you were unchained, did anybody assist you in
18 getting up and moving out of that room ---

19 A No. No one assisted me.

20 Q All right. When you left the room to go with the City
21 of Columbia officer, were you in handcuffs?

22 A Yes.

23 Q Were you in handcuffs from the time you left Sumter
24 Street til you got to the Datamaster room?

25 A Yes, I was.

1 Q Where did you go after leaving the Datamaster room?

2 A After leaving the Datamaster room, we exited the
3 building and went down to the car that transports you from
4 the City police headquarters to the detention center.

5 Q Okay. After the Datamaster, though, did you go to
6 Palmetto Richland?

7 A Oh, yes. Yeah. We did.

8 Q Did the City of Columbia officer take you there?

9 A He did.

10 Q Were you in the back of his car?

11 A Yes, I was.

12 Q When you got to Palmetto -- first -- let me go back.
13 During the time that you were being investigated on Sumter
14 Street, what, if anything, did you observe about the City
15 of Columbia officer's command of his investigation
16 techniques?

17 A I did take notice that he was reading from a book for
18 parts of the test. As he was administering the test, he
19 was reading from a manual.

20 Q All right.

21 A Some sort of small book.

22 Q What was you -- what was your view -- or what -- of
23 his appearance as he gave you the commands of this test?

24 A It gave me the impression that he was kind of new,
25 wasn't really experienced with giving those tests.

1 Q All right. Did he refer to the manual on more than
2 one occasion?

3 A I believe twice.

4 Q All right. As you were going to the hospital for the
5 urine test, did you observe or hear the City of Columbia
6 officer make any contact with this supervisor?

7 A Yes, I did. He made a phone call.

8 Q All right. What did you hear him say?

9 A I heard him asking about the process for the -- this
10 was actually after we were getting ready to leave -- the
11 process about how to procure the urine sample, steps he
12 should take.

13 Q Did the City of Columbia officer appear to know what
14 he was doing?

15 A Not at that time.

16 Q Did anybody -- first of all, do you know who he
17 contacted?

18 A I don't.

19 Q I know you don't know title, but do you know who it
20 was by name?

21 A I don't know who that was.

22 Q Did anyone from the City of Columbia police department
23 come to Palmetto Richland to assist with the collection of
24 the sample?

25 A No one came.

1 Q All right. Did the City of Columbia officer attempt
2 to give the urine to the hospital staff?

3 A Yes, he did.

4 Q What did the hospital staff tell him?

5 A They informed him that they don't collect the sample
6 nor receive the sample, that he takes that with him.

7 Q All right. Did he appear to know what to do with it?

8 A No, sir.

9 Q As you entered the emergency room, were there other
10 people there?

11 A It was plenty of people in the emergency room.

12 Q Did those people see you in handcuffs?

13 A Yes, they did. If they were looking at me, they saw
14 me.

15 Q You didn't talk to anybody, though, did you?

16 A No one.

17 Q So whatever they assume -- whatever crime they assume
18 you committed was up to them to figure it out; was that
19 right?

20 A Yes.

21 Q Did people look at you?

22 A They did.

23 Q What did you do?

24 A What could I do? I didn't do anything. Just followed
25 the officer's orders.

1 Q How'd you feel?

2 A Felt embarrassed once again, kind of helpless.

3 Q Had you done anything wrong to be arrested?

4 A No, I had not.

5 Q You were told to render a urine sample?

6 A Yes.

7 Q Were you handcuffed?

8 A Yes.

9 Q Were you told to render a urine sample while you were
10 in handcuffs?

11 A Yes.

12 Q What did the City of Columbia officer do while you
13 were providing the sample?

14 A He led me to the restroom and he stood there.

15 Q So you urinated in front of him.

16 A Yes.

17 Q How'd that make you feel?

18 A Once again, embarrassed, helpless.

19 Q After you provided the sample, did the City of
20 Columbia officer take it?

21 A It was placed inside of a bag that they gave him, kind
22 of a sealable bag. But he had it.

23 Q And he did attempt to give it to the hospital people,
24 and they said, "We don't do that."

25 A That's correct.

1 Q Did he call the supervisor that -- excuse me -- did he
2 call someone at that point?

3 A This was once we were back inside the car, he made
4 another call.

5 Q What was that call about?

6 A I don't recall the exact contents of that call. But
7 there was another call once we were leaving the emergency
8 room.

9 Q Was it about the sample or what to do with the sample?

10 A It did have to do with the sample, but I don't
11 remember exact details on that call.

12 Q Where did the City of Columbia officer take you once
13 you left Palmetto Richland?

14 A That is when we went back to the City of Columbia
15 headquarters to be given to transport.

16 Q Was the City of Columbia police going to transport you
17 -- not this officer, but somebody different, I assume?

18 A Yes, there was a driver. A City police officer was a
19 driver.

20 Q Did you have a conversation with that City police
21 officer?

22 A I did.

23 Q What was that conversation?

24 A He asked me what was I being arrested for, and I told
25 him and I showed him the paperwork that I still had rolled

1 up in my hand. And he took a look at the paperwork, and he
2 commented that I really shouldn't be arrested for the
3 results that he saw on the paperwork, but that he was not
4 Officer Duecker's superior officer, so he couldn't say
5 anything about it to him.

6 Q And he didn't.

7 A And he didn't.

8 Q Where did you go?

9 A I was carried to Alvin S. Glenn Detention Center.

10 Q How did that make you feel?

11 A Once again, embarrassed, hopeless, ashamed.

12 Q You had done your best.

13 A I did.

14 Q And you were still going to jail.

15 A I was.

16 Q You'd done nothing wrong. Still going to jail.

17 A No.

18 Q You know, you can't take photographs inside the
19 detention center. Would you tell the jury -- just walk me
20 and them through the process that you went in -- as you
21 went into the detention center.

22 A Well, when you're taken in, you're taken in -- into
23 booking. And so they process your name and your paperwork.
24 They fingerprint you, they take pictures. You're still in
25 handcuffs. It's lots of noise, lots of people there, lots

1 of chaos. There are Correction Officers yelling, inmates
2 yelling. It's just -- you're kind of moved through like
3 cattle in a herd, and you really aren't treated well at the
4 detention center.

5 Q Nobody there believed you were innocent, did they.

6 A No. They hear it all the time.

7 Q It was -- as you went through booking, what happened
8 next?

9 A After booking, you're placed into a holding area, like
10 a general area with seats. And then they start assigning
11 you to rooms where they hold you until they decide what to
12 do with you or when you're going to bond court.

13 Q And the particular area where you were housed, was
14 that -- was that a confined location? Was it confined by
15 bars or doors?

16 A For two rooms that they placed me in, I was behind
17 doors. Once we were seated in an open area, and then we
18 were moved to rooms. And then sometimes we moved to
19 another room depending on what space was needed.

20 Q Speaking of space, would you describe the -- the use
21 of that -- how that space was used.

22 A Well, in one particular cell there was between 9 and
23 12 people in a single person cell. There wasn't room for
24 everyone to sit. Some people were standing. Some people
25 were sitting on the sink or the toilet area, standing. It

1 was pretty bad.

2 Q How'd you feel about that.

3 A Felt pretty disgusted. There's not much you can do
4 about the situation. Just try to make the best of it.
5 It's pretty cold and rough in there. Kind of hard to
6 describe that.

7 Q You waited on a bond hearing, which is where you're
8 given bond and you're given your papers to appear; is that
9 correct?

10 A That's correct.

11 Q And what time did you exit the Alvin S. Glenn
12 Detention Center?

13 A I didn't leave there until around six that -- that
14 evening.

15 Q So from approximately 1:30/1:40 on the night of the
16 19th, until that afternoon, at 6 p.m., you were in the
17 custody of the City of Columbia Police Department.

18 A I was.

19 Q And do you remember what time you arrived at the Alvin
20 S. Glenn Detention Center?

21 A I don't remember the exact time because I had nothing
22 to tell the time with. My things were locked up, but it
23 had to have been after 2 a.m.

24 Q Okay.

25 MR. REEVES: Your Honor, may I have one second,

1 please?

2 THE COURT: Yes, sir.

3 (Brief pause.)

4 Q Mr. Hassell, when you left the detention center, you -
5 - you were given a form that told you when to appear in
6 court to defend yourself or take care of these charges; is
7 that correct?

8 A That is correct.

9 Q Now, the City of Columbia charged you with two crimes.
10 What were those?

11 A The first ticket was an improper turn, and the second
12 ticket was a driving under the influence ticket.

13 Q Did you make an improper turn?

14 A I did not.

15 Q Were you driving under the influence?

16 A I was not.

17 Q If we had the video tape, would the video tape
18 demonstrate that you complied successfully and orderly with
19 the request the investigating officer made when he asked
20 you to do all those physical things?

21 A Yes, it would.

22 Q When you went to court on the first time, which I
23 believe was April the 5th or somewhere along there, about
24 two months later -- is that correct, roughly, is that
25 correct?

1 A Yeah. It was around April.

2 Q All right. You had to appear; is that correct?

3 A That's correct.

4 Q Did you have a lawyer?

5 A I did not.

6 Q Why did you not have a lawyer?

7 A I didn't feel I would need one at that time.

8 Q All right. Were you still expecting somebody to do
9 the right thing?

10 A I was hoping that things could be rectified there at
11 the court.

12 Q All right. Well, what happened at court?

13 A At the court, I had a conversation with Officer --
14 Officer Duecker, and he expressed to me that he was gonna
15 try to get the tickets thrown out. He also expressed to me
16 that he was sorry that this had to happen to me and that he
17 realized that policing was not for him.

18 And I mentioned to him that I was gonna request a jury
19 trial, and he said by that time, he probably would not be
20 with the City anymore anyway and it would get thrown out.

21 Q But it was your intent, before you had the
22 conversation, to request a jury trial.

23 A It was.

24 Q Did -- okay. And that jury trial date came up at some
25 point months down the road; is that right?

1 A That's correct.

2 Q Did it come up during 2014 or was it later?

3 A I don't recall. I don't recall exactly when it came
4 up.

5 Q That's fine.

6 At the first date that you appeared in court, did
7 anybody provide you any of the evidence that the City of
8 Columbia had gained in its investigation of your driving on
9 February the 19th?

10 A Nothing was presented to me at that court session.

11 Q When you went back the second time, did anybody
12 present to you urine results -- excuse me -- urine test
13 results or the videos?

14 A No one presented anything at that court presentation
15 neither.

16 Q Did you ever tell the City of Columbia to destroy any
17 of the evidence that they'd gained or gathered against you?

18 A No. I had no communications with the City of
19 Columbia.

20 Q Before today, has the City of Columbia ever told you
21 that they made a mistake?

22 A Never.

23 Q First you've heard of that today?

24 A Yes, sir.

25 Q Mr. Hassell, in the complaint, which is not evidence,

1 but we -- we filed a complaint to come to this court to
2 have this matter resolved. You have -- were you arrested
3 wrongly?

4 A Yes, I was.

5 Q You heard the City attorney in her opening talk about
6 probable cause, which is -- I'm not sure of the language,
7 but it was a suspicion that something was going on, good
8 faith belief that there was something going on. Was there
9 any possible way under the sun, since man has been on the
10 earth, that that officer could have smelled alcohol in your
11 car?

12 A None at all.

13 Q You have alleged that the officer's conduct, by
14 handcuffing you and arresting you in front of two sets of
15 people, has defamed you, placed you in a bad light. Do you
16 believe that's what happened to you?

17 A I do believe that's what happened.

18 Q Is -- is your -- I mean, there's -- like all of us, I
19 mean, I'm sure you're not perfect. You do some good things
20 and you do some bad things. But is your reputation
21 important to you?

22 A It's very important to me.

23 Q Did the City of Columbia officer's actions and the
24 resulting prosecution affect your reputation?

25 A I believe that it did.

1 Q Along those lines, we all hear on T.V. about that one
2 phone call that the arrestee gets. Did you get a phone
3 call?

4 A I did get a phone call.

5 Q Who did you call?

6 A I called my mother, but I couldn't get through to her.
7 And so I called my aunt.

8 Q As you heard the phone ringing for your aunt to pick
9 up, what was going through your mind?

10 A I hated to have to call my aunt. My aunt stresses a
11 lot, but she was the only one I knew that I could reach if
12 I couldn't reach my mother. And to be able to explain to
13 her where I was and why I was there, I think pretty much
14 was pretty stressful for her. I could hear it in her voice
15 as she cried.

16 Q Were you embarrassed?

17 A I was.

18 Q Humiliated?

19 A I was.

20 Q Helpless?

21 A I was..

22 Q You knew ultimately that your mama would find out.

23 A Correct.

24 Q How'd that make you feel?

25 A Well, once again, you would hate for them to have to

1 worry about or go through those kinds of emotions over what
2 I thought was really nothing for no reason. But I knew
3 that my aunt would communicate with my mother, so I had to
4 get the message to her.

5 Q Were you scheduled to work the next day?

6 A Yes, sir.

7 Q At USC-L.

8 A That's correct.

9 Q You did not work that day.

10 A No, I did not.

11 Q Okay. Who called the people at USC-L to let them know
12 that you weren't going to be at work that day?

13 A I found out that my sister had to be the one to call
14 my supervisor at work and explain to them the conditions
15 and everything that was going on.

16 Q All right. Is that something you wanted to happen?

17 A Never.

18 Q Darris, would you describe the community at USC-L as
19 far as among the staff and administration.

20 A USC-L is a small, regional, two-year campus of the
21 University of South Carolina. So we there really work
22 together kind of as a family unit. Everyone knows
23 everyone. Teachers and the students have a very good
24 rapport. The co-workers are close. The administration is
25 close with the faculty.

1 Q Is that why it was so bothersome that they would hear
2 this?

3 A Right.

4 Q News travels fast.

5 A It does.

6 Q Did you have an opportunity after you got out of jail
7 to speak with your family, the administration and staff at
8 USC-L?

9 A I did.

10 Q Was it your decision to explain to them what happened
11 so that you could keep your reputation intact?

12 A Right. I felt they were owed an explanation. I was
13 grateful for the fact that they knew me and the kind of
14 person that I am. But it still -- I owed them an
15 explanation as to what happened and how it happened.

16 Q Did -- did you want to tell that story or you did it
17 because you had to?

18 A I did it because I had to do it.

19 Q Who did you speak with at USC-L?

20 A I spoke with Dean Cox, which is the Academic Dean. I
21 also spoke with Fran Gardner, who is my Division Chair
22 supervisor. And I spoke with my student assistant,
23 Christopher Harris.

24 Q Did it embarrass you to tell that story?

25 A With all three, it did.

1 Q But they know you.

2 A Yes.

3 Q What was their response?

4 A They couldn't believe it. They all had the same
5 reaction, "Can't be, can't be possible. You don't drink."

6 Q At -- now, you -- you didn't lost your job.

7 A Thank goodness, no.

8 Q They accepted your explanation.

9 A They did.

10 Q At -- you didn't -- you didn't -- you didn't lose your
11 job?

12 A Thank goodness, no.

13 Q They accepted your explanation?

14 A They did.

15 Q All right. In the time frame from when you were in
16 jail until when you were able to explain yourself, do
17 you know what any of those thoughts were for those people?

18 A Only later, from speaking with them later, did I find
19 out what their thoughts were then.

20 Q And was your explanation, you believe, satisfactory to
21 them?

22 A Yes. It was for all.

23 Q Should you have had to explain a situation like this?
24 In other words, should this have happened?

25 A No.

1 Q Again, throughout the process when you saw the City of
2 Columbia officer at court and when you went back to court
3 the second time, these charges, the two charges you
4 mentioned, they were pending against you; is that right?

5 A That's correct.

6 Q They were on your record against you; is that right?

7 A That's correct.

8 Q Now, at any time during this entire process were you
9 ever disrespectful to the City of Columbia officer?

10 A Never was.

11 Q Did you fight with him over the situation?

12 A I did not.

13 Q Did you raise your voice with him over the situation?

14 A I did not.

15 Q Were you angry that it happened?

16 A I was upset.

17 Q Did you hold your emotions?

18 A I did.

19 Q Why?

20 A I held those emotions because nobody cares about how
21 you feel, basically. I knew that there was a way to settle
22 this, and I just knew that it wasn't there on the street.
23 It wasn't in jail, maybe not even sometimes in court. But
24 there's a way to settle it.

25 Q Are you here today to have these folks settle this

1 matter for you?

2 A I am.

3 Q Have you, in any way, taken to social media to vent or
4 to express your opinions about this matter?

5 A No, sir. I would not.

6 Q Have -- is your intent then to let this particular
7 courtroom and this particular jury make that decision for
8 you?

9 A I believe this is the venue for that to take place.

10 Q Darris, do you want this jury in this case to
11 return a verdict of money damages for you?

12 A Yes, I would.

13 Q And is -- this is your only day in court.

14 A This is it.

15 Q The -- you -- you have heard from the City of
16 Columbia, from their 30(b)(6) deponent, that is their
17 representative. Based on what you heard the City of
18 Columbia say in that deposition, at any time since this
19 event happened, February 19, 2014, has anybody with
20 authority at the City of Columbia looked into this matter?

21 A No one.

22 Q Has anybody at the City of Columbia investigated this
23 matter to determine what happened to those two pieces of
24 evidence that were taken from you?

25 A No one.

1 Q As of today, the City of Columbia does not know what
2 happened to either one of these two pieces of evidence, do
3 they?

4 A They don't.

5 Q The City of Columbia broke it's own rules by losing
6 the evidence.

7 A They did.

8 Q The City of Columbia has admitted to breaking those
9 rules, at least through testimony; is that correct?

10 A That is correct.

11 Q Had those rules been followed, would you have gone to
12 jail that night?

13 A No.

14 Q In opening statement, the City attorney indicated that
15 a mistake was made. But breaking a rule is different than
16 a mistake, isn't it?

17 A It is.

18 Q The rule tells you what to do, correct?

19 A That's correct.

20 Q Gives you written instructions what to do. No
21 excuses, right?

22 A That is correct.

23 Q So it's a lot more than just a mistake, isn't it?

24 A To me it is.

25 MR. REEVES: Mr. Hassell, please answer any questions

1 the city attorney may have.

2 THE WITNESS: Yes, sir.

3 THE COURT: Before you go, I'm going to give the jury
4 a short break.

5 Members of the jury, I gonna ask you to go to the room
6 -- jury room. Please don't talk about this case. Once
7 again, the time to do so is at the very end. So I'm going
8 to give you a moment to refresh yourselves and then we'll
9 come back. Okay?

10 (Jury exits the courtroom at 11:25 a.m.)

11 THE COURT: All right. We'll be at ease for a few
12 minutes.

13 (To the witness) And you can step down. You just
14 can't talk to anybody about your testimony. But you can
15 step down.

16 (Briefly off the record.)

17 THE COURT: All right. Is everybody ready?

18 MR. REEVES: Yes, Your Honor.

19 THE COURT: (To the bailiff) All right. Invite the
20 jury to come back in.

21 (Jury enters the courtroom at 11:45 a.m.)

22 THE BAILIFF: The jurors are now present, Your Honor.

23 THE COURT: All right. Thank you.

24 Welcome back, members of the jury. Ms. Ham, you may
25 cross-examine.

1 MS. HAM: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. HAM:

4 Q Good morning, Mr. Hassell.

5 A Good morning.

6 Q Did you know Officer Duecker before February 19, 2014?
7 Had you ever met him?

8 A No, I had not.

9 Q Okay. And you testified that you were compliant and
10 respectful with all the officer's requests.

11 A Yes, ma'am.

12 Q Was he respectful to you?

13 A He was.

14 Q Okay. Do you have any physical injuries from this
15 incident?

16 A None.

17 Q Okay. And I believe you indicated that you take
18 medication?

19 A I do.

20 Q That's for a chronic condition?

21 A Yes.

22 Q Okay. Did you miss any doses of your medication
23 because of this incident?

24 A I did.

25 Q How many doses did you miss?

1 A I missed three.

2 Q Does that change the prognosis of your diagnosis?

3 THE COURT: Ms. Ham, I think the jury's straining to
4 hear you.

5 MS. HAM: I apologize.

6 THE COURT: Is that right, members of the jury? Can
7 y'all hear?

8 (No audible response.)

9 THE COURT: Okay.

10 MS. HAM: I'm going to stand over here just so I'll be
11 a little closer to them.

12 BY MS. HAM:

13 Q With you missing a few doses of your medication, has
14 that changed the diagnosis of -- of -- changed the
15 prognosis of your diagnosis?

16 A It doesn't change the prognosis, but it does affect
17 it.

18 Q Okay. In what way?

19 A In missing doses could cause my viral load to be
20 different.

21 THE COURT REPORTER: I'm sorry. Your what?

22 THE WITNESS: Viral load.

23 Q And in this case, did it?

24 A No.

25 Q You also mentioned that you saw some people across the

1 street from the emergency room when you were being
2 arrested. Did you know any of those people?

3 A I don't.

4 Q Have you heard from any of those people?

5 A I have not.

6 Q Did any of those people know you?

7 A No.

8 Q Has anyone written you a letter saying, "You know, I
9 saw you across the street getting arrested, and you know, I
10 think this or that about you"?

11 A No. No one has written me a letter.

12 Q When you went to the emergency room, you indicated
13 that the emergency room was full of people.

14 A That's correct.

15 Q Did you know any of the people at the emergency room?

16 A No, I did not.

17 Q Did anyone recognize you?

18 A Not that I'm aware of.

19 Q Have you heard from anyone that indicated that they
20 were in the emergency room that night that you were there?

21 A No, I have not.

22 Q Okay. When did you go to bond court on this charge,
23 Mr. Hassell?

24 A Bond court would have been the next morning. Well,
25 really, the same morning. I went in after 1 -- after 2

1 a.m., so that same morning, around 10.

2 Q About 10 a.m.? And were you given a bond?

3 A No.

4 Q What happened?

5 A I was detained.

6 Q And why were you detained?

7 A I was detained because I was being held for other
8 charges from another county.

9 Q Isn't it true that you had two outstanding bench
10 warrants from Lexington County?

11 A Yes.

12 MR. REEVES: Your Honor, I object. We have only
13 claimed damages for his stay at the Richland County
14 Detention Center. These two tickets from 21 years ago are
15 not relevant to this case.

16 THE COURT: Sustained. Disregard that last question,
17 members of the jury. Don't let it enter your mind during
18 the course of your deliberations.

19 MS. HAM: May we approach, Your Honor.

20 THE COURT: Yes.

21 (Bench conference.)

22 THE COURT: Go in the jury room, ladies and gentlemen,
23 don't discuss this case. I'll bring you back out shortly.

24 (Jury exits the courtroom at 11:49 a.m.)

25 THE COURT: Thank you. Now, let's make a full record

1 of this. I think at the beginning of this trial, he raised
2 the issues whether or not there were any convictions that
3 were impeachable, you said there were not. Now, you're
4 going into some tickets that happened 20 years ago; is that
5 correct?

6 MS. HAM: Correct, Your Honor. I was not going to go
7 into ---

8 THE COURT: Well, stop. As I clearly understood this
9 trial, there was nothing in his record that you were going
10 to try to impeach him on. Am I right so far?

11 (No audible response.)

12 THE COURT: And what did you just try to do?

13 MS. HAM: Your Honor, I was only going into the fact
14 that there were outstanding ---

15 THE COURT: Didn't you raise the -- you -- you want me
16 to read it back?

17 MS. HAM: I -- I don't, Your Honor. There's --
18 there's a case ---

19 THE COURT: Didn't you mention something -- forget the
20 cases. The clear understanding that I had between the
21 parties was there was nothing in his background, there was
22 no conviction that he would be impeached on. Is that clear
23 to everybody? Is that my understanding?

24 (No audible response.)

25 THE COURT: Yet you were going into some tickets that

1 he got 20 years ago?

2 MS. HAM: Yes, Your Honor. I ---

3 THE COURT: How is that relevant? Is that
4 impeachable?

5 MR. REEVES: No.

6 THE COURT: You put me in the position -- (to Mr.
7 Reeves) if you want a mistrial, I've got to entertain it.
8 I don't know if you want one or not, but I don't think you
9 do at this point in time. But --

10 MS. HAM: Your Honor, if I could explain the ---

11 THE COURT: (To Mr. Reeves) I tried to give a curative
12 instruction to disregard those remarks. I'll let you think
13 about it. You talk to your client about that. Okay.

14 (Off the record at 10:51 a.m.)

15 (On the record at 12:14 p.m.)

16 THE COURT: Is everybody ready?

17 MR. REEVES: Your Honor, may I place on the record
18 what we talked about?

19 THE COURT: Yes, sir. Go ahead.

20 MR. REEVES: Your Honor, you were gracious enough to
21 offer us the opportunity to declare -- or request a
22 mistrial based on the mention of these prior tickets that
23 are not impeachable, and are not relevant to the damages.

24 I have spoken to Mr. Hassell and he declines to move
25 for a mistrial, but we would ask the Court if it would

1 consider to explain to the jury in its curative instruction
2 that we're talking about traffic tickets.

3 THE COURT: Say that again now.

4 MR. REEVES: For the jury to disregard the -- the
5 questions and answers because it was relevant to traffic
6 tickets, nothing else, just relevant to traffic tickets.

7 THE COURT: All right. That's your position. What's
8 the City's position?

9 MS. HAM: Your Honor, the City's position is, as we
10 discussed ---

11 THE COURT: Beg your pardon?

12 MS. HAM: The City's position is, as we discussed back
13 in chambers, I -- I'd just like for to move on. I don't
14 even think that I really need to ask him anymore questions
15 with regards to ---

16 THE COURT: I agree with that.

17 MR. REEVES: I'll withdraw that if ---

18 THE COURT: All right. I've known everybody in here a
19 long time. Nobody means any harm, but this -- this is part
20 of trying cases, this is what happens all the time. I've
21 seen it for 20-some years and experience it for 20-some
22 years when I was a lawyer. So with that in mind, we'll
23 just move on. Is that fair enough to everybody?

24 MR. REEVES: Yes, sir.

25 THE COURT: All right. Very well. Bring the jury in.

1 (Jury enters at 12:16 p.m.)

2 THE BAILIFF: The jurors are seated, Your Honor.

3 THE COURT: Thank you. Welcome back, members of the
4 jury.

5 (To Ms. Ham) You may continue with your cross-
6 examination.

7 MS. HAM: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. HAM:

10 Q Mr. Hassell, did you lose your job because of this
11 incident?

12 A I did not.

13 Q Did you lose the opportunity for any promotions?

14 A Not that I'm aware of.

15 Q You indicated that your USC Lancaster faculty there
16 was kind of like a community.

17 A That's correct.

18 Q Correct? Did you lose any -- I -- I guess what I'm
19 trying to find out is did you miss any opportunities with -
20 - with regards to your profession because of this incident?

21 A Well, I guess that remains to be seen. I haven't
22 seen any repercussions from it, but I don't know.

23 Q Okay. Were you up for any promotions?

24 A Yes.

25 Q Did you receive a promotion?

1 A Not yet.

2 Q Oh. You're up for a promotion now.

3 A Correct.

4 Q Okay. Were you up for a promotion in 2014?

5 A No, I was not.

6 Q Okay. How many days a week do you teach there?

7 A Five days a week.

8 Q And that's full time?

9 A Full time.

10 Q You teach every day or do you hold office hours some
11 days, you teach some days?

12 A I teach Monday through Thursday, and I do office hours
13 and tutoring on Fridays.

14 Q Okay. And it's considered full time. I asked you
15 that.

16 A It is full time.

17 Q What's your salary with USC?

18 A \$48,000.

19 Q How long have you been working there?

20 A 20 years.

21 Q Okay. That's what I thought you said.

22 Mr. Hassell, isn't it true that you never -- with
23 regards to the charges that this case comes from, isn't it
24 true that you never filed a complaint against Officer
25 Duecker?

1 A I never filed a complaint against Officer Duecker, no.

2 Q Did you know you had the ability to do that?

3 A I wasn't aware of any formal process to do that.

4 Q Did you ever call the police department to -- to say,

5 "Hey, I feel like this officer disregarded what I was

6 saying and falsely arrested me"?

7 A No. To be honest with you, after that night, I wasn't

8 sure if anything would be heard. I -- I tried reasoning

9 with the officer himself that night, and it was not

10 successful.

11 Q Did you ever request -- did you ever make a request

12 for the evidence in this case?

13 A I personally did not.

14 Q So at the time you were going back and forth to court,

15 you didn't know whether or not a video existed, did you?

16 A I did not.

17 Q And you -- at that time, you had no reason to

18 believe that anything at all was wrong with the urine

19 sample; is that correct?

20 A I knew that there was nothing wrong with the urine

21 sample. I provided it.

22 Q With regards to the testing, I should have said.

23 A I didn't -- I didn't know what happened to it after I

24 left.

25 Q Right. You mentioned -- oh. Excuse me. I didn't

1 mean to throw my pen at you. You mentioned that you had to
2 get your -- that they towed your car --

3 A They did.

4 Q -- from the incident. How much did you have to pay to
5 get your -- to recover your car?

6 A That was \$75.

7 Q Okay. And were you -- did you have any trouble
8 getting your car back?

9 A No.

10 Q If you'll give me one moment, Mr. Hassell.

11 A Yes, ma'am.

12 (Brief pause.)

13 Q I think that's all the questions that I have. Thank
14 you.

15 A Thank you.

16 THE COURT: All right. Any thing on redirect, Mr.
17 Reeves?

18 MR. REEVES: Not too much.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 BY MR. REEVES:

22 Q Mr. Hassell, the city attorney asked you about
23 whether you had filed a complaint or report about this
24 particular incident.

25 When you went to the first hearing, were you told by

1 the officer that he was waiting on the urine sample results
2 and that was one of the reasons why the case might be
3 continued?

4 A I don't quite recall. I -- I know that we had
5 conversations. I was more focused on the ones where he was
6 talking about the charges themselves and --

7 Q Given -- I'm sorry. Did you want to say something
8 else?

9 A I just wanted to say I didn't quite recall all of our
10 conversation, but I do remember that we did discuss that he
11 wasn't planning on being around by the time the case came
12 to trial as an officer.

13 Q But they weren't dismissed that day, were they?

14 A They were not.

15 Q The city attorney asked you about filing the complaint
16 and report. Based on your experience with the City of
17 Columbia up until right now, what, if any, good would that
18 have done?

19 A Zero. Nothing.

20 Q I asked you --

21 MR. REEVES: Sorry, Your Honor, four questions.

22 Q I asked you, on direct, about the deposition of the
23 city's representative, where not one single investigation
24 or report has been generated because of this lost evidence;
25 is that correct?

1 A That is correct.

2 Q Would anything you have done to the City, short of
3 bringing this lawsuit, caused there to be any changes in
4 the way this case was handled?

5 A No, there would not have been.

6 Q Thank you.

7 THE COURT: Anything on re-cross?

8 RE-CROSS EXAMINATION

9 BY MS. HAM:

10 Q Mr. Hassell, what happened to the charges?

11 A The charges were dismissed at the second court
12 hearing.

13 Q Okay. Has your record been expunged?

14 A It has.

15 Q No further questions.

16 THE COURT: All right. Anything further?

17 MR. REEVES: No, sir. Thank you.

18 THE COURT: All right. You may step down.

19 (The witness complies.)

20 THE COURT: How long is your next witness, Mr. Reeves?

21 It's 23 after 12.

22 MR. REEVES: I'm sorry, I can't see it. Maybe 25
23 minutes.

24 THE COURT: Okay. That's fine. That's fine. We'll
25 go to one o'clock, ladies and gentlemen, in case y'all are

1 wondering if anybody else is hungry other than the Court
2 Reporter. Okay.

3 (Courtroom laughter.)

4 THE COURT: Call your next witness.

5 MR. REEVES: Call Mr. Duecker to the stand.

6 THE COURT: All right.

7 CAMERON DUECKER, having been first
8 duly sworn, testifies as follows:

9 THE WITNESS: My name is Cameron Duecker. My last
10 name is spelled D-U-E-C-K-E-R.

11 THE COURT REPORTER: Spell Cameron for me, too,
12 please.

13 THE WITNESS: C-A-M-E-R-O-N.

14 DIRECT EXAMINATION

15 BY MR. REEVES:

16 Q Good morning, Mr. Duecker. How are you?

17 A I'm doing well. How about yourself?

18 Q Fine. I'm going to ask you some questions today
19 because as the story unfolds, as you well know, you and Mr.
20 Hassell on the street that night.

21 A Yes, sir.

22 Q Okay. You indicated that when you approached the car,
23 based on your report, that there were three things that
24 came to your attention, one of which was the smell of
25 alcohol; is that correct?

1 A That's correct.

2 Q The second was glassy eyes.

3 A That's correct.

4 Q And the third was a slightly slurred speech.

5 A That's correct.

6 Q Officer Duecker, would you agree that the Datamaster
7 video that we have was taken within about 30 minutes of
8 your arrest of Mr. Hassell; is that correct?

9 A I believe the Datamaster returned a sample at
10 approximately at 02-45, and I placed him under arrest at
11 approximately 01-41. So that's correct.

12 Q Okay. Would you also agree with me that the
13 presentation that Mr. Hassell has on the SLED maintained
14 Datamaster video was significantly and substantially the
15 same as his presentation at the scene?

16 A I would say similar, yes.

17 Q Okay. Would you also agree with me that video tape
18 demonstrates that Mr. Hassell did not have any problem with
19 his control of his motor functions including walking?

20 A I haven't viewed the video in awhile, sir. I -- I
21 wouldn't be able to attest to what's on the video off the
22 top of my head.

23 Q Well, I mean, the video shows what it shows. Did you
24 ever assist -- or you didn't ever assist Mr. Hassell with
25 walking or moving from one point to other -- another, did

1 you?

2 A Nothing beyond what was necessary to control --
3 control of him as an arrested individual.

4 Q All right. And when you say that, you had his [sic]
5 hand on his hand or his hands cuffed, correct?

6 A That's correct. Either on his arm or on the handcuffs
7 themselves, which is in accordance with my training.

8 Q The improper turn that you allege he made was he
9 moved from the left turn lane on Taylor Street to the far
10 outside lane on Sumter Street; is that correct?

11 A Yes, I believe that is correct. I believe if I --
12 according to my report, he turned from Lane 1 on Taylor
13 Street to Lane 2 on Sumter Street, which is the inside lane
14 to the outside lane.

15 Q All right. You indicated that's one of the cues that
16 you had that led you to believe that he might be
17 intoxicated; is that correct?

18 A Well, at that point, I -- I pulled him over for the
19 improper turn. I had -- beyond that, I had no indication
20 that he was intoxicated prior to making contact with him.

21 Q Did you believe that -- based on your training and
22 experience, that you had an individual, who's driving at a
23 very early hour in the morning and makes a maneuver, is
24 there something in your head that it tells you there could
25 be alcohol or drugs involved?

1 A Anything's possible prior to making contact. I tried
2 very -- in my training experience, I tried very -- very --
3 I tried very hard to avoid presupposition upon any traffic
4 stop.

5 Q All right. You would agree with me also that the
6 turning maneuver that you said that you saw is rarely
7 indicative of an impaired driver, is it?

8 A Depends on the impaired driver. Any -- any kind of
9 traffic violation can indicate an impaired driver.

10 Q Remember in the deposition when you and I discussed
11 that -- that your training, your DUI training comes from
12 the National Highway Traffic Safety Administration?

13 A That is correct.

14 Q And I provided to you all the cues that National
15 Highway Traffic Safety Administration provides, and an
16 improper turn only accounts for about four percent of DUIs.
17 Do you remember when I was talking about that?

18 A I believe I recall.

19 Q Would you agree with that?

20 A I -- my experience is this is the only time an
21 improper turn led to a DUI.

22 Q Which was not a DUI, correct?

23 A In the end, without the urine sample results, I cannot
24 say one way or the other. The case was dismissed, so ...

25 Q Officer Duecker, you just kind of brought everything

1 down to the point. You had an opportunity to take that
2 sample, and had you done it by the rules, then SLED would
3 have got the sample --

4 A That is correct.

5 Q -- and SLED would have done their job.

6 A That is correct.

7 Q And if that test had come back negative, we
8 wouldn't be talking about DUI, would we?

9 A No, I made a mistake.

10 Q I understand that, and I appreciate your candor. But
11 Officer Duecker, do you understand -- excuse me, Mr.
12 Duecker, do you understand, though, that when there are
13 rules in place that tell you, or any other officer
14 similarly situated, that you do A, B, C, D, and E every
15 time, all the time, it's not just a mistake.

16 A I understand that completely.

17 Q You broke the rules.

18 A Yes, I did.

19 Q And what happened in this case is you -- you broke
20 those rules that would have allowed anybody else, looking
21 at this picture from the outside, to make a determination
22 as to what really went on that night and whether or not
23 this gentlemen right here, that you took to jail, had
24 actually consumed anything drug wise; is that right?

25 A That is correct.

1 Q Because we know, beyond a shadow of a doubt and
2 without any hesitation, that there was no alcohol in his
3 system.

4 A That is correct.

5 Q We know that there was no beer or liquor or wine in
6 the car.

7 A That is correct.

8 Q We know, and you knew at the time, that there was no
9 containers in the car.

10 A That is correct.

11 Q There were no spills in the car.

12 A That is correct.

13 Q He had nothing on his body that had been spilled or
14 lodged there by anybody else, did he?

15 A No, not to my knowledge.

16 Q And you agreed with me, in your deposition, that it
17 would have been impossible for you to smell alcohol under
18 those circumstances, correct?

19 A It's entirely possible.

20 Q But you arrested him anyway.

21 A That's correct.

22 Q You didn't have to arrest him, did you?

23 A Within the guidance I was given and my discretion, I
24 was required to place him under arrest for his failing the
25 five field sobriety tests.

1 Q And we don't have any video of the field sobriety
2 tests, do we?

3 A I do not, no.

4 Q He disputes that he failed the field sobriety tests,
5 you understand that?

6 A I understand that. That's well within his right.

7 Q And there's no way, though, for us to know what's on
8 that video tape, is there?

9 A Unfortunately, no.

10 Q And that's true, it is unfortunate.

11 A Yes.

12 Q But you would agree with me that it's a heck of a lot
13 more unfortunate for him than it is for you.

14 A Very much so.

15 Q He went to jail and you went home.

16 A That is correct.

17 Q That wasn't a fair result, was it?

18 A Given the circumstances before my face right now, I
19 would say no, it is not fair.

20 Q And I appreciate your honesty, Mr. Duecker, I do. I
21 appreciate your honesty. And I'm sorry you're in this
22 position.

23 A I am, too, believe me.

24 Q I'm sorry. But today was the first day that I've
25 heard anybody from the City say that we made a mistake.

1 Let me ask you this -- and -- and I really do
2 appreciate your candor. I commend you for that.

3 Throughout the contact that you had with Mr. Hassell,
4 did he ever attempt to -- to fight with you?

5 A No. He's very -- he was very cooperative and
6 compliant with all of our instructions.

7 Q Did he respect you?

8 A More so than most in his circumstances.

9 Q You said he was compliant, which means he followed
10 your instructions.

11 A That's correct. No -- he -- there were a few -- he
12 questioned what I was doing, but beyond that -- which is
13 normal, asked what I needed to do, what -- why I need to do
14 that. But I provided him the answer best I could.

15 Q You admit that, at the scene, he did tell you fairly
16 early on that, "I haven't been drinking."

17 A That is correct.

18 Q And, in fact, he said, "I don't drink at all", didn't
19 he?

20 A I believe so.

21 Q And that did not sway you, though, in your conclusion
22 as to what to do, did it?

23 A No, I -- I -- every DUI says that, I'm afraid. So I
24 -- I -- unfortunately, with -- I have no knowledge of this
25 person prior to that incident. I have to take it under

1 advisement, but at the same time pursue my investigation.

2 Q And you bring up that fact this is your first meeting
3 with him. You -- you had no history to determine if he was
4 talking the way he always talked or if he was talking
5 different.

6 A Not at the time, no.

7 Q You had no history to determine how he walked and
8 whether he was walking differently that night than any
9 other night.

10 A Not at the time, no.

11 Q And in fact, you had no history to judge how his eyes
12 might have looked that night versus any other night.

13 A Not at that time, no.

14 Q Did you refer to a manual as you were doing the
15 sobriety tests?

16 A Yes, I did.

17 Q All right. According to the city attorney -- I didn't
18 know this, but according to the city attorney, this was
19 your first DUI case that had bodily fluids involved; is
20 that correct?

21 A That is -- that is correct.

22 Q All right. The medical record indicated that the --
23 that you attempted to give the urine sample to the
24 hospital.

25 A Yes, I did.

1 Q That was not correct, was it?

2 A No, it was not. I was under the impression that they
3 were going to take it and test it there at the hospital. I
4 was unaware that it was going to SLED at the time.

5 Q And you called supervision to ask them what to
6 do.

7 A Exactly.

8 Q And now prior to that, you had been trained in a 12-
9 week course, and part of that training did involve what to
10 do with bodily fluids.

11 A Yes.

12 Q All right.

13 A I believe so.

14 Q And the rule was is that once you obtained the sample,
15 you were to secure that sample, return it to the City of
16 Columbia Evidence Room that evening; is that correct?

17 A That is correct. Now, are you referring to the police
18 academy training? When you say "12-week course," I'm just
19 clarifying.

20 Q I'm sorry. Any training you might have had. Any
21 training.

22 A Okay. Yes.

23 Q All right. And then you were to retrieve that sample
24 the next business day, and then you were to take it to
25 SLED.

1 A I later found this out, yes.

2 Q All right. That was the rule.

3 A Correct.

4 Q And you didn't follow the rule.

5 A That is correct.

6 Q I understand. Okay. And in this case, not following
7 the rule had a really bad result.

8 A That's correct.

9 Q Would you agree with me that -- that if you or any
10 other City of Columbia police officer -- if you don't
11 follow the rules, then that could affect anybody that
12 you're dealing with; is that ---

13 A That's correct.

14 Q Anybody.

15 A Very correct.

16 Q Old, young, red, yellow, black, and white?

17 A That is true.

18 Q Anybody. That's why the rules are important; is that
19 correct?

20 A Yes, sir.

21 Q Mr. Hassell followed the rules that night that you
22 gave him, correct?

23 A Correct.

24 Q When you called your supervisor -- by the way, who was
25 your supervisor at the time? Do you recall?

1 A According to the report, the approving officer was
2 Corporal Morris, Corporal Christopher Morris.

3 Q Okay. Is he the -- is he the officer that came by the
4 scene while you were with Mr. Hassell?

5 A No.

6 Q That was Trooper -- Officer Montgomery.

7 A That was Officer Montgomery.

8 Q Okay. And he didn't stop. He just kind of gave you a
9 heads up to see if you were okay and he kept on moving.

10 A Oh. I'm don't -- I don't recall who that officer was.

11 Q Oh, I'm sorry.

12 A The officer that came to sit with the tow was Officer
13 Montgomery.

14 Q Okay.

15 A But I don't believe that was my supervisor at the
16 time.

17 Q Okay. When you called about your lack of
18 understanding with the rules, did your supervisor provide
19 you with instructions?

20 A I don't recall his exact instructions, but he informed
21 me of where to go for -- the first time I called him for
22 the urine sample, to -- what to do to get one. He informed
23 me to go to Richland Memorial and to have -- have them
24 receive it, have him provide the sample there at Richland
25 Memorial ER. And then pack -- take it down to evidence.

1 Q All right. But nobody, of your supervisor in chain of
2 command, came to the hospital to speak with you about this
3 particular case, did they?

4 A No, they did not.

5 Q In fact, at no time after this did anybody in your
6 chain of command speak with you about the missing video or
7 the missing urine, did they?

8 A No, they did not.

9 Q When Mr. Hassell came to court in April, after he had
10 been arrested, you met with him --

11 A That's correct. We met before court.

12 Q In your deposition, you told me that one of the
13 things that you were waiting on, though, was the urine
14 sample results; is that correct?

15 A That is correct.

16 Q At that time, you still did not know that there had
17 been -- that the rules had been broken and you weren't able
18 to get a sample, isn't ---

19 A No, I did not.

20 Q In a criminal case, the -- the prosecuting agency is
21 required, under the rules, to give whatever evidence it has
22 to the people accused; is that right?

23 A Upon a Rule 5 request, that is correct.

24 Q All right. But you didn't give anything to Mr.
25 Hassell, did you?

1 A I did not receive any Rule 5 request.

2 Q All right. But he talked with you; is that correct?

3 A That's correct.

4 Q And he requested a jury trial ---

5 A He did request a jury trial.

6 Q He told you that he did not think he was guilty,
7 didn't he?

8 A That's correct.

9 Q All right. And on that particular day in April, you
10 had a conversation, he's already related that, about you --
11 that maybe this wasn't your profession.

12 A I don't believe that conversation took place then. I
13 think that conversation took place at the second appearance
14 as I -- as I recall. I could be -- I could be mis-
15 remembering.

16 Q Okay. I appreciate that. But at some point, though -
17 - I mean -- excuse me -- at the April meeting, the charges
18 were maintained and they were not -- excuse me -- dismissed
19 until several months later.

20 A October.

21 Q October. All right. You also said that you thought
22 that you might have requested a jury trial also. Is that
23 correct?

24 A I can't recall which of us it was that requested a
25 jury trial, but I remember that that was the request that

1 was made.

2 Q Okay. Would you agree that there were people who --
3 from the hospital across the street -- or I guess anywhere
4 -- came out to view you investigating Mr. Hassell on Sumter
5 Street?

6 A I don't recall. I didn't observe anyone from the
7 hospital across the street. So I don't recall exactly if
8 anybody came out or not. I was kind of -- my focus was on
9 Mr. Hassell at the time.

10 Q Yes, sir. Do you remember or do you agree that there
11 were people at the Palmetto -- Palmetto Richland ---

12 A That is correct.

13 Q --- in the emergency room when y'all went through
14 there?

15 A Yes, there were.

16 Q He was in handcuffs.

17 A That is correct.

18 Q Would you agree that the natural inference from
19 anybody -- inference from whoever might have seen that was
20 that he'd been charged with a crime?

21 A That is correct.

22 Q And it was left to their imaginations what that crime
23 might be.

24 A I'm afraid so.

25 Q Officer Duecker, would you -- would you agree that the

1 last you saw of the in-car video of the scene was when you
2 believed you uploaded it to a server?

3 A The last time that I saw the in-car camera was when I
4 tagged it with the case number and the information of the
5 case.

6 The system had just changed from a -- we had just
7 transitioned from a DVD system to a Wi-Fi system that would
8 upload the video -- the video cameras, upon our saving the
9 information, would be up -- saved into the hard drive for
10 upload when someone would take a vehicle up to headquarters
11 and upload it through the Wi-Fi system.

12 My duty at that point was -- upon completion of this
13 arrest, when I finished the incident report and reviewed
14 the incident -- or the video for the incident report, was
15 to tag it with the case number and then mark it for --
16 which we'd mark it for uploading.

17 I do not believe I was the one who uploaded it that
18 night. I think it was uploaded the next morning by the
19 next shift. Typically that's what we would do.

20 Q Your car -- your in-car camera was working
21 perfectly, though?

22 A It was.

23 Q That night?

24 A It was.

25 Q All right. Do -- do you agree with me that the loss

1 of the video and the loss of the urine sample, regardless
2 of who in the City did it, would have deprived him from to
3 completely defend himself in the criminal charges?

4 A I believe that the loss of the video and the loss of
5 the urine would actually working in his favor as it would
6 have created reasonable doubt in the criminal case.

7 As you said in your opening statement, the burden of
8 proof is high for --for the government and the prosecution.
9 With the loss of the video and loss of the urine, there's
10 -- there is doubt as to what occurred; so therefore, he
11 would have been found not guilty more than likely in my --
12 in my - according to my training and experience.

13 Q Well, it -- it certainly deprives the City of it's
14 ability to prosecute the case.

15 A This is correct.

16 Q That's why the rules are important.

17 A This is correct.

18 Q Officer Duecker -- excuse me, Mr. Duecker, is your
19 reputation important to you?

20 A Yes.

21 Q Would you agree that when -- if someone were to
22 perform a defamatory act, like handcuffing you in front of
23 other people, you may not know any of them, correct?

24 A That's correct.

25 Q May not hear from any of them. But certainly seeing

1 you in handcuffs might influence how they look at you,
2 wouldn't it?

3 A This is correct.

4 Q They may never tell you that, correct?

5 A Correct.

6 Q You may never get a letter, correct?

7 A Correct.

8 Q But it could have completely changed the way they view
9 you, wouldn't it?

10 A That's correct.

11 Q And in fact, your reputation, according to Proverbs,
12 is "better than silver and gold," isn't it?

13 A That's correct.

14 Q We put a price on our reputation. That's why we all
15 try to protect it, correct?

16 A That is correct.

17 Q Would you agree with me that being placed in
18 handcuffs and arrested would harm someone's reputation?

19 A I would agree with that.

20 Q Would you agree with me that that harm may, in fact,
21 be difficult to assess, but it's there. Would you agree
22 with that?

23 A Stands to reason.

24 Q Yes. And it's hard to take back what I see. In other
25 words, when the picture's in my brain, it's hard for me to

1 take that back, isn't it?

2 A That's correct.

3 Q I can't un-see it potentially.

4 A Potentially.

5 Q Okay. Mr. Duecker I -- I -- I -- you're sorry about
6 what happened, aren't you?

7 A That's correct. I am -- I am very sorry that I made a
8 mistake, very sorry for the distress that it has caused Mr.
9 Hassell.

10 Q I appreciate that. Would you agree that he's been
11 damaged because of what happened?

12 A I don't know him well enough to say one way or the
13 other, but it would stand to reason that he would be.

14 Q Right. And -- and you wouldn't have any problem, if
15 the evidence supports it, with these folks returning a
16 verdict in his favor, would you?

17 A I don't -- I don't think I would have a problem, no.

18 Q Okay. Because in this particular case, what we're
19 trying to get to is the truth, aren't we?

20 A That's correct.

21 Q The truth's important --

22 A Yes.

23 Q -- just like your reputation.

24 A Very much so.

25 Q You mentioned to me in your deposition that you knew

1 Mr. Hassell was not happy/angry with what was going on
2 while you were with him, correct?

3 A That's correct.

4 Q But he did nothing other than treat you with respect,
5 did he?

6 A That's correct. He was very -- probably one of the
7 most respectful people I've arrested.

8 Q That action on his part allowed both of you to leave
9 that scene safely, didn't it?

10 A That is correct.

11 MR. REEVES: Your Honor, one minute, please, sir.

12 THE COURT: Yes, sir.

13 (Brief pause while Mr. Reeves confers with co-
14 counsel.)

15 Q Sorry.

16 A No worries.

17 Q You would agree that the videos in this case we're
18 missing were not -- are the best evidence of what they
19 recorded; would you agree with that?

20 A That's correct.

21 Q All right. And -- that's all. Thank you very much.
22 I appreciate it.

23 MS. HAM: Your Honor, do you want me to begin?

24 THE COURT: Beg your pardon?

25 MS. HAM: Do you want me to go ahead and -- or do you

1 want to ---

2 THE COURT: No. It's -- it's -- if you're ready, go
3 ahead.

4 MS. HAM: All right.

5 CROSS-EXAMINATION

6 BY MS. HAM:

7 Q Mr. Duecker, that night did you believe you were
8 acting in accordance with the city's policies?

9 A I did.

10 Q What -- at -- at that time, what did you understand
11 the policy to be?

12 A At the time, I was under the understanding that the
13 policy was that I would tag the evidence into -- the urine
14 sample into evidence, and that it would be taken from there
15 to be tested.

16 Where it was tested and whether it was tested at SLED
17 or there, I wasn't aware of at the time. But I believed at
18 the time it would be tested just like any drug sample that I
19 had tagged in, that it would be tested and I would receive
20 and email with the results.

21 Q Okay. When did you find out -- what -- what -- what
22 -- in actuality, what is the correct policy?

23 A The correct policy is that an officer tagging in a
24 bodily fluid sample at the time -- I don't know if the
25 policy's changed since then -- but at the time, the policy

1 was that the officer was responsible for taking that
2 evidence out of the evidence locker and taking it to SLED
3 themselves.

4 Q And when did you find out -- or when did you realize
5 that you had violated the policy?

6 A After our deposition.

7 Q After the deposition in this case?

8 A That's correct.

9 Q Which was a few weeks ago, a month ago maybe?

10 A A few months ago, I believe.

11 Q But you do understand that you violated the policy.

12 A I do.

13 Q Who trained you on that policy?

14 A A list of quite a few people.

15 Q Where did you get trained?

16 A I received 12 weeks of training, prior to the Academy,
17 at City of Columbia. I received 12 weeks of training at the
18 police academy and then a -- it's 45 working days of field
19 training at the department.

20 Q And I'm going to assume that you were trained on the
21 proper policy.

22 A That is correct.

23 Q Were you ever disciplined for violating this policy?

24 A No.

25 Q Why not?

1 A I -- in this specific case?

2 Q Yes.

3 A I had left the city, and I believe no complaint had
4 been filed; at least, I was not made aware of one.

5 Q Let's go back to the -- the actual stop and the
6 arrest. Tell me what happened there.

7 A I was on routine patrol, primary area was The Vista.
8 My responsibility went from Gervais Street to Calhoun Street
9 and then from Huger to Harden was the area I was responsible
10 for.

11 It was approximately 1:30 in the morning. I observed
12 a vehicle -- that I later found -- discovered was being
13 driven by Mr. Hassell -- make a improper turn from Taylor
14 Street, turning left onto Sumter Street.

15 I was positioned on Sumter Street at the intersection
16 of Taylor, waiting for the light to change, when he made the
17 proper turn. I initiated -- after the -- after the light
18 turned green for me, I initiated a traffic stop and called
19 out with it. I made -- the office at the 1400 block of
20 Sumter Street and then reading the incident report makes you
21 -- keep it fresh -- just before the intersection with
22 Hampton street, so about half a block down from -- a block
23 or two from -- I believe it was..

24 Made contact with Mr. Hassell. I introduced myself as
25 was my norm, I introduced myself as Officer Duecker, "I'm

1 with Columbia Police Department. I pulled you over today
2 for improper turn. Do you have your driver's license and
3 registration and proof of insurance?"

4 He provided me with them. At that time, I ordered --
5 observed that -- that he had -- his eyes appeared to be
6 glassy, his speech appeared to be slurring a little bit, and
7 I distinct -- observed what I believed to be odor of an
8 alcoholic beverage.

9 I asked the Defendant if he had been drinking; he
10 stated no. I asked him if he'd be willing to step out and
11 perform a few field sobriety tests for me, just to make
12 myself feel more comfortable.

13 He was more than willing to do so. He stepped out. I
14 provided him with his Miranda warnings, which is per policy
15 in -- in DUI investigations, prior to the field sobriety
16 tests because it is investigating a crime and provided you
17 read the Miranda warnings. And I performed the three field
18 sobriety tests.

19 Q Lets's talk about those three sobriety tests. What
20 were they?

21 A The first test was the horizontal -- it's called
22 the "horizontal gaze nystagmus test," the second test is
23 called the "walk and turn," and the third test is the one-
24 legged stand.

25 Q Okay. And can you describe for the jury what those

1 tests entail? Let's start with the horizontal gaze test.

2 A The horizontal -- a nystagmus is where an eye
3 involuntarily will vibrate, for lack of a better phrase.
4 And what happens is we're looking for -- we do several
5 passes with a finger. I ask -- instruct him to -- I used --
6 I believe I used a pen at this time -- to keep his eyes
7 focused on my pen and follow the pen with my -- his eyes and
8 his eyes only.

9 What we're looking for is -- at first we look for
10 resting nystagmus to see if he eye will vibrate without eyes
11 being moved at all, just looking straight ahead. Then we do
12 a few passes to see if it will vibrate and -- and
13 essentially, stutter stop as it sweeps -- as we do a sweep
14 across both sides. There's a certain time frame you have to
15 do it in, certain beats. It's a little complicated.

16 The final -- one of the final steps is we go all the
17 way to -- as far as we can -- it's called "maximum
18 deviation," which is where the eye is looking all the way to
19 the right. It's almost to the point where your eyes start
20 to hurt that you're looking.

21 And what we're looking for is to see if it will twitch
22 because you'll see it very pronounced at that point. You do
23 it both directions to look at focusing on both eyes when
24 we're doing it.

25 The final part of the test is to look for a vertical.

1 The vertical nystagmus goes up, and you -- and it can
2 vibrate up and down.

3 Typically the nystagmus cannot be faked. You cannot
4 -- you do not notice that it's being -- that it's occurring,
5 that your body is doing it. And typically it is only seen
6 if you are -- have imbibed a large number of -- amount of
7 alcohol; some form of a foreign substance, whether it be
8 illegal or legal drugs; or in cases of traumatic brain
9 injury.

10 A vertical nystagmus will only be seen if someone has
11 been drinking more than their -- their body's used to or
12 their under the influence of some form of narcotic.

13 Q And did you observe a nystagmus with Mr. Hassell?

14 A That is correct. I did. I observed a -- lack -- his
15 eyes were doing the stutter stop. He had a horizontal
16 nystagmus. It was vibrating at the maximum deviation on
17 both sides; and he had a vertical nystagmus.

18 Q Tell me about the next test, the walk and turn.

19 A The walk and turn. The next test was the walk and
20 turn. Forgive me. It's been a while since I've had to
21 perform one of these, so I don't remember if that's --
22 exactly what the details are.

23 But we have the -- the subject is instructed to put
24 their arms straight down and point their toe while they
25 receive instruction. This is part of the test. We're

1 looking for swaying, we're looking to see if they're going
2 to use their hands for balance. All of this can be an
3 indicate -- indications of some sort of inebriation.

4 We instruct them to go -- walk a certain number of
5 steps forward. We instruct them to turn around in a very
6 specific way, and then take those same number of steps back.

7 While they walk, they're supposed to keep their hands
8 directly to their -- to their sides and they're supposed to
9 walk heel to toe, the distance of the foot -- the feet, heel
10 to toe, as they walk, bringing heel to toe along a straight
11 line.

12 What we're looking for is to be stepping off of line,
13 if you don't get it quite heel to toe. We're looking for
14 swaying, using your hands for balance, and if you turned
15 around correctly in accordance with the instructions.

16 There are a lot of factors in this -- in this test,
17 and you have to stay on -- you can't just step off line
18 once, and then, oh, you failed the test. That's not how it
19 works. You have to fail several different points of the
20 test in order for it to be considered a true failure.

21 Q Did Mr. Hassell pass or fail this test?

22 A I believe he failed. According to my report, I
23 have written that he had (as read): "... difficulty keeping
24 his balance while receiving instructions; he did not touch
25 his heel -- feet heel to toe twice on steps three and four

1 walking out and step five on the way back; and he used his
2 arms for balance and stepped off the line multiple times."

3 So he -- he failed several different points of that
4 test.

5 Q And there was a third test?

6 A The third test is the one-legged stand. This one's a
7 bit more complicated and people tend to get a little more
8 freaky -- freakish about it because of how -- how difficult
9 it can be to hold your balance.

10 What you do is you stand straight up, you point your
11 foot -- point your -- pointing your toe out -- I can
12 demonstrate.

13 Q Sure. Come on down so that ---

14 THE COURT REPORTER: Just keep your voice up since
15 you're leaving the microphone.

16 THE WITNESS: Yeah. Yes, ma'am.

17 (The witness exits the stand.)

18 Q Make sure you come up far enough so that the jury can
19 see what you're doing.

20 THE WITNESS: Can everybody see me?

21 (No audible response.)

22 A (Demonstrating) What you're going to do is you're
23 going to -- we'll have you stand like this -- this is from
24 memory, forgive me. Then you're just pointing your toe,
25 stand like this, and usually we have them -- keep their

1 focus on the toe. It kind of helps keep -- keep balance to
2 keep your eyes on -- and then count to -- count "One, one
3 thousand; two, one thousand; three, one thousand, and so on
4 until we tell them to stop. Typically it's 30 seconds is
5 the maximum that we ask them to count to. It doesn't matter
6 which leg they do. We usually instruct them to use the leg
7 of their choice what foot to point.

8 Q Did Mr. Hassell perform this test?

9 A Yes, he did. And he used his arms for balancing,
10 swayed a little bit. I don't remember if that's pass or
11 fail for that one. I believe the two tests that we focused
12 on for that night was the first two.

13 In order for a DUI arrest, according to -- per the
14 training given by the Academy, you have to fail two of the
15 three tests in order to be arrested.

16 Q It was previously mentioned that you used some notes
17 or a manual or something in order to provide the tests?

18 A That is correct. When I went through the training at
19 the police academy in 2012, following the week of field
20 sobriety testing, they gave us a booklet that had the tests
21 verbatim, according to -- as per standard, the way we were
22 trained to do them. When handling a DUI, it's important to
23 be as specific and as verbatim as possible; otherwise the
24 case can be tossed out. Unfortunately, a large number of
25 DUI cases get tossed out because an officer used the wrong

1 word at some point.

2 My -- my personal policy -- this is not departmental
3 policy, but my personal policy, when doing a DUI, was to
4 read the tests from the -- from that booklet to make sure I
5 got it right. I did my part making sure that that was --
6 that was written -- that was spoken correctly, that I
7 instructed each individual specifically as to what they were
8 supposed to do so there was no question. I used that
9 booklet every DUI I did.

10 Q At what point did you determine that you were going to
11 arrest Mr. Hassell?

12 A Upon the completion of the third test.

13 Q Do you have any discretion with regards to your
14 arrests?

15 A Officers have discretion in making arrests. It's the
16 officer's judgement, based on the probable cause and
17 evidence before them, whether they should make an arrest.

18 In light of DUIs, we had this very strict instructions
19 from our supervisors and from -- I believe from the City
20 Attorney's Office at the time -- that with DUIs, that we
21 were not to down -- we weren't to downgrade to reckless and
22 we were not to call people a cab.

23 If we felt that they had -- they were under the
24 influence and we could make a DUI case, we were to place
25 them under arrest at this point.

1 And so at this point, I had very little discretion
2 once he failed the field sobriety tests.

3 Q Do you like making mistakes, Cameron?

4 A No.

5 Q Did you make this mistake on purpose?

6 A No. .

7 Q Lesson learned, huh?

8 A Very much so. I've learned a number of lessons from
9 this.

10 Q Did you -- did you believe that Mr. Hassell was
11 impaired?

12 A I believed that -- I believed he was impaired,
13 otherwise I wouldn't have made the arrest. At the time of
14 the arrest, I believed he would have -- if he would have
15 blown, he would have blown very low. I was very surprised
16 it was a zero.

17 Q And after he blew the zero, what made you decide to
18 offer him to provide the urine sample?

19 A That's policy, as far as I understood. I don't know
20 if it's a written departmental policy or just my field
21 training officer's policy. But in the case of a DUI, they
22 provide a zero sample, the next step is to look for
23 something other than alcohol.

24 The DUI law doesn't specifically state that you have
25 to be under the influence of alcohol. You can be under the

1 influence of any substance that can cause impairment, which
2 means anything from caffeine -- I've heard of DUI cases
3 being made on people who have too much caffeine.

4 So the next step was to get a urine sample. We cannot
5 get a blood sample unless there is an injury to the mouth.
6 The next step -- so therefore, the next step was for me to
7 get a urine sample in -- in order for -- successfully
8 perform my duties.

9 Q Okay. Give me one second, Mr. Duecker.

10 (Brief pause.)

11 Q When did you leave the city's employment?

12 A I left on -- I started using up my -- all of the leave
13 I had left in July of that year.

14 Q July of 2014?

15 A That's correct. My -- my last day of -- my date of
16 termination was -- I want to say, August 9th.

17 Q Okay.

18 A I want to say that.

19 Q But Mr. Hassell's court date was after your end date
20 with the city?

21 A His first court date was April -- April 29, according
22 to the ticket I wrote. His second appearance, when the case
23 was -- case was dismissed, was October of that year.

24 Q And you came back in October, even though you didn't
25 work for the City anymore?

1 A That's correct.

2 Q And tell me what happened that day.

3 A I had been called a few weeks prior, stated that they
4 wanted to clear my cases I had on the jury trial docket. I
5 was a student at the time, so I -- I said I was more than
6 willing to do that. I worked it out with my professors.

7 I made touch with -- got -- when I got there, I asked
8 the city attorney who was prosecuting the case -- I was no
9 longer an officer. I could not determine what was going to
10 happen with the cases, I could only stand as a witness.

11 But the city attorney at the time was working with me
12 on -- based on my recommendations whether the case should be
13 dismissed or dropped to a lesser charge.

14 I asked the city attorney if the urine sample had ever
15 been received, and she said, "No, we hadn't received any
16 response of the analysis of the urine sample."

17 I stated -- I said, "Well, my recommendation --
18 without that urine sample, we can't make the charge."

19 I recommended to the city attorney that we dismiss the
20 case. She agreed. I don't remember her name,
21 unfortunately.

22 And so I informed Mr. Hassell that his -- the cases
23 against him would be dropped -- well, will be dismissed.
24 They weren't nolle prossed, they were dismissed by the
25 judge.

1 Q What did you do when you left the City of Columbia's
2 employment? Where -- what were you doing?

3 A I went to go to school full time. I went and got my
4 Bachelor's Degree at Columbia International University.

5 Q And what did you get your Bachelor's degree in?

6 A My major was Bible; my minor was Inter-cultural
7 studies.

8 Q Have you completed that degree?

9 A I did. I graduated about a month ago. About two
10 weeks.

11 MS. HAM: That might be all I have, give me one
12 second.

13 THE COURT: All right. Take your time.

14 (Brief pause.)

15 Q Mr. Hassell, were the tickets, in fact, dismissed?
16 I'm sorry, Mr. Duecker. I apologize.

17 A Yes. The cases were dismissed right there.

18 MS. HAM: That's all the questions that I have.

19 THE COURT: Anything on re-cross [sic], Mr. Reeves?

20 MR. REEVES: Yes sir, please, Your Honor.

21 RE-DIRECT EXAMINATION

22 BY MR. REEVES:

23 Q Mr. Duecker, you -- you told me in your deposition
24 that, as you evaluate a DUI, when you look at those tests,
25 you're looking for 3 failures out of 21 cues, right?

1 A I believe so.. I don't have the specifics of the
2 tests in front of me at the time -- right now.

3 Q That's what you said in your deposition.

4 A Yeah.

5 Q So as I understand it then, you can get 86 percent of
6 everything right and you would still determine it was a
7 driving under the influence charge.

8 A That's correct.

9 Q Fourteen percent failure and we're gone.

10 A That is correct.

11 Q Those physical tests that you demonstrated a while
12 ago, nobody does those things normally, do they? Nobody
13 does -- that's not part of routine?

14 A Not -- no. Not a part of routine, no.

15 Q Okay.

16 A But I have observed people performing them
17 successfully when -- when -- when not -- when sober.

18 Q Okay. You said that there was a -- the eyes
19 fluttered and that gauges nystagmus thing that you talked
20 about?

21 A Yes. That is correct.

22 Q Would you agree that -- we know there's no alcohol, so
23 that didn't cause the flutter that you said you saw.

24 A Correct.

25 Q He's got brown eyes.

1. A Correct.

2. Q He -- it's dark.

3. A Correct.

4. Q And you still could see all of that going on?

5. A If I remember correctly, I had the spotlight on my
6. vehicle shining, and I also had the blue lights turned off
7. on the front so that the blue lights would not cause any
8. kind of issues.

9. Q So you -- okay, so you had the light shining in his
10. eyes, right?

11. A (No audible response.)

12. Q Then if he demonstrated -- or lets assume for a moment
13. that it's true he had no impaired -- excuse me -- no drugs
14. that would cause impairment, then he's not going to have any
15. flutter, would he?

16. A No, he would not.

17. Q And if all that's true, then you didn't see flutter,
18. did you?

19. A I saw flutter.

20. Q But it had to come from one or the other, though, you
21. agree?

22. A From alcohol or drugs?

23. Q Yeah.

24. A Correct.

25. Q And if he didn't have any one of those in his system,

1 then again you're mistaken.

2 A My mistake was in not getting the urine sample. I
3 still believe that that urine sample would have returned a
4 positive -- would have returned something that would have
5 caused that.

6 Q I understand that. I understand that. Let me ask the
7 question again, though. I'm just asking you, we know he was
8 telling the truth about alcohol, don't we?

9 A Yes.

10 Q We know without a shadow of a doubt he was telling
11 the truth about alcohol, don't we?

12 A That is correct.

13 Q And we know he said he didn't have anything in his
14 system that would have caused his eyes to flutter, too,
15 don't we?

16 A That is correct.

17 Q If he's right on this, would you agree he's probably
18 going to be right on this?

19 A Possible.

20 Q Probable.

21 A It's possible.

22 Q You have indicated that this situation is unfortunate,
23 but you still maintain that there was something that caused
24 that eye flutter; is that right?

25 A That is correct?

1 Q Nobody from The City of Columbia ever contacted you
2 about this case and what happened and where things went
3 ever, did they?

4 A Not -- not before the lawsuit was served.

5 Q Right. And in fact, even in February of this year,
6 when you gave your deposition, February 2017, three years
7 later, you still didn't know what happened to the samples,
8 did you?

9 A That is correct, I do not.

10 Q Thank you.

11 THE COURT: Any further of this witness?

12 (No audible response.)

13 THE COURT: You may step down, sir.

14 (The witness complies.)

15 THE COURT: Members of the jury, how about -- let's
16 say I give you an hour and half. This is the first day for
17 you. Be back at 2:30. That fair enough? That should be
18 plenty of time. And 2:30, back up here in the jury room,
19 not downstairs. Hope you have a pleasant lunch. We'll see
20 you back at 2:30. Thank you very much.

21 (Jury exits the courtroom at 1:07 p.m.)

22 THE COURT: Anything further from anyone? Everybody's
23 okay?

24 (No audible response.)

25 THE COURT: See y'all back at 2:30. I'll see how I'm

1 doing. If I puff up anymore, I might have to go to the
2 doctor, but right now, I feel okay. So hope you have a
3 pleasant lunch. I'll see you back at 2:30.

4 (Off the record at 1:08 p.m.)

5 (On the record at 2:06 p.m.)

6 THE COURT: This is a video deposition or ...

7 MR. REEVES: No. This is the SLED maintained ---

8 THE COURT: Okay. Everybody's seen it, right?

9 MS. HAM: Yes.

10 THE COURT: There's no -- any -- no objection to it?

11 MS. HAM: No objection.

12 THE COURT: Okay. All right. So we ready then?

13 MR. REEVES: Yes, sir.

14 THE COURT: All right.

15 MR. REEVES: Thank you.

16 THE COURT: Bring the jury in.

17 (Jury enters the courtroom at 2:06 p.m.)

18 THE BAILIFF: The jurors are present and seated, Your
19 Honor.

20 THE COURT: Thank you. Welcome back, members of the
21 jury. This case will resume. I think Mr. Reeves is now
22 going to play the SLED video or something?

23 MR. REEVES: Yes, sir.

24 THE COURT: All right.

25 (Video plays.)

1 THE COURT: All right. Will you stop it for a moment?
2 I think the jury needs to be informed specifically as to
3 what this video shows. I'll let you do it, Mr. Reeves, go
4 ahead, tell them.

5 MR. REEVES: The Datamaster room test is required to
6 be video taped in this state. The South Carolina Law
7 Enforcement Division maintains those video tapes. They
8 directly feed into SLED server, and that's why this has been
9 maintained.

10 And this video is of Mr. Hassell's Datamaster test and
11 includes the entire time, as you saw, when he came in.

12 The video is about thirty minutes long. I do plan to
13 fast forward because there's some spaces where there's
14 really nothing going on in my opinion.

15 So -- but this video is offered as evidence in the
16 case for you to consider Mr. Hassell's presentation.

17 THE COURT: Is that fair enough, Ms. Ham? Is that
18 fair enough?

19 MS. HAM: Your Honor, I have no objection.

20 THE COURT: All right.

21 MR. REEVES: Thank you, Your Honor.

22 WHEREUPON the video plays for
23 approximately 30 minutes.)

24 MR. REEVES: That concludes the playing of the video.

25 THE COURT: All right.

1 MR. REEVES: Your Honor, please the Court. Plaintiff
2 calls Chief Deputy Kelly, as the City of Columbia's 30(b)(6)
3 representative.

4 THE COURT: All right.

5 MELRON KELLY, having been first
6 duly sworn, testifies as follows:

7 THE WITNESS: My name is Melron J. Kelly, M-e-l-r-o-n
8 K-e-l-l-y.

9 DIRECT EXAMINATION

10 BY MR. REEVES:

11 Q Is it Chief Deputy or Deputy Chief?

12 A Deputy Chief.

13 Q Thank you. Before we get started, the City was kind
14 enough to send me copies of portions of the general
15 ordinance for the City of Columbia. I have one portion of
16 the general ordinance, Section 06, involving -- or titled
17 "DUI Enforcement."

18 A Okay.

19 Q Are you familiar with those general ordinances?

20 A I -- generally, yes.

21 Q All right. (Hands a document to the witness) I
22 realize this is not the complete order, but if you'd just
23 take a quick look at that and identify it as being a correct
24 copy, then I'll move that into evidence.

25 MR. REEVES: Your Honor, the City has shared this with

1 me, so they've seen these documents.

2 MS. HAM: That's correct, Your Honor.

3 THE COURT: All right.

4 A Yes, sir.

5 MR. REEVES: Thank you. Move the DUI Enforcement as
6 Exhibit No. 1 for the Plaintiff.

7 THE COURT: All right.

8 (Marked Plaintiff's Exhibit No. 1, DUI Enforcement
9 document, 5 pages.)

10 Q Chief Deputy, I'm going to show you another portion of
11 the general ordinance for the Columbia Police Department
12 called "Collection and Preservation of Evidence." Would you
13 just please take a look at that and tell me if that's a true
14 and accurate copy.

15 A Thank you.

16 (Brief pause as the witness looks at a document handed
17 to him by Mr. Reeves.)

18 A Yes, sir.

19 Q Thank you.

20 THE COURT: And once again, Mr. Reeves, what is the
21 Exhibit No. 2?

22 MR. REEVES: Exhibit No. 2 is the "General Order of
23 the City for Preservation and Collection and Preservation of
24 Evidence."

25 THE COURT: Okay. Thank you, sir.

(Marked Plaintiff's Exhibit No. 2, General Order of the City for Preservation and Collection of Evidence document, 13 pages.)

Q Chief Deputy Kelly, these documents that have been introduced into evidence as Exhibits 1 and 2 in essence are the rules that the officers of The City of Columbia Police Department go by when they're doing DUI enforcement.

A It is.

Q And when they're collecting samples.

A Yes.

Q And are there any other rules they're to go by other than what's codified in Exhibits 1 and 2?

A There are a -- a group of standards that officers use while in the training process, commonly referred to as "field training officers," that is very similar as outlined by general orders. Kind of step by step for new officers.

Q All right. You appear in that deposition as the representative of The City of Columbia, pursuant to Rule 30(b)(6); do you recall that?

A I did.

Q All right. And you were there because the rule allows the City to designate someone they believe to have the most information or the ability to gain the most information about certain subjects that were submitted to you by me; is that correct?

1 A That's correct.

2 Q And so we had a discussion about the subject matter
3 that we prepared for in anticipation of your deposition,
4 correct?

5 A Yes.

6 Q I'm going to go over a few things that we talked about
7 then. It is true that unless the officer makes a request,
8 the video should be and is held indefinitely; is that
9 correct?

10 A That is correct.

11 Q And I asked The City of Columbia did anyone make
12 inquiry of these individuals, that is, the evidence
13 custodians, about this particular video and what had
14 happened to it. And your response was "no"; is that
15 correct?

16 A Yes, that's correct.

17 Q All right. And that was from the beginning of this
18 incident, on February 19th, until we took your deposition
19 last week; is that correct?

20 A That's correct.

21 THE COURT: Mr. Reeves, probably, at this point, I'll
22 define "deposition" for the benefit of the jury, if you
23 don't mind.

24 MR. REEVES: Yes, sir.

25 THE COURT: Members of the jury, Mr. Reeves has

1 referred to a "deposition." Some of you know what
2 depositions are, but here's the legal definition of a --
3 definition of a deposition.

4 Testimony in this case was presented to you by
5 deposition or will be. A deposition is a document
6 containing sworn testimony, given by a witness, outside of
7 court, in the presence of lawyers for each party, who may
8 ask questions of the witness.

9 This testimony is entitled to the same consideration
10 and is to be judged as to credibility and weighed by you in
11 the same way as if the witness were present and gave the
12 testimony to you from the witness stand. It is then for
13 you, the jury, to determine the effect, value, weight, and
14 truth of the testimony given in a deposition.

15 That makes sense, does it not? Same value. I'm
16 sorry.

17 MR. REEVES: It's quite all right.

18 THE COURT: Any exceptions or objections?

19 MS. HAM: No, Your Honor.

20 MR. REEVES: No, sir.

21 BY MR. REEVES:

22 Q Chief Deputy, you did not make inquiry into the
23 missing urine or the missing video, did you?

24 A I did not.

25 Q The protocols that we have introduced in Exhibits 1

1 and 2 would have required the video to be maintained by the
2 City as evidence; correct?

3 A Yes, sir.

4 Q It would require the City maintain or present for
5 examination the urine sample, correct?

6 A That is correct.

7 Q And your protocols, or your rules, indicate that the
8 officer is to -- it's his responsibility or her
9 responsibility to take that evidence, as soon as practical,
10 to the South Carolina Law Enforcement Division for testing -

11 -

12 A It is.

13 Q -- right? And that officer also -- he or she is to
14 then pick up those results for use at any trials or
15 disposition of the case; is that correct?

16 A That is correct.

17 Q And SLED maintains the examinations information so
18 that information can be disseminated both to The City of
19 Columbia Police Department and to the Defendant or his
20 attorneys; is that correct?

21 A That is correct.

22 Q And that information also -- excuse me, that sample,
23 that urine sample, is also available to someone accused of a
24 crime so that they can have their own independent testing
25 done; is that correct?

1 A That is correct.

2 Q The evidence custodian has no responsibility over
3 urine?

4 A Only in terms of logging it into the initial ---

5 Q In logging it?

6 A Yes, and housing.

7 Q All right. And the time frame for the submission of
8 the urine is supposed to be the next business day available
9 ---

10 A Yes.

11 Q All officers are trained in the collection,
12 preservation, and the disposition of bodily fluid evidence
13 such as urine; is that correct?

14 A Generally.

15 Q Yes, sir. And that collection and preservation is as
16 follows the protocols to get that to the right people so it
17 can be examined; is that correct?

18 A Using the less amount of chain of custody as possible,
19 yes.

20 Q But you have to keep up with the chain of custody?

21 A You do.

22 Q And the City of Columbia, up until the date of your
23 deposition, had made no inquiry into what happened to the
24 urine sample, had it?

25 A As it relates to the police department, we did not.

1 Q Okay. And the City of Columbia Police Department had
2 not made an inquiry as to what had happened to the video at
3 the time of your deposition; is that correct?

4 A Not to my knowledge, no.

5 Q Okay. You understand and you agree with me -- or the
6 City of Columbia agrees with me that the video evidence was
7 to be maintained, not only by your protocols and rules, but
8 by South Carolina law?

9 A That is correct.

10 Q And the urine sample also, in addition to your
11 protocols, was to be maintained and examined by -- or
12 pursuant to South Carolina State law?

13 A That is correct.

14 Q All right. And the City of Columbia agreed with me
15 that -- that it -- if it failed to do that, to preserve the
16 evidence and to submit it to the right people for
17 examination, then the City of Columbia acted in bad faith;
18 is that correct?

19 A That is correct.

20 Q You agree that the City of Columbia's inability to
21 produce these two pieces of evidence nullified the ability
22 of the City to prosecute Mr. Hassell? Agree with that?

23 A Could you explain again? If that was the outcome of
24 the court case. I'm not aware of the outcome of the court
25 case.

1 Q Okay. The -- the -- the -- according to your rules
2 and State law, that evidence is to be preserved and so that
3 both sides can ---

4 A Fairly --

5 Q --- use it, review it, and then produce it as -- as
6 they see fit, correct?

7 A That is correct.

8 Q I -- I guess a few questions about the -- the
9 City's situation with these pieces of evidence. We -- we
10 agree, that is, the City of Columbia agrees that this
11 evidence should have been maintained and for some reason was
12 not; is that correct?

13 A That is correct.

14 Q All right. Would you -- or would the City of Columbia
15 agree that it would have been good to know -- it would have
16 been reasonable supervision to know what had happened to
17 these two pieces of evidence for many reasons? Would you
18 agree?

19 A Definitely. Yes, that is correct.

20 Q One of those reasons is that you can't supervise
21 properly circumstances and situations that you don't know
22 the cause of, can you?

23 A That is correct.

24 Q And if we had known the cause of what happened to
25 those pieces of evidence, then that would allow the City to

1 reasonably supervise, by either re-training or correct any
2 problems ---

3 A That is correct.

4 Q All right. And since no inquiry was done, then
5 there's no way to tell how to better supervise the City
6 employee, such as the police department, on how to avoid
7 these rules being violated in the future; is it not?

8 A That is correct.

9 Q And you would agree that as far as
10 supervision's concerned, that it is important for City chain
11 of command to keep account of the problems and circumstance
12 that arise leading to the missing evidence. Would you agree
13 with that?

14 A I agree.

15 Q And in this case, we don't know what happened about
16 this evidence, do we?

17 A I don't, personally.

18 Q Right. And -- and the City has not, to your
19 knowledge, produced any information as to what happened
20 either, has it?

21 A Not to my knowledge.

22 Q All right. Would you also agree then that the City
23 would be unable to correct this problem since it never
24 investigated why the problem happened?

25 A That is correct.

1 MR. REEVES: That's all I have, Your Honor. Thank
2 you.

3 THE COURT: Ms. Ham.

4 CROSS-EXAMINATION

5 BY MS. HAM:

6 Q Can I call you Chief Kelly?

7 A You may.

8 Q Is that ---

9 A That's common.

10 Q --- what your officers call you?

11 A Yes.

12 Q How long have you been with the City of Columbia?

13 A Tomorrow will be 18 years.

14 Q Have you held any other ranks besides Deputy Chief?

15 A I have. I started as a -- a patrol officer. I worked
16 my way up through the ranks as a corporal, then a sergeant,
17 a lieutenant, a captain, a major, and now deputy chief.

18 Q What training do officers receive? Just kind of walk
19 the jury through what training officers receive once they've
20 ---

21 A So upon hiring at the Columbia Police Department,
22 Columbia police officers are put into what we call a "basic
23 candidacy school." This is a six-to-eight week in-house
24 school that we teach potential officers the norms and
25 policies of the Columbia Police Department.

1 At the completion of the in-house basic candidacy
2 school, officers are sent to the South Carolina Criminal
3 Justice Academy where they receive an additional 13 weeks of
4 formalized law enforcement training. This is everything
5 from the South Carolina Code of Laws to how to pull over
6 cars, defensive tactics, shooting, civil laws, and things of
7 that nature.

8 Upon graduation from the Criminal Justice Academy,
9 officers are then assigned to a period of field training,
10 where they spend another six to eight weeks in a car with a
11 field training officer. This officer has been specially
12 trained to train other officers in the policies and
13 procedures of the police department and to reinforce the
14 knowledge that they have gained at the Criminal Justice
15 Academy over that period of time.

16 At the completion of the field training officer
17 period, officers are then assigned to a patrol area and
18 assigned to an area of the city as a solo officer on a
19 shift.

20 Q Is there additional training that officers get for
21 DUI?

22 A Officers, after their probationary period, can elect
23 to receive a myriad of training as it relates to DUI. That
24 could include roadside safety. That's where you learn how
25 to conduct those roadside tests, whether it be DUI

1 enforcement or someone driving under the influence. They
2 could receive at-scene training, how to work those
3 collisions that we believe involved alcohol. And they can
4 also receive some -- some other criminal enforcement
5 training specifically narrowed towards DUI.

6 Q Are you aware as to whether or not Cameron Duecker
7 received DUI training?

8 A I'm not aware of that.

9 Q You've already testified as to what is supposed to
10 take place with regards to evidence ---

11 A I did.

12 Q --- according to the policy, correct?

13 A Yes.

14 Q Sitting here today, are you aware that Cameron Duecker
15 violated policy?

16 A As the information that I've heard thus far, yes.

17 Q Tell me the process by which a person, a citizen,
18 anyone can file a complaint against an officer.

19 A The -- the most common way that we receive complaints
20 from citizens is through a call on our informational line or
21 calls into our professional division, which is commonly
22 referred to as the "Internal Affairs Division." The other
23 ways that citizens can raise a complaint is contacting that
24 specific officer's supervisor, whereas the supervisor would
25 report the complaint and it would be investigated either by

1 that -- that officer's chain of command or by the Internal
2 Affairs Division.

3 Q Do you have any knowledge as to whether or not a
4 complaint was filed against Officer Duecker by Mr. Hassell?

5 A Not to my knowledge.

6 Q Tell the jury the process by which an officer is
7 disciplined for violating a policy.

8 A Officer discipline is investigated two ways,
9 administratively and operationally. As earlier I stated,
10 all -- all officers report to a sergeant or corporal. Those
11 first-line supervisors investigate operational matters,
12 whether it be someone that drove too fast or operated
13 outside the policy and directives or general orders.

14 We also investigate administratively through our
15 professional standards division. This is typically
16 involving policy violations of a more serious nature;
17 however, they have an option to -- to encompass those
18 operational investigations as well.

19 So at some points, you have simultaneous
20 investigations going on from the patrol officers in -- in
21 the field and administrative and -- and professional
22 standards in Internal Affairs.

23 Q Are there times by which, when an officer violates a
24 policy, for instance, it isn't known immediately that the
25 policy was violated?

1 A That has happened, yes.

2 Q What happens once you realize that the policy has been
3 violated?

4 A Once it comes to knowledge that a policy has been
5 violated, an -- an internal investigation is immediately
6 started. Again, either on the operational end or
7 professional standards.

8 Most times, when -- when complaints come in and it's
9 been awhile since -- since we've learned about it, the
10 Internal Affairs Division kind of takes over and takes a
11 look at each and every step of the way in that complaint to
12 reach the factual findings of -- of those complaints.

13 Q Do you know when the police department found out about
14 the violation -- that Cameron Duecker violated policy?

15 A To my knowledge, the police department became aware of
16 this situation upon receipt of the lawsuit.

17 Q And could you investigate with your Internal Affairs
18 Department at that point?

19 A At that point, we could only do a cursory or summary
20 investigation because Cameron Duecker no longer was employed
21 by the City of Columbia at -- at the time of the -- of the
22 lawsuit.

23 Q All right. Thank you for that.

24 Let me ask you this: Is there a way, under the South
25 Carolina law, that a person can be un-arrested?

1 A No, ma'am.

2 Q Once a person is arrested for DUI, whether or not they
3 blow a point zero or anything that happens after that is
4 irrelevant to the arrest?

5 A To my knowledge, the statute, as written, once we
6 place a person under arrest for driving under the influence,
7 they are under arrest. Despite the results of the -- of the
8 tests, they are still under the arrest of the officer.

9 Q The tests are just additional evidence.

10 A Just additional evidence in the process of the
11 investigation.

12 Q Okay. Just -- to your knowledge, do you know how many
13 citizen interactions the police department gets per year?

14 A This year -- I'm sorry. This past year, 2016, we had
15 approximately 166,000 citizen contacts. The year prior to
16 this we had approximately 163,000. We -- we just were going
17 through our numbers yesterday.

18 Q All right.

19 A So those are -- those are citizen contacts, everything
20 from traffic stops to officers stopping to speak with
21 someone to answering calls for service. These are all of
22 our citizen contacts over the course of 12 months.

23 Q Okay. Do you know what Cameron Duecker's status
24 was when he left the City of Columbia? And what -- what I
25 mean by that is --

1 A Discharge status?

2 Q Right. Well, you know how when a person is in the
3 military --

4 A Uh-huh.

5 Q -- and they get discharged, the discharge could be
6 honorable or -- or not. Is -- is there ---

7 A He was -- he resigned in good standing, meaning if he
8 needed a reference or anything of that nature, we would be
9 able to give a positive reference for him. He left the
10 department not under any disciplinary rule or anything of
11 that nature.

12 Q Are you aware of any disciplinary actions that have
13 ever been taken against Cameron?

14 A I am not.

15 Q Are you aware of any complaints that have ever been
16 filed against him?

17 A I am not. If I could explain?

18 Q Yes.

19 A Generally, a person that resigns from the department
20 or goes away in good standing, such as he did, did not have
21 any infractions during employment, period. So that's why
22 you would have that good standing once he resigned.

23 Q Okay. One moment, please.

24

25 A Okay.

1 (Brief pause.)

2 Q Chief Kelly, if Cameron administered the Datamaster
3 test, would that mean that he was certified to do so?

4 A That would mean he -- he was certified to do so.

5 Q So someone not -- or uncertified, would not have been
6 able to administer that test?

7 A That is correct. You are not able to even enter the
8 Datamaster room to administer the test if you have not been
9 certified to do so by the State.

10 Q I think that's all the questions that I have.

11 A Thank you.

12 Q Thank you.

13 THE COURT: Mr. Reeves, anything further from this
14 witness?

15 REDIRECT EXAMINATION

16 BY MR. REEVES:

17 Q Chief Deputy, at the time all this was going on in
18 February, 2014, Mr. Duecker -- Officer Duecker was an agent
19 and servant and employee of the City of Columbia Police
20 Department, correct?

21 A That is correct.

22 Q And I know today we're talking about what should have
23 been done to him, but at the time that he interacted with
24 Mr. Hassell, he was part and parcel of the City of Columbia
25 Police Department; is that correct?

1 A That is correct.

2 Q And the City of Columbia Police Department is
3 responsible for its chain of command for the acts and
4 omissions and activities of its officers; is it not?

5 A That is correct.

6 Q You indicated that, according to your view, there is
7 no un-arrest at any time. If that's the case, if that's the
8 case, then the importance of someone to do a proper,
9 unbiased, detailed investigation before that particular
10 event takes place is critical; is it not?

11 A I'm sorry. You say before the critical incident takes
12 place?

13 Q I'm sorry. I'll repeat that. I got that really
14 backwards.

15 If the law is that he can't be un-arrested, then
16 everything that took place in the investigation before that
17 event is critical; correct?

18 A That is correct.

19 Q You ought not make a mistake during that critical
20 portion if you've been trained properly, should you?

21 A Correct.

22 Q You ought to go by the rules, shouldn't you?

23 A I -- I -- I would agree. Unfortunately, mistakes
24 happen. I would agree.

25 Q Well -- and I -- I understand that. But in this

1 case, this officer smelled alcohol and there was not alcohol
2 present, correct?

3 A I'm unaware of that.

4 Q You're not aware of those facts. Well, let
5 me ask you this: On the mistake side, if you got clear and
6 concise and efficient rules that are publicized and used to
7 train your officers, then they should know what those rules
8 are.

9 A That is correct.

10 Q And they should follow those rules every time.

11 A That is correct.

12 Q And they should comply with every requirement every
13 time.

14 A That is correct.

15 Q And if you know what the requirements are and you
16 know you're supposed to comply with them all the time, then
17 if you don't comply with them, that's not just a mistake,
18 that's a violation of rules, isn't it?

19 A That is correct. Violation of general orders.

20 Q Okay. Thank you.

21 THE COURT: Anything further?

22 MS. HAM: Nothing further, Your Honor.

23 THE COURT: All right. You may step down, sir.

24 THE WITNESS: Thank you.

25 (The witness exits the stand.)

1 MR. REEVES: Your Honor, may we approach the bench?

2 (Bench conference.)

3 THE COURT: Members of the jury, I'm going to take a
4 short break. There's one witness we've got to wait until he
5 gets here, might be about 10 minutes or so. Okay? So just
6 don't talk about this case, as I will continually remind you
7 of. You may go to the jury room.

8 (Jury exits the courtroom at 3:01 p.m.)

9 (Briefly off the record.)

10 MR. REEVES: Your Honor, I would formally move in the
11 video as Exhibit No. 3 that was played for the jury.

12 THE COURT: All right.

13 (Plaintiff's Exhibit No. 3, video, in evidence.)

14 MR. REEVES: And I needed to correct -- I told the
15 Court Reporter and the Court that Exhibit No. 2 had 13
16 pages. It actually has 14 pages.

17 THE COURT: 14 and the other one had 5.

18 MR. REEVES: Yes, sir.

19 THE COURT: All right. So you have one more witness.
20 I assume he's going to be very short.

21 MR. REEVES: Very.

22 THE COURT: Gonna say what a wonderful man Mr. Hassell
23 is. I don't want to just guess.

24 MR. REEVES: That's correct, Your Honor.

25 THE COURT: Okay. And then we'll stop for the day and

1 you have one more witness tomorrow. Short or long?

2 MR. REEVES: Short.

3 THE COURT: Short. And well, I'm going to have a
4 charge conference after we finish today. We'll go back in -
5 - go over the charges again. We'll try to get everybody on
6 the same page.

7 And we'll come back in the morning. I'll have your
8 charge, order the jury lunch, and that's usually the way I
9 plan.

10 MR. REEVES: May we start at 10 in the morning, Your
11 Honor?

12 THE COURT: Maybe. Why?

13 (Briefly off the record.)

14 MR. REEVES: With all due respect, that suits the
15 doctor's schedule.

16 THE COURT: Okay. That's fine. I'm just asking.
17 Bring the jury in.

18 (Jury enters the courtroom at 3:26 p.m.)

19 THE BAILIFF: The jurors are present.

20 THE COURT: Thank you, ma'am. Welcome back members of
21 the jury, I give y'all a heads up. We have one other
22 witness this afternoon. I've been informed that it will be
23 a short witness, and I had scheduled to do something at four
24 o'clock anyway.

25 And that should lead us into having maybe one short

DIRECT EXAMINATION BY MR. LYLE - CHRISTOPHER HARRIS, JR. 167

1 witness in the morning. So in the morning, we should be
2 able to argue, charge, and I'll -- I'll buy you lunch, too,
3 at the same time. How's that? That okay?

4 (Jurors speak simultaneously.)

5 THE COURT: You may call your next witness.

6 MR. LYLE: Plaintiff's would call Chris Harris.

7 THE COURT: Who?

8 MR. LYLE: Chris Harris, Christopher Harris.

9 THE COURT: All right.

10 (CHRISTOPHER HARRIS, having been
11 first duly sworn, testifies as follows.)

12 THE WITNESS: Christopher Harris, Jr.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. LYLE:

16 Q Mr. Harris?

17 A Yes.

18 Q Thanks for coming in this afternoon. If you could,
19 please tell the jury how old you are.

20 A 24.

21 Q Okay. And where are you from, Chris?

22 A I'm from Heath Springs, South Carolina.

23 Q Where'd you go to high school?

24 A Andrew Jackson High School.

25 Q What year did you graduate?

1 A 2011.

2 Q And where did you go after that?

3 A I went to USC Lancaster.

4 Q And what did you do there?

5 A I completed my associate's degree and then I
6 transferred to -- while -- while there, I was a student
7 assistant for Mr. Hassell.

8 Q Okay. And did you complete a degree after USC
9 Lancaster?

10 A Yes, sir. I completed my Bachelor's degree in finance
11 and management at the University of South Carolina.

12 Q Finance and Management. What do you do now?

13 A I am a financial service associate at The Cason Group.

14 Q The Cason Group.

15 A Yes, sir.

16 Q Okay. And do you have any other businesses?

17 A A landscaping business.

18 Q Tell me about that landscaping business.

19 A Landscaping business in South Carolina, in
20 Lancaster, and also here in Columbia area. And I service
21 about 10 to 15 clients where I provide basic landscaping up
22 to any special jobs that they may like me to complete.

23 Q Going back to your job with Mr. Hassell, you said you
24 were a student assistant?

25 A Yes, sir.

1 Q Tell me what the job duty is of a student assistant.

2 A A student assistant will be monitoring the classroom
3 while Mr. Hassell is in or outside of the classroom.

4 Handing out any papers, making copies, grading those papers
5 for him. Anything that he would like for me to do,
6 complete, get in contact with students that he may need to
7 set an appointment with or anything of that nature.

8 Q Okay. How many hours a day would you say that you
9 spent with him?

10 A Anywhere between five to six hours.

11 Q Five or six hours a day?

12 A Yes, sir.

13 Q Five days a week?

14 A Yes, sir.

15 Q Did anyone else spend that kind of time with him
16 during the day?

17 A No, sir.

18 Q And would you consider him to be a mentor of yours?

19 A Yes, sir.

20 Q Okay. What kind of things did he do to -- to help
21 further your education or mentor you?

22 A He spent countless hours meeting with me in the
23 classroom/outside of the classroom, helping me better
24 understand my -- my class work. I was a student of his, so
25 he took that time out additionally to help me understand

1 Spanish better, but also my other classes that were more
2 pertaining to my major.

3 So he -- he spent countless hours staying there
4 anywhere between ten and eleven o'clock at night. Anything
5 that I needed, Mr. Hassell was -- was there for me, and he
6 -- he's a great friend to me.

7 Q You got married recently?

8 A Yes, sir.

9 Q Did you invite Mr. Hassell to your wedding?

10 A Yes, sir. He was one of my groomsmen.

11 Q He was in your wedding?

12 A Yes, sir.

13 Q I want to go back to the incident that we're
14 here for today. Do you remember when you heard about Mr.
15 Hassell being arrested?

16 A Yes, sir.

17 Q Okay.

18 A And how did you find out?

19 Q I found out by Mr. Hassell. At the time, I did --
20 when I was in his office for a couple of days, two days, I
21 didn't know where he was at.

22 Q Did you -- I'm sorry. Go ahead, finish.

23 A So when I did find out, I found out by Mr. Hassell.

24 Q Okay. Did -- did y'all communicate frequently?

25 A Yes, sir. All the time.

1 Q Okay. So did it concern you when you didn't see him
2 at work?

3 A Yes, sir, very much so.

4 Q What did you do?

5 A I tried reach out to him by phone. But his voice-mail
6 was full, so I wasn't able to leave a voice-mail. I tried
7 to -- I text him, tried to get in contact with his family,
8 but for some reason, no one knew where he was at.

9 Q Okay. And -- and Mr. Hassell -- you -- you -- you
10 know him really well. When he delivered this news to you,
11 what was it like for him to tell you that?

12 A It was very embarrassing for him to tell me that
13 information. It was not of his character. It was just --
14 it was just something that I couldn't believe that -- that
15 happened to him. It was a very unfortunate situation.

16 Q But you knew that -- you believed him when he told you
17 that he didn't do that.

18 A Yes, sir, I did believe him.

19 Q And when you first met Mr. Hassell, say, couple weeks
20 on the job, and you heard about this kind of incident, would
21 you have been more inclined to believe that maybe he did to
22 that?

23 A Could you repeat the question, please?

24 Q Yes, sir. That was a bad question. You've known
25 him for quite some time. So when he explained these charges

1 to you, and said, "I didn't do it," you -- you believed
2 that.

3 A If I did not know him at the time?

4 Q No. I'm really botching this up. Excuse me.

5 You know him really well now.

6 A Yes, sir.

7 Q When he delivered this new to you, you knew him really
8 well?

9 A Yes, sir.

10 Q So you didn't really question his integrity. You
11 believed him when he told you that this was a bogus charge.

12 A That's correct.

13 Q Had you encountered the same situation after having
14 worked for him for only a week or two, you didn't know him
15 real well, and he told you the same set of facts, would that
16 have made you pause or have some kind of concern?

17 A Yes, sir, of course.

18 Q It would? Okay.

19 MR. LYLE: I've got no other questions, Your
20 Honor.

21 THE COURT: All right. Anything, Ms. Ham?

22 CROSS-EXAMINATION

23 BY MS. HAM:

24 Q It's fair to say that you respect Mr. Hassell.

25 A That's correct.

1 Q Even maybe admire him?

2 A I'm sorry?

3 Q Even maybe admire him.

4 A Yes.

5 Q When did you hear about this incident? At what point
6 -- was it a day after it happened or two days after it
7 happened?

8 A It was two -- it was the day that he was released from
9 -- from jail.

10 Q Okay.

11 A So I'm not sure how long ---

12 Q Okay. Once you found out what happened, you indicated
13 that you believed him with regards to the fact that he was
14 not guilty of the charges that were alleged against him,
15 correct?

16 A I'm sorry. I can't hear you.

17 Q Once -- I'm sorry. Let me come a little bit closer.
18 Once you heard about what had happened --

19 A Uh-huh.

20 Q -- you -- you indicated that you believed him when he
21 said that he was not guilty of these charges.

22 A That's correct.

23 Q That's correct. Once you heard about it, did your
24 opinion of him change at all?

25 A No, ma'am.

1 Q Did you respect him any less?

2 A No, ma'am.

3 Q Did you admire him any less?

4 A No, ma'am.

5 Q Okay. That's all the questions I have.

6 THE COURT: Anything further?

7 MR. LYLE: No redirect, Your Honor.

8 THE COURT: Can I see y'all a minute?

9 (Bench conference.)

10 THE COURT: Now, members of the jury, that's all of
11 the evidence ---

12 THE COURT REPORTER: Judge, you want to release the
13 witness?

14 THE COURT: I'm sorry. You may step down, sir. Mr.
15 Harris, right?

16 THE WITNESS: All right. Thank you.

17 (Brief pause as the witness exits the stand.)

18 THE COURT: Thank you, Mr. Harris.

19 Now, members of the jury, that's all of the evidence
20 you shall receive this afternoon. I understand that we have
21 a very short witness in the morning. We're going to work a
22 little bit more this afternoon after you leave for today.

23 I need to remind you once again, please do not discuss
24 this case in any way, shape, or form. The time to do so
25 will be tomorrow once you've heard all the evidence, once

1 you've heard the arguments from the lawyers, and I tell you
2 what the law is that applies to this case.

3 And what I'm going to do, is I'll invite y'all, in the
4 morning when you get here, to elect a foreperson. I could
5 appoint one, but y'all been together now for a little while,
6 and I'm going to let y'all, among yourselves, elect a
7 foreperson first thing in the morning. Is that fair enough?

8 (No audible response.)

9 THE COURT: Thank you all so very much. See you
10 tomorrow morning at ten o'clock, ten o'clock.

11 (Jury exits the courtroom at 3:35 p.m.)

12 THE COURT: I just going to go ahead and put the
13 charge conference -- let me go over your charges. See where
14 we are. We'll do it back in chambers.

15 (Off the record at 3:36 p.m.)

16 **DAY 3**

17 (On the record at 10:04 a.m.)

18 THE COURT: Anything we need to take up?

19 MR. REEVES: No, sir, Your Honor.

20 THE COURT: All right. You want to see if the jury's
21 ready? One lady just got here, and if they're ready, you
22 can bring them in.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Who's the doctor?

25 MR. REEVES: This is Doctor Sharon Weissman.

1 THE COURT: Weissman.

2 MR. REEVES: She works for University Specialty
3 Clinics.

4 THE COURT: All right. You can invite them to come
5 in.

6 (Jury enters the courtroom at 10:06 a.m.)

7 THE BAILIFF: The jurors are present and seated, Your
8 Honor.

9 THE COURT: Thank you, ma'am.

10 Welcome back Mr. Foreman, members of the jury. I -- I
11 explained to the members of the jury the situation I had.
12 They seemed to be very understanding, and I thank you for
13 your courtesy and patience in this matter.

14 I think we have one more witness, is what I've been
15 informed. Mr. Reeves, you may proceed sir.

16 MR. REEVES: Please the Court, Your Honor. I call Dr.
17 Sharon Weissman to the stand.

18 THE COURT: Okay.

19 DR. SHARON WEISSMAN, having been
20 first duly sworn, testifies as follows:

21 THE WITNESS: Sharon Weissman. W-e-i-s-s-m-a-n.

22 DIRECT EXAMINATION

23 BY MR. REEVES:

24 Q Good morning, Dr. Weissman. How are you?

25 A Good. How are you?

1 Q We tried to work out a stipulation, but you're here.
2 Thank you for coming.

3 I am going to ask you first: Are you a licensed
4 medical provider in the State of South Carolina?

5 A Yes, I am.

6 Q Where do you practice?

7 A At Palmetto Health Richland, University
8 Specialty Clinics.

9 Q All right. And is Darris Hassell a patient of yours?

10 A Yes, he is.

11 Q And has he been a patient for some period of time?

12 A Yes, he has.

13 Q In the course of your treatment of Mr. Hassell, did
14 you prescribe certain medications to him?

15 A Yes, I have.

16 Q I'm going to let you read the list because I'm not
17 sure I can pronounce them.

18 MR. REEVES: May I approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 Q (Hands a document to the witness) I made a list. If
21 you just would provide, for the record please, what those
22 medications are, please.

23 A Prezista, Norvir, Icentriss, Lipitor and Celsentri.

24 Q All right.

25 THE COURT REPORTER: I'm sorry, the last one?

1 A Celsentri.

2 Q Dr. Weissman, you and I talked about this case a
3 little bit, so you -- you know some of the issues. And
4 really what you're here for today is to testify about these
5 things which I'm going to ask you.

6 first of all, do those medications, as prescribed,
7 cause impairment to someone?

8 A No, they don't.

9 Q Do those medications, as prescribed, cause nystagmus,
10 which is the jerking motion of the eyes?

11 A No, they don't.

12 Q All right. Thank you very much. That's all I have
13 for now. Thank you.

14 THE COURT: All right. Can I see y'all for a minute,
15 Mr. Reeves?

16 MR. REEVES: Yes, sir.

17 (Bench conference.)

18 DIRECT EXAMINATION

19 BY MR. REEVES:

20 Q Dr. Weissman, I'm sorry. I forgot something. We --
21 how long have you been practicing medicine?

22 A Over 20 years.

23 Q All right. And what is the specialty of your
24 practice?

25 A Infectious disease.

1 Q All right. And are you board certified?

2 A Yes, I am.

3 Q How long have you been board certified in infectious
4 diseases?

5 A Twenty years.

6 Q All right.

7 MR. REEVES: And -- well, Your Honor, at this time I
8 would offer her as an expert in the field of infectious
9 disease.

10 THE COURT: All right.

11 MR. REEVES: And also an expert with the ability to ,
12 prescribe the medication that she's testified to.

13 MS. HAM: No objection.

14 THE COURT: No objection, right?

15 And -- and I don't want to get too involved, but the
16 answers that she's giving to the questions, your answers are
17 to -- are within a reasonable degree of medical certainty;
18 is that correct?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. I'll let you go ahead.

21 DIRECT EXAMINATION

22 BY MR. REEVES:

23 Q One other thing because he keeps reminding me of what
24 I forgot. Your opinions about these medications not causing
25 impairment is to a reasonable degree of medical certainty

1 which is more likely than not?

2 A Yes. I actually reviewed them again and looked them
3 up in medical literature. I found an article, could not
4 find anything to reference these as causing impairment.

5 Q All right. And to a reasonable degree of medical
6 certainty, they will not cause nystagmus?

7 A Similar. Yes.

8 Q Thank you very much.

9 MR. REEVES: Thank you, Your Honor.

10 THE COURT: Yes, Ms. Ham.

11 CROSS-EXAMINATION

12 BY MS. HAM:

13 Q Good morning, Dr. Weissman. Can you tell the jury
14 what research you did with regards to the medications that
15 you just testified to?

16 A I reviewed in PubMed, which is the web-based
17 literature review program for -- and it contains all of
18 medical literature back through the '80's; and couldn't find
19 anything to that extent. I also -- we have a PharmD who
20 works in our clinic, and I had her review all the medicines
21 as well.

22 Q Did you review the -- the drug separately, just
23 with regards to what their side effects may be?

24 A Review them separately and they also looked at drug
25 interactions --

1 Q Okay.

2 A -- between each other.

3 Q Did you do any research with regards to each drug and
4 nystagmus specifically?

5 A Yes.

6 Q And what was your finding on that?

7 A I couldn't find that these drugs cause nystagmus.

8 Q Is PubMed the only source that you checked?

9 A The PharmD checked other pharmacy sources as well.

10 Q Okay. Is -- are those sources updated regularly?

11 A Instantaneously.

12 MS. HAM: One second, Your Honor.

13 THE COURT: All right. Yes, ma'am.

14 (Brief pause.)

15 MS. HAM: No further questions, Your Honor.

16 THE COURT: Anything further, Mr. Reeves?

17 MR. REEVES: No, sir, Your Honor. Thank you very
18 much.

19 THE COURT: Dr. Weissman, you may step down, ma'am.

20 (The witness complies.)

21 THE COURT: And members of the jury, I was informed
22 that she would be a short witness and she was a short
23 witness.

24 I believe, once again, I have explained my situation
25 to you. I thank you all for being patient and

1 understanding. I would say that you be back tomorrow
2 morning at 10 a.m. If that presents a problem for anybody -
3 - and at that point, we should be able to argue and charge
4 and give it to you for resolution. Okay?

5 Y'all have a good night, and once again, just don't
6 talk about this case in any way, shape, or form. Thank you
7 all so very much.

8 (Jury exits at 10:13 a.m.)

9 THE COURT: Anything else y'all can think of? Any
10 motions? You want to hear motions this morning? Are there
11 any motions?

12 MS. HAM: There are..

13 THE COURT: Huh?

14 MS. HAM: There are motions.

15 THE COURT: All right. Go ahead, make them.

16 (Brief pause.)

17 THE COURT: Yes, Ms. Ham.

18 MS. HAM: Yes, sir. Your Honor, first I'd like to
19 renew my motion that I made pretrial with regards to the
20 negligent supervision. In ---

21 THE COURT: In regards to what?

22 MS. HAM: The negligent supervision cause of action
23 versus the other -- other negligence actions. Basically,
24 you can either be negligent or intentful. You can't have
25 both.

1 Under the South Carolina Tort Claims Act, the City is
2 liable for negligence of its employees because they're
3 acting within the scope of their employment. That's how the
4 City's held liable.

5 False arrest and malicious prosecution fall under that
6 umbrella with regards to negligent acts from the employee.

7 The Tort Claims Act also says that the City is not
8 negligent if employee -- an employee acts intentionally.

9 THE COURT: Are you claiming that the officer in this
10 case acted with intent?

11 MS. HAM: I am not.

12 THE COURT: Okay.

13 MS. HAM: I'm just saying that the two causes of
14 action, standing together, aren't -- aren't ---

15 THE COURT: All right. That would be negligent
16 supervision. What was the other? False --

17 MS. HAM: False arrest and ---

18 THE COURT: All right.

19 MS. HAM: --- malicious prosecution. So it's either
20 the employee acted negligently or the employee acted
21 intently. He can't have acted both.

22 THE COURT: All right.

23 MS. HAM: And so, at this time, I would ask the Court
24 or plaintiff's counsel to choose which one we are going to
25 proceed under because that kind of dictates how we are going

1 to close our case.

2 THE COURT: All right. Mr. Reeves?

3 MR. REEVES: Well, Your Honor, as to the argument that
4 the employee cannot act intentionally -- by the way, I --
5 I'm not sure we -- I concede that he acted intentionally.

6 THE COURT: Uh-huh.

7 MR. REEVES: But -- and then he then can't act
8 negligently.

9 I'm not alleging he acted negligently necessarily.
10 His supervisor ---

11 THE COURT: You said his supervisors were negligent --

12 -

13 MR. REEVES: Exactly. And they ---

14 THE COURT: --- overseeing what he did.

15 MR. REEVES: Yes, sir. They admitted that yesterday
16 in their -- in ---

17 THE COURT: And I think you stand on the grounds that
18 when you examined or cross-examined Chief Kelly, was it?

19 MR. REEVES: Chief Deputy Kelly.

20 THE COURT: Kelly -- that the question you posed and
21 answer you gave keeps you within the purview of this
22 negligent supervision.

23 MR. REEVES: I do, Your Honor.

24 THE COURT: All right. Anything further?

25 MS. HAM: Your Honor, I believe that's incorrect. The

1 -- I mean, the -- the law clearly states that this ---

2 THE COURT: All right. Let me help you out.

3 MS. HAM: Okay.

4 THE COURT: Do you have any authority on point that
5 supports your position? Do you have a case?

6 MS. HAM: I do.

7 THE COURT: All right. Well, let me take a look at
8 it.

9 MS. HAM: I have two -- two cases.

10 THE COURT: All right.

11 MS. HAM: Two Court of Appeals cases.

12 THE COURT: All right.

13 MS. HAM: And I've given a copy to plaintiff's counsel

14 ---

15 THE COURT: Okay. That's fine.

16 (Ms. Ham hands documents to the Court.)

17 THE COURT: Thank you.

18 (Brief pause.)

19 THE COURT: And I think you mentioned yesterday the
20 two Court of Appeals cases. These are the cases you ---

21 MS. HAM: Yes, sir.

22 THE COURT: --- mentioned in passing -- sort of -- you
23 mentioned them, but didn't explain them. Go ahead. How are
24 they factually similar to the case at hand?

25 MS. HAM: In the *Moore v Berkeley County School*

1 *District Case*, Your Honor, to be frank, I -- I -- I read the
2 cases and I know the facts, but reciting them to you right
3 now, I'm probably going to have trouble because I focus on
4 the law.

5 THE COURT: Let -- let -- let me help you both out.
6 I'm here to help everybody; I'm not here to hurt anybody.
7 So you take your time. I'm going to read these cases. I
8 don't necessarily have to make a decision right now. But I
9 want to hear your arguments now, read the cases, think about
10 them, and let you know my decision in due course.

11 MS. HAM: Okay.

12 THE COURT: Okay.. Anything further, Mr. Reeves?

13 MR. REEVES: (No audible response.)

14 THE COURT: She's -- and essentially, I've determined
15 she's asked me to read these cases before I make a decision
16 on that point.

17 MS. HAM: Yes, sir.

18 THE COURT: Okay. That's fine. Yes, sir, Mr. Reeves.

19 MR. REEVES: I would -- well, I can respond now on one
20 issue ---

21 THE COURT: Go ahead.

22 MR. REEVES: --- while you read the cases. And I can
23 help out the City. In the *Hamilton vs. Charleston County*
24 *Sheriff's Department Case*, the holding was (as read): "A
25 defendant is guilty of gross negligence" -- in this case,

1 negligent supervision -- "if he is so indifferent to the
2 consequence of his conduct as not to give slight care to
3 what he is doing."

4 Chief Deputy Kelly admitted yesterday, not only to not
5 supervising and not looking at this problem and never
6 investigating this problem, he said, "We acted in bad
7 faith."

8 And the definition of bad faith is (as read):
9 "Intentional dishonest act by not fulfilling legal or
10 contract obligations; misleading another; entering into an
11 agreement without the intention or means to fulfill it."

12 So he's gone beyond negligence. But I'm not asking
13 for anything other than just negligent supervision.

14 So these cases are distinguishable because they didn't
15 show slight care in the supervision of its employee.

16 Other evidence, including, Your Honor: The employee
17 called his supervisor at the hospital; he admitted he had no
18 clue what he was doing; nobody came; no -- there's no
19 evidence that anybody tried to correct his behavior or find
20 out what was going on.

21 THE COURT: All right.

22 MR. REEVES: That is evidence of negligence and
23 failure to exercise slight care.

24 It -- it may -- they may not agree with it, but it's
25 certainly evidence of that.

1 THE COURT: All right.

2 MS. HAM: Your Honor ---

3 THE COURT: Yes, ma'am.

4 MS. HAM: --- I -- I believe that Mr. Reeves
5 yesterday, in his questioning of Chief Kelly, led him down a
6 path of hypothetical questions: "If this were to happen,
7 would that be bad faith?" And that's what he answered the
8 question to.

9 I -- I -- I still believe that there must be intent on
10 the part of the employee in -- pursuant to the cases, which
11 I've already asked you to read, for negligent supervision to
12 attach.

13 THE COURT: All right. That's the first motion. I'll
14 let you know my decision in due course. What's the next
15 one?

16 MS. HAM: All right. Next motion is discretionary
17 immunity. The City has raised the defense of discretionary
18 immunity. Discretionary immunity provides that (as read):
19 "The governmental entity is not liable for losses resulting
20 from the exercise of discretion or judgment by its
21 employees; or the performance or failure to perform any act
22 or service which is in the discretion or judgment of the
23 employee."

24 "To establish -- establish discretionary immunity, the
25 governmental entity must prove that its employee fail --

1 faced with alternatives, actually weighed competing
2 considerations and made a conscious choice. It must also
3 show that in weighing competing considerations and
4 alternatives, the employees utilized accepted professional
5 standards appropriate to resolve the issue.

6 "Simply because there's a disagreement as to whether
7 or not the discretion was properly exercised does not
8 preclude discretionary immunity. The exercise of discretion
9 includes the right to be wrong. The burden lies on the
10 defendant."

11 If we prove this, then your verdict must be in favor -
12 - or your ruling must be in favor of the City.

13 I believe that Mr. Duecker testified yesterday that --
14 that, you know, he -- he used his discretion with regards to
15 making the arrest in the case. He used standard practices
16 and procedures when he conducted the field sobriety test;
17 and he made a conscious choice to administer them to Mr.
18 Hassell. Once the results came out, he decided to make the
19 arrest pursuant to his training. And I think that all falls
20 under the discretionary immunity ---

21 THE COURT: All right. Thank you, ma'am. Yes, sir.
22 Mr. Reeves.

23 MR. REEVES: The defenses to false imprisonment and
24 malicious prosecution are, in essence, non-consensual, not
25 privileged, and probable cause. All those are at issue in

1 this case.

2 I looked yesterday through the charge book. I could
3 find no defense that's applicable to those two charges
4 relevant to negligent -- or excuse me -- discretionary
5 immunity.

6 Qualified immunity is where you're accused of an
7 intentional act and then you get qualified immunity if you
8 are acting in the scope of what would be reasonable
9 behavior, even if it was wrong.

10 THE COURT: Uh-huh.

11 MR. REEVES: That doesn't apply here because we're not
12 alleging a 1983 action. We're alleging these torts: false
13 arrest, malicious prosecution, defamation, and negligent
14 supervision. There is no defense to those charges other
15 than probable cause.

16 THE COURT: There's no immunity from those charges.

17 MR. REEVES: That's -- I'm sorry. That's -- that's --
18 there's no immunity other than probable cause.

19 THE COURT: Okay. Anything further, folks?

20 (No audible response.)

21 MS. HAM: Got another motion. Although the question
22 of whether probable cause exists is ordinarily a question
23 for the jury, it can be decided as a matter of law when the
24 evidence yields but one conclusion.

25 If Your Honor reviews the testimony given today, in

1 the light most favorable to the plaintiff, and concludes
2 that as a matter of law the facts known to the officer at
3 the time would induce an ordinarily prudent and cautious man
4 under circumstances to believe that Mr. Hassell had
5 committed the offense of driving under the influence, then a
6 directed verdict is proper here.

7 THE COURT: All right. Mr. Reeves?

8 MR. REEVES: There is a factual dispute. The City has
9 admitted -- they sort of admitted it. They kind of kept
10 going back and forth. They sort of admitted he made a
11 mistake. He admitted he made a mistake. You will also be
12 asked to charge that, given the circumstances, the jury can
13 infer, from those missing pieces of evidence, that they were
14 not demonstrated things helpful to the City; but in fact,
15 were demonstrating things helpful to the plaintiff.
16 Therefore, that factual scenario -- while they can decide it
17 as they will -- gets to the jury, in my humble opinion.

18 THE COURT: All right. Anything further?

19 MS. HAM: Yes. Your Honor, kind of in the same light
20 of the negligent supervision issue that I raised, I believe
21 that there is a similar issue as it relates to false arrest
22 and malicious prosecution.

23 Those two causes of action basically have the same
24 elements, except for malice. So you can be negligent or you
25 can be malicious, but you can't be both. So at -- at -- at

1 this time ---

2 THE COURT: What -- why do you say you can't be both
3 negligent and malicious?

4 MS. HAM: Well ---

5 THE COURT: I mean, what's -- what's the basis of your
6 making your argument you can't be negligent and malicious?

7 MS. HAM: Well, I should say that -- I -- I -- the
8 elements of false arrest versus the elements of malicious
9 prosecution only differ in the fact that there is a
10 requirement for malice for malicious prosecution.

11 If the -- if the employee acted maliciously, then he
12 should only recover for that particular cause of action. I
13 -- there shouldn't be two causes of action under which he
14 can recover for the same thing basically.

15 THE COURT: No. I -- I don't think there's going to
16 be an issue about a double recovery. It's a matter of what
17 assertion or accusation or allegation is made that they may
18 buy, so to speak. I mean, they might think this; they might
19 think that.

20 But it seems to me your argument goes to whether or
21 not there might be a double recovery, rather than they have
22 a choice. It's just like you can convict somebody of
23 murder, voluntary manslaughter, or involuntary manslaughter.
24 You know --

25 MS. HAM: Okay.

1 THE COURT: All right. Mr. Reeves, anything further?

2 MR. REEVES: Well, since we've moved for motions, I
3 would move for a directed verdict on the issue of negligent
4 supervision, in as much as the City has admitted that ---

5 THE COURT: Let me help all y'all out. I think these
6 are issues that need to be resolved by 12 people from this
7 community ---

8 MR. REEVES: We'll go with that.

9 MS. HAM: I have one other thing, Your Honor.

10 THE COURT: Okay. Go ahead.

11 MR. REEVES: Shoot. I shouldn't have ---

12 MS. HAM: I'm sorry. I'm sorry.

13 THE COURT: No. Go ahead.

14 MS. HAM: I just -- I just found out this last night.
15 And it's in relation to my faux pas with regards to the --
16 mentioning the plaintiff's prior bench warrants. You know,
17 we kind of scurried over that issue and didn't address it
18 again.

19 In relation to you making your curative instruction,
20 you know, Plaintiff got on the stand and -- and testified to
21 his reputation, that his reputation was somewhat tarnished
22 with regards to him having to go to jail and sit there for
23 however long he was there.

24 I think that it's a little bit unfair for them to be
25 able to argue reputation with regards to him being -- having

1 to be incarcerated, when he had two outstanding bench
2 warrants that he would have gone to jail ---

3 THE COURT: And what was those bench warrants for,
4 ma'am? There's a certain category of offenses that you can
5 use to impeach within a 10 year period. Did those bench
6 warrants that you alluded to, that almost caused a mistrial
7 -- do they have anything to do with an impeachable offense?

8 MS. HAM: They do not.

9 THE COURT: Okay. Thank you. Anything else?

10 MS. HAM: I was just making my motions on the record.

11 THE COURT: I used to have to do the same thing.

12 MS. HAM: I understand.

13 THE COURT: Yes, sir.

14 MR. REEVES: Nothing. I -- I'm good. I'm through.

15 THE COURT: All right. All right. I'm going to think
16 about one of them. As I said, and I'll let y'all know in
17 due course. I'll let you know in a few minutes what I'm
18 going to do.

19 Let me see y'all one more time about the request for
20 charge back in chambers.

21 MS. HAM: Okay.

22 (Off the record at 10:30 a.m.)

23 **DAY 4**

24 (On the record at 10:38 a.m.)

25 THE COURT: So is everyone pretty much ready?

1 MS. HAM: Yes, sir.

2 THE COURT: And technically, I'm going to let you put
3 your exceptions or objections on the record afterward.
4 We've talked about them several times.

5 MS. HAM: That's fine, Your Honor. Thank you.

6 THE COURT: Okay. Bring the jury in.

7 THE BAILIFF: Yes, sir.

8 (Brief pause.)

9 (The jury enters the courtroom at 10:41 a.m.)

10 THE BAILIFF: The jury's seated, Judge.

11 THE COURT: Thank you. Welcome back and good morning,
12 once again, Mr. Foreman, members of the jury. We're at the
13 point in this trial when -- where you will hear closing
14 arguments, or final arguments, on behalf of the parties.

15 Now, under our system, the Plaintiff has the burden of
16 proof. So first we'll hear from Mr. Reeves, who will argue
17 in favor of the Plaintiff; followed by Ms. Ham, on behalf of
18 the City of Columbia. And since the Plaintiff has the
19 burden of proof under our system, Mr. Reeves will have an
20 opportunity to reply or respond to Ms. Ham's argument.

21 With that in mind, I appreciate your courtesy and
22 attention throughout this trial and invite your keen and
23 close attention to the closing arguments.

24 Mr. Reeves, you may proceed, sir.

25 MR. REEVES: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. REEVES: Good morning. Thank you for your
3 service. I know it's been probably inconvenient for you. I
4 know you've been told to go here and come here and thank
5 you.

6 It's closing of the case. I want to talk a little bit
7 about the evidence. I -- I'm not going to talk long. I'm
8 not going to insult your intelligence by going over
9 everything in detail because you saw it.

10 At the very beginning of this case, I told you a
11 couple of things that I'd like to reiterate. First of all,
12 we, Darris Hassell, has the responsibility, the burden to
13 prove his case. As I told you at that time, that burden of
14 proof or responsibility was to take the scales of justice,
15 if you will, and tip them ever so slightly in his favor.
16 And he has then done what the law requires him to do.

17 Then that puts the issue in your hands to determine
18 what damages he sustained if you believe he's tipped those
19 scales in his favor.

20 I also told you at the beginning of this case that it
21 was my thought, after hearing his story that I was about to
22 tell you about, that it was obvious that you could be
23 arrested for something you didn't do.

24 I also think it's obvious that sometimes, for some of
25 us, your best is just not good enough when it should have

1 been.

2 With those two things in mind, I want to go into a
3 couple of things that I think are important, and some of
4 which the judge will talk with you about in just a little
5 while when he gives you the law of the case.

6 (Using demonstrative aid) City of Columbia has
7 admitted that Mr. Duecker was on the police force when all
8 this happened. So the fact that he's sitting at the table
9 over there should be no relevance to the determination of
10 his response. It's the City of Columbia. I'll come back to
11 that in just a minute.

12 Secondly, the City of Columbia has admitted to
13 violating its rules and procedures. And you can look at
14 Exhibits 1 and 2, if you want to, for further proof of that.

15 They've also admitted to violating State law in the
16 handling of that arrest, and at some point during the trial,
17 I did something that I've never done before. When Mr.
18 Duecker got on the stand, I could tell it was bothering it
19 him; I could tell that he was moved by the situation. And I
20 said, "You're sorry, aren't you?" He said, "Yeah."

21 And I thought, well, my goodness. It's taken us three
22 years to get to that point because by the way, folks, before
23 this week, nobody at the City of Columbia has said anything
24 about being sorry or being appalled.

25 Why today? Why Monday? Let me tell you why Monday.

1 They had 12 people staring at them in the face and they had
2 to come up with something.

3 Now, I don't -- I don't -- I don't diminish someone's
4 ability to apologize. I think it's very critical in our
5 culture. Apologies are a good thing. But what you've got
6 to ask yourself is, "Why was the apology now and was it
7 really an apology?"

8 Because it seems to me that, after I had some empathy
9 for Mr. Duecker because of what he had done, telling that he
10 had screwed up the alcohol smell and said he really didn't
11 smell alcohol, even though that's what he put in his report
12 and that's what he testified to, six questions later though,
13 when the City attorney redirected him or did her cross, he
14 said, "You know, if we just had that urine, we could prove
15 he was on drugs."

16 That message today is: "We still don't get it" is the
17 message from the City of Columbia.

18 And let him who has eyes to see, see. You didn't
19 leave your common sense at the door. You didn't leave your
20 sense of justice at the door. You didn't leave your brain
21 at the door because here's what I want you to see. If you
22 would, just for a minute, look at this table over here
23 (indicates.) I want you to understand that there's not a
24 police officer within six miles of this courthouse today.
25 They've left the sacrificial lamb over here for you to look

1 at and maybe even feel sorry for. There's not an officer in
2 this building to represent the City of Columbia. They still
3 don't get it and they still couldn't care less about what
4 happened to him. They could care less about the testimony
5 in this courtroom. They just don't care.

6 If they did, somebody in uniform would have been here
7 this week. That is reprehensible to me.

8 Let him who has ears to hear, hear this: The only
9 uniform person that came in this courtroom, got on the
10 stand, and said, "You know what, we have really screwed up.
11 Boy, we broke the law. We broke our own rules, and we can't
12 find -- and by the way, we've acted in bad faith."

13 The definition of bad faith includes this: "And
14 finally, the basic standards of honesty in dealing with
15 others."

16 That's what the City of Columbia's done, and today do
17 you think anybody cares?

18 What they care about is what you're going to do with
19 their checkbook because when they got up here and said, "You
20 know, we're sorry. We hate this happened. We made a
21 mistake," what they were in essence doing was they were
22 taking a checkbook (holds up item) -- this is not the City
23 of Columbia's checkbook -- but they're saying, "You know
24 what, here, folks. You -- you -- you can have that. You --
25 you do what you think's right."

1 Wait a minute, wait, wait, wait. Think -- Mr.
2 Duecker's, you know, says, "You know, that -- that -- I --
3 I'm convinced that urine had something in it."

4 So then they say, "You know what, we're going to take
5 this back (indicates.) We don't trust you. We don't care."

6 Every major religion that I'm familiar with has a
7 principle of repentance and saying, "I'm sorry," is part of
8 that. It's very important. But there's two other things
9 that happen when you really are sorry for something. Number
10 2, you take responsibility for it. And you can determine
11 whether anyone's taking responsibility for this.

12 The third thing you do is you make it right. So I'm
13 inviting you to take the City's "We're sorry," and do those
14 three things: Make them responsible and then make it right.

15 And making it right is when you give Darris Hassell
16 his full measure of damages, whatever you determine that to
17 be. Because that is the only way he's going to get justice
18 and that's the only way you're going to tell these people
19 what his damages are because nobody's here and nobody's
20 listening down there.

21 That's why Darris Hassell's probably a better guy than
22 I am because he sat through this whole thing and you saw on
23 that video his demeanor.

24 By the way, that's the video that SLED maintained, not
25 the City of Columbia because if they had it, we wouldn't be

1 looking at that video tape today.

2 By the way, not one single person has been brought in
3 here today to give you any explanation of exactly what
4 happened. You just don't know. And they have the audacity
5 to ask Darri Hassell, "Well, did you complain to anybody?
6 Did you come and complain to us?" What good would that have
7 done if it would have done any good?

8 His response was, "I just thought that somebody would
9 make it right."

10 You heard the deputy say, "Oh, you know, we can't un-
11 arrest somebody." Gosh, just all that -- we just can't do
12 it."

13 They did un-arrest him about nine months later. Keep
14 that in mind. Just took them nine months.

15 First hearing he goes to -- which is where the officer
16 charged him with two crimes, said you gotta come to court
17 and you gotta put up a defense -- he goes there: "We ain't
18 got nothing. We don't -- we don't -- oh. We're just going
19 to continue this case, and we'll put it off a little while."

20 And well, that's easy for the City to do because
21 obviously they don't have a clue what's going on anyway.
22 And so he has to wait additional months before it's actually
23 dismissed.

24 The case in this -- this situation that I'm going to
25 ask you to consider involves three things that's false

1 arrest -- I'm going to put up some elements to show you here
2 and the judge is going to charge these. I'm different than
3 him. You listen to him because he's the judge. But I'm
4 gonna put up a couple of things here just real briefly.

5 (Using demonstrative aid) These are the -- these are
6 the elements of the cause of action of false arrest. This
7 is what we have to show through the preponderance of the
8 evidence. Okay. These are fancy words.

9 (As read) "The defendant restrained or put the
10 plaintiff under arrest." They did that. "Restraint was
11 intentional." Well, we know that. And "restraint was
12 unlawful." It was unlawful. There was no probable cause.
13 Probable cause is we have a suspicion that somebody's done
14 something wrong.

15 Now, the judge will also charge, at the end of this
16 case, that video at the scene that's missing, he's going to
17 charge you that you have the right to presume and infer that
18 because that video is missing, it does not show what the
19 City tells you it shows. That's your job. You get to do
20 that.

21 Now, if there was no probable cause, then we have
22 proven false arrest. And here's why there was no probable
23 cause: If you have any doubt about what I say, if you have
24 any doubt about what Darris Hassell says, if you want to
25 think about what the City of Columbia said through Mr.

1 Duecker -- who's no longer an officer there -- I want you to
2 look at this, look at the SLED video. He maneuvered around
3 chairs, his disposition was -- he spoke clearly, he was
4 attentive, he sat in that same position for 25 minutes. He
5 didn't slump over. There was no indication of impairment,
6 none whatsoever.

7 Drunk people don't ask for tests. High people don't
8 ask for another test that's gonna prove it. You don't do
9 that if that's what -- if you are impaired.

10 And by the way, when -- when you're drunk or high, can
11 you give your driver's license number from memory twice?
12 Can -- can you ask the question, "Officer, what -- what did
13 I do wrong?"

14 And you saw his demeanor. That demeanor -- and the
15 officer agreed -- that demeanor was the same at the scene as
16 it was in the Datamaster room where we have the video. What
17 you saw was a man who was helpless, but in control; who was
18 reasonable, who just wanted somebody -- when that number
19 came back, it was like, "Hallelujah. This is over." Nah,
20 you got drugs in your system.

21 Folks, the City of Columbia did not know how to do the
22 drug test, but they had it done. And then the sample goes
23 missing. I don't know if it's missing. I don't think they
24 know about it and just don't want you -- I don't know what
25 happened to the sample. But again, you can infer from the

1 fact they lost it that sample showed what Derris Haskell
2 said all along it showed: I didn't have anything. I didn't
3 take anything.

4 Oh, and we -- we brought his doctor in here yesterday.
5 Yeah. He's on some medications, but they won't cause that
6 voodoo eye jumping thing and they don't cause impairment.

7 So where's the City left today? Responsible.

8 The next cause of action that we've alleged is
9 malicious prosecution. (Using demonstrative aid) Malicious
10 prosecution is when you do something -- he wrote him a
11 ticket; written by the City of Columbia. Darris Hassell
12 went to court twice. All the charges were dismissed. Just
13 -- they just weren't -- they just weren't dismissed.

14 Defendant's malice in starting the proceedings.
15 Malice is kind of a big word. It's a nasty word. It's --
16 but here's where malice comes from. The judge will tell you
17 that malice can be inferred for -- because they have no
18 probable cause to do it. But it also suggests something
19 else, too. Darris Hassell was the only person in the
20 courtroom that day when he appeared for his ticket who
21 didn't know they'd lost the video and who didn't know they'd
22 lost the sample. Nobody told him. And the City has the
23 audacity to say, "He didn't ask us. He didn't ask us."

24 Finding probable cause is -- that's the second cause
25 of action, malicious prosecution.

1 (Using demonstrative aid) The third cause of action is
2 negligent supervision. That's a legal term which just
3 simply means this: The City of Columbia didn't know what
4 they were doing. They still don't and they don't care.

5 You have an employee who has -- he admitted didn't
6 have a clue what to do, took it, didn't ever talk about it
7 again, never went -- process to SLED. That's unreasonable
8 because as you know State law requires anything -- State law
9 says you gotta send it over there and SLED says, "We'll do
10 it." It never got there apparently, or if it did, it came
11 back. Nobody told us about it.

12 And then finally there's damages. Let me tell you
13 what the damages are here in this case: The negligent
14 supervision. The chief deputy came in and said, "You know,
15 if we lost that stuff then, yeah, we -- we were -- we were
16 negligent. We -- we were more -- we were -- yeah, in bad
17 faith."

18 You get to judge the credibility of the people who
19 were here. Mr. Hassell's demeanor here was much like his
20 demeanor on the video tape. It was respectful, it was
21 concerned, and it was -- he was helpless.

22 As I said in my opening, I am -- I am moved by the
23 fact that he demonstrated courage, which courage, in
24 essence, means selflessness. And so he just put everything
25 else ahead of himself and said, you know, we're not going to

1 start a fight. We're not going to start a fuss. We're not
2 going to cuss, we're not gonna -- we're not gonna raise
3 Cain. I'm just going to go before, eventually, 12 people
4 who can fix this.

5 And folks, I really want to be able to say that your
6 city, my city, this city, the City of Columbia, gets it; but
7 they don't.

8 Mr. Hassell has told you that -- what it was like to
9 go to jail, and he told you what it was like to pee in front
10 of somebody in handcuffs; told you what it was like to ride
11 down to the detention center where even another police
12 officer says, "You know, why you are going down there?
13 Nothing I can do about it though."

14 So you're here to do something about it. You're here.

15 I am going to ask you for a verdict in money damages,
16 and I'm here to tell you up front, I -- I don't even know
17 what you're thinking about this case. I don't know what
18 your basis or what -- where you're coming from on how you
19 feel about this case. But there's an interesting question -
20 - I don't know why it was asked, but it was asked by the
21 City: "Mr. Hassell, how much money do you make in a year?"
22 He said \$48,000. I don't know why they asked that question.

23 But I thought about it last night, and I thought --
24 well -- because you know, we all lawyers are suspicious of
25 why -- why would they ask that question. So I was thinking

1 about it and I thought, "What -- what does that mean?" And
2 I thought, "You know, what a great measuring stick for
3 someone who has been plucked from the normal everyday
4 routine and cuffed and arrested and taken to the detention
5 center and left there to -- to his own devices, put in a
6 cell with people -- he said it was crowded and -- and even
7 in his -- even in his humble demeanor, said it was terrible.
8 And -- and I thought about, you know, what -- what would it
9 -- how do you measure that kind of damage and how do you
10 measure, you know, being held against your will when you
11 know you're right and you're -- you're good is just not good
12 enough?

13 And how does it feel when you say, "I'm -- I'm not
14 impaired and now you are. And even after testing, "No. You
15 still are." And even after that, "We just lost the test.
16 Just, you know, please go away."

17 What -- what is it -- what is that worth?

18 And then also, what is it worth to -- to wait 1,000
19 days before somebody comes in and says, "Maybe there's
20 something wrong here?"

21 So you get to choose what damages you're gonna give
22 him. You cannot give punitive damages though. Our law says
23 you can't give punitive damages against a municipal or
24 county governmental subdivision. I wish you could. You
25 can't.

1 But what you can do is give the full measure of
2 damages. And so I suggest that you take that salary of
3 \$48,000 a year and multiply it by about four. That's my
4 number. You -- you may want to go higher. You may want to
5 go -- I don't know. But you can use that as a benchmark
6 because you get to determine what the facts in the case are.

7 And you may say, "Well, gosh. I -- you know, I might
8 go to the detention center for some money." Well, you know
9 his outcome. What if the outcome wasn't that good? It's
10 hard to put anybody else in that situation.

11 We look at the paper everyday and we see an article
12 about crimes, and you know, we think -- read these horrible
13 things, "Oh, that guy's guilty. She did it. I'm sure of
14 that."

15 But what happens though if it's somebody that we know
16 who's in -- we think, "Gosh. That can't be true. That
17 can't be -- that just -- no. That's horrible."

18 This is horrible, folks. And I'm asking you for that
19 multiplier because I think that's the kind of damages he
20 deserves and that's the full measure of justice. Because
21 here's what's going to happen if we don't do that: Nobody's
22 going to pay attention. They're not even here today. Not
23 important enough.

24 Darris Hassell did the right thing when everybody else
25 was doing wrong. He waited for the right time to make his

1 complaint. He wanted to do it in the right place, and he
2 wanted to do it with the right people, in front of the right
3 people. And you're the right people to give us the full
4 measure of damages, and I'm going to ask you to do that.

5 I'm going to ask you to take the City's checkbook and
6 give them the responsibility for what they've done, and
7 maybe next time, they might even show up in court. Thank
8 you very much.

9 THE COURT: All right. Ms. Ham?

10 MS. HAM: May it please the Court, Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. HAM: Good morning, ladies and gentlemen. And
13 first I'm going to apologize to you because there is
14 something that I did not do. There were two people sitting
15 behind me the entire week and I just want to introduce you
16 to who they are.

17 The young lady in the orange shirt is Natasha Collins.
18 She's an attorney with our office. And the other young
19 lady, also in orange -- maybe red -- she is an intern with
20 our office this summer. She's a law student. She just
21 completed her first year of law school. And they were both
22 here to observe today.

23 I also would like you to know that (indicates) all
24 these folks right here in the front are also from the City
25 of Columbia, including the -- the City attorney herself, Ms.

1 Teresa Knox, right there in the front.

2 What did I tell you? I told you at the -- at the -- I
3 -- (a pen falls) I tend to throw pens. I'm sorry. I -- I
4 keep it in my hand because it's kind of a nervous habit, but
5 you know, disregard that, please.

6 But I -- I told you at the beginning of this, on
7 Tuesday morning, that you were going to hear similar facts
8 from both sides. And I think that you did. I think that
9 you did. I told you that Cameron Duecker was going to stand
10 in front of you and he was going to tell you that he made a
11 mistake. It was an honest mistake. And -- and he did that.

12 But I don't think anyone here believes that Cameron
13 Duecker acted with any malice in his heart against Mr.
14 Hassell. I just don't -- I -- I don't believe that. I
15 don't think you believe that. I -- I don't think anyone in
16 this courtroom believes that Cameron acted with malice.

17 He got on the -- the stand. He was honest, he was
18 forthcoming, he was transparent. He apologized today
19 because he didn't have the opportunity before. He gave his
20 deposition. At the time of his deposition, he didn't know
21 he violated the policy. He -- he had no idea.

22 It wasn't until after he left his deposition that he
23 went and looked at the policy because he was wondering why
24 they -- why his attorney asked him questions about this
25 policy. That's when he found out that he violated the

1 policy.

2 He hasn't worked for the City of Columbia since 2014,
3 so it wasn't until this lawsuit was filed and we called him
4 up and said, "Hey, we're going to need for you to come and
5 deal with this in this case." So that is why there was not
6 an apology before that.

7 I also don't believe that Cameron acted intentionally
8 in this -- in this situation. In order for a charge of
9 negligent supervision to stand, he had to act with intent
10 with regards to his bad acts against Mr. Hassell.

11 You heard him. I don't -- I don't think he -- he did
12 anything intentional. I don't think you -- you think he did
13 anything intentional. Certainly not with -- with regards to
14 the evidence. Up until the day the charges were dismissed,
15 he was still waiting on a report from the -- the evidence
16 room on the urinalysis. He didn't know.

17 He was not the only person in the courtroom that day
18 that didn't -- that -- that knew about the lost video or
19 knew about the improperly logged-in evidence with regards to
20 the urine. He was not the only person there that knew that.
21 Cameron Duecker didn't know that either. He was waiting on
22 them to send him something so that he could prosecute his
23 case.

24 Now, when I say that Cameron made a mistake, I want
25 for you all to understand that he did not make a mistake

1 with regards to the arrest. What's required with regards to
2 an arrest is probable cause. I defined that for you on
3 Monday. I've got -- I told you to listen to the judge, he's
4 going to give you the law. So you -- you listen to the
5 judge with regards to what probable cause actually is.
6 But I'm going to read it for you again.

7 I worded it a little bit differently this time than I
8 did on Monday, just because I think it makes it a little bit
9 easier to understand. But as -- it's an ordinary prudent
10 person -- ordinarily prudent person, in the same
11 circumstances as Cameron, would have a good faith belief
12 that Mr. Hassell was guilty of a crime.

13 Yes. Why? Because of the same things that I told you
14 on Monday: It was 1:30 in the morning, the plaintiff made
15 an improper turn -- or at least that's what Cameron
16 observed. When he approached the car, he thought he smelled
17 alcohol. He got Mr. Hassell out of the car. He performed
18 field sobriety tests. Mr. Hassell did not pass those field
19 sobriety tests, and pursuant to those things, that is the
20 quintessential definition of probable cause. He made the
21 arrest. That's it. Plain and simple, guys. That's
22 probable cause. Okay?

23 If you really think about it, Mr. Hassell kind of
24 benefitted from Cameron's mistakes. You know, Cameron --
25 the video is lost. I don't know that Cameron lost it, but

1 we -- we don't have it. The urine didn't get logged in
2 correctly. It did not get tested. So what happened?

3 Charges were dismissed. Mr. Hassell's record has been
4 expunged. That is justice, guys. That's how it works.
5 That's how all the cases work. If there is no evidence,
6 then there is no prosecution. The charges against Mr.
7 Hassell were -- were dropped once it was determined that
8 there was no evidence. That's fair.

9 That's -- if you really think about it, it's the best
10 possible outcome for any criminal case. That's what they
11 all want is for the charges to be dismissed and their
12 records to be expunged. And that's what he got.

13 Even if the urinalysis had come back and said that
14 there was nothing -- no drugs, nothing in the urinalysis, it
15 was negative, what would have happened? The charges would
16 have been dismissed and his record would have been expunged.
17 He got what he deserved with regards to the charges from
18 that night. And -- and I believe that -- that -- that's
19 great for Mr. Hassell.

20 Now, I understand that he spent time in jail and we
21 are very sorry for that. And I -- I do not take that
22 lightly. I do not.

23 You heard Chief Kelly testify to the policy and
24 procedures with regards to the City of Columbia and how the
25 evidence process works. We got a couple of exhibits there.

1 You can look at the exhibits, but he told you what the
2 policies were. He told you that Cameron violated that
3 policy. We don't deny that. We don't. Like I said before,
4 Cameron didn't tell him that in his deposition because he
5 didn't know at that time. He didn't know.

6 Chief Kelly told you that there are several ways to
7 file a complaint against an officer. He told you that no
8 complaint was ever filed. He told you that having a
9 complaint filed against an officer puts the command staff on
10 notice that there are issues. They need to look into that.
11 But there was no complaint ever filed.

12 This happened in 2014. In 2016, we got a lawsuit.
13 Cameron hadn't worked for the City of Columbia since 2014,
14 y'all. Noone was on the list about any of these issues that
15 plaintiff has complained about. Chief Kelly told you that
16 if they were on the list, even if Cameron still worked for
17 the City now, if they had just learned today about the
18 issues in this case, there would be an investigation by
19 Internal Affairs and he would be disciplined.

20 But Cameron's been gone since 2014, shortly after Mr.
21 Hassell got arrested. If -- if there was no notice of any
22 issues, how could they negligently supervise him? He -- yo
23 know, he called and asked what is he supposed to do with his
24 urine. They told him he needs to take it -- it's 1:30 in
25 the morning or 2 o'clock in the morning by that time. I

1 don't know specifically, but it's in the early hours of the
2 morning. You gotta take it to the evidence room and put it
3 in a locker. They assumed that, you know, he's been through
4 training, he knows what to do with it. He did that.
5 Unfortunately, Cameron did not know and -- and we've
6 admitted that.

7 Chief Kelly told you that they had -- the department
8 has 166,000 citizen interactions every year, give or take.
9 I know that all of those aren't with regards to arrests and
10 criminal charges, but a lot of them are. And if you require
11 that every single charge made by every single officer is
12 supposed to be investigated by command staff, I -- I think
13 we'd all be paying a heck of a lot more taxes ---

14 MR. REEVES: Objection, Your Honor.

15 MS. HAM: --- for ---

16 THE COURT: Sustained. Outside the scope of purview
17 of this trial.

18 MS. HAM: Withdrawn.

19 I think that would be a big undertaking for the
20 department.

21 Chief Kelly told you about all the training that
22 Cameron had to go through. He was properly trained on the
23 proper procedures and the proper ways to do things. Cameron
24 made the violation, not the City of Columbia. We trained
25 him properly. He got all the same training as all the other

1 officers.

2 Now, he got the training and he got it wrong this
3 time. But there is no testimony -- he's never had a
4 complaint filed against him. He's never had an IA --
5 Internal Affairs investigation done against him. He's not
6 done this before. This is not something that he does on a
7 routine basis. This isn't -- there was no reason for the
8 City of Columbia to not hire Mr. Duecker, none, none at all.
9 He was -- they told you that when he left, he left the City
10 in good standing. He didn't have any of those complaints.
11 Okay?

12 So where are we? Mr. Hassell doesn't have any
13 physical damages, he didn't lose his job, he didn't miss any
14 opportunities, he wasn't disciplined at work. His peers
15 still respect and love him, maybe even more so now. His
16 medical condition was not adversely affected.

17 So in sum, he got his charges dismissed, his record
18 expunged, and now he's up for a promotion. He's here asking
19 you to give him money, asking you to give him money for
20 malicious prosecution, even though there's no malice.
21 There's no malice here. Cameron Duecker didn't act with any
22 malice.

23 He's asking you to give him money for negligent
24 supervision. Well, there's no negligent supervision here.

25 He -- he didn't act intentionally, there was no prior

1 notice with regards to any of the issues that plaintiff is
2 here complaining about. And Mr. Duecker never had any
3 complaints for -- from any of his other cases ever. No
4 internal investigation -- Internal Affairs investigation.
5 There -- there's no negligent supervision here, folks. I'm
6 -- I'm -- I -- ...

7 They also asking to give him money for false arrest,
8 even though there was established probable cause. In order
9 to win on a false arrest claim, there has to be no probable
10 cause. And we have that here, folks: 1:30 in the morning,
11 improper turn, thought he smelled alcohol, field sobriety
12 test. We have it here.

13 I don't think Cameron acted with any malice. If you
14 agree with me, then you cannot give him any money for
15 malicious prosecution. That -- that -- that's the law.
16 There has to be malice in order for him to get damages for
17 malicious prosecution. There's no malice here.

18 I don't think Cameron acted intentionally with regards
19 to the negligent supervision charge or cause of action. He
20 made an arrest because he thought that Mr. Hassell was
21 impaired based on his tests. He did not want Mr. Hassell to
22 hurt himself or anyone else on the streets that night.
23 Because he thought he was impaired, he arrested him, plain
24 and simple.

25 There's no negligent supervision. The City was never

1 on any notice about any of these issues. Just because he
2 made a phone call to his supervisor, you know, double
3 checking the process with regards to what to do with some
4 evidence at two o'clock in the morning does not make the
5 City negligent. We didn't negligently supervise him. He
6 had -- had a perfect record, so to speak. If you agree with
7 me that there is no intent and there was no notice to the
8 City with regards to these issues, then you can't give him
9 money for negligent supervision.

10 Probable cause -- I -- I keep going back to that
11 because it's so simple. Probable cause is -- it -- it's
12 relatively easy for -- for officers to come by. In this
13 case, it's all there: 1:30 in the morning -- I'm not going
14 to go back through it. Y'all -- y'all know it. Y'all know
15 it. But if you think that Cameron Duecker had probable
16 cause, you can't give them money for false arrest. This is
17 the law.

18 Now, I understand. We all feel bad for Mr. Hassell.
19 Cameron Duecker testified that he felt bad about it. He
20 even apologized. I can't say that sitting here today I
21 don't feel bad about it. I do. I met Mr. Hassell when we
22 did his deposition and I think that he is a great person,
23 outstanding citizen. I feel bad about what happened. And
24 that is not for show. That's not to give you the checkbook
25 and make you feel comfortable with regards to what your

1 damages are to the City. I'm here to argue the law to -- to
2 you guys today. The judge is going to tell you the law.
3 I'm here to argue it to you.

4 There -- the City's been forthcoming. We've been open
5 and honest about things. We're not here to hide anything.
6 That's just not true.

7 That's it, folks. You decide that, that's it. You
8 decide that none of these things apply to the City, we all
9 go home. And unfortunately, Mr. Hassell doesn't get any
10 money today, but he's already gotten his record expunged,
11 the charges were dismissed, and you know, he's up for a
12 promotion. I don't think he loses anything with regards to
13 that.

14 So last night -- I -- I can't help but think that you
15 guys are looking at this case kind of in hindsight. I know
16 we're not supposed to do that. You're supposed to try to
17 think about it at the time things happened, but I'm just
18 saying that you are. And I know that you feel bad for Mr.
19 Hassell because I do. Now, you know, maybe -- maybe -- if
20 you find that there was no probable cause, I believe that
21 there was. Without a shadow of a doubt, I believe there was
22 probable cause. But if you perhaps find that there was not
23 probable cause, then Mr. Hassell does get damages for that.
24 He gets damages for the things that he had to go through
25 with regards to the false arrest charge.

1 I don't think there's a way that you can find for Mr.
2 Hassell on the other two charges, so I'm not even going to
3 address those.

4 How much does he get for that? What's a reasonable
5 amount? I don't know. I don't know. I -- I told you guys
6 on Tuesday that last year, I got married, then I had a baby.
7 And from this past year, I've learned a lot of things. I
8 don't know if you -- any of you guys have children or
9 whether or not you're married. I can't remember from jury
10 qualifications, but I -- I think I've learned a few things
11 about what could be considered reasonable.

12 My husband -- he actually played football for Carolina
13 under Lou Holtz. And he was a wide receiver. I don't know
14 if you guys know anything about football and Carolina, but
15 Lou Holtz didn't really like to throw the ball. But he did
16 have wide receivers, and my husband was one of them. But in
17 a conversation that we had last year, he was telling me how
18 football players would -- they had practice usually twice a
19 day. They had to -- mandatory meetings, they had weight
20 lifting times that were mandatory. They had to review film
21 tape on Sunday afternoons or something like that. And then,
22 of course, they had to play the game -- playing the games on
23 Saturday.

24 And he said that after every single game, one of the
25 assistant coaches would walk down the aisle of the bus or

1 the plane or wherever they were, and give the players their
2 per diem, per to say, per diem, for lack of a better term,
3 for the week. It was ten dollars. It's all they got all
4 week, ten dollars. I think that is unreasonable by any
5 means of the -- by any stretch of the imagination, that's
6 unreasonable.

7 Now, last year I also had a baby like I said at
8 Baptist Hospital. Everything went fine, perfect delivery,
9 perfect baby. It was great. I did ask for all the drugs.
10 That's neither here nor there.

11 I got the bill in the mail from the hospital. I also
12 got the bill in the mail for the doctor and for the
13 anesthesiologist and for the pediatrician. And it was
14 pretty significant amount, pretty significant amount. Can't
15 remember the exact amount, but probably a few thousand
16 dollars after insurance. And I thought for what I got to
17 take home, it was worth it. It was reasonable. I -- I
18 thought that the medical bills that they gave to me were
19 reasonable. My husband and I, we got away and got them
20 paid.

21 A week after we got home from the hospital the
22 pediatrician called and told us that there was an issue with
23 my daughter's newborn screen. Turns out she has a very rare
24 genetic complex. It's called "carnitine transport complex."

25 THE COURT REPORTER: I'm sorry?

1 MS. HAM: Carnitine transport complex.

2 He says, "Extremely rare. I've never seen it. I've
3 been practicing for 30 years. I've asked all the other
4 doctors in our practice. Noone knows anything about this.
5 We're going to send you to a geneticist. The geneticist is
6 in Greenwood, South Carolina."

7 I'm sorry. That was a little emotional for me just
8 going back there for a second.

9 But none the less, we went to the geneticist and we
10 listened to what he had to say. He said he needed to run
11 some tests. He ran the tests and turns out that she's only
12 a carrier of the defect. She doesn't actually have it. So
13 she's fine. She's perfect. Nothing's wrong. She doesn't
14 have to take any medication. And we were very happy about
15 that. Very happy about that.

16 And then we got the bill from the geneticist. Well,
17 it was not like the hospital bill. Let's just say that it
18 had a comma and there were five digits. It was huge. That
19 bill was extremely huge. That, folks, that bill was
20 unreasonable. And that's how I think about things as to
21 what is reasonable and what is not.

22 So we're going to use the testimony from Mr. Hassell
23 to try and determine what would be a reasonable amount for
24 you to award to him for false arrest if and only if you
25 decide that there was no probable cause.

1 Mr. Hassell testified that he makes \$48,000 a year.
2 I've done the math and he works full time and so forth. 40
3 hours a week for 52 weeks it ends up being about \$23 an
4 hour. Okay.

5 Now, I think that he deserves more than \$23 an hour
6 for the time that he spent in jail. It's -- by my
7 calculations, I think it's 16 hours or he spent 16 hours in
8 -- in jail, give or take. You can calculate it from what
9 you heard in the testimony. But from -- from my
10 recollection, I believe it was about 16 hours.

11 Now, do you double that? Do you double what he makes
12 per hour? Do you triple it? I don't know. I thought about
13 it and thought about it. So I decided that \$200 an hour
14 would be reasonable. That's over 8 times what he makes at
15 his job, \$200 an hour would be a reasonable amount to pay
16 him for the time that he spent in jail.

17 Well, and then I thought about it some more. I've
18 never been arrested. I've never been arrested. I've never
19 been in jail. I have been to the jail several times. My
20 job takes me there often. So I -- I know what it's like in
21 there. You're perspective also tends to change once you
22 have a child, and like I said, I don't know that any of you
23 have any, but Mr. Hassell testified that he had to think
24 about, while he was in jail, how his mother would worry.
25 And I thought about if my daughter got arrested, how I would

1 worry. So I doubled my original amount to \$400 an hour
2 because I -- I think that's reasonable and I think that he
3 deserves that.

4 He testified as to the conditions in the jail. I've
5 been there. He's right. It's pretty bad. So \$400 an hour,
6 that's over 17 times what he makes per hour on his job. May
7 -- maybe I'm being overly generous, but you guys are the
8 ones that get to decide. But -- but I think that's
9 reasonable.

10 For 16 hours that he spent in jail, he also testified
11 that he had to pay \$75 to get his car out of the impound.
12 Well, for 16 hours that he spent in jail and for \$75 for him
13 to get his car out of the impound, that's a total of
14 \$6,475.00. I think that's reasonable.

15 Like I said, you might find that to be too high. You
16 might think that he deserves more. But I think that's a
17 reasonable amount. I -- I prepared my closing with a number
18 in mind as to where -- how much he would ask for. He ended
19 up asking for a lot more than that, so I'm going to have to
20 switch what I was going to tell you around a little bit.
21 But I think Mr. Hassell has asked you for four times his
22 annual salary. I think that's -- I tried to do the
23 calculations real quick, and you guys, obviously, can do the
24 math when you're back in the jury room. But I -- I believe
25 that's \$192,000. That's \$12,000 an hour. That's over 521

1 times what he makes at his job. I'm sorry, folks, that is
2 unreasonable. That is unreasonable.

3 I thought that 50 or \$75,000 was unreasonable, but
4 \$192,000? He's basically asking you to be his lottery
5 ticket. I'm sorry, folks. It's unreasonable. I believe
6 it's unreasonable. It's a windfall. You know, he doesn't
7 get to have a windfall. He gets to have a reasonable amount
8 given to him for what he had to go through.

9 Now, he had to come to court twice. I understand
10 that. And I think that for the time that he had to spend in
11 court, you maybe should give him something for that, too.

12 Now, this is all if you believe that there's no
13 probable cause, that Cameron did not have probable cause
14 when he made the arrest. Okay?

15 So, you know, he had to come to court, he had to spend
16 time driving back and forth to the courthouse; he had to
17 spend time at the courthouse, and he had to spend time
18 talking to the officer at the Courthouse. And you know,
19 that takes a few hours, I would assume.

20 I've been to court lots of times, I know how it works.
21 So let's just say there were four or five hours that he had
22 to spend going to and from court and actually in court.

23 Now, I think that's worth something. I don't know how
24 much that's worth. I don't think it's worth the same amount
25 as the time he spent in jail. It's probably worth less than

1 that, but I think it's probably worth something. I'll leave
2 that for you guys to decide.

3 Now, the time that he spent waiting for the charge to
4 be dismissed, eight months or was it nine months that he
5 spent waiting? I don't think he gets paid for that. That's
6 unreasonable. That's a windfall, that's not justice. He
7 got his charges dismissed, he got his record expunged. Mr.
8 Hassell, by his own testimony, said that he thought the
9 urinalysis would come back, would absolve him, that it was
10 going to come back negative. There's nothing going to show
11 in the urinalysis. So it's not as if he was worried about
12 the outcome. If he knew that he hadn't taken any drugs, he
13 knew that the urinalysis was going to come back.

14 How does he get paid for the time that he had to wait
15 for the charges to get resolved?

16 It's not as if Mr. Duecker continued the case because
17 he just wanted to come. He, Mr. Duecker, came back to court
18 after he left the City of Columbia. He came back to take
19 care of the charge, and he didn't even work there anymore.
20 If he'd have known, he'd have tried to resolve it the first
21 time he came. He didn't know. He had no idea that the
22 urine hadn't been tested. I already told you guys that.

23 I paid attention to everything in this case.
24 Everything. I paid attention to all of the evidence, I paid
25 attention to the testimony. I paid attention to you guys.

1 I watched how you paid attention, and I appreciate that. We
2 don't always get jurors that pay attention the way that you
3 do. So I do want to say thank you for that.

4 So in conclusion, I am going to ask you for the
5 following: For you to find that Cameron Duecker did not act
6 with malice. No malice, no malicious prosecution here.
7 Okay? There is no malice, there will be no malicious
8 prosecution here.

9 I'm going to ask that you find that Cameron Duecker
10 did not act intentionally, that the City was not on notice
11 with regards to any of the Plaintiff's issues at the time
12 that this all happened. There was no supervision.

13 I'm going to ask that you find that Cameron Duecker
14 had probable cause when he arrested Mr. Hassell.
15 It was wrong, I get that, but he had it. He had probable
16 cause at the time. If there is no probable cause, then
17 there is no false arrest, plain and simple.

18 Now, if, if you find that there was no probable cause
19 -- if you find that there was no probable cause, then all
20 I'm asking is for the damages that you give to Mr. Hassell
21 to be reasonable. That's all I'm asking. I'm not taking
22 the checkbook back from you, or you know, anything of that
23 nature. I'm just asking you to be reasonable. Don't be the
24 geneticists, okay? Thank you, guys.

25 THE COURT: All right. Mr. Reeves?

1. MR. REEVES: Please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. REEVES: It is painful and uncomfortable to watch
4 a Defendant who just cannot seem to say, "We did it." I
5 wish they had, but they didn't.

6 In essence, the City of Columbia just told you, and I
7 quote, "Mr. Hassell got what he deserved."

8 If you agree with that, then you need to find for the
9 City of Columbia.

10 The City of Columbia looks at this situation as if you
11 spilled your milk in the morning," Whoops. Sorry."

12 And the City's position about no probable cause, just
13 look at the video. You know, I -- I told you to look at the
14 video from SLED and -- and I -- the Judge is not going to
15 charge you about anything about intentional acts. Okay?
16 That's not -- that's not -- the judge is not going to charge
17 you about intentional acts. You don't have to find that at
18 all. That's -- that's a mis-statement of the law.

19 She also said, "Well, you know we lost all this
20 evidence, so it really was good for him. They all -- isn't
21 that what they all want anyway?"

22 Let me talk about why that statement's important.
23 It's them and everybody else, and aren't you getting what
24 y'all deserve? I am astounded that this City is still
25 standing here saying, "You got what you deserved."

1 That is offensive. It's offensive to me, it's
2 offensive to you, and you know what? That argument about
3 well, y'all, what's reasonable, she knows what's reasonable.

4 In essence, she's saying, you know what, you really do
5 need to find for Mr. Hassell, but just don't hurt us too
6 much. That's what she's saying.

7 I was wrong. You need to give him five times his
8 salary, not four. Because they still don't get it. And
9 he's still sitting here having people tell him, "You got
10 what you deserved."

11 Thank you, Your Honor.

12 THE COURT: (To the jury) Y'all need a short break?
13 It's going to take me nearly twenty minutes. So y'all okay
14 or you want to take a short break? Anybody need a break?

15 (No audible response.)

16 THE COURT: Okay. Now, Mr. Foreman and members of the
17 jury, you have heard the evidence and the argument of both
18 parties. I will now explain to you the law that applies to
19 this action.

20 Darris Hassell, the plaintiff, claims that he's been
21 injured by the actions of the City of Columbia, the
22 defendant. In bringing this lawsuit, he claims that the
23 Defendant should compensate him for his damages or injuries.

24 Now, members of the jury, under our constitution and
25 code of laws, only you can make the findings of fact in this

1 case. I am not permitted to indicate to you how I may feel
2 about the testimony and the evidence which has been
3 presented. And throughout this trial, I have intended to be
4 fair and impartial toward each of the parties involved.

5 Now, to determine the facts in this case, you will
6 have to evaluate the credibility, which means the
7 believability, of each witness. Now, some of the things you
8 may consider as you decide whether or not to believe a
9 witnesses testimony about a particular matter include: What
10 was the manner and appearance of the witness who testified?
11 Was he or she straightforward or hesitant in answering? Was
12 the testimony of a witness -- witness consistent or
13 inconsistent? How did the witness come to know the facts
14 that he or she testified to or what was his or her ability
15 to know these facts? Is there some reason a witness would
16 give -- would want to give testimony which would help or
17 hurt one side or the other? In other words, was the witness
18 biased or prejudiced? And was the testimony of a witness
19 strengthened or weakened by other testimony or evidence?

20 Now, members of the jury, you can believe as much or
21 as little of each witnesses testimony as you think proper.
22 You may believe the testimony of a single witness against
23 the remaining witnesses or just the opposite. Of course,
24 you'll not determine the truth merely by counting the number
25 of witnesses presented by each side. Throughout this

1 process, you have but one objective: To seek the truth
2 regardless of its source.

3 Now, the same constitutional laws which designate and
4 make you the finders of the facts as I've just explained,
5 also make me the instructor or the law. And you must accept
6 the law as I give it to you. If I am wrong, there's another
7 place and time for that error to be corrected. But for this
8 case, you must apply the law as I give it to you and this
9 means that you should not be concerned with what you may
10 think the law should be, but only with what the law is, that
11 is, as I tell it to you.

12 Now, Mr. Foreman and members of the jury, the
13 Plaintiff has the burden of proving his claims in this case.
14 He must meet this burden by proving his claims by the
15 greater weight or the preponderance of the evidence. Now,
16 what we mean by the greater weight of the evidence can be
17 illustrated by imaging a traditional set of scales.

18 Now, when the case begins, the scales are even. After
19 all the evidence has been presented, if the scales should
20 remain even or if they should tip even slightly in favor of
21 the Defendant, then the Plaintiff would have failed to meet
22 his burden of proof, and your verdict would be for the
23 Defendant.

24 Now, if on the other hand the scale should tip even
25 slightly in favor of the Plaintiff, then he would have met

1 his burden of proof, and your verdict would be for the
2 Plaintiff.

3 Of course, there's no way to weigh evidence except
4 through the exercise of your good common sense and
5 judgement. It is entirely a mental process and the evidence
6 you should give the most weight to is that which convinces
7 you of its truth, regardless of from whom and what source it
8 comes.

9 Now, members of the jury, there's three things that
10 you need in a civil case: You need negligence, proximate
11 cause, and damages. And these -- three of these elements
12 must be proved by the greater weight or the preponderance of
13 the evidence.

14 Now, I will now define what is -- we call "proximate
15 cause." Members of the jury, negligent conduct is the
16 proximate cause of an injury, if the injury is within the
17 scope of the foreseeability of risk of the negligence. The
18 touchstone of proximate cause in South Carolina is
19 foreseeability. Foreseeability of some injury from a
20 negligent act or omission is a prerequisite to its being a
21 proximate cause of the injury for which recovery is sought.

22 The standard by which foreseeability is determined is
23 that of looking to the natural and probable consequences of
24 the complained act. While it is not necessary that the
25 actor must have contemplated or could have anticipated the

1 particular event that occurred, liability cannot rest on
2 mere possibilities. The actor cannot be charged with that
3 which is unpredictable or that which could not be expected
4 to happen.

5 In determining whether a consequence is one that is
6 natural and probable, the actor's conduct must be viewed in
7 the light of the attendant circumstances. The law defines
8 proximate cause of an injury to be something that produces a
9 natural chain of events, which in the end, brings about the
10 injury. In other words, proximate cause is the direct cause
11 without which the injury would not have occurred.

12 Now, foreseeability of some injury from a negligent
13 act or omission is a prerequisite to its being a proximate
14 cause of the injury for which recovery is sought.

15 The law requires only foresee -- foreseeable foresight.
16 When the injury complained of is not reasonably foreseeable,
17 the exercise of due care -- in the exercise of due care,
18 there's no liability. It is not required that the specific
19 injury be foreseen, only that some injury might result from
20 the negligence.

21 In order to establish liability, it is not necessary
22 that the party charged with negligence should have
23 contemplated the particular event that occurred. It is
24 sufficient that the Defendant should have foreseen that his
25 negligence would probably result in injury of some kind to

1 someone.

2 The wrongdoer may be held liable for anything which,
3 after the injury is complete, appears to have been a natural
4 and probable consequence of his negligence.

5 If the actor's conduct is a substantial factor in
6 bringing about harm to another, the fact that the actor
7 neither foresaw nor should have foreseen the extent of the
8 harm or the manner in which it occurred does not prevent him
9 from being held liable.

10 Now, there's three cause of action that are really
11 specifications of negligence in this case. One is false
12 imprisonment. I will now charge you on the law of false
13 imprisonment.

14 Now, members of the jury, in an action for false
15 imprisonment, the Plaintiff not need prove malice or want of
16 probable cause to entitle him to recover. If you should
17 find from the evidence that he was unlawfully restrained in
18 his person, he would be entitled to such damages.

19 The first type of damages for a false imprisonment is
20 referred to as actual damages. Now, actual damages are
21 sometimes called "compensatory damages," meaning to
22 compensate the Plaintiff for the injuries sustained or put
23 him in the same position that he was prior to the alleged
24 injury in so far as monetary compensation can do so.

25 The elements of actual damages are, for false

1 imprisonment: One, pecuniary loss; loss of wages or loss of
2 time; pain and suffering; physical injury or illness; loss
3 of business or loss of employment; humiliation,
4 embarrassment, mental anguish, discomfort, and general
5 expenses.

6 Now, false imprisonment is the deprivation of a
7 person's liberty without lawful justification.

8 Elements of false imprisonment are -- in order to
9 prove a claim, the evidence must show: Number one, that the
10 Defendant restrained the Plaintiff; two, that the restraint
11 was intentional; and three, that the restraint was unlawful.

12 Now, false imprisonment may be committed by words
13 alone or by acts alone or both; and they operate merely on
14 the will of the individual or by personal violence or both.

15 It is not necessary that the individual be confined
16 within a prison or within walls or that he be assaulted or
17 even touched.

18 It is not necessary that there be -- that there should
19 be any injury done to the individual person or to his
20 character or reputation; nor is it necessary that the
21 wrongful act be committed with malice, ill will, or even
22 with the slightest wrongful intention.

23 A use of force is unnecessary to constitute false
24 imprisonment. Any genuine restraint constitutes an actual
25 imprisonment, although effective without actual contact of

1 the person. The essential thing is the restraint of the
2 person.

3 Nor is it necessary that the act be under color of --
4 or -- of any legal or judicial proceeding. All that is
5 necessary is that the individual be restrained or his --
6 restrained of his liberty without any sufficient legal cause
7 therefor, and by words or acts which he fears to disregard.

8 (To the jury) That make sense to you so far, members
9 of the jury?

10 (No audible response.)

11 THE COURT: Okay. Now, I will define what we call
12 "malicious prosecution." That's another specification of
13 cause of action in this case.

14 Now, actual damages are properly called "compensatory
15 damages," meaning compensate, to make the injured person
16 whole, to put him in the same position he was in prior to
17 the damages received, in so far as this is possible. In
18 other words, actual compensatory damages include
19 compensation for all injuries that are naturally the
20 proximate result of the alleged wrongful conduct of the
21 Defendant.

22 In a case such as this, they may include, if
23 established by the preponderance of the evidence: Loss of
24 time, deprivation of liberty, bodily pain, injury to fame or
25 reputation, injury to health, general impairment of social

1 and mercantile standing, actual loss or injury to property,
2 and losses to the Plaintiff's business as the direct and
3 natural result of the original proceedings.

4 In addition to recovery and damages similar to those
5 recoverable in a defamation action, the Plaintiff in a
6 malicious prosecution case may recover special damages if
7 supported by specific pleading and proof. These damages
8 include: One, damages for discomfort or injury to the
9 Plaintiff's health; loss of time; depravation of the society
10 of his family; reasonable attorney's fees and occasionally
11 attorney's fees in the prior criminal action; five, specific
12 financial loss as in present or prospective employment,
13 limited by the doctrine of proximate cause.

14 In a malicious prosecution case, the Plaintiff may
15 recover whatever actual damages he has suffered as a natural
16 result of the wrong, including, but not limited to: A,
17 attorney's fees in defending the criminal charge; B, mental
18 pain and suffering; C, fright; D, nervousness; E, indignity;
19 F, humiliation; G, embarrassment; and H, insults; and I,
20 injury to reputation and person.

21 If you find in favor of the Plaintiff on a malicious
22 prosecution claim, you are instructed to return a verdict to
23 fairly compensate the Plaintiff for his arrest,
24 imprisonment, or loss of liberty, taking into consideration
25 his mental pain and suffering, fright, nervousness,

1 indignity, humiliation, embarrassment, and any insults to
2 which he was subjected.

3 Compensation to which the Plaintiff would be entitled,
4 should you find in his favor, would also be for injury to
5 his reputation, his feelings or his health, and for all
6 expenses, including the amount of attorney's fees the
7 Plaintiff paid in defending the prosecution brought by the
8 Defendant.

9 If you reach the issue of damages, you are not
10 governed by the amount of damages suggested by the parties
11 or their attorneys. But you are to be governed exclusively
12 by the evidence presented in the case and the results of law
13 I have given you in regard to the measurement -- the measure
14 of damages.

15 If you award damages, you should award such damages as
16 you find from the evidence by its greater weight -- greater
17 weight as fair compensation for any damage the Plaintiff has
18 sustained as a proximate result of the Defendant's conduct.

19 Now, what are the elements of a false imprisonment
20 claim. If a Plaintiff fails to show that the prosecution
21 was instituted maliciously, without probable cause, and that
22 it was terminated in his favor, then the Defendant must be
23 absolved from liability in an action for malicious
24 prosecution.

25 If the Plaintiff has shown these elements of malicious

1 prosecution by the greater weight of the evidence, then he
2 would be entitled to any actual damages that he has
3 sustained. The burden of proving damages rests upon the
4 Plaintiff. The damages recoverable -- recoverable must be
5 direct, natural, and proximate result of the prosecution.

6 To recover in an action for malicious prosecution the
7 Plaintiff must show: One, the institution or continuation
8 of original judicial proceedings; two, by or at the instance
9 of the Defendant; three, termination of such proceedings in
10 the Plaintiff's favor; four, Defendant's malice in
11 instituting such proceedings; five, want of probable cause;
12 and six, resulting injury or damage.

13 The mere fact that the Defendant was unsuccessful in
14 the prior action has no bearing on the issue of probable
15 cause.

16 I need to define for you what's the term "malice."
17 Now, although malice may be inferred from a lack of probable
18 cause, a lack of probable cause cannot be inferred from any
19 degree of malice. Malice is a term of art or a technical
20 word employed in wickedness and excluding just cause or
21 excuse. It is something that springs from wickedness, from
22 depravity, from a depraved spirit. It is deliberate,
23 intentional purpose -- intentionally purposed to injure
24 another without just cause or excuse.

25 There could be no malicious prosecution unless there's

1 both lack of probable cause and express malice. If there's
2 probable cause for a prosecution, there is no liability even
3 if the prosecutor was motivated by malice.

4 Malice may be inferred from the lack of probable
5 cause, but this is an inference that may be rebutted by
6 evidence. It is for you, the jury, to determine from all
7 the facts and circumstances disclosed by the testimony as to
8 whether express malice has been proved.

9 Malice is an essential element of malicious
10 prosecution. Malice is the deliberate, intentional doing of
11 a wrongful act without just cause or excuse. Malice looks
12 to the primary purpose behind the Defendant's actions.
13 Malice can be found if the proceedings are instituted to
14 extort money, collect a debt, recover property, tie up
15 witnesses in another action, or try to discover who
16 committed the crime.

17 Malice is almost always a jury question unless only
18 one conclusion may be reasonably drawn from the evidence.
19 Lack of probable cause alone may give rise to an inference
20 of malice, sufficient to carry the question to the jury.

21 While malice may be inferred from a want of probable
22 cause, a lack of probable cause cannot be inferred from any
23 degree of malice.

24 I need to now define what probable cause is, members
25 of the jury. An essential element of malicious prosecution

1 is the institution of judicial proceedings without probable
2 cause against the Plaintiff. Probable cause, in this
3 context, does not turn upon the Plaintiff's guilt or
4 innocence; but rather upon whether the facts within the
5 prosecutor's knowledge would lead a reasonable person to
6 believe the Plaintiff was guilty of the crime charged. The
7 Defendant is free from liability there was probable cause
8 for the accusation made. The burden being upon the
9 Plaintiff to show the absence of probable cause as part of
10 the cause of action.

11 In an action for malicious prosecution, the Defendant
12 must be absolved from liability if Plaintiff fails to show
13 that the prosecution was instituted maliciously and without
14 probable cause.

15 A true bill of indictment is a prima facie -- is prima
16 facie evidence of probable cause in an action for malicious
17 prosecution. Prima facie means evidence good and sufficient
18 on its face, shows evidence as in the judgement of the law
19 is sufficient to establish a given fact or the group or
20 chain of facts constituting the parties claim or defense and
21 which is not rebutted or contradicted will remain
22 sufficient. It is evidence that suffices for the proof of a
23 particular fact until contradicted and overcome by other
24 evidence. It is evidence that, standing alone and
25 unexplained, would maintain the proposition for which it is

1 introduced.

2 The Plaintiff must establish lack of probable cause.
3 This can be done in a number of ways. If a reasonable man
4 would investigate further before bringing the prosecution,
5 the Defendant may be liable for failure to do so.

6 A mistake of law, like a mistake of fact, will not
7 preclude probable cause if it is one which is reasonably --
8 reasonable for the individual to make under the
9 circumstances.

10 By probable cause is meant the extent of such facts
11 and circumstances as would -- as would excite the belief in
12 a reasonable mind, acting on the facts within the knowledge
13 of the prosecutor, that the person charged was guilty of a
14 crime for which he has been charged. Only those facts and
15 circumstances that were or should have been known to the
16 prosecutor at the time should be considered.

17 In an action for malicious prosecution, the Defendant
18 must be absolved from liability if the Plaintiff fails to
19 show that the prosecution was instituted maliciously and
20 without probable cause. An essential element of malicious
21 prosecution is lack of probable cause.

22 In determining the existence of probable cause, the
23 focus is on whether the Defendant had reasonable cause to
24 believe the Plaintiff guilty and not on the Plaintiff's
25 actual guilt or innocence.

1 In determining the existence of probable cause, the
2 facts should be considered from the point of view of the
3 party prosecuting. The question is not what the actual
4 facts are -- facts were, but what he honestly believed them
5 to be.

6 Now, there's a third specification of negligence -- a
7 third cause of action, and that is negligent hiring and
8 supervision. So false imprisonment I told you about;
9 malicious prosecution I just told you about and defined for
10 you. Now, the third specification of negligence for a cause
11 of action in this case is negligent hiring and supervision.

12 Now, if an employer is in some way negligent in the
13 hiring, supervising, retaining, or assigning of an employee
14 or agent with the knowledge that the employee or agent is in
15 some way unfit, incompetent, or unworthy to perform the work
16 of the employer; or if the employer fails to use the same
17 degree of care that normally would be required to discover
18 this unfitness, such negligence supervision would --
19 negligent hiring constitutes an independent basis for
20 liability of the master, and if it's shown by the greater
21 weight of the evidence.

22 Y'all understand that?

23 (No audible response.)

24 THE COURT: All right. Now, I further charge you on
25 the law of spoliation. Spoliation is the loss or

1 destruction of evidence when it is established, the jury may
2 -- spoliation is the loss or destruction of evidence, and
3 when it is established, a jury may draw the inference that
4 the evidence lost or destroyed was unfavorable to the party
5 responsible for its loss or destruction.

6 Now, there was one expert witness admitted in this
7 case, that was Dr. Weissman, I think. And as to her
8 testimony, I'll tell you the following: The rules of
9 evidence ordinarily do not permit witnesses to testify to
10 opinions or conclusion. An exception to this rule exists
11 for witnesses we call "expert witnesses." A witness who, by
12 education and experience, has become in some art, science,
13 or profession, may give an opinion as to the subject the
14 witness claims to be an expert in; and may also give the
15 reason for such opinion.

16 You should consider any expert opinion given by a
17 witness and, like any other evidence, give it the weight you
18 think it deserves. If you decide that an expert witness
19 opinion is not based on sufficient education and experience
20 or if you decide that the reason given in support of the
21 opinion is not sound or that the opinion is outweighed by
22 other evidence, you may disregard the opinion entirely.

23 An expert witness testimony -- an expert witness
24 testimony is to be given no greater weight than that of any
25 other witness simply because the witness is an expert, and

1 you -- you do not have to accept an expert opinion even
2 though it is uncontradicted.

3 And I -- I said this earlier in the trial. I want to
4 mention it one more time because there was some reference to
5 deposition testimony, members of the jury. Testimony in
6 this case was presented to you by deposition. A deposition
7 is a document containing sworn testimony given by a witness
8 outside of court, in the presence of lawyers for each party
9 who may ask questions of the witnesses.

10 This testimony is entitled to the same consideration
11 and it is to be judged as to credibility and weighed by you
12 in the same way as if the witness were present and gave the
13 testimony to you from the witness stand. It is then for you
14 the jury to decide the effect, value, weight, and truth of
15 the testimony given in the deposition.

16 I further charge you, Mr. Foreman, members of the
17 jury, that a verdict in this case cannot be based upon
18 sympathy, passion, prejudice, or emotion or some other
19 consideration not found in the evidence.

20 Now, simply stated again, in summation, there's three
21 causes of action: false imprisonment, negligent
22 supervision, and malicious prosecution. These must be
23 proven to your satisfaction by the greater weight or the
24 preponderance of the evidence by the Plaintiff. And also,
25 the amount of damages must also be proved by the greater

1 weight or the preponderance of the evidence.

2 Now, Mr. Foreman and members of the jury, whatever
3 your verdict is in this case it must be unanimous, that is
4 all 12 of you must agree. And to aid you in this endeavor,
5 I've prepared what we commonly refer to as a verdict form.
6 And I'll go over it with you.

7 It says (as read): "State of South Carolina, County
8 of Richland. Darris Hassell, Plaintiff, vs. City of
9 Columbia, Defendant, in the Court of Common Pleas verdict
10 form."

11 And it says (as read): "On the cause of action for
12 false arrest, we, the jury, unanimously find for (check one)
13 Plaintiff or the defendant."

14 And the second line says this (as read): "On the
15 cause of action for malicious prosecution, we, the jury,
16 unanimously find for (check one) Plaintiff or Defendant."

17 And on the cause of action for negligent supervision
18 (as read): "We, the jury, unanimously find for (check one)
19 the Plaintiff or the Defendant."

20 And the final line is this (as read): "We, the jury,
21 unanimously find for the Plaintiff in the amount of (blank)
22 actual damages."

23 Of course, if you find for the Defendant on the false
24 arrest and on the malicious prosecution and for the
25 negligent supervision, you would not need them to award

1 damages. But if you find for the Plaintiff on false arrest,
2 malicious prosecution, and negligent supervision, then he
3 would be entitled to an award of damages in the amount that
4 has been proven to your satisfaction by the greater weight
5 or the preponderance of the evidence.

6 Now, that's all I need to tell you right now. I need
7 for you to go to the jury room, but don't begin discussing
8 this case. The time to do so will be when the bailiff will
9 give you this verdict form, along with all of the evidence
10 that have been -- evidence that has been introduced in this
11 case, and then that will be your signal to begin your
12 deliberation.

13 Until then, I need to ask you once again go to the
14 jury room, but don't talk about this case. Finally, the
15 time to do so is when you get the verdict form and the
16 exhibits that have been introduced in this case.

17 Thank you so very much, ladies and gentlemen. You may
18 retire to your jury room.

19 (Jury exits the courtroom at 12:03 p.m.)

20 THE COURT: All right. Any exceptions or additions
21 from the Plaintiff?

22 MR. REEVES: Your Honor, it -- it would appear to me
23 that you didn't charge the master/servant, i.e. the City.
24 Mr. Duecker was their agent, so it's -- it's the City of
25 Columbia that's responsible. I ---

1 The COURT: All right.

2 MR. REEVES: --- I don't think you charged that.

3 And one of the things that you said, I think, Your
4 Honor, is I -- it sounded like you said in order to award
5 damages, you got to find for -- for all three causes of
6 action, and it could be one or none. At least that's the
7 way I heard it. I might have misunderstood.

8 THE COURT: It's all right. That will be your
9 position. I'll hear hers. I'll figure something out.

10 Yes, ma'am, any exceptions or additions from the City?

11 MS. HAM: Your Honor, I would like to just put on the
12 record that the City did want the instructions for
13 discretionary immunity ---

14 THE COURT: Okay.

15 MS. HAM: --- that I read.

16 THE COURT: That's -- that's the issue you raised
17 before.

18 MS. HAM: Yes, sir.

19 THE COURT: And I declined to do so. So ---

20 MS. HAM: Yes, sir.

21 THE COURT: That's your only exception or addition?

22 MS. HAM: One -- one other with regards to the
23 negligent supervision charge, the City also wanted an
24 instruction that read ---

25 THE COURT: All right. That's fine.

1 MS. HAM: --- that the employee's actions had to be
2 intentional.

3 THE COURT: And I respectfully declined to charge
4 that.

5 MS. HAM: Yes, sir.

6 THE COURT: Okay. So let me -- let me go back to Mr.
7 --

8 MR. REEVES: Reeves.

9 THE COURT: -- Reeves again. I -- I just want to
10 clarify it, but make your statement once again.

11 MR. REEVES: I ---

12 THE COURT: You want me to tell the jury that the City
13 is the master and Mr. --

14 MR. REEVES: Well -- well, I assume the City -- and
15 of course, the Tort Claim requires me to do so -- but I want
16 the jury to understand that the City is responsible for Mr.
17 Duecker as if he is the City. In other words, he -- they're
18 responsible for his actions, he's not.

19 THE COURT: As an action, he -- they are responsible
20 for the actions of the servant.

21 MR. REEVES: Yeah. Just ---

22 THE COURT: Okay. I -- I don't mind doing that. Any
23 objection to that?

24 MS. HAM: No objection.

25 THE COURT: Okay.

1 MR. REEVES: Your Honor, while we -- may I -- is it
2 the time to put on the record about the defamation? I know
3 ---

4 THE COURT: Yeah. You can do so now, go ahead. You
5 had requested that I charge defamation.

6 MR. REEVES: Right. We ---

7 THE COURT: And I declined to do so. Yeah.

8 MR. REEVES: We requested defamation.

9 THE COURT: Okay.

10 MR. REEVES: You said you would not. I -- I take
11 exception to that based upon the fact that my view of the
12 case law indicates that damages in a case, where there's now
13 potential criminal misconduct, are presumed and not
14 necessarily detailed proof thereof.

15 THE COURT: Okay. All right. And I -- I think my
16 reason I gave you, I didn't see how he'd been defamed in any
17 way, shape, or form. How was it published, who heard about
18 it, things along that line. I just hope you're covered for
19 you motion.

20 So let -- let me do this. I'm going to bring them
21 back out and say simply -- and y'all help me out a little
22 bit, "In this case, the master is the City of Columbia, the
23 servant is Mr. Kucher?

24 THE DEFENDANT: Duecker. Duecker.

25 THE COURT: I haven't said it right the whole time

1 we've been here.

2 But the idea is to explain that the City is the
3 master, responsible for the action that he might have done.
4 I'll bring them back out and try to clarify that, okay?

5 (To the bailiff) Will you bring them back out?

6 MS. HAM: One more thing, Your Honor.

7 THE COURT: Yeah.

8 MS. HAM: I just want to put on the record, in
9 response to Mr. Reeve's motion about the defamation, is that
10 the City's position is that the only thing that was
11 published to anyone was that Mr. Hassell was under arrest.
12 No one ---

13 THE COURT: Okay.

14 MS. HAM: --- which was true.

15 THE COURT: Nobody read it, found out about it, or
16 anything like that ---

17 MS. HAM: Right.

18 THE COURT: --- the reason I gave. And that's your
19 position also.

20 MS. HAM: Yes, sir.

21 THE COURT: Okay. That's fine.

22 MS. HAM: Thank you.

23 THE COURT: Bring them back out. Let me try to
24 clarify this.

25 MR. REEVES: Judge, may we approach? May we approach?

1 THE COURT: Sure, sure, sure.

2 (Bench conference.)

3 (Jury enters the courtroom at 12:07 p.m.)

4 THE BAILIFF: Jury is all accounted for.

5 THE COURT: Welcome back, Mr. Foreman and members of
6 the jury. Some points of clarification. What I charged
7 you -- I have discussed with the lawyers, some points of
8 clarification I want to make.

9 Number one, in the negligent supervision cause of
10 action, the City, as the master, is responsible for the
11 actions of his servant, the police officer, Mr. Kucher.
12 I've butchered your name enough.

13 MS. HAM: Duecker.

14 THE DEFENDANT: Duecker, Your Honor.

15 THE COURT: Duecker, Duecker. So whatever Mr. Duecker
16 does is imputed to the City. So the City is the master,
17 Mr. Duecker is the servant. So whatever the servant does
18 is imputed to the -- the master, which is the City of
19 Columbia. Does that make sense to you?

20 (No audible response.)

21 THE COURT: That clarifies it enough for you?

22 MS. HAM: Yes, sir.

23 THE COURT: In addition, there was a point of
24 clarification I need to make about the three causes of
25 actions that you are to consider.

1 Under false -- false arrest, you can find for the
2 Plaintiff or the Defendant. Okay?

3 And on the malicious prosecution, you can find for the
4 Plaintiff or the Defendant.

5 And on the negligent sue -- negligent supervision, you
6 can find for the Plaintiff or the Defendant.

7 In each of the three different ones, you don't have to
8 find all three to get one.

9 Like on the false arrest, it can be for the Plaintiff
10 or the Defendant. On the malicious prosecution, it can be
11 for the Plaintiff or the Defendant. But just because you
12 don't find false arrest does not prevent you from finding
13 malicious prosecution.

14 And that's the same for negligent supervision. You
15 can find negligent supervision or not. But they're not
16 tied together, they're separate and distinct. Does that
17 clarify it enough, I think?

18 MR. REEVES: Yes, sir.

19 MS. HAM: Yes, sir.

20 THE COURT: Okay. Just want to make sure.

21 And so once again, I ask that you to go to the jury
22 room, but don't begin discussing this case until you get
23 the verdict form along with the exhibits.

24 What I just said to you I've got to talk to them about
25 one more time before you begin your deliberation. That

1 make sense?

2 (No audible response.)

3 THE COURT: All right. Thank you all so much once
4 again.

5 (The jury exits the courtroom at 12:11 p.m.)

6 THE COURT: Now, I hope that clarified everything.
7 Anything additional from the Plaintiff, additional or
8 further?

9 MR. REEVES: Nothing.

10 THE COURT: All right.

11 MS. HAM: Nothing, Your Honor.

12 THE COURT: All right. Now, what I'm going to invite
13 y'all to do is please look at all the exhibits, make sure
14 that ones that are in should be in. Take a final look at
15 the verdict form, and then we can give it to them.

16 (Off the record at 12:13 p.m.)

17 (On the record at 12:19 p.m. to convey a juror note by
18 the foreperson.)

19 THE COURT: (As read) "May we have a copy of the
20 directives you read to us before we retired to the jury
21 room? We would like to have this for reference if needed."

22 Typically we don't send jury charges back. What will
23 happen is this: If you have a specific question about any
24 of the cause of action, if you'll write down the questions
25 for me, I can bring you all back out and read it to you

1 again. Okay.

2 THE BAILIFF: Okay.

3 THE COURT: Any exceptions or additions to that?

4 MS. HAM: None.

5 THE COURT: Okay.

6 Well, thank you, Mr. Foreman. Good luck to you and
7 the other jurors.

8 JUROR: Okay. Thank you. Appreciate it, Judge.

9 (Marked Court's 1 and 2, Juror Notes.)

10 (Off the record at 12:19 p.m.)

11 (On the record at 1:06 p.m.)

12 THE COURT: All right. Is everybody ready? What -- I
13 -- I -- obviously, I don't have any idea what the verdict
14 is. Y'all want 10 days? Either side? Both of you? I
15 don't care.

16 MR. REEVES: Sure. Thank you.

17 THE COURT: All right. So both sides got 10 days
18 post-trial motions or whatever.

19 MS. HAM: Yes, sir.

20 THE COURT: All right. Bring the jury in.

21 THE BAILIFF: Yes, sir.

22 (Jury enters the courtroom at 1:10 p.m.)

23 THE BAILIFF: Jury's present, Judge.

24 THE COURT: All right. (To the court clerk) Pat?

25 COURT CLERK: Mr. Foreman, has the jury reached a

1 verdict?

2 JUROR: Yes, we have.

3 COURT CLERK: Is it unanimous?

4 JUROR: Yes, it is.

5 COURT CLERK: Please pass it to the bailiff.

6 (The juror complies and the bailiff hands it to the
7 Court.)

8 THE COURT: All right. (To the clerk) You may publish
9 it.

10 COURT CLERK: Yes, Your Honor.

11 (As read) "State of South Carolina, County of
12 Richland. Darris Hassell vs. The City of Columbia. Docket
13 No. 2016-CP-40-0910, on the cause of action for false
14 arrest, we, the jury unanimously find for the Plaintiff.

15 On the cause of action for malicious prosecution, we,
16 the jury unanimously find for the Plaintiff.

17 On the cause of action for negligent supervision, we,
18 the jury unanimously find for the Plaintiff.

19 We, the jury unanimously find for the Plaintiff in the
20 amount of \$200,075. Signed, Number 280, Richard Taylor,
21 foreperson, May the 18th, 2017.

22 Mr. Foreman, was this your verdict and the verdict of
23 the entire jury?

24 JUROR: Yes, it was.

25 COURT CLERK: Thank you.

1 THE COURT: All right. Anything further from the jury
2 on behalf of the Plaintiff?

3 MR. REEVES: No, sir, Your Honor.

4 THE COURT: All right. For the Defendant?

5 MS. HAM: No, sir.

6 THE COURT: You don't mind if I call you Richard T, do
7 you? What does the "T" stand for anyway?

8 JUROR: Tiers. You know, family name.

9 THE COURT: Terry?

10 JUROR: T-i-e-r-s.

11 THE COURT: Terry?

12 JUROR: Tiers. The middle initial?

13 THE COURT: Yeah.

14 JUROR: Yeah. It's a family name.

15 THE COURT: And where -- what did your father do? You
16 were telling me about it.

17 JUROR: My grandfather was director of housing at
18 Carolina during McGuire and -- and all those guys were
19 there. And used to get you guys the rooms you wanted and
20 stuff like that back in the day.

21 THE COURT: Anyway, I want to thank each and every one
22 of you for participating in this patriotic process. And it
23 is a patriotic process, it's not easy to sit in judgement
24 of your fellow citizens. But you were very attentive and
25 nobody has any reason to complain about your verdict.

1 So I want to thank each and every one of you
2 personally, and I hope somewhere along the way, maybe at
3 the Publix or at the Wal-mart or somewhere, if y'all should
4 see me, don't stop and say hello. Just keep going and
5 leave me alone.

6 (Courtroom laughter.)

7 THE COURT: I -- I would be happy and proud for you to
8 say, "Hey, Judge Manning, remember when I was on this
9 jury."

10 So I hope I see y'all again in some circumstances.

11 What you need to do now, go back to the jury room and
12 Pat has some information you that will verify for some of
13 you -- for your spouses -- that you were actually on a jury
14 here. That might be helpful to you.

15 And I think you're going to be able to go home now
16 after this. Okay. So thank you all so very much. It's a
17 pleasure having worked with y'all the last couple of days.

18 (Jury exits the courtroom at 1:13 p.m.)

19 THE COURT: Thank you all so very much. 10 days,
20 okay. Take your time.

21 MS. HAM: 10 days for post-trial motions?

22 THE COURT: Yeah. Uh-huh. All right. Good luck to
23 everybody.

24 (Off the record at 1:14 p.m.)

25 -- END OF TRANSCRIPT OF RECORD --

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2016CP4000910
	)	
DARRIS HASSELL,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CITY OF COLUMBIA, AND CITY	)	
OF COLUMBIA POLICE DEPARTMENT,	)	
	)	
DEFENDANTS,	)	

June 2, 2017
Columbia, South Carolina

BEFORE:

THE HONORABLE L. CASEY MANNING, JUDGE.

APPEARANCES:

PAUL REEVES, ESQ.
Attorney for the Plaintiff

NATALIE HAM, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. Ms. Ham, I think this is your
2 motion. You may proceed.

3 MS. HAM: Yes, sir. May it please the Court.
4 Natalie Ham for the City of Columbia.

5 Your Honor, we're here on post-trial motions in
6 Darris Hassell V. City of Columbia. The City has filed a
7 motion for a new trial. The first issue that we would
8 like to raise is that there was a failure to charge
9 discretionary immunity.

10 THE COURT: Beg your pardon? Speak up a little bit,
11 please.

12 MS. HAM: The first issue that we would like to raise
13 is that we believe there was a failure to charge the
14 discretionary immunity.

15 THE COURT: Okay. And I think you placed it on the
16 record, at least twice. I invited everybody to do so but
17 go ahead.

18 MS. HAM: I did. But just as a post-trial motion,
19 I'd like to put that on the record.

20 THE COURT: Go ahead. That's why we're here.

21 MS. HAM: Plaintiff requested a jury charge of
22 discretionary immunity to be read to the jury. The Tort
23 Claims Act specifically states that a governmental entity
24 is not liable for the loss resulting from the exercise of
25 discretionary judgment within that employee's duties.

1 Basically, if proven, the discretionary immunity is a
2 complete defense. Although there was evidence in the
3 record that demonstrated that the City's officer exercised
4 discretion in deciding to arrest the plaintiff, the Court
5 refused the charge to the jury, and that's the current --

6 THE COURT: All right. I disagree with that request
7 at this time. My decision remains the same. But go ahead
8 and continue.

9 MS. HAM: Okay.

10 THE COURT: As far as discretionary immunity, I
11 thought it was factually applicable in this case.

12 MS. HAM: That is it, Your Honor. I thought it was

13 --

14 THE COURT: That's fine. That's fine.

15 MS. HAM: The next issue was we believe the verdict
16 to have been punitive.

17 THE COURT: Okay.

18 MS. HAM: There was to be no award for punitive
19 damages under the statute.

20 THE COURT: There were no punitive damages under the
21 statute.

22 MS. HAM: Well --

23 THE COURT: I'm not going to stop you, but the
24 punitive damages was submitted, was considered. I think
25 Mr. Reeves on the record said I'm not going to request

1 punitive damages, and he made it obvious to the jury this
2 is not a punitive damages case at that point.

3 MS. HAM: I recall that, as well, Your Honor, but I
4 believe some of the language that he used with regards to,
5 you know, the City not --

6 THE COURT: What language are you talking about,
7 Ms. Ham?

8 MS. HAM: I don't have the transcript, but if I
9 recall, it was --

10 THE COURT: Are you suggesting that the Court gave a
11 charge that in some sort of way indirectly brought in the
12 issue of punitive damages? Is that your position?

13 MS. HAM: I'm not, Your Honor.

14 THE COURT: Okay. I just want to understand.

15 MS. HAM: I believe that some of the language that
16 the plaintiff's attorney used in his closing argument just
17 implied to the jury that they were to punish --

18 THE COURT: I think that in a trial, if it's not
19 contemporaneously objected to, there was no
20 contemporaneous objection to any argument, as I recall,
21 particularly, by Mr. Reeves, that it's not preserved.

22 You may continue.

23 MS. HAM: Your Honor, we'd also like to raise the
24 issue that the master servant charge was improper in this
25 particular matter.

1 THE COURT: All right.

2 MS. HAM: There was a master servant charge given to
3 the jury. While the city is liable for its negligence of
4 its employees, the master servant charge here was improper
5 because the City is a governmental entity, and so it
6 should have been charged as the Tort Claims Act which is
7 the correct law. And since that wasn't done, basically,
8 the -- that eliminated any immunities that the City would
9 have under that.

10 THE COURT: All right. Go ahead.

11 MS. HAM: We'd also like to bring up the issue that
12 there was a failure to request a specific determination on
13 malice.

14 THE COURT: I'm sorry, Ms. Ham, you need to speak up
15 a little bit.

16 MS. HAM: I'm sorry. I apologize, Your Honor. I'm
17 having an inner ear issue, so I can't tell --

18 THE COURT: Ms. Ham, it's okay, I just can't quite
19 hear including understanding what you're saying. That's
20 why I'm inviting you to speak louder.

21 MS. HAM: So I sound like I'm talking loud to myself
22 and maybe not to you. I apologize.

23 THE COURT: It's all right, Ms. Ham. Go ahead.

24 MS. HAM: We believe there was a failure to request a
25 specific determination on malice. In this case, the jury

1 was instructed on the elements of malicious prosecution;
2 however, there should have been, at least, a special
3 interrogatory in the verdict form inquiring as to whether
4 or not the jury found that the City's employee acted with
5 malice.

6 And that's necessary because it would determine
7 whether or not the city would be held liable for that
8 particular cause of action. If there was found to be
9 malice by the officer, then the cause of action is
10 correct, but the City could not be held liable for that
11 under the Tort Claims Act.

12 Alternatively, if there was no malice, then the City
13 could theoretically be liable under the Tort Claims Act,
14 but the charge of the cause of action of malicious
15 prosecution couldn't stand because malice is an element of
16 the charge.

17 THE COURT: All right.

18 MS. HAM: Okay. We also believe that there should
19 have been a specific determination on probable cause.
20 Under the same breath, the jury was instructed as to the
21 definition of probable cause; however, we believe that
22 there should have been a special interrogatory on the
23 verdict form inquiring as to whether or not the jury found
24 that the City's former officer acted as an ordinary --

25 THE COURT: You know, I don't believe there were any

1 specific objections to the verdict form by either party
2 before it was submitted to the jury but go ahead.

3 MS. HAM: If the jury had determined that he did act
4 as such an ordinary prudent person would in a similar
5 situation, then the defendant could not be held liable for
6 false arrest.

7 THE COURT: All right.

8 MS. HAM: We believe that the damages award was
9 grossly excessive. The trial court has the power to grant
10 a new trial nisi remittitur --

11 THE COURT: Nisi additur, yes.

12 MS. HAM: Right. Or a new trial absolute if he finds
13 the verdict to be excessive. The consideration for that
14 motion requires the judge to consider the adequacy of the
15 verdict in light of the evidence presented.

16 There were -- I mean, Mr. Hassell didn't have any
17 damages physically. He didn't have any damages with
18 regards to his employment or his medical issue. The only
19 thing he has was the time he spent in jail, which was
20 about 16 hours, so we believe that the amount of the
21 verdict is grossly excessive in relation to those specific
22 damages.

23 If you believe that the verdict is so excessive as to
24 be the result of passion, punitives, caprice, prejudice or
25 some other influence outside of the evidence, then a new

1 trial can be granted, and we believe that that should be
2 granted based on the evidence.

3 Lastly, we believe that negligent supervision should
4 not have gone to the jury. Under the Tort Claims Act, the
5 City is liable for the negligence of its employees when
6 they're acting within the scope of their employment.

7 Also, under the Tort Claims Act, the City is not
8 liable if an employee acts with intent to harm. So the
9 city would not be liable for a loss resulting from a
10 responsibility or duty exercised in a grossly negligent
11 manner by an employee.

12 The policy element of that is, basically, a
13 governmental entity can kind of hide behind an employee
14 and just say that their actions were intentional so that
15 the governmental entity doesn't get held liable for it, so
16 negligent supervision was created because of that.

17 And negligent supervision doesn't allow the
18 governmental entity to escape liability if it knew or
19 should have known that the employee was incompetent or
20 would create an unreasonable risk of harm to another and
21 failed -- and the governmental entity failed to properly
22 supervise them.

23 Negligent supervision only attaches when the conduct
24 of the employee is found to be intentional or grossly
25 negligent. There is no evidence offered to show that

1 Mr. Duker (phonetic) had acted intentionally or with gross
2 negligence.

3 THE COURT: Mr. who?

4 MS. HAM: Mr. Duker, the former city employee. If
5 the City did not act with intent to harm, then negligent
6 supervision doesn't lie. Instead, the employee's conduct
7 is the basis for the liability.

8 The cause of action should not have gone to the jury.
9 At a minimum, a special interrogatory should have been
10 required as to whether or not the jury believed the
11 employee to have acted intentionally, and with that being
12 said, based on that, we would ask for a new trial in this
13 matter.

14 THE COURT: All right.

15 MS. HAM: Your Honor, all of these issues, separate
16 and independent, we believe do not rise to the level of
17 harmless error. They are not harmless error.

18 We believe they are reversible error and there should
19 be a new trial granted, and in the alternative, if a new
20 trial isn't granted, at least, there should be a
21 remittitur.

22 THE COURT: Thank you, Ms. Ham.

23 Mr. Reeves, be happy to hear from you, sir.

24 MR. REEVES: May it please the Court, Your Honor. I
25 will address briefly the ones you've already talked about.

1 THE COURT: Yes, sir.

2 MR. REEVES: As to the application of discretionary
3 immunity, there is no case law that cites that as an
4 applicable defense to any of the causes of action that we
5 have pled.

6 Also, Your Honor, doing a Westlaw search of that
7 particular code section, that particular subsection, I
8 could find no cases that talk about its applicability in
9 this case here, and I agree with the Court.

10 Secondly, Your Honor, there was no contemporaneous
11 objection to any remarks that the city now makes or
12 believes to be inflammatory.

13 I would also add, Your Honor, that the damages award,
14 since they've argued was excessive, was brought about
15 because the City brought up by direct question
16 Mr. Hassell's annual income, which the City used to
17 diminish his damages.

18 We simply used it in the reverse, and the jury agreed
19 with us. Not because of caprice or prejudice or some
20 outward influence. It was the City's inability to
21 determine if it was sorry or not sorry that caused the
22 jury probably to find what they did, but as applicable as
23 to the law, though, Your Honor, there was no
24 contemporaneous objection.

25 Your Honor, as far as the Court properly charged

1 malicious prosecution. You properly charged the
2 definition of malice, including the fact that malice could
3 be inferred from want to probable cause and that's what
4 the jury heard.

5 To follow the City's line of argument, you have some
6 special regard for each element which is not the law in
7 this state.

8 Same objection or the same response to the probable
9 cause, per request -- because I don't think there was ever
10 a request on the record made for either one of those,
11 quite frankly, Your Honor.

12 We determined that -- we talked about the jury form,
13 came back, there was nothing on the record that anybody
14 objected to the verdict form that I recall. The record,
15 of course, would reflect that.

16 Your Honor, the appellate courts give great deference
17 to jury verdicts. In light of the City's complaint that
18 the jury verdict was excessive and should be set aside
19 under new trial remittitur, I would, again, argue that the
20 jury heard all the facts.

21 They were very attentive, and they rendered a verdict
22 based on the evidence as they saw it. There is no
23 requirement, Your Honor, that the verdict give some
24 special response as to why it found what it found. You
25 charged the law, and they followed it and rendered a

1 verdict in this case.

2 Your Honor, there's a number of cases that talk about
3 how the jury's province of rendering damages is offered
4 with great deference, and this Court, absent abuse of
5 discretion, is proper to deny that motion. And there's no
6 abuse of discretion because the record does not support
7 anything that would undermine the jury's verdict.

8 Your Honor, finally, on the negligent supervision,
9 the Court properly charged the jury. When the jury went
10 out, if you recall, Your Honor, I asked you to charge
11 master, servant, agent, principle, whatever you want to
12 call it.

13 You went right by the law that was given that's in
14 the charge book that most of us rely upon. There was
15 nothing wrong with the charge. The City asked this Court
16 to misapply the law as it relates to that because there is
17 no requirement that an employee act intentionally in order
18 to invoke negligent supervision.

19 The cases cited by the City, Your Honor, are cases
20 where an employee acted outside the course and scope of
21 his or her employment, and the issue was can the employer
22 be held liable for that.

23 The Hamilton case, the Charleston case, all those
24 talk about an employee -- in one of the cases, I believe a
25 correctional officer sexually assaulted an inmate. The

1 issue was is the governmental subdivision responsible for
2 his acts even though they were intentional and outside the
3 course and scope of employment. The Court discussed the
4 applicability of the restatement of torts. It is not
5 applicable here.

6 A: There's no allegation by anybody that the officer
7 acted outside the course and scope of his employment. You
8 charged the applicable law, Your Honor, by saying that if
9 there's an employee who the employer knows or should have
10 known is not properly trained or is acting in a way that's
11 wrong based on the rules and regulations and it's
12 foreseeable harm, then the action can go to the jury.

13 The jury just simply took your charge and applied the
14 facts to it. So I saw no error in that particular
15 application. Again, if you look at those cases, though,
16 the fact that an employee acts intentionally is not a
17 requirement for negligent supervision.

18 Your Honor, we believe that the jury verdict was
19 proper. We believe that what you said -- the charge you
20 made was proper and there were no contemporaneous
21 objections to those.

22 THE COURT: All right. Thank you, Mr. Reeves.

23 Anything further, Ms. Ham?

24 MS. HAM: Nothing further, Your Honor.

25 THE COURT: The case was tried because the issue

1 probably goes to your heart, and I thought we had a fair
2 jury. The jury elected a foreperson. I think they
3 considered the facts and the law and made a decision that
4 they were comfortable with.

5 I don't think it was excessive. I think both sides
6 received a fair trial, so it's my intention and I feel --
7 I felt then and I feel now that both sides received a fair
8 trial with a fair jury that made a fair verdict. All
9 post-trial motions for a new trial for remittitur are
10 denied.

11 I think it was a simple case. We had 12 strangers
12 from this community, the jurors, with no bias or prejudice
13 involved one way or the other. They heard the facts, they
14 applied the law, and I think we got a fair result.

15 I remember Mr. Reeves when you requested that I
16 charge defamation. It's okay. I respectfully declined to
17 do that.

18 MR. REEVES: Yes, sir.

19 THE COURT: So I wasn't trying to split the baby, but
20 you asked for something, I didn't give it to you. You
21 asked for something, I didn't give it to you because I
22 didn't think it applied to either side.

23 I take this opportunity to go out of my way to
24 compliment those 12 men and women that decided this case,
25 and especially the foreperson. I think they were very

1 honest, very straightforward, and it represents the best
2 of our system of justice to have 12 strangers to resolve
3 disputes such as this one.

4 So good luck to everybody involved in this matter.
5 The post-trial motions are respectfully definitively.
6 Thank you all so very much.

7 MR. REEVES: Thank you, Your Honor.

8 MS. HAM: Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded.)
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State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-0910

Darriss Hassell,)
Plaintiff,)
vs.)
City of Columbia,)
Defendant.)
_____)

Transcript of Record

June 27, 2018
Columbia, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge

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

Paul L. Reeves, Esquire
Todd R. Lyle, Esquire
Attorneys for the Plaintiff

Blake A. Hewitt, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>

No exhibits introduced.

1 THE COURT: We have several issues, but I'm going to
2 let y'all ferret them out yourself. Who is the moving
3 party?

4 MR. HEWITT: We are, Your Honor, the City of Columbia.

5 THE COURT: Who are you?

6 MR. HEWITT: My name is Blake Hewitt from the ---

7 THE COURT: Let me stop you, Blake. Are you the
8 attorney of record?

9 MR. HEWITT: Yes, Your Honor.

10 THE COURT: Since when?

11 MR. HEWITT: We filed a notice.

12 THE COURT: Let me ask you this. Has anybody signed
13 an order making you the attorney of record?

14 MR. HEWITT: Not that I know.

15 THE COURT: Okay. That's fine. So, who is the
16 attorney of record? That's my first question.

17 MR. HEWITT: I believe I'm the attorney of record,
18 Your Honor.

19 THE COURT: Is an order required to designate you the
20 attorney of record?

21 MR. HEWITT: Not that I'm aware of, Your Honor. As
22 far as I ---

23 THE COURT: Okay, how do you become the attorney of
24 record?

25 MR. HEWITT: By noticing an appearance.

1 THE COURT: Noticing an appearance. Let me ask you
2 this. It's a simple question. If there's a substitution
3 of counsel, you need an order to substitute counsel, don't
4 you?

5 MR. HEWITT: I believe that's correct, but let me
6 qualify that by saying an order is required to remove a
7 counsel of record.

8 THE COURT: Okay, who's been removed?

9 MR. HEWITT: I don't know whether attorney John
10 Nichols has been ---

11 THE COURT: No, no, no, no.

12 MR. HEWITT: --- formally removed.

13 THE COURT: Who tried the case?

14 MR. HEWITT: Natalie Ham from the City of Columbia.

15 THE COURT: Okay, Natalie Ham. My question to you,
16 sir, is Natalie Ham still the official attorney of record,
17 yes or no?

18 MR. HEWITT: I don't know whether she ---

19 THE COURT: Okay. Well, let me ask you this. If she
20 is, then shouldn't she be here?

21 MR. HEWITT: I don't know that all attorneys of record
22 are required to appear.

23 THE COURT: Well, who else is the attorney of record
24 other than Natalie Ham?

25 MR. HEWITT: Your Honor, I am an attorney of record

1 for the city; I noticed my appearance in the Court of
2 Appeals.

3 THE COURT: You may proceed, sir.

4 MR. HEWITT: Thank you, Your Honor. There are two
5 pending motions before the court, as you're aware. One is
6 the motion to seal some exhibits that were filed with a ---

7 THE COURT: Let me ask you this. When was the motion
8 to seal filed?

9 MR. HEWITT: I believe it was filed July 3rd of last
10 year, which was the Monday following the Friday where the
11 motion for a new trial was filed.

12 THE COURT: Did somebody from the city go and take
13 something out of the file before they filed the motion to
14 seal?

15 MR. HEWITT: I'm, I'm not...

16 THE COURT: Did somebody from the city's attorney's
17 office go or have somebody go into the file before the
18 motion was filed and take something out?

19 MR. HEWITT: I think that's correct, before it was
20 clocked.

21 THE COURT: Okay. Let me ask you this. Has anything
22 been done in connection with that action? Has anybody been
23 noticed? Has anybody been alerted that that's what's
24 unfolded?

25 MR. HEWITT: I don't know that anything ---

1 THE COURT: That's all right. That's fine. That's
2 fine. I'm just asking these questions because I think
3 they're important. Go ahead.

4 MR. HEWITT: Other than the motion to seal ---

5 THE COURT: Who filed the motion to seal?

6 MR. HEWITT: The City of Columbia did.

7 THE COURT: What attorney from the City of Columbia
8 filed the motion to seal?

9 MR. HEWITT: Dana Thye.

10 THE COURT: All right. Where is Dana Thye this
11 morning?

12 MR. HEWITT: She's not here, Your Honor.

13 THE COURT: I know she's not here. Where is she?

14 MR. HEWITT: Judge, I don't know. I assume she's in
15 her office.

16 THE COURT: All right. So, who is responsible from
17 the city attorney's office for removing something from the
18 file, removing something from the file before the motion
19 was filed?

20 MR. HEWITT: Judge, I'm counsel of record. I mean,
21 well ---

22 THE COURT: I'm asking you. That's why I'm asking
23 you. Do you know?

24 MR. HEWITT: I mean, this, this ---

25 THE COURT: I'll put it this way. These are the

1 issues that are involved in this case that needed to be
2 straightened out before we began, but they haven't been.
3 So, you may proceed and we'll deal with them later. Go
4 ahead.

5 MR. HEWITT: Okay. Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. HEWITT: And I apologize if my questions -- are
8 not satisfactory.

9 THE COURT: These are simple questions.

10 MR. HEWITT: Yeah.

11 THE COURT: You don't have an answer for them, but you
12 may proceed. Go ahead. Well, first of all -- well, go
13 ahead. I'm going to listen to you and Mr. Reeves, I think,
14 is prepared to respond to anything you say. Go ahead, sir.

15 MR. HEWITT: Okay. Thank you, Your Honor. The two
16 pending motions, as the court is aware, arise out of a
17 single issue, and the court is aware that this -- the
18 underlying trial in this case occurred in May of last year.
19 It was tried to a verdict and a plaintiff's verdict was
20 rendered on three causes of action: one for false arrest,
21 negligent supervision, and malicious prosecution. And
22 we're here because after the verdict was rendered or
23 entered, the city discovered that one of the jurors did not
24 disclose during *voir dire* that he had been arrested.

25 THE COURT: And you have an issue with that because

1 y'all did not get the whole transcript from the *voir dire*.
2 You only got two or three pages. If you're going to get
3 two or three -- you just can't get two or three pages.
4 You've never provided the court with a complete transcript
5 of the *voir dire*. Were you aware of that?

6 MR. HEWITT: Well, I ---

7 THE COURT: Stop, son. Listen to me carefully. Were
8 you aware that you never provided the court with a complete
9 transcript ---

10 MR. HEWITT: Yes, Your Honor.

11 THE COURT: --- of the *voir dire*? Are you aware of
12 that?

13 MR. HEWITT: I'm aware of our filings.

14 THE COURT: Are you aware of that? Doesn't the rule
15 require that you have the complete transcript?

16 MR. HEWITT: I'm not aware of that requirement.

17 THE COURT: Do you know, yes or no? Do you know?

18 MR. HEWITT: I would be surprised if that is the rule.

19 THE COURT: That's not answering my question. Do you
20 know, yes or no?

21 MR. HEWITT: What, what is the question?

22 THE COURT: The question is if you're going to rely on
23 a transcript for a motion, aren't you required to get the
24 complete transcript, not just a portion of the transcript?

25 MR. HEWITT: So, we have the entire trial transcript.

1 THE COURT: Has it been provided to the court?

2 MR. HEWITT: No, Your Honor. I'm happy to provide it.

3 THE COURT: Well, okay. You go ahead.

4 MR. HEWITT: Yeah. So, if I may approach?

5 THE COURT: Yes, sir.

6 MR. HEWITT: I've got some tabbed copies of the
7 motion.

8 THE COURT: And I've never met you before, so my
9 questions have nothing to do with you on a personal level.
10 You know that?

11 MR. HEWITT: Oh, no. I, I, I take no personal offense
12 to anything.

13 THE COURT: You should not.

14 MR. HEWITT: So, just briefly running through the
15 motion, Your Honor, the red tab articulates what I
16 attempted to articulate a few moments ago. At the top of
17 the page, subsequent to the return a verdict, the
18 defendant, the City of Columbia, sought to contact the
19 jurors who served on the case, and during that effort
20 located -- during efforts to locate the foreperson
21 discovered that he had been arrested by the City of
22 Columbia Police Department about a year before the trial.

23 THE COURT: Let me ask you this.

24 MR. HEWITT: Yes, Your Honor.

25 THE COURT: Why was it necessary to put a mug shot and

1 all the other information into the file regarding this
2 juror? Wouldn't it have been just as simple and easy to
3 say juror number so-and-so did such and such, but instead I
4 thought y'all went way overboard. You made a public record
5 of this juror's mug shot and everything in a civil file.
6 Why did you do that?

7 MR. HEWITT: Well, I think in hindsight there are
8 things we would have done differently.

9 THE COURT: My question is why.

10 MR. HEWITT: Yeah. So, I, I ---

11 THE COURT: Don't you think that was a little over the
12 top?

13 MR. HEWITT: Well, it may well have been.

14 THE COURT: And additionally to that ---

15 MR. HEWITT: I think we ---

16 THE COURT: --- not only did you do that, but you put
17 his Social Security number in the file also, didn't you?

18 MR. HEWITT: Again, Your Honor, I understand the...

19 THE COURT: Well, let's say hindsight. Let's forget
20 hindsight.

21 MR. HEWITT: Yeah.

22 THE COURT: That's a thing in the past. Let's move on
23 with your motion. I apologize. Go ahead.

24 MR. HEWITT: It's, it's quite all right, Your Honor,
25 and in the, in the last page, the green tab -- excuse me,

1 not the last page but the green tab in the packet has the
2 relevant portion of the *voir dire*. The question from the
3 court was: Now, if you ---

4 THE COURT: All right, the court would like a complete
5 copy of the *voir dire*, not relevant. The complete. I
6 think the other side is entitled to have -- I think the
7 court should have the complete *voir dire*, not just a
8 portion.

9 MR. HEWITT: I'd be happy to provide you ---

10 THE COURT: Well, I'll be happy to get it when you get
11 -- I'll be happy to receive it when you provide it to me.

12 MR. HEWITT: Well, it will be provided later today,
13 Your Honor, and I apologize.

14 THE COURT: Thank you, sir.

15 MR. HEWITT: The question was:

16 Have you or a close family member ever been
17 arrested by the City of Columbia, by a City of
18 Columbia police officer? Have you or a member of
19 your family ever been arrested by the city? If
20 so, please stand.

21 One juror stood. It was not the foreperson of the
22 jury.

23 THE COURT: Let me ask you this. Was the *voir dire*
24 sworn at that time? Was the panel sworn at the time this
25 question was asked?

1 MR. HEWITT: I don't know.

2 THE COURT: Okay. Go ahead.

3 MR. HEWITT: Okay, and I apologize for not knowing.

4 THE COURT: That's all right.

5 MR. HEWITT: The, the standard, as you probably know
6 from your long experience, but also ---

7 THE COURT: Just make your argument. Don't speculate
8 on my experience, sir.

9 MR. HEWITT: Very well, Your Honor.

10 THE COURT: It's offensive. Go ahead.

11 MR. HEWITT: Well, I certainly mean no offense.

12 THE COURT: All right. Just go ahead.

13 MR. HEWITT: There are a constellation of cases that
14 discuss this sort of issue which is called juror
15 misconduct. Actually don't think that's the best label.
16 We would call it failing to accurately respond during *voir*
17 *dire*, but the standard is that a new trial is required when
18 a juror intentionally concealed information.

19 THE COURT: Well, how do we know that this juror
20 intentionally concealed information? Maybe he
21 misunderstood the question.

22 MR. HEWITT: Maybe he did.

23 THE COURT: Okay.

24 MR. HEWITT: Maybe he did, but the *Woods* case says
25 it's not a subjective standard.

1 THE COURT: All right.

2 MR. HEWITT: It doesn't rely on what the particular
3 juror understood or didn't understand.

4 THE COURT: All right, sir.

5 MR. HEWITT: Intentional concealment, which was
6 defined for the first time in *State vs. Woods*, a 2001
7 Supreme Court case, occurs when the question to the jury is
8 reasonably comprehensible to the average juror and of --
9 and the subject of the question, what you're asking about,
10 is of such significance that the juror's failure to respond
11 is unreasonable.

12 So, is the question clear? I don't like to use the
13 word clear because they say -- or at least lawyers say when
14 you use the word clear, you're trying to convince yourself
15 and somebody else. But is this question straightforward?
16 It is straightforward: have you ever been arrested. And is
17 the subject matter of the question -- were you asking about
18 something trivial, or were you asking something we would
19 expect a member of the venire to remember? I would expect
20 anybody would remember if they had been arrested.

21 The three cases that we think are most analogous are
22 *State vs. Gullledge*, *Long vs. Norris and Associates*, and
23 *State vs. Woods*. I think the most comparable case is *Long*
24 *vs. Norris Associates*. I have copies for you and your law
25 clerk and one for the other side. Your Honor, if I may

1 approach?

2 THE COURT: Sure.

3 MR. HEWITT: And unfortunately it's a little bit of a
4 lengthy opinion. It was written by Judge Ralph King
5 Anderson when he was on the Court of Appeals. It's not as
6 long as some of his others. It's eleven pages. I'm sorry.

7 THE COURT: I knew, know Judge Anderson very well.
8 He's from Florence, South Carolina. Tripp is his son. Go
9 ahead. I know him very well.

10 MR. HEWITT: I'm sorry. I'm sorry.

11 THE COURT: I've dined with him many times, and he
12 does like to use a lot of -- he's a friend of mine, but he
13 does like to use a lot of words.

14 MR. HEWITT: I'm told he would ask his law clerks to
15 put a lot of law in the case from time to time.

16 THE COURT: Yeah. Yeah.

17 MR. HEWITT: And this doesn't have as much as some
18 others, but it has a lot.

19 THE COURT: I know. Most people don't use his charge
20 book because they're too long, but go ahead.

21 MR. HEWITT: *Long vs. Norris and Associates* was a
22 civil case like this case. It was assault and battery,
23 claims that arose out of a car repossession, and the
24 question that was put to the venire was:

25 Are you -- excuse me -- are any of you in the

1 business of repossessing automobiles, or have any
2 of you had an automobile repossessed?

3 And it turned out a member of the venire who was
4 ultimately put on the jury had had his car repossessed two
5 years before the trial but did not ---

6 THE COURT: Disclose it.

7 MR. HEWITT: Did not disclose it.

8 THE COURT: All right, sir.

9 MR. HEWITT: *Long* rejects the argument that it's
10 important to examine the juror to determine whether there
11 was any actual bias. It says: Prejudice is inferred with
12 intentional nondisclosure. Reading the *Long* case, it's
13 difficult for me to come up with a meaningful distinction
14 between that case and this case.

15 Judge, that's sort of the sum and substance of our
16 argument. I'll be happy to unpack any more of if you would
17 like.

18 THE COURT: Thank you, sir. I've enjoyed your
19 presentation.

20 Mr. Reeves, be happy to hear from you, sir.

21 MR. REEVES: Your Honor, the city is here on a 59(b)
22 and a 60 motion.

23 THE COURT: Yeah, and I don't know why they didn't
24 mention that either, but go ahead. It's a matter of
25 record; it's in the file. Ten days is ten days. Go ahead,

1 Mr. Reeves.

2 MR. REEVES: Yes, sir. Two observations initially,
3 Your Honor. First of all, in the case that counsel cited,
4 the *Long* case, is and quotes often the case of *Gray* which
5 we reply on, Your Honor, which says this. If you're
6 seeking to reverse or have -- seeking a new trial on a
7 motion based on juror misconduct or juror error, whatever
8 the case may be, there's three elements. You have to show
9 the juror was disqualified or could have been disqualified.
10 Secondly, you have to show the grounds of disqualification
11 could not have been known. And then finally you have to
12 show that you were not negligent in not knowing that
13 information.

14 THE COURT: It's a city case; they had city police
15 involved. He was arrested by the city. Is that right?

16 MR. REEVES: Yes, sir. Your Honor, the record
17 surrounding this juror, Your Honor, and I -- one of the
18 things that bothers me is the person who made all these
19 decisions on, on the, on the review of this court as to
20 whether or not that person was negligent or could have
21 known is not here.

22 THE COURT: That's why I'm asking who is the attorney
23 of record.

24 MR. REEVES: The city had the opportunity to have this
25 information before you and has not chosen to do that, but I

1 will say that here's what we do know.

2 The City of Columbia, Your Honor, said in their motion
3 that after they got the verdict, they then began to review
4 the case for purpose of appeal. Now, why you call a juror
5 for that I have no idea, but anyway that's what they said
6 they did.

7 THE COURT: Yes, sir.

8 MR. REEVES: And then they found these records, Your
9 Honor, all of which are on the public record. Your Honor,
10 the city's incident report -- Your Honor, as you know, the
11 Tort Claims Act won't allow a plaintiff to sue the actual
12 department or entity. It has to sue the overall government
13 entity, which is the City of Columbia. The, the real
14 defendant, though, was the City of Columbia, Your Honor --
15 excuse me, City of Columbia Police Department.

16 THE COURT: City of Columbia, that's right.

17 MR. REEVES: In two different locations within the
18 city's own files was information relevant to this juror
19 that could have been found, should have been found by
20 competent counsel.

21 THE COURT: Yeah.

22 MR. REEVES: It was in the city court -- City of
23 Columbia municipal court and the City of Columbia Police
24 Department file.

25 Your Honor, they had ten days to file their motion.

1 They filed a very, as you're well aware, filed a very
2 detailed motion within the ten days as you required them to
3 do.

4 THE COURT: Well, you know, there's some question
5 about the ten days because they filed part of the motion
6 within ten days. Then they tried to file another part of
7 the motion outside of the ten days. So, I'm not sure
8 whether they even followed the ten-day rule, Mr. Reeves, to
9 be honest with you.

10 MR. REEVES: I, I do think there was portions outside
11 the ten days, which you made a note on the record in the
12 motions hearing.

13 Your Honor, again, the case that the city relies on,
14 *Long*, encompasses the case law of *Gray*. My memo that I'll
15 give to you says that there are three things, and I want
16 this court to make -- excuse me. I would respectfully
17 request this court to make a finding of at least two things
18 in all three.

19 First of all, Your Honor, this juror -- when the
20 verdict was read, I will give you -- when the verdict was
21 -- I thought the verdict was \$75. That's all I heard.
22 Obviously it was not correct.

23 THE COURT: Yeah.

24 MR. REEVES: We don't know what this juror heard or
25 didn't hear. To, to argue that he intentionally mislead

1 this court is without foundation in the record.

2 Number two, the juror ---

3 THE COURT: There was no request to *voir dire* the jury
4 after the verdict, if I remember.

5 MR. REEVES: No, sir.

6 THE COURT: Okay.

7 MR. REEVES: Also, Your Honor, you swore the jury in
8 before the trial started in the jury box, the jury drawn in
9 this case. Also, Your Honor, had this juror instead said,
10 okay, Your Honor, I've been arrested. He came to you and
11 said I've been arrested, you would have then asked him,
12 well, and, and given that information, would you have been
13 able or can you give both sides a fair and ---

14 THE COURT: Would that or could that affect your
15 decision to be a fair juror in the trial of this case is
16 the question.

17 MR. REEVES: Exactly. Now having said all that, Your
18 Honor, it is my belief that -- I respectfully ask this
19 court to make a factual finding concerning these three
20 things. The juror was not disqualified or could not, would
21 not have been disqualified because he had an arrest record.
22 Number two, I want the court, respectfully, to make a
23 finding that this information could have been known to the
24 city by the search of its own records or by accessing an
25 internet and going to the public index where there it is

1 based on just the juror information listed in the jury
2 list. And number three, I want the court to find that
3 since there is no one here talk about what the city did or
4 did not do, that they cannot disprove they were negligent
5 in not finding the information, and I believe those facts
6 we'll find, Your Honor.

7 There's one case, Your Honor. It's cited in my brief
8 called *Smith vs. Quattlebaum* where this issue came up, and
9 the judge made some astute findings that, you know what?
10 Given this case and given what I saw, everybody got a fair
11 trial. It was the right thing.

12 Your Honor, to, to file or to order a mistrial for
13 this information is not presumed. It's within your
14 discretion as to what you want to do and based on the
15 findings of fact, I just ask the court to make -- this
16 motion should be denied and no new trial granted.

17 THE COURT: All right.

18 MR. REEVES: Thank you.

19 THE COURT: Thank you, Mr. Reeves. This has been an
20 interesting case from the very beginning.

21 Go ahead.

22 MR. HEWITT: Just, just a few points, and of course I
23 would like to do my best to respond to any questions you
24 have, Your Honor.

25 THE COURT: I'm not going to ask anybody any more

1 questions.

2 MR. HEWITT: Okay. As to the vehicle, Rule 59, Rule
3 60, the key case on that is *Gray vs. Bryant* where the
4 Supreme Court said the circuit court has the inherent power
5 to hear this sort of issue even after *sine die*, adjourned.
6 In *Gray*, it was raised by way of 50 -- a 59 motion. In
7 *Long vs. Norris and Associates*, it was raised by a Rule 60
8 motion, so the vehicle doesn't matter.

9 THE COURT: All right.

10 MR. HEWITT: With respect to the city, whether the
11 city should or should not have searched the public index
12 either on the entire 300-person venire ---

13 THE COURT: No, no, no. Forget the venire. They give
14 you a list every Monday, and it has whether or not a juror
15 has been arrested. I didn't look at the list, but usually
16 they have that information or the clerk, Jim Truett, has
17 that information. And whatever judge qualified the panel
18 that day, he would have known that somebody had an arrest
19 for anything from trespassing to shoplifting or even a
20 speeding ticket almost. So, the information was available,
21 should have been available, on this jury the Monday morning
22 when the venire was qualified. That's how it works around
23 here. Okay, go ahead.

24 MR. HEWITT: Well, it's my understanding that the
25 city's standard practice is not ---

1 THE COURT: I'm telling you what the courthouse
2 standard practice is. I don't know what the city does, but
3 every Monday when you qualify the jury, Jim Truett, the
4 clerk, he has a list of everybody with a prior record for
5 anything above a speeding ticket, okay? So, that
6 information on this jury should have been available to the
7 city Monday morning on the week of that trial. That's how
8 it works here in Richland County. You don't have to take
9 my word for it, but it's a matter of practice, okay?

10 MR. HEWITT: It's my understanding -- and again I may
11 be misinformed.

12 THE COURT: Well, I've been here for twenty-five
13 years, and that's the way it's worked all of the
14 twenty-five years I have been here, sir.

15 MR. HEWITT: Well, I would just direct the court to
16 the portion of *Long vs. Norris and Associates*.

17 THE COURT: All right.

18 MR. HEWITT: Court of Appeals specifically rejects a
19 similar argument that the defendant ---

20 THE COURT: What similar argument? That I ---

21 MR. HEWITT: -- the defendant ---

22 THE COURT: --- just made?

23 MR. HEWITT: --- was negligent in failing ---

24 THE COURT: Okay.

25 MR. HEWITT: --- to conduct some sort of a background

1 check on the jurors, and this is what the court said and
2 I'm paraphrasing. The defendants had no evidence during
3 the trial to support any concerns and accordingly raised no
4 objection.

5 THE COURT: Okay.

6 MR. HEWITT: We're not dealing with children. We're
7 dealing with adults that are asked direct questions, direct
8 *voir dire*, and we're entitled to treat -- to presume that
9 those answers are accurate, not that we're dealing with a
10 four year old who has to be told twelve times to put his or
11 her shoes on.

12 THE COURT: I get your point, sir.

13 MR. HEWITT: But, nevertheless, the defendant in
14 *Long*, and I think the same is true of the city here,
15 promptly mobilized after the judgment, discovered the
16 truth, and made a prompt Rule 60(b) motion, and I don't
17 think there's ---

18 THE COURT: What's considered a prompt Rule 60(b)
19 motion? What's the time limit?

20 MR. HEWITT: The time limit, I think, is a year, but
21 in that case it was twenty-five days after the verdict was
22 rendered, and in this case it was about thirty days,
23 thirty-five after the verdict was rendered.

24 THE COURT: All right, sir.

25 MR. HEWITT: There was a -- my brother made an

1 argument about the fact the jury was sworn and the jury
2 swore that it could be fair. *Gray vs. Bryant* specifically
3 rejects this argument. It says we do not rely on the
4 juror's declaration of his or her fairness. The standard
5 for reversal is whether the information would have
6 supported the challenge for cause -- would not in this
7 case; this juror was qualified under the statute -- or
8 would have been a material factor in the exercise of
9 strikes. I don't think that anybody would contest the city
10 would not have struck someone who had been arrested by ---

11 THE COURT: Sir, I learned a long time ago not to
12 assume what somebody else would do. I don't know what they
13 would have done.

14 MR. HEWITT: Yeah.

15 THE COURT: Go ahead.

16 MR. HEWITT: A couple other points. The argument
17 about we don't know whether the juror heard or didn't hear
18 the question, that was ---

19 THE COURT: That wasn't an argument. That was a point
20 that I raised. I don't think Mr. Reeves ---

21 MR. HEWITT: Well, I, I ---

22 THE COURT: Did you make that argument?

23 MR. REEVES: I just pointed out my own...

24 THE COURT: Okay. Go ahead, sir.

25 MR. HEWITT: Well, I would just like to -- whomever

1 said it, I would like to direct the court to *State vs.*
2 *Woods* where a juror gave similar testimony when asked.
3 Must not have heard the question. Had I heard it, I would
4 have responded. The court says, you know, thank you. Try
5 again. The questions were reasonably comprehensible and
6 should have elicited a positive response.

7 THE COURT: All right, sir.

8 MR. HEWITT: This question was reasonably
9 comprehensible and should have elicited a response.

10 THE COURT: Thank you, sir. Anything further?

11 MR. HEWITT: I don't think so, Your Honor.

12 THE COURT: Thank you.

13 Anything further, Mr. Reeves?

14 MR. REEVES: No, sir.

15 THE COURT: Thank you for your lively presentation.
16 I'll let you know my decision in due course. I'll let
17 y'all submit proposed orders if you want to within ten
18 days.

19 --- END OF TRANSCRIPT OF RECORD ---



We Are Columbia

Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

July 14, 2017

The Honorable L. Casey Manning
Chief Administrative Judge of the Fifth Judicial Circuit
Richland County Judicial Center
Post Office Box 192
Columbia, SC 29202

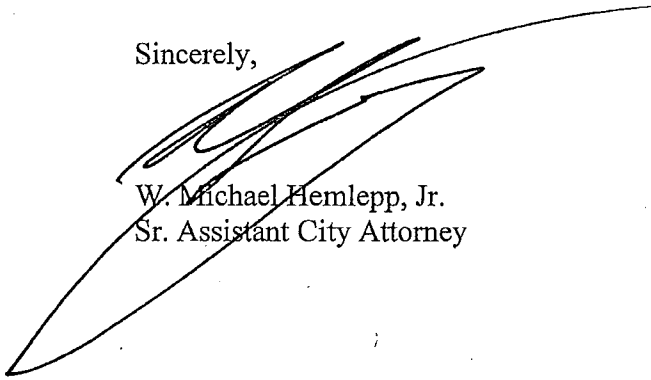
Re: Darris Hassell v. City of Columbia
C/A File No.: 2016-CP-40-0910

Dear Judge Manning:

Please find enclosed a proposed *Order for Substitution of Counsel* in the above-referenced matter. If this Order meets with your approval, please sign it and return it to me in the enclosed envelope and I will have it filed with the Court.

Thank you for your attention to this matter.

Sincerely,



W. Michael Hemlepp, Jr.
Sr. Assistant City Attorney

WMH/jlh
Enclosure(s) as Stated

cc: Paul L. Reeves, Esquire
John S. Nichols, Esquire

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

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

**ORDER FOR
SUBSTITUTION OF COUNSEL**

IT APPEARING that Natalie A. Ham of the Office of the City Attorney, had formerly been assigned to represent the Defendant in the above referenced matter and that she has resigned her position with that office;

IT ALSO APPEARING that Dana M. Thye, also of the Office of the City Attorney, has appeared in this matter but has been reassigned within the Office and will no longer be representing the City with regard to this case;

IT FURTHER APPEARING that the City has retained the law firm of Bluestein, Nichols, Thompson and Delgado to represent the City's interests going forward;

NOW, THEREFORE upon application of the undersigned attorneys and for good cause shown pursuant to Rule 11(b), SCRCP;

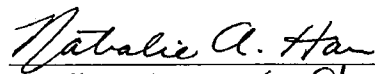
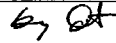
IT IS HEREBY ORDERED that the law firm of Bluestein, Nichols, Thompson and Delgado, shall be and hereby are substituted as counsel for the Defendant in this matter.

AND IT IS SO ORDERED.

L. Casey Manning
Chief Administrative Judge

July _____, 2017
Columbia, South Carolina

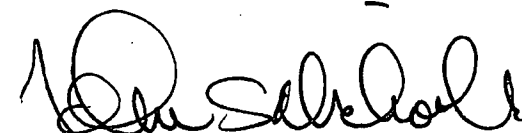
I hereby consent to be relieved:


Natalie A. Ham *by* 


Dana M. Thyé

I hereby consent to the substitution of counsel:

Bluestein, Nichols, Thompson and Delgado

By: 
John S. Nichols

June 28, 2018

The Honorable L. Casey Manning
P.O. Box 192
Columbia, SC 29202-0192

RE: Darris Hassell v. City of Columbia
C.A. No. 2016-CP-40-0910

Dear Judge Manning:

Immediately prior to the hearing yesterday I was handed a copy of the Plaintiff's memorandum opposing the City of Columbia's motion for a new trial. I have now had a chance to review that memorandum.

I respectfully disagree with the Plaintiff's written arguments for reasons outlined during yesterday's hearing. I am writing to share my particular concern with the requested "findings of fact" set forth in the Plaintiff's memo. As I indicated yesterday, I do not think anyone would dispute that had the juror answered the voir dire question honestly the fact of his prior arrest would have been a material factor in the City's use of peremptory strikes. Also, it is not the City's standard practice to perform a background check or a public index search of the entire jury venire or of the jury itself, once selected, and I am not aware of any obligation that a litigant or a lawyer do so.

If the Court has any doubts about my statements from the hearing or regarding the explanation provided in the written motion for a new trial describing how the City's trial counsel came to learn of this juror's prior arrest, I will happily provide an affidavit from the appropriate official in the office of the City Attorney.

Yours sincerely,



Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC

cc: Paul L. Reeves, Esquire
W. Michael Hemlepp, Jr., Esquire
The Honorable Jeanette W. McBride

Reeves & Lyle

ATTORNEYS AT LAW

July 6, 2018

The Honorable L. Casey Manning
P.O. Box 192
Columbia, South Carolina 29202-0192

Re: *Hassell v. City of Columbia*
CA No.: 2016-CP-40-0910

Dear Judge Manning:

Please find enclosed the Plaintiff's Proposed Order relevant to the Motions Hearing of June 27, 2018. By copy of this letter I am providing same to Mr. Hewitt, counsel for the City of Columbia.

I am in receipt of Mr. Hewitt's letter, on behalf of the City of Columbia, dated June 28, 2018. I received that letter via U.S. Mail on June 29, 2018. I object to the City's attempt to now present evidence regarding trial Counsel's efforts, or lack thereof, in regard to the discovery of juror misconduct. The City had ample notice of the Hearing on June 27, 2018. I strenuously object to the City's attempt to now support its Motion after the Hearing has been closed.

Should you require any additions or deletions to the proposed order, please do not hesitate to contact me regarding same.

I am,

Very truly yours,



Paul L. Reeves
Attorney at Law

PLR:jrs
Enclosure

cc: Blake A. Hewitt, Esquire

July 9, 2018

The Honorable L. Casey Manning
P.O. Box 192
Columbia, SC 29202-0192

RE: Darris Hassell v. City of Columbia
C.A. No. 2016-CP-40-0910

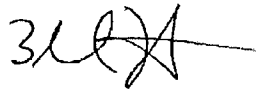
Dear Judge Manning:

I have attached the City of Columbia's proposed order following the motion for a new trial you heard last month, on June 27th. You may recall that following the hearing you asked both sides to present proposed orders in ten days.

I received the plaintiff's proposed order on Friday. Although I expect my view with respect to that proposed order is predictable, I wish to note my position that the plaintiff's proposed order is not faithful to controlling law or to what is in truth an uncontested record regarding how the City of Columbia learned this information about the foreperson of the jury. I also wish to direct attention to the notice of appearance I filed in November of last year (attached). I am not aware of any requirement for a court order before an additional lawyer is able to join a case as I did.

Please do not hesitate to contact me if I may be of any additional assistance.

Yours sincerely,



Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC

Enclosures

cc: Paul L. Reeves, Esquire
W. Michael Hemlepp, Jr., Esquire
The Honorable Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Darris Hassell

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

ORDER

This case is before the court on two motions. The first is a motion for a new trial based on juror disqualification. The second is a motion to seal the exhibits filed in support of the motion for a new trial.

*

This case was tried to a verdict May 15 to May 18, 2017 on claims for false arrest, malicious prosecution, and negligent supervision. The jury rendered a verdict in the plaintiff's favor. The amount of damages awarded was \$200,075.00. A judgment of that amount was entered May 19, 2017.

The City of Columbia made a timely motion for a new trial, which this Court denied in a Form 4 signed June 16, 2017 and filed June 27, 2017.

The City filed the present motion for a new trial June 30, 2017. The motion alleged that during the City's efforts to locate and speak with jurors after the trial the City discovered the foreperson of the jury had been arrested by the City of Columbia Police Department on May 20, 2016. That arrest was a year before trial, almost to the day. The foreperson did not respond during jury selection when the Court asked whether anyone had ever been arrested by the City.

The City attached as exhibits to its motion the incident report from the foreperson's arrest, the booking photo, a partial transcript from the voir dire of prospective jurors, and a copy of the Supreme Court's decision in *State v. Woods* discussing the standard for a new trial when a juror conceals information during voir dire.

The next business day after filing the motion for a new trial—the motion was filed Friday, June 30, 2017—the City filed a motion to seal the exhibits pursuant to Rule 41.1, SCRCP, because the page with the foreperson's booking photo contained the foreperson's social security number.

The Court conducted a hearing on the motion June 27, 2018. Blake Hewitt and Teresa Knox appeared for the City of Columbia. Paul Reeves and Todd Lyle appeared for the plaintiff, Mr. Hassell.

**

The issue is whether these circumstances constitute concealment of information during voir dire and whether such concealment requires a new trial. Two of those precedents outline the necessary inquiry.

First, there is *Thompson v. O'Rourke*, which articulates a three-factor test. *Thompson* explains a party seeking a new trial on the basis of juror disqualification must show (1) the "fact of disqualification," (2) that the grounds for disqualification were not known prior to the verdict, and (3) that the moving party was not negligent in failing to learn of the disqualification before the verdict. 288 S.C. 13, 14, 339 S.E.2d 505, 506 (1986).

Next, there is *State v. Woods*, which defines "intentional concealment." *Woods* held "intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001).

“Intentional concealment” is the first step in the analysis of whether a juror is “disqualified.” *Id.* at 587-588, 550 S.E.2d at 284. A new trial is required when the information concealed “would have supported a challenge for cause or would have been a material in the use of the party’s peremptory strikes.” *Id.* at 587-588, 550 S.E.2d at 284.

Applying the standards from those decisions to the circumstances of this case, the only reasonable conclusions are that the foreperson’s failure to disclose the prior arrest meets the definition of intentional concealment and that a new trial must be granted.

First, these circumstances constitute intentional concealment under *Woods*. The venire was specifically asked:

Now, have you or a close family member ever been arrested by a City of Columbia police officer? Have you or a member of your family ever been arrested by the City?

This question is straightforward and was reasonably comprehensible to the average juror. Also, the question is directed towards an event of significance—whether anyone has been arrested. For a reasonable person, a prior arrest is not a trivial or readily forgettable experience. Failing to respond to this question when one had in fact been arrested would be unreasonable. The City contends this information would have been a material factor in its use of peremptory strikes and there is no reason to question this contention given that this case involved a claim of false arrest brought against the City of Columbia for the actions of one of its officers in making an arrest.

Next, addressing the three-prong test from *Thompson*, the “fact of disqualification” is answered by the “intentional concealment” finding under *Woods*. On the second prong—that this information was not known prior to the verdict—the Court has not been presented with any information leading anyone to question the veracity of the City’s assertion that it learned this information in its effort to locate contact members of the jury after the verdict.

The parties dispute the last prong from *Thompson*; specifically, they dispute whether the City was negligent in failing to learn of the foreperson's arrest before the verdict. The plaintiff claims the foreperson's prior arrest was a matter of public record and could have been accessed by the City at any time prior to jury selection and before the verdict. The City agrees the arrest was a matter of public record and that this information could have been discovered at any time before or during trial, but the City disagrees that it had any reason to question the veracity of statements made during voir dire or to examine the public record of every potential juror or of the seated jurors. The City argued the decision of the Court of Appeals in *Long v. Norris & Associates* presented similar circumstances and could not be meaningfully distinguished.

Long was a civil suit for assault and battery arising out of a car repossession. 342 S.C. 561, 565, 538 S.E.2d 5, 7 (Ct. App. 2000). The plaintiff alleged the person repossessing the car pushed her to the ground and injured her before driving away. *Id.* at 565, 538 S.E.2d at 7. Potential jurors had been asked during jury selection "Are any of you in the business of repossessing automobiles or have any of you had an automobile that was repossessed?" *Id.* at 569, 538 S.E.2d at 10. A member of the venire with a prior repossession failed to respond to the question and was seated on the jury. The court's opinion indicates the defendants learned of the prior repossession after trial and while investigating this juror because he seemed to manifest a preference for the plaintiff during the trial. *Id.* at 561, 566, 538 S.E.2d at 8.

Long is instructive for two reasons. First, it rejects a claim that the defendant was negligent in not learning of the disqualification sooner. The Court of Appeals noted the large number of people summoned to court for jury service and that parties are not under a duty to investigate potential jurors. *Id.* at 572, 538 S.E.2d at 11. The court noted the defendant had no evidence during trial to support an objection to the juror but promptly mobilized after judgment

and made a prompt motion for relief. *Id.* at 572, 538 S.E.2d at 11. The record does not reasonably support a different conclusion in the present case. Nobody has identified a reason why anyone would anticipate information being concealed during voir dire.

Second, *Long* reiterates that prejudice and bias are inferred in cases of intentional concealment. *Id.* at 576, 538 S.E.2d at 13. Though no explanation has been offered for why the foreperson did not respond to the question during voir dire, intentional concealment is the only reasonable conclusion given that the question would be readily understood by the average juror and the failure to respond to the question would be objectively unreasonable.

A point was raised at the hearing regarding this motion's timing. The motion was filed June 30, 2017. This was more than 10 days after the judgment was entered on May 19. The motion references Rule 60(b)(2), SCRCP, governing new trials for newly discovered evidence.

The motion is timely. In *McCoy v. State*, the Supreme Court explained a motion for a new trial based on juror disqualification/concealment is a separate basis for a new trial apart from new trial motions under Rules 59 and 60. See 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013). This conclusion finds further support in other precedent explaining the court has "inherent power" to hear and decide this sort of motion, "even after sine die adjournment[.]" *Gray v. Bryant*, 298 S.C. 285, 287, 379 S.E.2d 894, 896 (1989) (quoting *Smith v. Quattlebaum*, 223 S.C. 384, 390, 76 S.E.2d 154, 157 (1953)).

The circumstances are obviously unfortunate as the new trial is in no way the result of an error in the part of the plaintiff, plaintiff's counsel, the City or its counsel, or the Court. Having said this is not the fault of any party, there can nevertheless be no other conclusion than that a new trial must be granted. Parties are entitled to truthful and accurate responses during voir dire. As was true in *Long*, and as the Supreme Court said in *Woods*, the question was "reasonably

comprehensible and should have elicited a positive response.” *Woods*, 345 S.C. at 589, 550 S.E.2d at 285.

Regarding the motion to seal, the Court dismisses the motion as moot. The exhibits attached to the motion for a new trial that are on file with the clerk and available on the public index have a redacted version of the printout from the foreperson’s booking in which the social security number is redacted and the foreperson’s picture is obscured. As the City acknowledged in the motion to seal, the social security number should have been redacted in the original filing pursuant to Rule 41.2, SCRCP.

The motion for a new trial is granted. It is so ordered.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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

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SC Court of Appeals

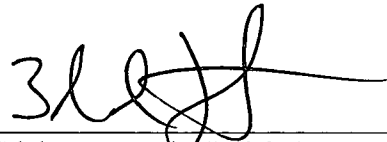
Darris Hassell, ... Respondent,

v.

The City of Columbia, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

May 22, 2019

Attorney for Appellant