

23282

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas
R. Markley Dennis, Circuit Court Judge

Case No. 2013-CP-10-5351
Appellate Case; 2015-001331

RECEIVED
OCT 13 2016
SC Court of Appeals

Jack Powell,

Appellant,

V

Medical University
of South Carolina

Respondent,

RECORD ON APPEAL

Appellant Jack Powell
1402 Camp Road Unit 8-A
Charleston, S.C. 29412
(843)952-4762

Barnwell & Whaley
288 Meeting St. Ste. 200
Charleston, S.C. 29401
(843)577-7700

Attorney John Arthur Jones
M. Dawes Cooke, Jr.
John William Fletcher

RECORD ON APPEAL

INDEX

PLEADINGS

Complaint, filed on Sep. 16th 2013 p. 1

Plaintiffs response to Defendants supplemental memorandum, filed Nov. 12-2014 ...p. 32

MOTIONS

Motion to Compel Discovery, filed on 4-18-14 p. 46

Motion to Amend Reconsideration, filed on 5-6-15 p. 47

ORDERS & JUDGMENTS

1. Order Granting Summary Judgment filed on 9-25-14 p.69

2. Order Reversing Appellants Conviction for Trespassing filed on 3-20-2015 p. 79

TRANSCRIPT

MSJ hearing Transcript held on 7-30-14..... p. 81

EXHIBITS

Exh. A Charleston County Clerk of Court E-mail p. 100

Exh. B MUSC Radiology Report p. 101

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

2013-CP-10-5351

Jack Powell,

Plaintiff,

vs.

Medical University of South Carolina,

Defendant.

COMPLAINT BY

FILED
2013 SEP 16 PM 2:57
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff Pro Se; Jack Powell is a resident of Charleston County and reserves all rights to amend this Complaint. The Plaintiff files this Complaint because the Medical University of South Carolina (MUSC) exercised reckless gross negligence when; MUSC Doctors, Nurses, Public Safety and Security Guards weighed competing considerations and intentionally failed to exercise proper protection for the Plaintiff from the contemptuous attitudes & atmosphere that was allowed to continue for almost "2" hours on June 21 & 22, 2012. MUSC knew of the likelihood of harm that could take place and had the sufficient authority and time to make the proper decisions to protect the Plaintiff from emotional harm and pain & suffering WHEN; allowing Security Guards to attempted to pull the injured Plaintiff from the bed the second time.

ALSO; MUSC Doctors & Nurses intentionally failed to supervise a proper discharge of the patient from his wheelchair so he could go freely anywhere he wanted to go. The Public Safety (non-physicians) were not exercising a mere execution of a specific duty that was within their scope of duty when they denied the Plaintiff his reasonable measure of slight care (Jinks v Richland County)(2003) when he requested help from the wheelchair and was refused help at that time so he could go freely and was then confined to the wheelchair by the gross negligent decisions. ALSO denied his option to be taken to Roper Hospital

for a second opinion that was offered by the Public Safety when the Plaintiff was unable to remove himself from the ER bed. Then the Plaintiff was hand cuffed in the front due to his medical issues which again was determined by a non-physician. Then arrested for Trespassing; Refusal to Leave because the Plaintiff was accused of loitering around the premises when just sitting and unable to remove himself from the wheelchair.

THEREFORE, because of the reckless gross negligence exercised by MUSC when; Slandering & documenting Lible, allowing Infliction of Emotional Distress, Assault & Battery and exercising reckless decisions that rendered the Plaintiff confined to his wheelchair and then Falsely Arresting and Imprisoning the Plaintiff which caused Emotional, Physical Pain and Suffering to his neck, shoulder and knee. Pursuant SCTCA 15-78-60 (25)(2003) MUSC does not have immunity and and does not fall under the protection of SCTCA 15-78-60 (5) (2003) because of the reckless gross negligent manner exercised by MUSC.

Because of these abnormal and specific circumstances, a Special Duty Statute could & should be considered when this Special Protected Class was subjected to professional carelessness, breach of duty of reasonable care and reckless gross negligence when allowing the following;

1. When the identifiable patient is uninsured, not under arrest and yelling from pain being inflicted upon them by a hospital just to discharge them.
2. When the identifiable, drugged, in pain and unable to move patient is given more drugs after the first discharge process attempt only for the purpose of discharging them again while in pain.
3. When the patient is under complete control, dominance and mercy of the hospital staff to make the proper due process of slight care to stop foreseeable harm. Then after weighing competing considerations, intentionally inflict emotional and physical harm when attempting to discharge patient.

4. When intentionally confined and at the mercy of the hospital staff they intentionally make improper decisions while discharging the patient. The reckless decision not to perform the duty of completing a discharge of an injured and unable to move patient renders the patient confined to the wheelchair. Then patient is unable to get out of wheelchair and avoid being arrested for loitering.

5. When the hospital staff has complete control over the patient and then allows a contemptuous atmosphere continue inside the ER and outside during discharge of the patient that is unable to get out of his wheelchair. Also when the patient is unable to protect himself from the harmful decisions made by the hospital because of injury and medication.

6. When the hospital lies to the patient and their intentional reckless decisions confines the patient to his wheelchair which denies him safe passage during discharge to be assisted up & out of wheelchair, then be taken home, anywhere he wants to go or Roper Hospital as prescribed and opted to the patient by the Public Safety when he was still on the ER bed and not under arrest.

PLAINTIFF JACK POWELL BRINGS FORTH THE FOLLOWING CAUSES OF ACTION

On 6-21-12 a "56" year old and sober Mr. Powell was walking up Folly Road and tripped over an exposed and unburied cable line in front of the Folly Oaks Center located at 930 Folly road. The Charleston County EMS came and Mr. Powell was transported to the MUSC Emergency Room after being knocked unconscious and receiving injuries to his head, neck, shoulder and knee.

Dr. Simon Watson and Billy Jacobsen were attending to Mr. Powell. Mr. Powell was in terrible pain and the doctor said a pain shot was on the way. Then someone began to push Mr. Powell's bed out of the room and he asked where are we going and he said to X-Rays. Mr. Powell asked how long will this take because I'm in pain and a pain shot is on the way. He said maybe a couple of hours and would you rather stay and wait for the shot? Mr. Powell said yes, so he pushed the bed back into the ER. Then a few minutes later the same doctor that said the pain shot was on way comes in and asked Mr. Powell if he had told the man (pushing his bed out of the room) that he wanted to stay and wait for his pain shot, Mr. Powell said yes. Then the doctor asked are you sure you want to wait for the pain shot or go to the X-Ray department? Mr. Powell who was having severe pain told the doctor that is about the stupidest question a doctor has ever asked me. The doctor rolled his eyes then left. Later after the X-Rays were finished and Mr. Powell was back in the ER the doctor comes in and rudely starts taking off the neck brace (that had been put on by the EMS). Then he tells Mr. Powell you have been discharged. The doctor then said other than the severe Arthritis you have from ("4" surgeries on Mr. Powell's neck, shoulder and knee) you do not have any major injuries like broken bones or fractures. Mr. Powell then said how can i leave, i can't move because of the pain. The doctor repeated the demand and Mr. Powell again said I can't move.

NOTE; at this time Mr. Powell was unaware that the Charleston County EMS stated that Mr. Powell was abusive and apparently this was believed and repeated ACCORDING to the Nurse Assessment written by Nurse Jill Pentz. Of course there was no mention that Mr. Powell had been knocked unconscious after tripping over a cable line in the dark on Folly road and then was barely conscious, with his face in the dirt , in severe pain because of his neck, shoulder and knee, unable to move, then asked repeatedly which hospital would you like to go to and Mr. Powell would answer I don't care. Then with a long pause between being asked, even with EMS getting up and walking around. Mr. Powell

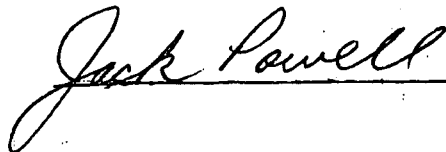
then uttered out of fear and severe pain, I don't give a which hospital you take me to, get me up I'm in pain. Then the EMS put a collar around Mr. Powell's neck and assisted him to the ambulance, then transported him to MUSC.

NOW; back in the ER the security guards are called in and the doctor allows them to try and pull Mr. Powell from the bed. They are pulling on Mr. Powell's injured arm/shoulder and knee. Mr. Powell is yelling because of the pain being inflicted upon him and the security guards stop pulling. Then they try again and again they stop trying to pull Mr. Powell from the ER bed because of the yelling from pain.

Then the Public Safety Officers came in and rudely told Mr. Powell to get off the bed and leave. The injured Mr. Powell responds with I'm in too much pain, I can't move. The Public Safety Officers again tells Mr. Powell to get off the bed and leave. Mr. Powell says I can't move and I'm not going to inflict anymore pain on myself, you will have to help me off the bed. Mr. Powell then said I want a second opinion and if you don't stop hurting me I will sue MUSC. The Officers then tell Mr. Powell we will take you home, anywhere you want to go or Roper Hospital.

The Officers painfully remove Mr. Powell from the bed and take him outside in a wheelchair. Then the public safety rudely tells Mr. Powell to get out of the wheelchair and leave. Mr. Powell says he can't get up because of the pain. Then they tell Plaintiff to leave premises or we will arrest you. Mr. Powell says I will not inflict anymore pain on myself for you and you will have to help me out of the wheelchair. Then the Public Safety Officers Kyle Radford and Jermaine Chapmen lifted Mr. Powell out of the wheelchair and put him into their police car to take him to the Al Cannon Jail for Trespassing; Refusal to Leave.

DATED 9/12/2013

A handwritten signature in black ink that reads "Jack Powell". The signature is written in a cursive style with a horizontal line underneath the name.

Pro Se; Jack Powell

“CRAVE REFERENCE TO”

the following statements made on Official MUSC Documents
and under Oath!

- A. Interrogatory Questions answered during Discovery.
- B. Security Guards Detailed Activity Report.
- C. Triage Nurse Assessment Report
- D. MRN # 1413630; provider Dr. Jacobsen & (Dr. Simon Watson)
- E. Plaintiff's Admit to Defendant
- F. Record Submitted by Dr. Shree Subedi)
- G. Public Safety Incident Report

Documented & Under Oath Statements

- “D” 1. Head, neck and leg injury
- “D” 2. Shoulder surgery, unknown spine surgery
- “D” 3. C-spine pain – shoulder pain
- “D” 4. Help to raise legs.
- “D” 5. Degenerative disc disease.
- “D” 6. Chronic MSK pain.
- “C” 7. Pain scale 10/10.
- “C” 8. Requiring physical assistance.
- “F” 9. SHOULDER; indication pain, chronic Degenerative changes of the Acromioclavicular and Glenohumeral joints. Irregularity of the greater Tuberosity noted due to Rotor Cuff Disease.
- “F” 10. RIGHT KNEE; indication pain frontal and lateral views of the right knee demonstrate severe “3” compartment Osteoarthritis with Osteophyte formation and joint narrowing with a “U” shaped Metallic device overlaying Lateral Condyle. Chronic loose bodies are seen.

"F" 11. CERVICAL SPINE CT; multilevel Degenerative Disc Disease with Osteophyte formation complex causing mild Effacement of the Spinal Canal at the same level.

"F" 12. BRAIN CT; acute pain due to fall, loss of Consciousness, Cervical Spine Tenderness.

"F" 13. Powell still complained pain was unbearable. Officer Kyle Radford states; Dr. Watson gave Powell Medication & was taken before Discharge.

NOTE; Discharged at 12:25:10 am Dr. orders, given oxycodone 10 mg. at 12:57

"H" 14. Nurse Assessment states; 12:45 am preparing patient for Discharge.

1:00 am patient given oxycodone. Patient assisted up and moved with ease to the edge of the bed. Then nurse Pentz states; patient stated; he will not leave "he can't move".

"A" 15. NOW Nurse Pentz states under oath that; at one point in time Mr. Powell sat in an upright position on the side of the bed. NOTE; no moved with ease.

"A" 16. Security Guards arrive at 1:00 am. Officer Mckinnie stopped trying to assist Patient from a lying to a seated position because Patient stated he would not put any more pain on himself by moving.

"B" 17. Mckinnie, Bowers and Mullins tried to convince Powell to leave.

"B" 18. Still complained that the pain was unbearable.

"B" 19. I am in pain and I cannot move without feeling pain and I will not move. I will not inflict more pain for myself for this hospital. I don't have to do anything. I don't want to and I'm starting to get a little pissed off.

"G" 20. Assisting Powell in the process but became Agitated and stated he would sue the Hospital and wanted a second opinion.

"B" 21. NOTE; Security Guards say they arrived at 1:00 am.

"G" 22. Now Security Officer Bowers contacts Public Safety Dispatcher and Public Safety 'NOTE' they arrive at 12:57:10 am and Officer Kyle Radford states; he lay in the middle of the bed in a seated position.

"G" 23. Officer Kyle Radford states; his response to me was I am in pain.

"G" 24. CPL Chapman attempted to talk Powell into leaving, Patient again stated; he was not going to put any more pain on himself by moving.

"A" 25. Public Safety gave the Patient several options; taking him home or anywhere he wanted to go or Roper Hospital.

"G" 26. Public Safety Officer Warner then told Mr. Powell he had to go. Mr. Powell was assisted to wheelchair.

"A" 27. Officer Mckinnie stated; Mr. Powell was never pulled from the bed!

NOTE; What Mckinnie stated in "A" 16.

"A" 28. Dr. Simon Watson stated; Mr. Powell was never pulled from the bed.

"A" 29. Public Safety Officer Warner. talked to the in charge physician
(NOTE; Simon Watson) and then Mr. Powell was taken from the bed.

"C" 30. MUSC states; neither physicians ordered Public Safety or Hospital
Security to remove Mr. Powell from the bed. NOTE; What was stated in "G" 20

At 1:40 am Public Safety at bedside, put into wheelchair.

"E" 31. Once outside Mr. Powell was told to leave the premises.

"A" 32. Powell said he could not get out of wheelchair.

"G" 33. Then told suspect he had the choice of leaving the area under his own
free will and better do so, failure to leave would result in arrest & jail.

"A" 34. Suspect said he would need help getting out of the wheelchair.

"D" 35. Oral Narcotic given; the effects may begin 30 minutes to an hour. It will
impair your judgement, slow your reaction time and make you sleepy. Don't do
anything requiring mental alertness. NOTE; taken by mouth on ER bed # 31.

"G" 36. Suspect stated; that he would not inflict any more injury.

"G" 37. The Suspect was advised again that he needed to leave the area.

"G" 38. The Suspect then did not move.

"G" 39. Under arrest for Trespassing; Refusal to Leave due to his loiter about
the premise after being warned off!

"G" 40. He was handcuffed in front due to his Medical issues !!

"G" 41. With regard to Mr. Powell's condition disposition and reason for his arrest.

"G" 42. Public Safety assisted him from the wheelchair into patrol car.

"G" 43. At 2:10 am Public Safety arrived at headquarters and left for Charleston
County Detention Center at 2:44 am.

NOTE; lying on cramped backseat, arms and legs handcuffed for 34 minutes.

"G" 44. Drugs; unknown type; Stated on Public Safety Report.

"G" 45. Public Safety gave the patient several options; taking him home or
anywhere he wanted to go or Roper Hospital.

RECKLESS AND GROSS NEGLIGENCE

1. MUSC acted wrongfully and demonstrated willful gross negligence when physicians & nurses ignored foreseeable harm taking place when the security guards were recklessly allowed to try and take the already injured, in pain, unable to move Plaintiff/Patient from the ER bed the second time.

PUBLIC SAFETY; INCIDENT REPORT

(On ER bed) I am in pain and I cannot move without feeling pain and I will not move, I will not inflict more pain for myself for this hospital. I don't have to do anything, I don't want to and I'm starting to get a little pissed off.

Assisting Powell in the process but became Agitate and stated he would Sue the hospital and wanted a Second Opinion.

CRAVE REFERENCE TO INTERROGATORIES ANSWER #13

ANSWER #3 Officer Mckinnie stopped trying to assist Plaintiff/Patient from lying to a seated position because Patient stated he would not put any more pain on himself.

PUBLIC SAFETY INCIDENT REPORT Officer Warner then told Mr. Powell he had to go. Officer Kyle Radford talked to the in charge physician (Dr. Simon Watson) and then Mr. Powell was taken from the bed.

2. Dr. Simon Watson allowed bodily harm and emotional distress to be inflicted upon the Plaintiff/Patient while he was under the supervision, complete control and at the mercy of the MUSC ER. This specific and reckless act had taken place after the Plaintiff/Patient had been discharged. Then, again administered drugs only for the removal of the in pain and unable to move Plaintiff/Patient from the ER bed.

0045 preparing Pt. (patient) for Dic (discharge) 0100 pt. Given oxycodone

TRIAGE; Dr. orders, given oxycodone 10 mg. at 12:57

PUBLIC SAFETY INCIDENT REPORT Officer Kyle Radford states; Powell still complained pain was unbearable. Dr. Watson gave Powell medication & was taken before discharge. Discharged at 12:25:10 ?

Public Safety states; Powell was being discharged and refusing to leave. Dr. Watson explained to patient that he was medically cleared to leave 12:25AM.

Powell still complained that the pain was unbearable. Dr. Watson gave Powell pain medication at 1:00 AM. This is proof that Dr. Watson made an improper and negligent decision when he ordered more medication and then allowed the security guards to start pulling on Mr. Powell's injured arms & legs to take him from the E.R. bed within minutes after taking medication that takes 30 minutes to an hour to take effect.

3. Then the public safety with their contemptuous attitude harmed and assaulted the Plaintiff/Patient while removing him from the wheelchair, only to arrest him. The contempt and angry attitude is expressed by their reckless decision to take the Plaintiff/Patient to jail after putting him in the car when the same procedure would have taken place to take the Plaintiff/Patient to the Roper Hospital, for a second opinion. But, it is obvious that MUSC did not want the Plaintiff/Patient to get a second opinion after being delivered by the public safety and then the Plaintiff/Patient sharing his complaints about MUSC and the Charleston County EMS.

PLAINTIFF'S INTERROGATORIES ANSWER #14 Plaintiff/Patient given several options; taking him home or anywhere he wanted to go or to Roper hospital, Officer Warner then told Mr. Powell he had to go.

The suspect was taken from the bed.

Then told the suspect he had the choice of leaving the area under his own free will and needed to do so. NOTE; Outside of ER.

Suspect stated; that he would not inflict any more injury for the hospital.

Once outside Mr. Powell was told to leave the premises.

The suspect then did not move.

Under arrest for Trespassing; Refusal to Leave due to his loiter about the premises. NOTE; unable to get out of a wheelchair is not refusing to leave!

He was handcuffed in front due to his medical issues. (Proves needs help) and this proves the likelihood of harm was ignored.

The Plaintiff/Patient is in fact identifiable when under the complete control and mercy of the hospital (MUSC). Also when the Plaintiff/Patient is unable to protect and remove himself from the harmful decisions & actions of the staff that were exercised in a contemptuous and reckless manner. Then the reckless negligent decisions led to unwarranted physical contact that caused physical, emotional pain and suffering. MUSC is in fact Liable for these reckless, grossly negligent acts that caused physical harm to the Plaintiff/Patient neck, shoulder and knee.

SLANDER AND LIBEL

The Charleston County EMS told the MUSC staff that the Plaintiff was verbally abusive. CRAVE reference to MRN #1413630

Verbally abusive to EMS and staff.

The Defendant wrongfully and negligently did not consider the foreseeable harm, contempt, hatred and ridicule towards the Plaintiff/Patient that could take place by repeating a highly exaggerated utterance when not knowing all the facts. This highly exaggerated utterance of a knocked out pedestrian from a fall, just regaining consciousness, in terrible pain, in the dark with his face down in the dirt saying; one curse word, I don't care which hospital you take me to just get me up, I'm in pain. This after being asked which hospital do you want to go to several times, over an unreasonable amount of time for a person in terrible pain to wait.

The Plaintiff was viewed badly by the staff after hearing and then spreading a rumored exaggerated utterance at a facility that deals with intoxicated and out of control people all the time. You will witness the following exaggerated and contradicting untruth statements by the MUSC staff. These statements help clear up and even prove how the rumor grew to untruths, ridicule and hatred towards the Plaintiff/Patient when spreading a rumor that assisted in a contemptuous attitude/atmosphere towards the Plaintiff/Patient and this was not a responsible performance of duty.

0045 preparing PT for DIC. PT stated he will not leave his "cane" alone. Drunken am 0100 PT given oxycodone. PT assisted to upright position & edge of bed. PT moaned w/ ease. PT became belligerent & refused to move to wheelchair to assist him out. PT began yelling @ staff. Security @ bedside to assist with discharge			
0140 PT refuses to leave hospital. PT cont to be verbally abusive to staff "Public safety @ bedside, PT in ICU; public safety & wheeled out of ICU"			
☐ See attached Nurse's Notes / Addendum(s)			
Signature <u>Joe Perry</u>		Initials <u>JS</u>	Signature <u>Amyneppu</u>
Initials <u>JS</u>		Initials <u>JS</u>	
DISPOSITION ☒ Home ☐ Admit ☐ LWT ☐ AMA ☐ Expired			
☐ Admit Room # _____		☐ Ambulatory ☐ Wheelchair ☐ Stretcher ☐ Transport Service	
☐ Transfer to _____		Teaching Instructions ☐ Written ☐ Oral	
Verbal Report to _____ @ _____		Language ☐ English ☐ Other _____	
Faxed Report ☐ Y ☐ N		Patient teaching ☐ Verbalized ☐ Return Demonstration	
Verified with _____ @ _____		Sent with patient ☐ Prescriptions ☐ Excuse	
Transfer form completed ☐ Y ☐ N		☐ IV discontinued upon DIC	
Personal Effects Inventory Form ☐ Y ☐ N		Discharge Vital Signs: BP _____ / _____ HR _____ RR _____	
Condition at disposition: _____		O ₂ Sat _____ % Temp _____	
Accompanied by: _____		Discharge Pain Score _____ /10	
		☐ No valuables taken from patient	
		☐ All valuables transferred with patient	
		Discharge RN _____	
		Date / Time _____	
		☐ Vital signs printed before discharge and attached	

1. NOTICE nurse Pentz is very specific about what Mr. Powell said on several occasions but is proven to be slander. She states; that Patient stated; he will not leave he "can't move". Then she states; at 0140 (1:40am) patient refuses to leave hospital. This again is her version of the truth when actually Mr. Powell said; was;

SECURITY GUARDS; DETAILED ACTIVITY REPORT

Still complained that the pain was unbearable.

Assisting Powell in the process; but became agitated and stated he would sue the hospital.

CPL Chapman attempted to talk Powell into leaving, patient again stated; he was not going to put any more pain on himself by moving.

PUBLIC SAFETY; INCIDENT REPORT & ADDITIONAL NARRATIVE

(On ER bed) I am in pain and I cannot move without feeling pain and I will not move, I will not inflict more pain for myself for this hospital. I don't have to do anything, I don't want to and I'm starting to get a little pissed off.

NOTE; Nurse Pentz stated; Mr. Powell said he will not leave "he can't move" and out of all the other statements under oath and on the Security Guards & Public Safety reports no one stated Mr. Powell said he will not leave.

CRAVE NURSE TRIAGE ASSESSMENT

2. Nurse Pentz states at 1:00 am Pt. assisted to upright position & edge of bed, moved with ease. (this is an untruth statement) by nurse Pentz as you will see when she answers under oath (ANSWER #20) below. Mr. Powell was unable to move because of the pain and he never moved with ease to the edge of the bed. Nurse Pentz stated that at 0100 or 1:00 a.m. now given oxycodone and moved with ease.

CRAVE INTERROGATORIES ANSWER #20

Now Pentz/MUSC states that at one point in time, Mr. Powell sat in a upright position on the side of the bed.(originally said this happened at 1:00am)

Public Safety Incident Report states they arrive at 12:57:10 and Officer Kyle Radford states; he lay in the middle of the bed in a seated position. His response to me was I am in pain.

CRAVE INTERROGATORIES ANSWER #3

(Arrived at 1:00am)

Officer Mckinnie stopped trying to assist Plaintiff from lying to a seated position because Plaintiff stated he would not put any more pain on himself.

(after 1:00am)

3. Nurse Pentz stated; became belligerent. patient refused to move to wheelchair.

Security said they arrived at 1:00am officer Mckinnie stopped trying to assist Patient from a lying to a seated position because Patient stated he would not put any more pain on himself by moving.

Mckinnie, Bowers and Mullins tried to convince Powell to leave.

Still complained the pain was unbearable.

I am in pain and I cannot move without feeling pain and I will not move. I will not inflict any more pain for myself for this hospital. I don't have to do anything. I don't want to and I'm starting to get a little pissed off.

Assisting Powell in the process but became agitated and stated he would sue the hospital and wanted a second opinion.

Public Safety was called and officer Kyle Radford stated Mr. Powell's response was I'm in pain.

This is the truthful version of what happened and not the story of slander created by Nurse Pentz. Not one mention even close to belligerent by public safety

4. Pentz states; began yelling at staff. Not one mention about yelling at staff by the public safety or the security guards on their very detailed reports.

5. Officer Kyle Radford did not complete the public safety report when he did not answer the visible injury (head wound that was cleaned and medicated by the second nurse at Al Cannon Jail, (NOTE; not MUSC). This specific and intentional act exercised appears to be part of a cover up to prepare for a backlash from their contemptuous reckless attitude exercised at MUSC, which harmed Mr. Powell emotionally and injured his neck, shoulder and knee.

6. Dr. Watson stated; Mr. Powell was never pulled from bed.

Officer Kyle Radford talked to the in charge physician (Simon Watson) and then Mr. Powell was taken from the bed.

Security Guard Ron Mckinnie stated; INTERROGATORIES ANSWER #3 that he stopped trying to assist patient from lying to a seated position because Patient stated he would not put any more pain on himself.

NOTE; Ron Mckinnie stated; INTERROGATORIES ANSWER # 7

No one attempted to pull Patient from the bed at anytime.

Assisting Powell in the process but became Agitated and stated he would sue the hospital and wanted a second opinion.

When RN Pentz wrote these exaggerated, incorrect facts and shared with staff members this claim about being abusive. Mr. Powell was almost unconscious, suffering unbearable pain, while in fear uttered a cry for help that exposed Mr. Powell to an unwarranted contemptuous atmosphere exercised by MUSC helped to fuel the contempt and ridicule towards the Plaintiff/Patient that caused Emotional and Physical pain & suffering to Mr. Powell's neck, shoulder and knee.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1. The MUSC security guards failed to perform their duty when they did not protect the "identifiable" in pain and unable to move patient from harm. They harassed the Plaintiff/Patient for a long period of time to leave the ER bed. Then they recklessly attempted a second time to remove the patient from the MUSC ER bed by pulling on him while he was yelling, because of his unbearable pain. This second attempt was harmful emotionally and inflicted pain & suffering which was not within the scope of the security guards duty to make medical decisions determining how much pain a patient can suffer before getting permission from the Dr. to continue pulling on an injured and yelling patient since physicians already stated they never ordered Mr. Powell to be removed from the bed.

Officer Mckinnie stopped trying to assist Patient from a lying to a seated position because patient stated he would not put any more pain on himself by moving.

Still complained that the pain was unbearable.

Mckinnie, Bowers and Mullins tried to convince Powell to leave, Assisting Powell in the process; but became agitated and stated he would sue the hospital. NOTE; the emotional distress taking place CPL Chapmen attempted to talk Powell into leaving, patient again stated; he was not going to put any more pain on himself by moving.

MUSC states; Neither Physicians order Public Safety or Hospital Security to remove Mr. Powell from the bed.

PUBLIC SAFETY; INCIDENT REPORT & ADDITIONAL NARRATIVE

(On ER bed) I am in pain and I cannot move without feeling pain and I will not move, I will not inflict more pain for myself for this hospital. I don't have to do anything, I don't want to and I'm starting to get a little pissed off. NOTE; public safety ignored the likelihood of harm.

The suspect was taken from the bed.

2. Then the public safety said they would take the Plaintiff/Patient anywhere he wanted to go and even to Roper hospital because he said he wanted to get a second opinion. Then the public safety took the "Identifiable" in pain and unable to move Plaintiff/Patient from the bed while he was still yelling because of the pain. Then he was wheeled outside to the ER entrance. He was then told by public safety to get up and leave the premises (without any assistance) The Plaintiff/Patient told them he could not get up because of the pain. The public safety again threatened and harassed him just like they did in the ER. The Plaintiff/Patient was already emotionally distraught and in pain from the attacks in the MUSC ER that injured his neck, shoulder and knee. Now the Plaintiff/Patient is fearful that more physical and emotional harm will be inflicted upon him. The public safety failed in their responsibility to protect the Plaintiff/Patient during the discharge when they refused to assist the Plaintiff/Patient from his wheelchair so he could go freely after making the decision to in fact lie to the Plaintiff/Patient who was not under arrest and was unable to get off the bed and out of his wheelchair because of his medical condition. This exercised gross negligent manner was not within the scope of duty when assuring the Plaintiff/Patient with options of safe passage to Roper Hospital and then the public safety determining the extent of the his medical issues. outside when there was no supervision by a physician, when handcuffing in front because of his medical condition, when not allowing for or even being aware of the 30 minutes to an hour it takes for medication to take effect and also would render the patient with impaired judgement, slow reaction, don't do anything requiring mental alertness. MR #1413630 provider; Jacobsen/Watson

On Public Safety report; Drugs; unknown type NOTE; administered by MUSC

Once outside Mr. Powell was told to leave the premises.

(Outside) Then told the suspect he had the choice of leaving the area under his own free will and needed to do so.

Suspect stated; that he would not inflict any more injury for the hospital. NOTE; Plaintiff/Patient is very distraught and in pain.

Suspect was advised again that he needed to leave the area.

The suspect then did not move.

Under arrest for Trespassing; Refusal to Leave due to his loiter about the premises. NOTE; Mr. Powell was unable to get out of the wheelchair. He was handcuffed in front due to his medical issues. NOTE; injured

3. Also according to the PUBLIC SAFETY; INCIDENT REPORT Mr. Powell was handcuffed in front due to his medical condition and they arrived at the HDPS Headquarters at 2:10 am then left at 2:44 am. If their concerned about his condition then why was he left lying down in their back seat for 34 minutes to pickup up paper work. This was also a reckless negligent decision to not protect the Plaintiff/Patient from harm. MUSC is liable for exercising gross negligence when they chose to cause more physical & emotional harm to the Plaintiff/Patient.

These intentional, reckless gross negligent decisions and actions did in fact cause emotional & physical harm to Mr. Powell's neck, shoulder and knee. MUSC is liable for these gross negligent decisions and actions that were not within the scope of duty for the public safety (non-physicians) who were not properly supervised to discharge a patient who was unable to remove himself from his wheelchair. MUSC allowed the public safety to decide if Mr. Powell was being harmed or injured considering again, he stated he was in pain, needed help out of the wheelchair, repeatedly threatened to leave and/or jail and was handcuffed in front due to his medical condition. NOTE; lying in pain in the back seat with handcuffed legs and arms.

FALSE ARREST AND IMPRISONMENT

The public safety physically pulled the plaintiff from the ER bed and then put the Plaintiff/Patient into a MUSC wheelchair. Then outside in the MUSC parking lot the public safety engaged in reckless wrongdoing and gross negligence when they intentionally failed to complete the discharge. The public safety did not take the Patient to Roper Hospital, as they said they would as an option. The public safety recklessly opted to make the decision not to complete the discharge of taking the Plaintiff/Patient anywhere he wanted to go and/or to Roper Hospital for his second opinion or assisted up to go freely anywhere.

PLAINTIFF'S INTERROGATORIES SUBMITTED TO MUSC

ANSWER #14 Public Safety gave the Plaintiff/Patient several options; taking him home or anywhere he wanted to go or Roper Hospital.

PUBLIC SAFETY; INCIDENT REPORT & ADDITIONAL NARRATIVE

Officer Warner then told Mr. Powell he had to go.

The suspect was taken from the bed.

Once outside Mr. Powell was told to leave the premises.

Mr. Powell said he could not get out of wheelchair.

Suspect stated; that he would not inflict any more injury for the hospital.

Suspect was advised again that he needed to leave the area.

The suspect then did not move.

Under arrest for Trespassing; Refusal to Leave due to his loiter about the premises. NOTE (no assistance) unable to get up is not a refusal to leave. He was handcuffed in front due to his medical issues. (proves needs assistance)

The public safety did not weigh the competing situations properly and apply proper discretion to act in a good faith manner. The public safety recklessly took complete control over the Plaintiff/Plaintiff by confining him to the wheelchair when they would not assist him from it. The public safety refused to complete the discharge and help the Plaintiff/Patient from the MUSC wheelchair when they had sufficient authority and time to fulfill their duty. After this grossly negligent act the public safety again acted improperly and arrested the Plaintiff/Patient for Trespassing; Refusal to leave because he loitered.

MUSC is liable for their intentional gross negligent actions when they falsely arrested and imprisoned the Plaintiff/Patient. Also MUSC injured the neck, shoulder and knee of the Plaintiff/Patient when performing this action in an intentional reckless manner.

ASSAULT AND BATTERY

1. The MUSC ER staff had the authority and reasonable time to weigh all options to act properly in these circumstances. The MUSC staff demonstrated reckless and gross negligence when they did not protect the patient from foreseeable harm after administering drugs to the already discharged patient, only for removal of the patient. Then the security guards were allowed to try and remove a still in pain and unable to move patient causing pain & suffering.

Still complained the pain was unbearable.

Mckinnie, Bowers and Mullins tried to convince Powell to leave, Assisting Powell in the process; but became agitated and stated he would sue the hospital.

CPL Chapmen attempted to talk Powell into leaving, patient again Stated; he was not going to put any more pain on himself by moving.

Assisting Powell in the process but became Agitated and stated he would sue the Hospital and wanted a second opinion.

Officer Mckinnie stopped trying to assist patient from lying to a seated position because patient stated he would not put any more pain on himself.

Actually the security guards stopped pulling because Mr. Powell was yelling from the pain that was being inflicted upon his neck, shoulder and knee.

NOTE; with the Doctors approval the guards continue to harm Mr. Powell.

Public safety officer Warner stated; He has to go.

Public safety officer Kyle Radford talked to in charge physician (Simon Watson) and then Powell was taken from bed.

TRIAGE NURSE ASSESSMENT States; At 1:40 am Public Safety at bedside, put into wheelchair.

This was the first causation of the Plaintiff/Patient physical and emotional pain & suffering when MUSC recklessly touched, pulled and/or assisted in a contemptuous manner when the Plaintiff/Patient should have been given more time for the drugs to take effect or even admitted to the hospital.

This was in fact Assault & Battery that was witnessed and ignored by the MUSC staff. This was unwarranted reckless gross negligent contact that was harmful and injured the Plaintiff/Patient already injured neck, shoulder and knee when MUSC allowed this contemptuous atmosphere continue.

2. The Plaintiff/Patient was not under arrest when he was wheeled out of the MUSC ER by the public safety. The public safety were not properly trained to complete a total discharge of a patient who is still in pain and unable to move from the wheelchair. The public safety was recklessly negligent when they intentionally did not assist the Plaintiff/Patient from the wheelchair so he could go freely, be taken home or to Roper hospital as prescribed as an option.

PLAINTIFF'S INTERROGATORIES SUBMITTED TO MUSC

ANSWER # 14 Public Safety gave the Plaintiff/Patient several options; taking him home or anywhere he wanted to go or Roper Hospital. (when on E.R. bed)

ANSWER #13 Mr. Powell stated he will not inflict any more pain on himself for the hospital.

PUBLIC SAFETY; INCIDENT REPORT & ADDITIONAL NARRATIVE

DRUGS; unknown type. Discovered on Public Safety report.

Officer Warner then told Mr. Powell he had to go.

(Outside)Then told the suspect he had the choice of leaving the area under his own free will and needed to do so.

Suspect stated; that he would not inflict any more injury for the hospital.

Suspect was advised again that he needed to leave the area.

The suspect then did not move.

Under arrest for Trespassing; Refusal to Leave due to his loiter about the premises.

He was handcuffed in front due to his medical issues. (proves needs assistance)

Public safety assisted him from the wheelchair into a patrol car.

The MUSC staff weighed competing considerations and made a conscious choice to ignore foreseeable harm being inflicted upon the Plaintiff/Patient. Then the MUSC staff continued to harass, confine, assault and inflict physical harm to the Plaintiff/Patient neck, shoulder and knee.

MUSC ignored the likelihood of harm taking place and is in fact liable for their intentional gross negligent Infliction of Emotional Distress, their contemptuous False Arrest & Imprisonment, harmful handling and Assault that caused the Plaintiff unwarranted pain & suffering to his already injured neck, shoulder and knee.

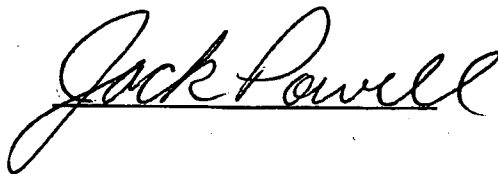
DAMAGES

Medical University of South Carolina "MUSC" intentionally failed to make the proper conscious decisions to protect the Plaintiff from emotional & physical harm to the Plaintiff's neck, shoulder and knee. MUSC falsely arrested, imprisoned, assaulted, caused intentional infliction of emotional distress and exercised slander & libel. The Plaintiff also suffered financial losses due to the fact that he was unable to work because of the injuries MUSC inflicted upon him. Also the embarrassment & shame the Plaintiff and his family had to endure after being falsely arrested & jailed. Then the arrest being made public by the media is un-repairable.

WHEREFORE the Plaintiff seeks monetary compensation of \$1,200,000 for these specific intentional acts of gross negligent conduct exercised by the MUSC in-charge Physicians, Nurses, Security Guards and Public Safety.

SCTCA 15-78-120 (A) (3) SCTCA 15-78-10 SCTCA 15-78-60 (25) (2003)

DATED; 9/12/2013

A handwritten signature in cursive script that reads "Jack Powell". The signature is written in black ink and is positioned above the printed name.

Pro Se; Jack Powell

Medical University of South Carolina

171 Ashley Avenue

Charleston, SC 29425

843-792-3826

Patient: Jack Powell MR#: 1413630 Date: 06-22-2012 Time: 00:25:10 Page 1

Instructions for: Jack Powell MR#: 1413630

Date: 06-22-2012 Your care provider was: Jacobsen/Watson

Fall without apparent injury:

No apparent injury was found during today's exam. You may develop some soreness and stiffness over the next two days. Mild neck and back strain is common in auto accidents, and may not be painful until the muscle becomes inflamed. But if nothing is painful now, there is no fracture, and x-rays are not needed.

If you develop pain over the next couple of days, treat each tender area. Apply cold packs directly to the painful spot. Rest. Antiinflammatory pain medication, such as ibuprofen, can decrease soreness and inflammation.

Most of the time, these late-developing pains go away within a few days. Most patients are back at work or school within a week. The area might be little irritable for two or three weeks.

You should call the doctor, or go to the hospital, if you develop severe neck, chest, or abdominal pain, repeated vomiting, severe lightheadedness or weakness, trouble breathing, numbness or weakness in any extremity, problems with your bladder or bowel, or pain radiating down an arm or leg.

Extremity X-Ray: Right Knee; Right Shoulder Plain Films

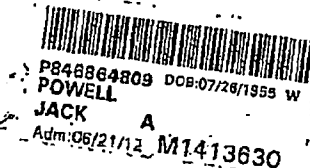
This radiographic study was performed during your ED visit.

CT Scan of Head

This radiographic study was performed during your ED visit.

CT Scan of C-Spine

This radiographic study was performed during your ED visit.



Pain medication injection:

You have received an injection of a pain medication. You should experience significant pain relief within 45 minutes. This drug is a narcotic — it will impair your judgement, slow your reaction time and make you sleepy (as well as relieve your pain). Narcotics also can cause nausea.

You should not drive, work with machinery, or perform any task requiring mental alertness until all effects of the medication are gone — six to eight hours. Do not take any alcohol, or sedatives, and do not take any other medication without checking with your physician.

Oral narcotic given:

You've been given an oral narcotic pain medication. The effects may begin 30 minutes to an hour after swallowing the medicine. You should have significant pain relief. The effects will usually last at least four hours.

Most oral narcotics contain a dose of acetaminophen (Tylenol). Don't take any other acetaminophen-containing medicines until you've discussed it with the doctor.

This drug is a narcotic — it will impair your judgment, slow your reaction time, and make you sleepy. Narcotics also can cause nausea and constipation. If you feel sick, you should eat. A full stomach reduces the nausea that pain pills can cause.

You should not drive or work with machinery (including blenders, knives, lawn mowers or sewing machines) for six to eight hours. Don't do anything requiring mental alertness until the effects of the medication are gone. Do not take any alcohol or sedatives, and don't use any other medication without checking with your physician.

Follow-up care:

You should follow up with your primary care physician within the next 3-5 days regarding your visit today. If you do not have a primary care physician a list of providers is listed below. You should return if there is unexpected worsening or a significant change in your symptoms. If you have a question, please



PTINSTRUC

PAIN

Technologist: JOHN DAVIS
Radiologist 1: RUSSELL CHAPIN
Radiologist 2: SHREE SUBEDI
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: RUSSELL CHAPIN
Date Authenticated: 06/22/2012 08:38

EXAMINATION: KNEE 06/21/12 23:38:00

ACCESSION NUMBER: 6717631

INDICATION: PAIN

COMPARISON: None

FINDINGS: Frontal and lateral views of the right knee demonstrate severe 3 compartment osteoarthritis with osteophyte formation and joint space narrowing worst in the medial compartment. Evidence of prior surgery with U shaped metallic device overlying lateral condyle. Chronic loose bodies are seen. No joint effusion. No acute fracture.

IMPRESSION:

Severe 3 compartment osteoarthritis worse medially. No acute fractures.

Key findings discussed with emergency room physician 6/22/2012 12:24 AM

VOICE DICTATED BY: Dr. Shree Subedi

acute pain due to fall, loc+, c spine tenderness

Technologist: BETH POTTS
Radiologist 1: RUSSELL CHAPIN
Radiologist 2: SHREE SUBEDI
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: RUSSELL CHAPIN
Date Authenticated: 06/22/2012 08:07

EXAMINATION: CERVICAL SPINE CT 06/22/12 00:09:00

ACCESSION NUMBER: 6717627

INDICATION: acute pain due to fall, loc+, c spine tenderness, acute pain due to fall, loc+, c spine tenderness acute pain due to fall, loc+, c spine tenderness

COMPARISON: None

TECHNIQUE: Multiple contiguous spiral CT images were obtained through the cervical spine without IV contrast.

FINDINGS: Suboptimal elevation due to significant artifact. There is normal alignment of the cervical spine with no evidence of acute fracture or dislocation. Vertebral body heights are preserved. Posterior elements are unremarkable. There is multilevel degenerative disk disease most prominent at C5-6 and C6-7 levels with disk osteophyte complex formation and mild effacement of the spinal canal at the same level. There is no prevertebral soft tissue swelling, no evidence of pneumothorax. Visualized portion of the skull base shows no evidence of fractures.

IMPRESSION:

No acute fracture or dislocation of the cervical spine noted given the degree of artifact.

Multilevel degenerative disk disease most prominent at C5-6 and C6-7 with disk osteophyte complex formation causing mild effacement of the spinal canal at the same level.

VOICE DICTATED BY: Dr. Shree Subedi

PAIN

Technologist: JOHN DAVIS
Radiologist 1: RUSSELL CHAPIN
Radiologist 2: SHREE SUBEDI
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: RUSSELL CHAPIN
Date Authenticated: 06/22/2012 08:39

EXAMINATION: SHOULDER 06/21/12 23:39:00

ACCESSION NUMBER: 6717632

INDICATION: PAIN

COMPARISON: Chest x-ray 9/7/03

FINDINGS: AP internal and external rotation and axillary Y views of right shoulder demonstrate no evidence of acute fracture or dislocation. Humeral head is well seated within the glenoid. The there are multiple bullet fragments overlies right shoulder, unchanged compared to chest radiograph from 2003. There are degenerative changes of the glenohumeral and acromioclavicular joints. Irregularity of the greater tuberosity noted due to rotator cuff disease.

IMPRESSION:

Chronic degenerative changes of the acromioclavicular and glenohumeral joint without acute fractures.

Stable appearance of the multiple metallic fragments consistent with prior shotgun injury.

Key findings discussed with emergency room physician 6/22/2012 12:24 AM

VOICE DICTATED BY: Dr. Shree Subedi

Patient: POWELL, JACK A

MRN: 1413630

Encounter: 846864809

Page 1 of 1

SC0100900 MUSC Dept of PS
SC0100900

INCIDENT REPORT

INFORMATION ONLY

CASE NUMBER

2012000512

NCIC

INQ. Yes No
ENTD. Yes No

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. TRESPASSING - REFUSE TO LEAVE		☒ YES ☐ NO	☒ YES ☐ NO	DRUG STORE/DOCTOR'S		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	2.		☒ YES ☐ NO	☒ YES ☐ NO			
	3.		☒ YES ☐ NO	☒ YES ☐ NO			
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
	MUSC TRAUMA BED # 31 169 ASHLEY AVE, CHARLESTON, SC				29425-	NONE	
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	LOCATION NO.
	06/22/2012	00:55		06/22/2012	02:09	06/22/2012 00:57	HOSP
VICTIM NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
	RADFORD, KYLE		#1 #2 #3	J	W	M	28
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
	101 DOUGHTY STREET		CHARLESTON	SC	29425-	HOSP	
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
	MUHA		#1 #2 #3				1
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
	169 ASHLEY AVE.		CHARLESTON	SC	29425-	HOSP	
SUBJECT NO. 1	VEHICLE NO. (MCT.1)		YES NO	EXPLAIN-			
	VICTIM NO. 1 USING ALCOHOL		YES NO UNK	COMPLAINANT OF ANY NON-VISIBLY INJURED			
	TWO MAN VEH		ONE MAN VEH	DETECTIVE PLASMT.	OTHER	ALONE	ASSISTED
	NAME (LAST, FIRST, MIDDLE)		POWELL, JACK, [REDACTED]	RACE	SEX	AGE	ETH
SUBJECT NO. 1	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		RELATED OFFENSE(S)		DAYTIME PHONE	EVERNING PHONE	
	glasses		90J		843-367-5566		
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
	620 CLEARVIEW Drive		CHARLESTON	SC	29412-	HOSP	
SUBJECT NO. 1	SUBJECT NO. 1 USING ALCOHOL		YES NO UNK	ARRESTED NEAR OFFENSE SCENE		DATE/TIME OF OFFENSE	
	YES NO UNK		YES NO		6/22/2012 12:55:11 AM	DATE/TIME OF ARREST	
	SUMMONS		YES NO UNK	TOTAL # ARRESTED		1	
	1 2 3 4 5 6 7 8		A B C D E F		G H I J K L M N O P Q R S T U V W X Y Z		
NARRATIVE	TRESPASSING - REFUSE TO LEAVE						
	REPORTING/ARRESTING OFFICER - RADFORD, KYLE 180						
	RESPONDING OFFICERS - LT WANNER, CPL CHATMAN, PFC K. RADFORD, PSO H. LUCAS, PSO S. STROBEL						
	ON THIS DATE, 06/22/2012, I WAS DISPATCHED TO MUSC TRAUMA CENTER BED # 31 IN REGARDS TO A PATIENT BEING DISCHARGED AND REFUSING TO LEAVE. I ARRIVED AT BED # 31 AND OBSERVED THE SUSPECT, LATER IDENTIFIED AS JACK POWELL, AS HE LAY IN THE HOSPITAL BED IN AN SEATED POSITION. I INTRODUCED MYSELF AND INQUIRED WHY HE WOULD NOT LEAVE THE AREA AFTER BEING TREATED AT MUSC. HIS RESPONSE TO ME WAS "I AM IN PAIN AND I CANNOT MOVE WITHOUT FEELING PAIN AND I WILL NOT MOVE. I WILL NOT INFLECT MORE PAIN FOR MYSELF FOR THIS HOSPITAL."						
PROPERTY EST.	TYPE (GROUP)		JURISDICTION OF THEFT		JURISDICTION OF RECOVERY		
	LAY IN the bed seated position not edge of bed		LAW ENFORCEMENT AGENCY		LAW ENFORCEMENT AGENCY		
	STOLEN						
	DAMAGED						
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		S. F.		
	YES NO		YES NO		YES NO		
	REASON FOR EXCEPTIONAL CLEARANCE		OFFENSE/DEATH		EXTRACTION DENIED		
	1. 2. 3. 4. 5.		1. 2. 3. 4. 5.		1. 2. 3. 4. 5.		
ADMINISTRATIVE	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	DATE	
	RADFORD, KYLE		6/22/2012 12:55:00 AM	180	CHATMAN, JERMAINE		
	LUCAS, HOWARD		6/22/2012 2:09:00 AM	172	FOLLOWUP INVESTIGATION	YES NO	
					OFFICER	BVPH 1.555 (Powell)	

ADDITIONAL NARRATIVE

Agency Name SC0100900 MUSC Dept of PS	ORI # SC0100900	Report Date/Time 08/22/2012	OCA # 2012000512
--	--------------------	--------------------------------	---------------------

TRESPASSING - REFUSE TO LEAVE

SHORTLY THEREAFTER CORPORAL CHATMAN AND LIEUTENANT WANNER ARRIVED AND INQUIRED MR. POWELL WHY HE WOULD NOT LEAVE THE AREA AFTER BEING TREATED AND HE PRODUCED THE SAME ANSWER. IN ADDITION TO HIS PREVIOUS STATEMENTS HE ADDED, "I DON'T HAVE TO DO ANYTHING I DON'T WANT TO AND NOW I AM STARTING TO GET A LITTLE PISSED OFF." DURING THE TIME OF THE QUESTIONING FROM LIEUTENANT WANNER AND CORPORAL CHATMAN I CONTACTED DISPATCH VIA THE RADIO TO INQUIRE IF THE SUSPECT HAD ANY WANTS/WARRANTS OR PREVIOUS FIELD INTERVIEW CARDS. DISPATCH RESPONDED AND ADVISED THAT THE SUSPECT HAD NO OUTSTANDING WANTS/WARRANTS OR PREVIOUS F.I.S. LIEUTENANT WANNER THEN SPOKE TO THE PHYSICIAN, DR. SIMON WATSON, THAT WAS IN CHARGE OF THE SUSPECT'S CARE. DR. WATSON ADVISED THAT THE SUSPECT HAD BEEN BROUGHT IN BY CHARLESTON COUNTY EMS FROM THE FOLLY ROAD AREA DUE TO BEING FOUND ON THE ROAD AND HAD THE APPEARANCE OF SUFFERING FROM A FALL. ACCORDING TO DR. WATSON HE WAS CHECKED OUT EXTENSIVELY BY THE MEDICAL PERSONAL AND HIS CURRENT INJURIES ARE NOT SUFFICIENT ENOUGH TO CAUSE SUCH PAIN THAT WOULD BE INCAPACITATING. DR. SIMON ADVISED THAT THE SUSPECT'S MAJOR INJURIES WERE FROM PAST TRAUMA AND STILL WOULD NOT CAUSE HIM TO BE INCAPACITATED AT THIS TIME.

AFTER SPEAKING WITH THE IN-CHARGE PHYSICIAN THE SUSPECT WAS TAKEN FROM BED # 31 BY HOSPITAL SECURITY AND PUBLIC SAFETY AND ESCORTED OUTSIDE OF TRAUMA TO THE CLINICAL SCIENCE RAMP AREA. I THEN TOLD THE SUSPECT THAT HE HAD THE CHOICE OF LEAVING THE AREA UNDER HIS OWN FREE WILL AND NEEDED TO DO SO. HE WAS ALSO ADVISED FAILURE TO LEAVE WOULD RESULT IN AN ARREST AND JAIL. THE SUSPECT THEN STATED THAT HE WOULD NOT INFLICT ANYMORE INJURY FOR THIS HOSPITAL. THE SUSPECT WAS ADVISED AGAIN THAT HE NEEDED TO LEAVE THE AREA. THE SUSPECT THEN DID NOT MOVE.

AT 02:09 AM HE WAS PLACED UNDER ARREST FOR TRESPASSING REFUSING TO LEAVE DUE TO THE FACT HE HAD BEEN INSTRUCTED TO LEAVE BY MYSELF AND DID NOT DO SO AND DUE TO HIM CONTINUING TO LOITER ABOUT THE PREMISES. HE WAS CHARGED ON UTC 95432CE. HE WAS HANDCUFFED IN FRONT DUE TO HIS MEDICAL ISSUES AND HANDCUFFS WERE DOUBLE LOCKED AND CHECKED FOR TIGHTNESS. ALSO, DUE TO HAVING TO BE HANDCUFFED IN THE FRONT HE WAS ALSO SECURED WITH LEG IRONS THAT WERE DOUBLE LOCKED AND CHECKED FOR TIGHTNESS. HE WAS SEARCHED INCIDENT TO ARREST YIELDING NEGATIVE RESULTS. HE WAS THEN PLACED IN PATROL UNIT # C-47 AND PLACED IN THE RIGHT REAR PASSENGER SEAT AND SECURED WITH THE SEAT BELT.

→ AT 02:10 AM HE WAS TRANSPORTED FROM THE ARREST SITE TO MUSC-DPS HEADQUARTERS PARKING LOT LOCATED AT 101 DOUGHTY ST. CHARLESTON SC, 29425 FOR COMPLETION OF JAIL INTAKE FORM, ARREST AND BOOKING REPORT, AND CHARGING DOCUMENT (UTC) PRIOR TO DEPARTING FOR THE CHARLESTON COUNTY DETENTION CENTER.

→ AT 02:44 AM PSO LUCAS AND MYSELF DEPARTED HEADQUARTERS PARKING LOT FOR THE CHARLESTON DETENTION CENTER VIA MOST DIRECT ROUTE, STARTING MILEAGE 69688.6. AT 03:07 AM TRANSPORTING OFFICERS ARRIVED AT CHARLESTON COUNTY DETENTION CENTER, ENDING MILEAGE 69696.6. UPON ARRIVAL AT THE DETENTION CENTER WEAPONS WERE SECURED IN THE REAR OF PATROL CAR UNIT # C-47. AFTER WEAPONS WERE SECURED, HE WAS REMOVED FROM THE REAR OF C-47 AND TAKEN INTO CHARLESTON COUNTY DETENTION CENTER FOR PROCESSING WITHOUT INCIDENT. HE WAS LODGED IN UNDER CHARGING DOCUMENTS, UTC 95432CE. HE WAS ADVISED THAT HIS COURT DATE WOULD BE 07/11/2012 AT 9:00 AM TO APPEAR BEFORE JUDGE COKER COURT LOCATED AT 4045 BRIDGEVIEW DR. CHARLESTON SC, 29406. HIS PROPERTY WAS RELEASED TO THE CUSTODY OF THE CHARLESTON COUNTY DETENTION CENTER. THE SUSPECT'S PROPERTY WAS RELEASED TO THE CUSTODY OF THE CHARLESTON COUNTY DETENTION CENTER.

AT 03:20 AM PSO LUCAS AND MYSELF DEPARTED THE JAIL AND RETURNED BACK TO HEADQUARTERS. PATROL UNIT C-47 WAS SEARCHED PRIOR TO AND UPON COMPLETION OF THE TRANSPORT TO THE CHARLESTON COUNTY DETENTION CENTER WITH NEGATIVE RESULTS

Detailed Activity Report without Officer Times



1206-000002154

Activity Date : 6/22/2012 Activity Time : 03:12

Activity Details

Category: 015 PUBLIC SAFETY ASSIST
Subcategory: 005 TRESPASSING
Call Received: 01:00
Source: DISPATCHER MUSC PUBLIC SAFETY DISPATCHER
Department: MCSS SAFETY, SECURITY & VOLUNTEER SERVICES
Site: MUH MEDICAL CENTER HOSPITAL
Location: EMERGENCY EMERGENCY DEPARTMENT
Location Detail Patient refusing to leave ED.

Notes:

REM 01:00 AM, 6/22/2012 OCA #2012000512: Ron McKinnie, ED Security Officer, Frank Bowers, PEDS Security Officer, along with Ray Mullins, MUH Roving Officer, responded to Bed #31 "C" side of Trauma, MUH. Upon arrival McKinnie was informed by Simon Watson, Attending Physician, that patient (Jack Powell was being discharged and refusing to leave.) Dr Watson explained to the patient, that he was medically cleared to leave. Powell still complained that the pain was unbearable. Dr Watson gave Powell pain medication which was taken by mouth, prior to giving the discharge papers. McKinnie, Bowers and Mullins tried to convince Powell to leave and was (assisting Powell in that process,) but patient became agitated and stated he would sue the hospital.

Bowers contacted Public Safety dispatcher for assistance. LT Warner, Cpl Chapman and PSO Radford, MUSC Public Safety Officers arrived to Bed # 31. Cpl Chapman attempted to talk Powell into leaving, (patient again stated that he was not going to put any more pain on himself by moving.) Lt Warner, then told Mr Powell he had to go. Mr Powell was assisted to the wheel chair and taken to CSB Ramp, Cpl Chapman offered to assist patient to get home, but patient again was adamant about not leaving the hospital. Powell was placed under arrest for trespassing and taken to Charleston County Detention Center. On Call Security Manager Archie Reid notified.

Involved Officer Summary Information

4. Admit that the MUSC Public Safety Officers offered to take Plaintiff to Roper Hospital on the morning of June 22, 2012. **ANSWER; ADMIT-WHEN ON BED.**

5. Admit that the MUSC Public Safety Officers offered to take Plaintiff home on the morning of June 22, 2012. **ANSWER; ADMIT -WHEN ON BED**

6. Admit that the MUSC Public Safety Officers offered to call someone for Plaintiff to pick Plaintiff up from MUSC on the morning of June 22, 2012. **ANSWER; ADMIT-WHEN ON BED**

7. Admit that after Plaintiff told the MUSC Public Safety Officers that they would have to help him off of the bed, the Officers assisted Plaintiff in moving from the bed into the wheelchair. **ADMIT; AFTER UNBEARABLE CONTINUED HARASSMENT AND FEAR.**

8. Admit that after Plaintiff was placed in the wheelchair, the MUSC Public Safety Officers transported him outside of the hospital in the wheelchair. **ANSWER; ADMIT**

9. Admit that, once outside of the hospital, the MUSC Public Safety Officers informed Plaintiff that he was free to leave the premises.

ANSWER; DENY, According to officer Kyle Radford when he wrote "6" days later; Then told the suspect that he had the choice of leaving the area under his own free will and better do so.

10. Admit that, once outside of the hospital, the MUSC Public Safety Officers asked Plaintiff to leave the premises. **DENY; THEY TOLD ME I HAD A "CHOICE" TO LEAVE.**

11. Admit that, once outside of the hospital, Plaintiff told the MUSC Public Safety Officers that he could not get up out of the wheelchair. **ANSWER; ADMIT**

12. Admit that, once outside of the hospital, Plaintiff told the MUSC Public Safety Officers that they would have to help him out of the wheelchair.

ADMIT ONCE OUTSIDE PUBLIC SAFETY CONTINUED UNBEARABLE HARASSMENT, REFER TO QUESTIONS 9, 10, 11 ONLY AFTER CONTINUED UNBEARABLE HARASSMENT, THE PERSISTANCE TO ARREST ME, UNDER THE INFLUENCE OF OXYCODENE AND WAS UNABLE TO MAKE PROPER DECISIONS FOR MYSELF THAT WERE INFLUENCED BECAUSE OF FEAR.

2. Dr. Watson; Why did the security guards stop trying to pull Mr. Powell from the bed?

ANSWER: Objection. Defendant MUSC objects to Interrogatory No. 2 on the grounds that it is misleading. Without waiving and subject to the foregoing objection, Defendant MUSC responds by stating that, upon information and belief, Mr. Powell was never pulled from the bed:

3. Security Guard Ron McKinnie; Why did you stop trying to pull Mr. Powell from the top of the bed?

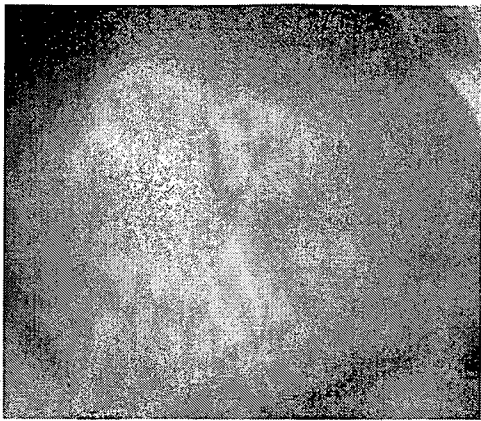
ANSWER: Objection. Defendant MUSC objects to Interrogatory No. 3 on the grounds that it is misleading. Without waiving and subject to the foregoing objection, Defendant MUSC craves reference to the Detailed Activity Report bates labeled BWPH 1.555 (Powell) MUSC BWPH 1.555 (Powell) MUSC 160 with regard to any involvement by Hospital Security with Mr. Powell. Defendant MUSC further responds by stating that Officer McKinnie tried to assist Plaintiff into a seated position on the bed in order to assist him in moving from the bed to the wheelchair. Upon information and belief, Officer McKinnie stopped trying to assist Plaintiff from lying to a seated position because Plaintiff stated that he would not put anymore pain on himself for the hospital.

7. Security Guard Ron McKinnie; Did you think it was a good idea to try and pull the injured Mr. Powell from the bed the second time? Yes or No

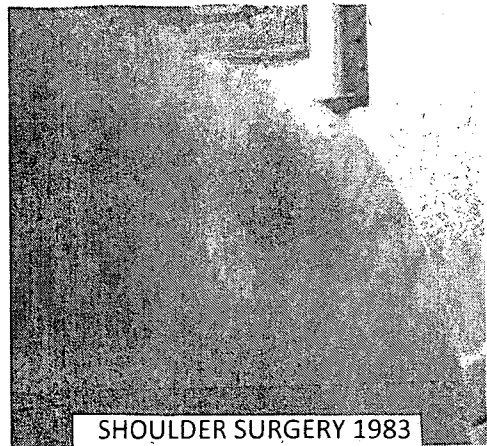
ANSWER: Objection. Defendant MUSC objects to Interrogatory No. 7 on the grounds that it is misleading. Without waiving and subject to the foregoing objection, Defendant MUSC craves reference to the Detailed Activity Report bates labeled BWPH 1.555 (Powell) MUSC 160 with regard to any involvement by Hospital Security with Mr. Powell. Defendant MUSC further responds by stating that no one attempted to pull Mr. Powell from the bed at anytime.

10. Officer Kyle Radford; Why didn't you help Mr. Powell out of the wheelchair when he said he could not get out because of the pain?

ANSWER: Objection. Defendant MUSC objects to Interrogatory No. 10 on the grounds that it is misleading and vague. Without waiving and subject to the foregoing objection, Defendant MUSC states that Officer Radford and the other officers who responded to the dispatch call regarding Mr. Powell assisted Mr. Powell from the bed in the Emergency Department into a wheelchair. Once Mr. Powell was escorted from the Emergency Department and was outside of the Clinical Sciences building, Public Safety assisted him from the wheelchair into a patrol car.



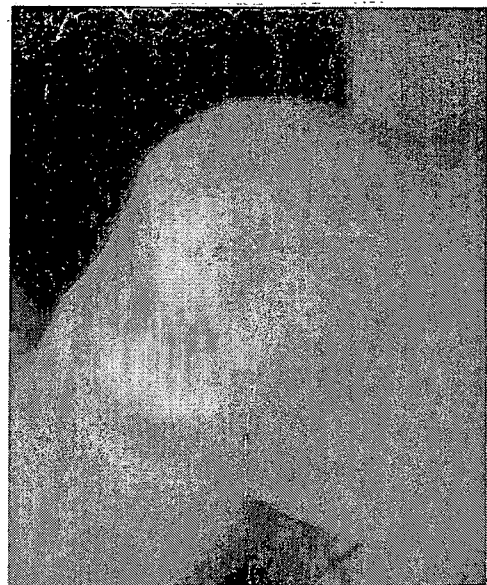
FOREHEAD INJURED WHEN
KNOCKED UNCONSCIOUS



SHOULDER SURGERY 1983
ROTOR CUFF DISEASE



NECK SURGERY 1978, "224" STITCHES
DEGENERATIVE DISC DISEASE
AND DISC OSTEOPHYTE



1ST OPERATION; 1974 WHEN GAMECOCK
FOOTBALL PLAYER; CHRONIC LOOSE BODIES



2ND OPERATION; 1977 AT DUKE. ONE OF FIRST
COMPLETE RECONSTRUCTION. "U" SHAPED
METALLIC DEVICE WITH STAPLED TENDONS TO
BONE, SEVERE "3" COMPARTMENT ARTHRITIS.



TRIAGE

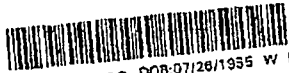
Adult Emergency Services Nursing Assessment

Page 1 of 2

Form Origination Date: 9/03
Version: 6

Version Date: 8/09

Patient Name
MRN



PB46864809 DOB: 07/26/1955 W A
POWELL
JACK A M1413630
Adm: 06/21/12

PATIENT IDENTIFICATION LABEL

DATE: 6-21-12 TIME: 2205 Acuity: ☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5		PMH Immunizations ☐ UTD ☐ Tetanus > 5 yrs Ht ☐ In Wt ☐ kg	
TRIAGE: Age 56 M ☐ F Pain Scale 10/10 GCS 15		Medication Reconciliation Initiated: ☐ Y ☐ N If no, why:	
Temp 98.0 Pulse 78 BP 108/74 RR 16 O2 Sat 100%		Illnesses / Surgical Procedures	
Visual Acuity R / / L / / Both /		None	
Chief Complaint:			
Trip & Fall c/o			
Objective: Neck / back pain			
Mode of Arrival ☐ POV ☒ EMS ☐ Helicopter		DRUG ALLERGY: N/A	
Trauma Alert ☐ Y ☐ N Time called: Level:		Wrist Band Applied: ☐ Y ☐ N	
Pre-hospital Interventions ☐ N/A ☐ Oxygen ☐ IV ☐ IVFs		LMP N/A ☐ Hysterectomy ☐ Post-menopausal	
☐ C-collar ☐ Splint ☐ Immobilization ☐ CPR ☐ Intubation		G: P: Ab	
Other		SH Tobacco ☒ Y ☐ N H/O PPD Alcohol: ☐ Y ☐ N H/O Socially	
Accompanied by: ☐ Self ☐ Spouse ☐ Family ☐ Friend		Night Drugs ☐ Y ☐ N H/O ☐ Suicidal ☐ Homicidal	
☐ Parent ☐ Police ☒ EMS ☐ Other		If yes, complete ED Psych Assessment Tool	
Name of officer: Badge #:		Language Spoken ☒ English ☐ Spanish Interpreter Needed ☐ Y ☒ N	
AGENCY:		Special Assessment TB Exposure: ☐ Y ☒ N Domestic Violence ☐ Y ☒ N	
Sepsis / Pneumonia Screen ☐ HR > 90/min ☐ RR > 20/min		Fall Precautions ☒ Y ☐ N Use of cane, walker or other assist device ☐ Y ☒ N	
☐ Temp > 100.4°F or < 96.8°F ☐ SBP < 90 mmHg ☐ WBC > 14 days		Wrist Band Applied ☒ Y ☐ N	
☐ Productive cough ☐ Suspected / known infection		STEMI ☐ Y ☐ N Time	
Triage Nurse Signature: [Signature]		BAT ☐ Y ☐ N Time	
Room # assigned: Time: 2205		SWAT ☐ Y ☐ N Time	
Report to Primary RN: Time:		Swallow Screen ☐ Pass ☐ Fail ☐ N/A	
Primary Nursing Assessment			
Psych ☐ NA ☒ WNL ☐ Appropriate for Age ☐ Anxious ☐ Sad ☐ Agitated ☐ Confused ☐ Disoriented ☐ Suicidal ☐ Homicidal			
Skin ☐ NA ☒ WNL ☐ Palpation ☐ Warm ☐ Dry ☐ Cool ☐ Diaphoretic ☐ Pale ☐ Cyanotic			
Eyes ☐ NA ☒ WNL ☐ Pupils R ☐ Dilated ☐ Pinpoint ☐ L ☐ Dilated ☐ Pinpoint			
ENT ☐ NA ☒ WNL ☐ Mucous Membranes ☐ Moist ☐ Dry ☐ Hearing ☐ Normal ☐ Impaired ☐ Hearing Aid			
CV ☐ NA ☒ WNL ☐ Heart ☐ Regular Rate ☐ Tachycardic ☐ Bradycardic ☐ Irregular Rhythm			
Can Refill ☐ Normal ☐ > 2 sec. Carotid Radial D/PT			
Pulses Right ☐ Present ☐ Absent ☐ Present ☐ Absent ☐ Present ☐ Absent			
Left ☐ Present ☐ Absent ☐ Present ☐ Absent ☐ Present ☐ Absent			
Resp ☐ NA ☒ WNL ☐ Inspection ☐ Normal Insp. Effort ☐ Tachypneic ☐ Bradypneic ☐ Agonal ☐ Nasal Flaring ☐ Visible Difficulty Breathing ☐ Stridor			
☐ Accessory Muscle Use ☐ Coughing ☐ Non-productive or Producing ☐ Clear ☐ White ☐ Yellow ☐ Green ☐ Blood-tinged Sputum			
Auscultation: ☐ Clear Bilateral Breath Sound ☐ Diminished ☐ R ☐ L Absent ☐ R ☐ L Crackles ☐ R ☐ L Wheezes ☐ R ☐ L			
GI ☐ NA ☒ WNL ☐ Distended Last Meal: Last BM: Nausea ☐ Y ☐ N Vomiting ☐ Y ☐ N Diarrhea ☐ Y ☐ N			
☐ Non-tender Tender RUQ RLQ LUQ LLQ Epigastric Periumbilical Suprapubic			
GU ☐ NA ☒ WNL ☐ Bleeding ☐ Discharge ☐ Frequency ☐ Urgency ☐ Retention			
MS ☐ NA ☒ WNL ☐ Swelling ☐ Deformity ☐ Pain ☐ Erythema ☐ Limited ROM ☐ Laceration(s) ☐ Abrasion(s)			
R Shoulder Upper Arm Elbow Forearm Wrist Hand Neck Back Hip/Pelvis Thigh Knee Lower Leg Ankle Foot			
L Shoulder Upper Arm Elbow Forearm Wrist Hand Neck Back Hip/Pelvis Thigh Knee Lower Leg Ankle Foot			
Neuro ☐ NA ☒ WNL ☐ Alert to Person ☐ Place ☐ Time ☐ Eye Contact ☐ Y ☐ N Facial Droop: ☐ R ☐ L None			
Speech ☐ Normal ☐ Dysarthric / Aphasic			
Motor ☒ Normal ☐ Decreased Inability to move RUE LUE RLE LLE Sensory ☐ Normal ☐ Decreased			
Gait ☐ Unable to Assess ☐ Steady ☐ Unsteady ☐ Requiring Physical Assistance ☐ Walker / Cane GCS: 15			
Primary Nurse Signature: [Signature]		Date / Time: 6-21-12 2205	

ah_1W_adultEDnursingassessment

UP 500068 Rev. 8/09

Patient: POWELL, JACK A

MRN: 1413630

Encounter: 846864809

Page 1 of 2

FILED

2014 NOV 12 PM 2:34

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
JULIE J. ARMSTRONG
CLERK OF COURT FOR THE NINTH JUDICIAL CIRCUIT

C/A NO.: 2013-CP-10-5351

Jack Powell,

Plaintiff,

vs.

Medical University of South Carolina
Defendants,

PLAINTIFF'S RESPONSE
TO DEFENDANT'S
SUPPLEMENTAL
MEMORANDUM

TO: Judge Dennis & Judge Nicholson.

PLEASE, take notice that the Plaintiff Pro se; Jack Powell in the above entitled matter has entered to the Honorable Court and Judge Nicholson & Judge Dennis a Response to the Defendant's Supplemental Memorandum in Support of Motion for Summary Judgment and to also enter evidence for the request by Judge Nicholson for Defendant to submit a Memorandum to prove the MUSC Public Safety had legal grounds to arrest Jack Powell during his discharge from the MUSC ER./Appeal case# 2013-CP-10-5792.

BACKGROUND ENTERED BY DEFENDANT

1. This Court requested that MUSC Public Safety brief whether a person could trespass on public property. As further explained below, though the general rule is that a person cannot trespass on public property, a separate statute criminalizes trespass on public property when a person refuses to leave such public property when it is typically closed.

Here, the Medical Center is generally open to the public from 6:00 AM to 6:00 PM. See MUSC Medical Center Policy Manual, § EC-15, ¶ F (attached as Ex. A)¹. After 6:00 PM, MUSC public safety officers are instructed to patrol the Medical Center grounds, ensure that entrances and exits are locked, and control who accesses sensitive areas (including the Emergency Department). Id.

Plaintiff enters; that Defendant attempts to state Mr. Powell was at the Emergency Room after hours after it was stated they are "open to the public from 6:00 PM to 6:00 AM" and the Public Safety are instructed to "ensure that entrances and exits are locked" which does NOT include the ER entrance and exit.

2. As established at trial, Powell refused to leave the Emergency Department after being disruptive and verbally abusive toward the staff and physicians, and after being medically discharged from the Emergency Department. Public Safety was called as a precautionary measure pursuant to hospital policy.

Defendant states; as established at trial (which was not), Powell refused to leave the Emergency Department after being disruptive and verbally abusive toward the staff and physicians and after being medically discharged from the ER. Plaintiff enters the following evidence of why he was upset about his treatment by the MUSC ER.

DISCOVERY FROM CASE #2013-CP-10-1297

3. Security Guard Ron McKinnie; Why did you stop trying to pull Mr. Powell from the top of the bed?

ANSWER: Objection. Defendant MUSC objects to Interrogatory No. 3 on the grounds that it is misleading. Without waiving and subject to the foregoing objection, Defendant MUSC craves reference to the Detailed Activity Report bates labeled BWPH 1.555 (Powell) MUSC BWPH 1.555 (Powell) MUSC 160 with regard to any involvement by Hospital Security with Mr. Powell. Defendant MUSC further responds by stating that Officer

McKinnie tried to assist Plaintiff into a seated position on the bed in order to assist him in moving from the bed to the wheelchair. Upon information and belief, Officer McKinnie stopped trying to assist Plaintiff from lying to a seated position because Plaintiff stated that he would not put anymore pain on himself for the hospital.

SC0100900 MUSC Dept of PS SC0100900		INCIDENT REPORT		INFORMATION ONLY ☐		CASE NUMBER 2012000512		NCIC INQ. YES ☐ ENTD. NO ☐	
--	--	------------------------	--	--	--	---------------------------	--	---	--

EVENT	INCIDENT TYPE 1. TRESPASSING - REFUSE TO LEAVE				COMPLETED ☒ YES ☐ NO	FORCED ENTRY ☒ YES ☐ NO	PREMISE TYPE DRUG STORE/DOCTOR'S	UNITS ENTERED 	TYPE VICTIM ☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.					
	2.				☒ YES ☐ NO	☒ YES ☐ NO								
	3.				☒ YES ☐ NO	☒ YES ☐ NO								
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) MUSC TRAUMA BED # 31 169 ASHLEY AVE, CHARLESTON, SC				ZIP CODE 29425-		WEAPON TYPE NONE							
VICTIM NO. 1	INCIDENT DATE 06/22/2012	24 HR. CLOCK 00:55	TO 	DATE 06/22/2012	24 HR. CLOCK 02:09	DISP. DATE 06/22/2012	DISP. TIME 00:57	TIME ARRIVED 00:57	DEPART. TIME 03:20	LOCATION NO. HOSP				
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) RADFORD, KYLE			RELATIONSHIP TO SUBJECT #1		RESIDENT J	RACE W	SEX M	AGE 28	ETH N	DAYTIME PHONE 843-792-4196	EVENING PHONE 		
	ADDRESS 101 DOUGHTY STREET			CITY CHARLESTON		STATE SC	ZIP CODE 29425-		LOCATION NO.					
	VICTIM'S NAME (LAST, FIRST, MIDDLE) MUHA			RELATIONSHIP TO SUBJECT #1		RESIDENT 	RACE 	SEX 	AGE 	ETH 	DAYTIME PHONE 843-792-1456	EVENING PHONE 		
SUBJECT NO. 1	HEIGHT 	WEIGHT 0	HAIR 	EYES 	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS 169 ASHLEY AVE.			CITY CHARLESTON		STATE SC	ZIP CODE 29425-		LOCATION NO. HOSP					
	VIOLENCE/NURY (VCT.1) ☐ YES ☐ NO ☐ EXPLAIN.													
	VICTIM NO. 1 USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS ☐ YES ☐ NO ☐ UNK. ☐ TYPE.													
NARRATIVE	TWO MAN VEH. ☐ ONE MAN VEH. ☐ DETECTIVE PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐													
	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) POWELL, JACK, ~~WARRIOR~~				RACE W	SEX M	AGE 58	ETH N	DATE OF BIRTH 07/26/1955	HEIGHT 601	WEIGHT 225	HAIR 3	EYES 2
	☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. glasses				RELATED OFFENSE(S) 90J		DAYTIME PHONE 843-387-6666		EVENING PHONE 				
	☐ WANTED	ADDRESS 829-64 E. BARNETT Drive				CITY CHARLESTON		STATE SC	ZIP CODE 29412-		LOCATION NO. HOSP			
NARRATIVE	☒ ARREST	SUBJECT NO. 1 USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ TYPE				ARRESTED NEAR OFFENSE SCENE ☒ YES ☐ NO ☐		DATE/TIME OF OFFENSE 6/22/2012 12:55:11 AM		DATE/TIME OF ARREST 6/22/2012 2:09:00 AM				
	☐ JAIL	TOTAL # ARRESTED 1				DATE/TIME OF OFFENSE 6/22/2012 12:55:11 AM		DATE/TIME OF ARREST 6/22/2012 2:09:00 AM						
	☐ SUMMONS	DAY OF THE WEEK S M T W T F S UNK				HOW REPORTED A= OFFICER DISPATCHED ON CALL B= REPORT TAKEN BY PHONE C= COMPLAINANT WALKED IN		D= COMPLAINT WRITTEN IN E= OFFICER INITIATED F= OTHER		DIFF. FACTOR A= RESISTANCE/HOSTILITY B= WEAPONS C= UNFOUNDED CALLS D= MENTAL SUBJECT				
	TRESPASSING - REFUSE TO LEAVE													
REPORTING/ARRESTING OFFICER - RADFORD, KYLE 180														
RESPONDING OFFICERS - LT WANNER, CPL CHATMAN, PFC K. RADFORD, PSO H. LUCAS, PSO S. STROBEL														
ON THIS DATE, 06/22/2012, I WAS DISPATCHED TO MUSC TRAUMA CENTER BED # 31 IN REGARDS TO A PATIENT BEING DISCHARGED AND REFUSING TO LEAVE. I ARRIVED AT BED # 31 AND OBSERVED THE SUSPECT, LATER IDENTIFIED AS JACK POWELL, AS HE LAY IN THE HOSPITAL BED IN AN SEATED POSITION. I INTRODUCED MYSELF AND INQUIRED WHY HE WOULD NOT LEAVE THE AREA AFTER BEING TREATED AT MUSC. HIS RESPONSE TO ME WAS "I AM IN PAIN AND I CANNOT MOVE WITHOUT FEELING PAIN AND I WILL NOT MOVE. I WILL NOT INFLECT MORE PAIN FOR MYSELF FOR THIS HOSPITAL."														

3.

34

3. Plaintiff enters when he was on the ER bed he was told that he would be taken to Roper hospital, home or anywhere he wanted to go, BUT, when outside the only place he was told he would be taken by the MUSC Public Safety was, JAIL. Real evidence;

COURT RECORDS OF: STATE/PUBLIC SAFETY v. JACK POWELL

Page 25

1 A. Yeah.
2 Q. When I was on the MUSC bed, public safety
3 said they would take me to Roper Hospital because I
4 asked for second opinion?
5 A. (Inaudible).
6 Q. Is this your public safety report here?
7 A. Yes.
8 Q. Read that to everybody.
9 A. I didn't document that, but that's what
10 happened.
11 Q. You didn't document that?
12 A. No, but I testified to it.
13 Q. Well, that is not true?
14 Is there any other documents? I have all
15 these documents and all these statements by everyone.
16 Nobody ever said that.
17 THE COURT: Mr. Powell, this is
18 cross-examination. You're not asking direct
19 questions.
20 MR. POWELL: Okay. I'm sorry.
21 THE COURT: You'll have a chance to
22 testify.
23 BY MR. POWELL:
24 Q. Once outside, you told me to leave the
25 premises?

Page 26

1 A. Yes, sir.
2 Q. Isn't it true that I told you I was in
3 pain. I could not get out of the wheelchair and
4 would need help getting out of the wheelchair? True
5 or false?
6 A. Yes, sir.
7 Q. Right after I said that I need help, you
8 did not help me and kept telling me to leave the
9 premises. True or false?
10 A. Yes, I did also asked --
11 Q. Excuse me, sir.
12 MR. POWELL: Your Honor, I'm asking for a
13 true and false. He's doing all this other --
14 THE COURT: He has answered. He can
15 answer and give an explanation. You asked a
16 question.
17 Go ahead and give the explanation again

Page 27

1 authority of MUSC.
2 Q. You told me an hour-and-a-half earlier --
3 THE COURT: Questions, questions.
4 MR. POWELL: Okay.
5 BY MR. POWELL:
6 Q. Did you tell me inside the ER that you
7 would take me to the hospital or anywhere I want to
8 go?
9 A. Yeah.
10 Q. Would you read off your report where you
11 said that.
12 THE COURT: Mr. Powell, ask him --
13 BY MR. POWELL:
14 Q. Can you read off the report that you wrote
15 those statement?
16 A. (Inaudible).
17 Q. I'm going to ask you to read it. Can you
18 read it?
19 A. No.
20 THE COURT: Sir, what is the question?
21 BY MR. POWELL:
22 Q. Is it true, right after I said that I
23 would need help, you did not help me out of the
24 wheelchair. At that point, wasn't it?
25 When I said it right then that I can't get

Page 28

1 out of the wheelchair, I need help getting out of the
2 wheelchair, did you help me out of the wheelchair?
3 (Inaudible) Yes or no?
4 A. (Inaudible).
5 Q. You told me to leave the premises. I said
6 I'm in pain. I can't get out of the wheelchair, and
7 I need help getting out of the wheelchair. Did you
8 help me out of the wheelchair right then?
9 A. Yes, into a police car.
10 Q. Right then?
11 A. What is right then?
12 Q. Right then, like I can't get out of the
13 wheelchair. Did you help me out of the wheelchair
14 right then when I said that, like, five seconds
15 later?
16 A. I told you I'd bring you anywhere you need
17 to go.

35

18 because you were interrupted.
 19 BY MR. POWELL:
 20 Q. Actually, according to public safety
 21 report, you said all those things while I was in the
 22 ER; is that not correct? Take me home. Take me to
 23 Roper Hospital, where I wanted to go. Those
 24 statements were made in the ER, not outside.
 25 A. Still in their jurisdiction, jurisdiction

18 Q. It says here I didn't say anything.
 19 Doctor said that I was good to go medically to go and
 20 all that. Did you know at the time, according to
 21 this paperwork, they discharged me 12:25. They gave
 22 me oxycodone at 1:00.
 23 A. I'm not a doctor.
 24 Q. Did you know that they did that? Yes or
 25 no.?

7 (Pages 25 to 28)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jack Powell,

Plaintiff,

vs.

Medical University of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A NO.: 2013-CP-10-01297

PLAINTIFF'S ANSWERS
 TO ADMIT FROM DEFENDANT

TO; THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, DEFENDANT

PRO SE; JACK POWELL returns the Admit request to Defendant and answered as stipulated by South Carolina Rules of Procedure, Rule 36 (c) and Rule 37 (c)

1. Admit that after Plaintiff was evaluated in the Emergency Department at MUSC on June 21, 2012, he was informed by MUSC that he was discharged. ANSWER;

2. Admit that after the MUSC Public Safety Officers arrived in the Emergency Department, Plaintiff told the MUSC Public Safety Officers that he could not move and was not going to inflict anymore pain on himself. ANSWER; ADMIT

3. Admit that Plaintiff told the MUSC Public Safety Officers that they would have to help him off of the bed.

5

36

ADMIT; AFTER UNBEARABLE CONTINUED HARASSMENT, EMOTIONAL DISTRESS, AFTER "2" ATTEMPTS BY THE SECURITY GUARDS TO REMOVE ME FROM THE BED AND THE CONTINUED PERSISTANCE TO REMOVE ME.

4. Admit that the MUSC Public Safety Officers offered to take Plaintiff to Roper Hospital on the morning of June 22, 2012. ANSWER; ADMIT-WHEN ON BED.

5. Admit that the MUSC Public Safety Officers offered to take Plaintiff home on the morning of June 22, 2012. ANSWER; ADMIT-WHEN ON BED.

6. Admit that the MUSC Public Safety Officers offered to call someone for Plaintiff to pick Plaintiff up from MUSC on the morning of June 22, 2012. ANSWER; ADMIT-WHEN ON BED

7. Admit that after Plaintiff told the MUSC Public Safety Officers that they would have to help him off of the bed, the Officers assisted Plaintiff in moving from the bed into the wheelchair. ADMIT; AFTER UNBEARABLE CONTINUED HARASSMENT AND FEAR.

8. Admit that after Plaintiff was placed in the wheelchair, the MUSC Public Safety Officers transported him outside of the hospital in the wheelchair. ANSWER; ADMIT

9. Admit that, once outside of the hospital, the MUSC Public Safety Officers informed Plaintiff that he was free to leave the premises.

ANSWER; DENY, According to officer Kyle Radford when he wrote "6" days later; Then told the suspect that he had the "choice" of leaving the area under his own free will and better do so.

10. Admit that, once outside of the hospital, the MUSC Public Safety Officers asked Plaintiff to leave the premises. DENY; THEY TOLD ME I HAD A "CHOICE" TO LEAVE.

11. Admit that, once outside of the hospital, Plaintiff told the MUSC Public Safety Officers that he could not get up out of the wheelchair. ANSWER; ADMIT

12. Admit that, once outside of the hospital, Plaintiff told the MUSC Public Safety Officers that they would have to help him out of the wheelchair.

ADMIT ONCE OUTSIDE PUBLIC SAFETY CONTINUED UNBEARABLE HARASSMENT, REFER TO QUESTIONS 9, 10, 11 ONLY AFTER CONTINUED UNBEARABLE HARASSMENT, THE PERSISTANCE TO ARREST ME, UNDER THE INFLUENCE OF OXEYCODENE AND WAS UNABLE TO MAKE PROPER DECISIONS FOR MYSELF THAT WERE INFLUENCED BECAUSE OF FEAR.

13. Admit that Plaintiff consented to allowing the MUSC Public Safety

Officers to help him out of the wheelchair once he was outside of the hospital.

Deny; Mr. Powell was given drugs, repeatedly harassed, grasped & pulled on, then taken from the ER bed by the same Public Safety that is now threatening to take him to jail if he doesn't get out of the wheelchair and leave walking even though he can't get up by himself. Also earlier in the MUSC ER they had told Mr. Powell they would take him to Roper Hospital for a second opinion. Mr. Powell only said you will have to help me out of the wheelchair because it was now obvious they had lied about taking him anywhere he wanted to go and now again he is fearful of harmful physical contact and assault by the Public safety.

14. Admit that, once outside of the hospital, the MUSC Public Safety Officers assisted Plaintiff out of the wheelchair only after Plaintiff told them that they would have to help him out of the wheelchair. ANSWER; ADMIT

The Public Safety had already failed to discharge Mr. Powell properly by helping him from the wheelchair so he could go freely. Then the only reason they assisted Mr. Powell from the wheelchair is because they were angry and wanted to take him to jail and not let him repeat what had happened at MUSC to Roper Hospital while getting his second opinion.

15. Admit that Plaintiff did not leave MUSC after being discharged from the Emergency Department on June 22, 2012.

DENY WHEN WAS ACTUAL DISCHARGE BEFORE OR AFTER GIVEN MORE DRUGS AND ALSO I WAS UNABLE TO MOVE TO LEAVE THE HOSPITAL SO THE MUSC PUBLIC SAFETY ASSISTED IN THE DISCHARGE.

16. Admit that Plaintiff did not leave MUSC after being discharged from the Emergency Department on June 22, 2012 until MUSC Public Safety escorted him out of the hospital. ANSWER; ADMIT

4. Plaintiff did not refuse to leave and the Defendant cannot show any actual proof from Discovery to prove their claim. Also, the normal operating time for the Medical Center is 6:00 PM to 6:00 AM. In Addition if the MUSC ER had medically discharged Jack Powell, why did their Public Safety handcuff him in front because of his medial issues, as stated on the MUSC Public Safety Incident Report, along with threatening him with arrest if he did not get up by himself and walk from the premises.

PUBLIC SAFETY INCIDENT REPORT

AFTER SPEAKING WITH THE INCHARGE PHYSICIAN THE SUSPECT WAS TAKEN FROM BED #31 BY HOSPITAL SECURITY AND PUBLIC SAFETY AND ESCORTED OUTSIDE OF TRAUMA TO THE CLINICAL SCIENCE RAMP AREA. (THEN TOLD THE SUSPECT THAT HE HAD THE CHOICE OF LEAVING THE AREA UNDER HIS OWN FREE WILL AND NEEDED TO DO SO. HE WAS ALSO ADVISED FAILURE TO LEAVE WOULD RESULT IN AN ARREST AND JAIL. THE SUSPECT THEN STATED THAT HE WOULD NOT INFLICT ANYMORE INJURY FOR THIS HOSPITAL." THE SUSPECT WAS ADVISED AGAIN THAT HE NEEDED TO LEAVE THE AREA. THE SUSPECT THEN DID NOT MOVE.

AT 02:09 AM HE WAS PLACED UNDER ARREST FOR TRESPASSING REFUSING TO LEAVE DUE TO THE FACT HE HAD BEEN INSTRUCTED TO LEAVE BY MYSELF AND DID NOT DO SO AND DUE TO HIM CONTINUING TO LOITER ABOUT THE PREMISES. HE WAS CHARGED ON UTC 95432CE. HE WAS HANDCUFFED IN FRONT DUE TO HIS MEDICAL ISSUES AND HANDCUFFS WERE DOUBLE LOCKED AND CHECKED FOR TIGHTNESS. ALSO, DUE TO HAVING TO BE HANDCUFFED IN THE FRONT HE WAS ALSO SECURED WITH LEG IRONS THAT WERE DOUBLE LOCKED AND CHECKED FOR TIGHTNESS. HE WAS SEARCHED INCIDENT TO ARREST YIELDING NEGATIVE RESULTS. HE WAS THEN PLACED IN PATROL UNIT # C-47 AND PLACED IN THE RIGHT REAR PASSENGER SEAT AND SECURED WITH THE SEAT BELT.

→ AT 02:10 AM HE WAS TRANSPORTED FROM THE ARREST SITE TO MUSC-DPS HEADQUARTERS PARKING LOT LOCATED AT 101 DOUGHTY ST. CHARLESTON SC, 29425 FOR COMPLETION OF JAIL INTAKE FORM, ARREST AND BOOKING REPORT, AND CHARGING DOCUMENT (UTC) PRIOR TO DEPARTING FOR THE CHARLESTON COUNTY DETENTION CENTER.

→ AT 02:44 AM PSO. LUCAS AND MYSELF DEPARTED HEADQUARTERS PARKING LOT FOR THE CHARLESTON DETENTION CENTER VIA MOST DIRECT ROUTE, STARTING MILEAGE 69688.6. AT 03:07 AM TRANSPORTING OFFICERS ARRIVED AT CHARLESTON COUNTY DETENTION CENTER, ENDING MILEAGE 69696.6. UPON ARRIVAL AT THE DETENTION CENTER, WEAPONS WERE SECURED IN THE REAR OF PATROL CAR UNIT # C-47. AFTER WEAPONS WERE SECURED, HE WAS REMOVED FROM THE REAR OF C-47 AND TAKEN INTO CHARLESTON COUNTY DETENTION CENTER FOR PROCESSING WITHOUT INCIDENT. HE WAS LODGED IN UNDER CHARGING DOCUMENTS, UTC 95432CE. HE WAS ADVISED THAT HIS COURT DATE WOULD BE 07/11/2012 AT 9:00 AM TO APPEAR BEFORE JUDGE COKER COURT LOCATED AT 4045 BRIDGEVIEW DR. CHARLESTON SC, 29406. HIS PROPERTY WAS RELEASED TO THE CUSTODY OF THE CHARLESTON COUNTY DETENTION CENTER. THE SUSPECT'S PROPERTY WAS RELEASED TO THE CUSTODY OF THE CHARLESTON COUNTY DETENTION CENTER.

AT 03:20 AM PSO. LUCAS AND MYSELF DEPARTED THE JAIL AND RETURNED BACK TO HEADQUARTERS. PATROL UNIT C-47 WAS SEARCHED PRIOR TO AND UPON COMPLETION OF THE TRANSPORT TO THE CHARLESTON COUNTY DETENTION CENTER WITH NEGATIVE RESULTS

BWPH 1.555 (Powell)
MUSC
155

5. Plaintiff enters according to the MUSC Doctor Instructions for Jack Powell, No apparent injury was found during today's exam. (which means he had no broken bones or fractures) ALSO, he should call the Doctor or go back to the hospital if he develops severe lightheadedness or weakness, numbness or weakness in any extremity or pain radiating down an arm or leg and don't do anything requiring any mental alertness until the effects of the medication are gone. The Defendant did not enforce proper procedures when ignoring these Instructions and the absence of medical personnel escorting their patient during discharge was also gross negligence when the Public Safety tried to threaten their patient, Ref. "handcuffed in front due to his medical issues" who had just received a second dose of pain medication only about thirty minutes earlier and walk from the premises.

DOCTOR INSTRUCTIONS THAT WEREN'T FOLLOWED

Medical University of South Carolina

171 Ashley Avenue
Charleston, SC 29425
843-792-3826

Patient: Jack Powell MR#: 1413630 Date: 06-22-2012 Time: 00:25:10 Page 1

Instructions for: Jack Powell MR#: 1413630

Date: 06-22-2012 Your care provider was: Jacobsen/Watson

Fall without apparent injury:

No apparent injury was found during today's exam. You may develop some soreness and stiffness over the next two days. Mild neck and back strain is common in auto accidents, and may not be painful until the muscle becomes inflamed. But if nothing is painful now, there is no fracture, and x-rays are not needed.

If you develop pain over the next couple of days, treat each tender area. Apply cold packs directly to the painful spot. Rest. Antiinflammatory pain medication, such as ibuprofen, can decrease soreness and inflammation.

Most of the time, these late-developing pains go away within a few days. Most patients are back at work or school within a week. The area might be little irritable for two or three weeks.

You should call the doctor, or go to the hospital, if you develop severe neck, chest, or abdominal pain, repeated vomiting, severe lightheadedness or weakness, trouble breathing, numbness or weakness in any extremity, problems with your bladder or bowel, or pain radiating down an arm or leg.

Received
"4"
X-RAYS

Extremity X-Ray: Right Knee; Right Shoulder Plain Films

This radiographic study was performed during your ED visit.

CT Scan of Head

This radiographic study was performed during your ED visit.

CT Scan of C-Spine

This radiographic study was performed during your ED visit.

Pain medication injection:

You have received an injection of a pain medication. You should experience significant pain relief within 45 minutes. This drug is a narcotic -- it will impair your judgement, slow your reaction time and make you sleepy (as well as relieve your pain). Narcotics also can cause nausea.

You should not drive, work with machinery, or perform any task requiring mental alertness until all effects of the medication are gone -- six to eight hours. Do not take any alcohol, or sedatives, and do not take any other medication without checking with your physician.

Oral narcotic given:

You've been given an oral narcotic pain medication. The effects may begin 30 minutes to an hour after swallowing the medicine. You should have significant pain relief. The effects will usually last at least four hours.

Most oral narcotics contain a dose of acetaminophen (Tylenol). Don't take any other acetaminophen-containing medicines until you've discussed it with the doctor.

This drug is a narcotic -- it will impair your judgment, slow your reaction time, and make you sleepy. Narcotics also can cause nausea and constipation. If you feel sick, you should eat. A full stomach reduces the nausea that pain pills can cause.

You should not drive or work with machinery (including blenders, knives, lawn mowers or sewing machines) for six to eight hours. Don't do anything requiring mental alertness until the effects of the medication are gone. Do not take any alcohol or sedatives, and don't use any other medication without checking with your physician.

Follow-up care:

You should follow up with your primary care physician within the next 3-5 days regarding your visit today. If you do not have a primary care physician a list of providers is listed below. You should return if there is unexpected worsening or a significant change in your symptoms. If you have a question, please

6. MUSC Policy Manual p.3, no. 2 (c) & (h) again verifies access procedures, designated

doors and again Jack Powell was not on the premises illegally.

F. Special Security Needs – Access Control will be addressed for the following areas:

1. Providing access control as appropriate to sensitive areas such as:
 - a. Emergency Department
 - b. Newborn Nurseries
 - c. Obstetrics
 - d. Special Care Units
 - e. Pharmacies
 - f. Institute of Psychiatry
 - g. Prisoners' Rooms
 - h. ICU's
 - i. Children's Hospital Patient Care Areas
 - j. Human Resources Employment/Benefit office
 - k. Pain Management Clinic (RT 9th Floor)
2. Access to the Medical Center between 6:00 p.m. and 6:00 a.m. shall be limited via the card access system.
 - a. It is the responsibility of the on-duty Security Coordinator to ensure entrances and exits are locked and reopened as scheduled.

- b. Limited access to the hospitals is maintained through the North Tower entrance. Access to the IOP is via the President Street entrance and Rutledge Tower is via the north entrance.
- c. Entrance and exit from the Medical Center complex is regulated by restricted use of designated doors only.
- d. After normal working hours, on weekends and holidays, persons will use the North Tower entrance. Access to the IOP is via the President Street entrance and Rutledge Tower is via the north entrance.
- e. The remaining doors will be locked at 6:00 p.m. An alarm will sound if these doors are used as exits.
- f. Medical Center areas not in use during evening and night hours, weekends and holidays will remain locked. A Medical Center Safety and Security Officer must check these areas.
- g. For additional security, employees are encouraged to notify Security when working after normal working hours by calling ext. 2-4196.
- h. All Medical Center areas not in use during evening and night hours, weekend and holidays will remain locked. A Medical Center Safety and Security Officer must check these areas.
- i. Safety and Security Officers will keep the Emergency Department parking lot clear for authorized vehicles only and will patrol Emergency Department parking and ambulance receiving areas as part of regular hospital rounds during evening and night shifts. Safety and Security Officers will be available for traffic control and will attempt to clear the area of any infractions. When necessary, Public Safety will be contacted for assistance.

G. Prisoner Security

1. Notice will be sent annually to all Department of Corrections facilities using the Medical Center. Notices must provide detailed information on Medical Center Prisoner policy.
2. Anytime a prisoner is treated, an unarmed officer will be in the treatment room for protection of the staff. When an officer provides assistance to medical staff for a prisoner or deals directly with a prisoner (e.g., removing, replacing restraints)

A-052 – Medical Center-Wide Security

Page 3 of 10

7. MUSC Policy Manual p.10, which is for a reported violent incident, threatening or overt act. Plaintiff states he has never received this copy and the reason is on no. 13, the MUSC Public Safety would have to admit they did not properly discharge Jack Powell from the ER when they did not check _____. Escorted off the premises. There was intent to arrest Jack Powell ONCE he was outside. Public Safety did not escort him from the premises and intentionally stopped in the parking lot short of their patrol car and threatened him with arrest if he did not get out of his wheelchair and walk from the premises. Which is in

fact not the proper procedure of discharging a patient they had to physically lift from the ER bed, place into his wheelchair and was at that time, not, under arrest.

MUSC MEDICAL CENTER Violent Incident Report

A reportable violent incident should be defined as any threatening or overt act of physical violence against a person (s) or property whether reported or observed.

Please put additional comments, according to number section, on reverse side of form.

Return to: MUSC Medical Center Security Department

1. Date: _____ Day of Week: _____
2. Time: _____ Assailant: Female Male
Specific Location: _____

3. Violence Directed toward: _____ Patient _____ Staff _____ Visitor _____ Other
Assailant: _____ Patient _____ Staff _____ Visitor _____ Other

Assailant's Name: _____
Assailant: _____ Unarmed _____ Armed Weapon _____

4. Predisposing factors: _____ Intoxication _____ Dissatisfied with care/Waiting time
_____ Grief Reaction _____ Prior History of Violence
_____ Gang Related _____ Other (Describe) _____

5. Description of Incident: _____ Physical abuse _____ Verbal abuse _____ Other _____

6. Injuries: _____ Yes _____ No

7. Extent of Injuries: _____

8. Detailed description of incident: _____

9. Did any person leave the area because of the incident? _____ Yes _____ No _____ Unable to determine

10. Present at time of incident: _____ Medical Center Security Officer _____ Public Safety Officer

11. Needed to call: _____ Medical Center Security Officer _____ Public Safety Officer

12. Termination of incident: Incident defused _____ Yes _____ No Public Safety notified _____ Yes _____ No
Assailant arrested _____ Yes _____ No

13. Disposition of assailant: _____ Stayed on premises _____ Escorted off premises _____ Left on own
Other: _____

14. Restraints used: _____ Yes _____ No Type: _____

15. Report completed by: _____
Title: _____
Department: _____
Phone Number: _____

PLAINTIFF'S CONCLUSION

The Public Safety did not want to take Jack Powell to Roper Hospital and explain to them what had happened at MUSC along with Mr. Powell giving a precise version of the incident.

ALSO, one of the most important elements of the Defendant's evidence was not entered, which was the proper procedures for discharge of a patient that is not under arrest and the Plaintiff has yet to receive proper answers during Discovery concerning these actual MUSC procedures. Note; during the Defendant's Motion for Summary Judgment, Judge Dennis granted their Motion right after Jack Powell had told him he "had ZERO Discovery." in this case. ALSO, on the Docket for that day Plaintiff had filed a Motion to Compel Proper Return and Evasive Answers for Interrogatories, Admissions and Production.

The first citing of law by the Defendant, #1 states;

Trespass can occur on public property when a trespasser refuses to leave public property when that public property is regularly closed to the public.

THEN states; Powell trespassed on the Medical Center's grounds because he refused to leave the medical centers grounds outside of normal business ours. Under S.C. Code Ann. 16-11-620, a person cannot trespass on public property.

The Defendant again has not proved Jack Powell Trespassed. The Defendants own Admissions to Plaintiff proved he was falsely arrested just outside the entrance of the hospital ER doors where he was refused help to get out of his wheelchair so he could freely leave the public facility that is open "24" hours a day, "7" days a week.

Defendant stated in their Conclusion; that Jack Powell was asked to leave several times and was even offered transportation to his home, another hospital or other destination of his choice. Powell declined to accept the offers and refused to leave the premises. Plaintiff enters this is an inflammatory statement because the Defendant knows for a fact they have not entered one sentence the Plaintiff actually stated like; I know I had threatened to sue and had asked for a second opinion and you said you would take me to Roper Hospital but now I'm having such a great time I think I will decline because I would rather go to jail. These offers were never made to Jack Powell outside of the Emergency.

Note; the reason Jack Powell did not call his wife was because the time on her phone had ran out earlier in the evening.

Plaintiff agrees with the Defendant that a person normally cannot trespass on public property and he was discharged during normal hours of the ER, which is 24 hours of the day. The Defendant has only proven that he was falsely arrested. As a result the Pro se, Plaintiff Jack Powell Hereby request the Honorable Judge Nicholson to reverse the appealed Summary Court decision when he defended himself and find him innocent of Trespassing; Refusal to Leave.

ALSO, grant the Plaintiff's Motion for Reconsideration of the Summary Judgment that was entered by Judge Dennis.

Dated & Signed on 11-12-14



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-5351

Jack Powell,

Plaintiff,

vs.

Medical University of South Carolina
Defendant.

**PLAINTIFF'S MOTION
TO PROPEL PROPER
DISCOVERY**

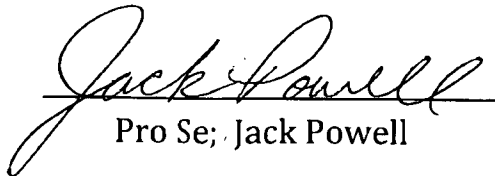
FILED
2014 APR 18 PM 2:49
JULIE J. HARTSTONG
CLERK OF COURT

TO: MEDICAL UNIVERSITY OF SOUTH CAROLINA, DEFENDANT.
ATTORNEY; BARNWELL & WHALEY

I Pro Se; Jack Powell file this Motion to Compel the Proper Return of
Discovery under Rule 37(A) of the following;

- A. "Interrogatories" that was submitted to Defendant on 12-16-13 and a "10" notice to Return was submitted on 3-26-14.
 - B. "Production" that was submitted on 12-16-13 and a "10" day notice to Return was submitted on 3-26-14.
 - C. "Admit" which was submitted on 3-26-14 and Defendant did answer stating ; that there were too many Admit questions submitted.
- CLERK of COURT RECORDS; the copy of the Request to Admit submitted by the Plaintiff, were the proper amount of Admit questions allowed, "20".

Dated & Signed on 4-18 -14


Pro Se; Jack Powell

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-5351

Jack Powell,

Plaintiff,

vs.

Medical University of South Carolina
Defendant.

MOTION
TO AMEND
RECONSIDERATION

Plaintiff Pro Se; Jack Powell submits this Amended Motion for Reconsideration to the Honorable Court Pursuant, White Palms of Palm Beach Inc. v. Fox (1998) & Bettez v. City of Miami (1987) because the Court erred when granting Summary Judgment in favor of the Defendant when there were genuine issues of material fact and because of the new crucial and relevant evidence.

On 7-30-14 Judge Markley Dennis granted the Defendant's Motion for Summary Judgment as to Plaintiff's claims for (1) false arrest and imprisonment (2) assault and battery (3) intentional infliction of emotional distress (4) gross negligence and (5) slander and libel, holding no genuine issues of material fact exists.

Judge Dennis erred when he did not allow the Plaintiff to submit any citing of law or discuss the relevant issues concerning the Defendant's intentional failure to respond properly with Admit, Production and Interrogatories that were in fact on the court docket that very same day as Compelled. Also, the Plaintiff had stated in his first sentence he had zero Discovery in this case and the Defendant had entered an Inflammatory statement in their Motion for Summary Judgment. Judge Dennis then states; I'm Granting Summary Judgment because Plaintiff did not respond to the Defendant's Memorandum for Motion for Summary Judgment.

1. Plaintiff also submits, Pursuant Rule 60 (b)(2)(5), newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial and Rule 56 (e). Therefore, Plaintiff submits this new order, **EXHIBITS A & B** by the Honorable Judge J. C. Nicholson Jr., which stated; It is this Court's opinion that the jury erred when it found Appellant guilty of

2015 MAY - 5 PM 3: 09
FILED
JUL 1 11 AM
CLERK OF COURT

trespassing Under S.C. Code Section 16-11-620, a person cannot trespass on public property. A separate statute, Section 16-11-630 penalizes trespassing on public property outside of it's normal business hours when they are closed to the public. In the current scenario, Appellant was not in a place that was closed to the public until the Public Safety officers removed him from his bed and took him to the clinical Science ramp area. It was only then that they arrested him for trespassing. By that logic, MUSC Public Safety is squarely to blame for the Appellant's trespassing, as they were responsible for taking him from a place that was open to the public to a place that was closed to the public. It is clear that the Appellant should have not been convicted of trespassing. Accordingly, the ruling of Magistrate Court is hereby **REVERSED**.

Therefore, Judge Dennis erred when he granted Summary Judgment that included the now proven False Arrest & Imprisonment that does in fact create relevant issues of material fact concerning Intentional Infliction of Emotional Distress, Reckless & Gross Negligence, Assault & Battery and False Arrest and Imprisonment.

Defendant, had submitted in their Motion for Summary Judgment the evidence and all inferences which can be reasonably drawn must be viewed in the light most favorable to the non-moving party. "[I]n applying a preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The touchstone of proximate cause in South Carolina is foreseeability "Koester, 313 S.C. at 493, 443, S.E. 2d at 394 (citing Young v. Tide Craft, 270 S.C. 453, 462, 242 S.E. 2d 671, 675 (1978)); Small, 329 S.C. at 463, 494 S.E. 2d at 842 "Foreseeability is determined by looking to the natural and probable consequences of the act complained of" Id; Bishop, 331 S.C. at 89, 502 S.E. 2d at 83; Oliver, 309 S.C. at 316, 422 S.E. 2d at 131; Small, 329 S.C. at 463, 494 S.E. 2d at 842.

The defendant may be held liable for anything which appears to have been a natural and probable consequence of his (actions)." Bramlette v. Charter-Medical-Columbia, 302 S.C. 68, 72,

2.

48

393 S.E. 2d 914, 916 (1990); Greenville Mem'l Auditorium v Martin, 301 S.C. 242, 245, 391 S.E. 2d 546, 548 (1990) c. 68, 72, 393 S.E. 2d 914, 916 (1990).

Mellen v Lane, 377 S.C. 261, 659 S.E. 2d 236 S.C. App., 2008[276] An assault is an attempt or offer with force or violence, to inflict bodily harm on another or engage in some offensive conduct. [A]n Assault occurs when a person has been placed in a reasonable fear of bodily harm by the conduct of the defendant" The elements of assault are; (1) conduct of the defendant which places the Plaintiff, (2) in reasonable fear of bodily harm. The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason of firmness, so as to influence his conduct; or it must appear that person whom the threat is made was peculiarly susceptible to fear, and that the person making the threat knew or took advantage of the fact that he could not stand as much as an ordinary person.

2. Because of Rule 56 (c) (2) (4), the Defendant entered, not supported by admissible evidence and is proven by documented fact the Defendant had entered false statements in their Memorandum and Plaintiff was not allowed to disclose the following;

NOTE: EXHIBITS OF DISCOVERY FROM 1ST MUSC CASE
EXHIBIT C

The Defendant stated; when transport arrived to take Plaintiff to X-ray. Plaintiff asked how long would it take and asked to stay in the E.R. to wait for his pain-medication rather than go to X-ray. The Doctor asked Plaintiff if he was sure that he wanted to stay in the E.R. and wait for his pain medication rather than go to the X-ray Department. Plaintiff replied in the affirmative and then told the Doctor that is about the stupidest question a Doctor has ever asked me.

The only reason this evidence is submitted by the Defendant is to create a false impression of the event so the Court would not realize the actual atmosphere and contempt exercised towards the Plaintiff and why.

EXHIBIT D

The actual statement in the Complaint; Dr. Simon Watson and Billy Jacobsen were attending

to Mr. Powell. Mr. Powell was in terrible pain and the Doctor said a pain shot was on the way. Then someone began to push Mr. Powell's bed out of the room and he asked where are we going and he said to X-Rays. Mr. Powell asked how long will this take because I'm in pain and a pain shot is on the way. He said maybe a couple of hours and would you rather stay and wait for the shot? Mr. Powell said yes, so he pushed the bed back into the E.R. Then a few minutes later the same Doctor that said the pain shot was on the way comes in and asked Mr. Powell if he told the man (who pushed his bed in & out of the room) that he wanted to stay and wait for his pain shot, Mr. Powell said yes. Then the Doctor asked are you sure you want to wait for the pain shot or go to the X-ray department? Mr. Powell who was having severe pain told the Doctor that is about the stupidest question a Doctor has ever asked me. The Doctor rolled his eyes then left and this when the contempt towards the Plaintiff began.

Inflammatory Re-creation

- A. The Defendant failed to state the Doctor said he would send a pain shot and left the room before the transporter arrived.
- B. The Defendant tries to give the impression that the Doctor was present when the transporter had this conversation about the pain shot with Mr. Powell, before he was pushed back into the room to wait for his pain shot.
- C. The Defendant also omitted the Doctors question to Plaintiff; which he asked Mr. Powell if he had told the transporter that he wanted to stay and wait for my pain shot and Mr. Powell said yes.
- D. Then, the Doctor asked again if Mr. Powell was sure that he wanted to stay in the ER and wait for his pain medication rather than go to the X-Ray department? Mr. Powell who was having severe pain and after being asked multiple times about his pain shot, then he uttered to the Doctor that is about the stupidest question a Doctor has ever asked me. Then he rolled his eyes and left which is when the contempt began. The Defendant re-created the whole incident by leaving out a crucial statement that explains why Mr. Powell was amazed by the repeated questions of his pain shot and

why he responded the way he did. There was an attempt to blame and create a bias attitude towards the Plaintiff that he alone caused the hostile atmosphere in the MUSC E.R.

The Plaintiff included this incident in his Complaint so the court would have a better understanding of why the contempt and bias existed towards the Plaintiff. Now that the Defendant has been proven guilty of False Arrest, the Intentional Infliction of Emotional Distress, Reckless Gross Negligence and Assault & Battery are Genuine Issues of Material facts that are still unknown because of the unanswered Discovery issues which began when the Plaintiff was on the E.R. bed.

3. On April 1st 2015, in a separate case Judge Dennis and an assistant met with Pro se Plaintiff Jack Powell and a Defendant Attorney in his chambers. This was only one day before the Defendant's Motioned Summary Judgment hearing and Jack Powell told Judge Dennis that the Attorney just told him out in the hallway that he had just put his Memorandum for Summary Judgment in the mail, that morning. Then Mr. Powell asked Judge Dennis, how am I supposed to Respond when we will be in court at 9:30 in the morning? Judge Dennis stated that it's "no big deal" because it's just the same issues.

4. The next day Plaintiff's Motion for a 2nd Summary Judgment against Knology, Pro se had entered in his Motion that he had stated; during the 1st Summary Judgment Knology did not Respond to his Memorandum for MSJ and the Judge didn't make a ruling on their non-response and the Pro se was denied SJ. Judge Dennis erred when he denied the Plaintiff's Motion and at the same time exercised his biased rulings concerning Response to Memorandum.

5. Then the next case was also against Knology and the Motion for SJ was filed by the same attorney who stated he had put the Memorandum in the mail that morning instead of handing it to Jack Powell at the Judge's chambers. Judge Dennis later grants Knology SJ and again improperly exercising a biased pattern towards Pro se Jack Powell no matter which position he has with the non-response to the Memorandum. Judge Dennis knew from the Plaintiff's complaint the day

before, the Defendant had said they sent their Memorandum that morning and the issues brought up in the hearing were new, not the same issues as he had stated in his chambers and Plaintiff had complained about the Defendant not answering the Discovery that had already been Compelled and again not answered during the hearing, before Judge Dennis ALSO on 7-30-14. Judge Dennis erred with this Granted Motion for Summary Judgment.

Plaintiff also states the following reasons why Judge Dennis erred because of bias towards the Plaintiff in his Ruling for Motion for Summary Judgment;

EXHIBIT E

6. Why would Dr. Watson allow the Security Guards to try and pull the patient from the bed, then deny that that they tried to pull him from the bed and then give him more pain medication? Then the Security tried to deny what they had already admitted to. Also, the Public Safety admits they took the Plaintiff from the bed in their Incident Report, which means they had to pull patient from bed.

EXHIBITS F & G & E #3

This questions proper procedures of why Plaintiff would be discharged at 12:25 a.m. and then after preparing him for discharge at 12:45 he was given a narcotic medication at 1:00 a.m. and then ignore their own Doctor Instructions and allow the Security to try and pull him from the bed just minutes after they had given him a narcotic drug for pain.

EXHIBIT H #18 & #24

Nurse Jill Pentz may have been the nurse he gave the second dose of medicine and then states Mr. Powell was arrested because of his condition and disposition which creates an issue concerning MUSC procedures and his disposition is insinuating angry revenge by the MUSC Police to arrest the Plaintiff. Judge Dennis erred when allowed these issues to continue and Grant MSJ.

EXHIBIT H, #20

7. Plaintiff submits this is the third attempt by the Defendant to re-create the events and

also the timing and reason for the anger that was displayed first by the Defendant. Nurse Pentz had written in her Report at 12:45 AM; preparing patient for Discharge. Patient stated he will not leave he "can't move" at 1:00 AM Dr. Jacobsen gave patient oxycodone. Patient assisted to upright position and edge of bed. Patient moved with ease. Patient became belligerent and refused to move to wheelchair to be assisted out.

Jill Pentz now under oath, changes her story because of **EXHIBIT E, #3**. Officer Mckinnie tried to "assist" Plaintiff into a seated position on the bed in order to assist him in moving from the bed to the wheelchair. Officer Mckinnie stopped trying to "assist" Plaintiff from lying to a seated position because Plaintiff stated that he would not put any more pain on himself for the hospital.

Plaintiff again submits the Defendant tried to re-create the story only for the purpose of blaming the Plaintiff for the anger that was actually being inflicted upon him and to confuse the reason for being given medication after his discharge. Then Security tried to pull Plaintiff from the bed while he was in pain and the Public Safety being allowed to take their patient from the bed and outside without the supervision of a nurse, was negligence compelled by anger.

Again, the Plaintiff submits Judge Dennis erred when not allowing Discovery to continue after the Plaintiff had informed the Court that he had received zero Discovery so far in this case which includes the unknown proper procedures to follow by a MUSC Doctor of why and when they should or legally give a patient pain medication after he was discharged and then call the Security and allow their patient's legs and arms pulled on by them while he's yelling in pain and then be allowed to be taken from the bed by their Public Safety before his medication had taken affect.

Plaintiff submits the chain of events escalated because of anger beginning with the MUSC staff calling for Security Guards to remove their patient from the bed and Plaintiff stating he'll sue.

EXHIBITS I, J & K

8. Then the Public Safety is called and Plaintiff was told while he was on the ER bed he would to be taken Roper Hospital, home or anywhere he wanted to go. Defendant again states; he was not

going to put any more pain on himself by moving, then Public Safety angrily states he had to go. Mr. Powell was taken from the bed and pushed outside to the CSB Ramp and not to the MUSC Police car to be taken anywhere he wanted to go. Therefore the Security Guards and the MUSC Public Safety intentionally failed to properly discharge the patient because of anger, then they falsely arrested Jack Powell because of anger.

Then the Public Safety Intentionally forced the Defendant to stay in their backseat for over thirty minutes alone at their headquarters parking lot, after they stated that they handcuffed him he front because of his medical issues. Again, Judge Dennis erred when overlooking multiple issues of unknown facts leading to the **REVERSED** Trespassing and the MUSC legal procedures to follow.

The following were listed in the Order Granting Medical University of South Carolina's Motion for Summary Judgment;

9. **False Arrest and Imprisonment**

The decision to arrest Plaintiff was clearly lawful and thus, summary judgment is appropriate as a matter law. See: Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished).

This was entered as fact, but the legal facts are that MUSC Public Safety falsely arrested the 56 year old patient and then imprisoned him at the Al Cannon Detention Center. The Trespassing was **REVERSED**, therefore creates many issues of material facts including unanswered Discovery that questions & demonstrates the Defendants Intentional Infliction of Emotional Distress, Reckless Gross Negligence and Assault & Battery that caused emotional and pain & suffering to the patient Jack Powell before, during and after he was arrested.

Judge Dennis erred when he ruled that False Arrest would not stand as a genuine issue of fact.

10. **Assault and Battery**

A. Plaintiff submits the circumstances of suffering through being knocked unconscious

sustaining multiple injuries, enduring hours of four painful x-rays, given pain medication twice and then the patient was yelling in pain because the Security Guards were trying pull him from the E.R. bed while recklessly engaging in an offensive conduct that placed the Plaintiff in reasonable fear when they grabbed his arms and legs and tried to pull him from the bed when he was yelling in pain.

B. The MUSC ER staff called the Security and then allowed this aggressive physical contact and this was the proximate cause of his bodily harm and pain & suffering that was foreseeable by the staff that their 56 year old patient Jack Powell was susceptible to fear and pain when he was yelling in pain. Therefore the Doctors intentionally & recklessly did not follow their own Instructions for Jack Powell after they administered a second dose of a narcotic medication and only a few minutes before they allowed the Security to attempt to pull him from the bed by his arms and legs on two different occasions.

C. The Plaintiff stated to the Public Safety he was in pain and couldn't get out of his wheelchair and needed help. The Plaintiff was obviously susceptible to fear and again the Public Safety took advantage of the circumstances when they angrily threatened Mr. Powell multiple times to leave the premises and "needed to do so" or be arrested and taken to jail. The Plaintiff was already fearful after being assaulted in the ER and now he realizes the Public Safety had lied to him and again was fearful because of the angry threats.

D. The Defendant has intentionally not produced crucial Documents or answered questions in this case concerning their legal procedures and protocols to follow that would verify a proper or gross negligent attempted removal and removal of Plaintiff. The Doctor Instructions for Jack Powell was in their possession and they foreseeably knew he was susceptible to their aggressive conduct. See Robinson v. Winn Dixie Greenville, Inc. 1995 & Herring v. Lawrence Co. 1952, Pitt v. State 51 Illinois and also Mellen v. Lane 377 S.C. 261, 659 S.E. 2d 236 S.C. App., 2008 [277] "A battery is the actual infliction of any unlawful, unauthorized violence on the person

another, irrespective of it's degree if it's unnecessary that the contact be by a blow, as any forcible contact is sufficient." Generally speaking a battery is the unlawful touching or striking of another by the aggressor himself or by any substance put in motion by him, done with the intention of bringing about harm or offensive contact which is not legally consented by the other and not otherwise privileged. It is sometimes defined as any injury done to the person of another in a rude, insolent or revengeful way.

Again, there are multiple genuine issues of material fact that exist concerning procedures, assault & battery. Therefore Judge Dennis erred in his Ruling to grant Summary Judgment.

11. Reckless and Gross Negligence & Intentional Infliction of Emotional Distress

A. MUSC Doctors allowed the Security Guards to try and pull their patient from the bed twice while he was yelling in pain, just minutes after he was given a second dose of pain medication. Therefore they allowed pain & suffering when they intentionally failed to follow their own Doctor Instructions even after he was subjected to four X-Rays that took hours, it was determined that he had no apparent injury. Which means the Plaintiff did not have any broken bones. This was explained by the Doctor before he rudely yanked Mr. Powell's neck collar off and told him he was discharged.

The Instructions were to call the Doctor or go back to the hospital if he develops severe neck, severe lightheadedness or weakness, numbness in any extremity or pain radiating down an arm or leg. The narcotic drug that was administered after his discharge would impair his judgment, slow his reaction time and don't do anything requiring mental alertness.

Plaintiff submits he was injured & harmed physically and emotionally because of the Security Guards illegal attempts to take him from the E.R. bed while he was not under arrest or resisting and yelling in pain from their attempts to pull him from the E.R. bed by his injured arms/shoulder/neck and legs. It is still unknown if this was a legal or illegal act exercised by MUSC to give the patient a second dose of medication after his discharge and then just a few minutes later

allow the Security to twice assault the Plaintiff.

Therefore until there is a proper Production Response of procedures, the Motion for Summary Judgment should have been denied and Judge Dennis erred in his ruling.

B. Citing an Argument by the Defendant; In South Carolina the issue of whether a physician deviated from the applicable standard of care is to be determined by what an ordinary careful prudent physician would have done under the same or similar circumstances. McCourt by and through McCourt v. Abernathy, 318 S.C. 301, 307 457 S.E.2d 603, 607 (1995) which is an issue concerning unknown MUSC and legal procedures.

C. Public Safety placed Plaintiff into a wheelchair to discharge him, therefore MUSC owed their patient a legal duty to exercise reasonable care during his discharge from the hospital including being assisted or supervised by a nurse since there were warnings to be aware of in the Doctor Instruction. See Links v. Richland County, 355 S.C. 341, 581 S.E.2d 281 (S.C. 2003)

D. The Public Safety intentionally did not take the Plaintiff to their patrol car, open the door, assist him in and take him to Roper Hospital for his second opinion after they had told Jack Powell they would do this while he was on the E.R. bed, including taking him anywhere he wanted to go. This intentional reckless act enabled them to falsely arrest the Plaintiff. It is common knowledge of the general public that a patient that is unable to walk because of pain must be discharged in a wheelchair and they are supposed to be wheeled up to a car, the door opened and assist them in. This is an issue that can only be verified with the proper Response of the Documents that were requested concerning MUSC procedures for a state agency to follow.

E. The Plaintiff was angrily threatened multiple times by the Public Safety to leave the premises and "better do so" or be arrested. Plaintiff submits these intentional unlawful threats of "better do so" coming from angry policemen to a former patient while he is telling them he is in pain and needs help out of his wheelchair were intentionally negligent and therefore were taking advantage of the circumstances. MUSC knew Jack Powell was helpless and susceptible to fear

and they could continue to make angry threats. Then they falsely arrested the Plaintiff and Judge Dennis erred because he doesn't know what the legal procedures are for a State Hospital and specifically their Security & Police.

EXHIBIT L

F. The Public Safety stated they; "handcuffed the patient in the front because of his medical issues." Officer Radford who arrested the Plaintiff, stated he wasn't a Doctor and therefore he recklessly & intentionally along with other officers refused to follow the MUSC Doctor Instructions they had in their possession and they knew he was very susceptible to fear and took advantage of the circumstances at 2:10 in the morning when they transported the Plaintiff around the corner to their headquarters parking lot and forced him to stay in the car lying alone until 2:44 AM. Then they imprisoned the Plaintiff at the Al Cannon Detention Center.

The Public Safety therefore intentionally failed to follow legal procedures including their failure to follow the MUSC Doctor Instructions which they had in their possession and had made medical decisions concerning the safety of the former patient who they just falsely arrested. Because of the contempt towards the Plaintiff, the Defendant failed to exercise ordinary and reasonable care to insure that no harm befell the patient while being discharged. See Papa v. Brunswick Gen. Hosp., 132 A.D. 2d 601, 517 N.Y.S.2d 762 (2d Dep't 1987)

An MUSC Public Safety Officer can't even be arrested for assaulting a Charleston citizen on MUSC property and therefore the proper legal procedures and protocols to follow are still unknown because of the improper Discovery Responses and there are in fact disputable issues of material fact, therefore Judge Dennis erred when Granted Summary Judgment when these crucial procedures are still unknown.

Plaintiff requesting a second opinion was also stated in the nurse report while the patient was on the E.R. bed and threatening to sue. Officer Radford agrees this is what was said by the Plaintiff. Therefore this is Reckless Gross Negligence and Intentional Infliction of Emotional Distress

because the Public Safety agrees to take the patient to Roper Hospital and instead they falsely arrest the Plaintiff and take him to jail.

Also, it was Gross Negligence by the Doctors when they failed to make sure their patient was properly discharged and taken to Roper for a requested second opinion. Again, this is more unanswered issues that needs to be answered by proper responses to Discovery, that arose from;

12. COURT RECORDS OF: STATE/PUBLIC SAFETY v. JACK POWELL
EXHIBIT L

A. On page 25, no. 5-10..... it was stated, Public Safety would take the Plaintiff to Roper Hospital because he had asked for a second opinion.

B. On p. 25, no. 24 through p. 26 no. 10... I was in pain and I can't get out of the wheelchair wheelchair, I need help getting out of the wheelchair, Officer Radford admits he did not help me out of the wheelchair, kept telling me to leave the premises.

C. On p. 28, no. 5- 9 after Officer Radford was told I was in pain and needed help out of the wheelchair, he didn't help the Plaintiff out so he could go freely, but falsely arrested the Plaintiff for Trespassing; Refusal to Leave, because he loitered about the premises.

D. On p. 28, no. 19-23 did Officer Radford know that I was discharged at 12:25 a.m. and then given oxycodone at 1:00 a.m., then Officer Radford stated he wasn't a Doctor. This statement with others above, creates more unanswered issues about MUSC'S official procedures in the E.R, also outside during a discharge when a police officer who is not a Doctor makes the diagnosis to arrest, then handcuffed the Plaintiff in the front because of his medical issues. Then the Public Safety makes another diagnosis and doesn't take the Plaintiff to Roper Hospital for his second opinion and instead drives him to a parking lot and leaves him alone for about thirty minutes lying in the backseat.

MORE UNANSWERED GENUINE ISSUES OF MATERIAL FACTS

13. The transport man's name is still unknown even after a Freedom of Information Act was sent to MUSC attorney Annette Drachman, **EXHIBIT M**, her Response didn't contain the man's

name.

Unproduced Relevant Documents including MUSC procedures to follow within the E.R. and during the Plaintiff's discharge as an injured patient in a wheelchair are still issues that has not been discovered or submitted by the Defendant. Again, there are a Preponderance of unknown procedures that weren't followed by the state entity, MUSC.

14. Pursuant Rule 56 (b) the Defendant knew at the time of filing their Motion it was improper because they knew the Plaintiff had filed to Compel Admissions, Interrogatories and Production before they filed their Motion for Summary Judgment and Judge Dennis was aware because; he had told the Plaintiff before the Defendant's MSJ on July 30th 2014, to go out in the hallway and make more arrangements with the Defendant to receive the Discovery since the Plaintiff had not called the Defendant, even though the Defendant was given a "10" Day Notice to Respond after they failed to Respond and/or Responded evasively.

15. Because of Rule 56 (d) that there is a preponderance of undiscovered evidence concerning the MUSC procedures, protocols and actual Discharge laws that are unknown because of the Defendants intentional failure to respond properly to Discovery. ESPECIALLY, considering the Charleston Police Department can't go onto MUSC property and arrest a Public Safety Officer for assaulting or falsely arresting a patient and they are allowed to investigate themselves.

16. The Motion was premature, 56 (f) because of the other Plaintiff's motions; Compelled Interrogatories, Production and Evasive Admissions that were filed over 3 months earlier before the Summary Judgment was added to the court schedule of 7-30-14.

17. Because of Rule 56 (e) Pro Se had to appear in court to engage "15" Motions which was emotionally stressful even for an experienced attorney who has paralegals, access to law books, secretaries and financial security considering Pro Se filed under In forma Pauperis. Many courts take extra care with Pro Se litigants, advising them of the need to respond and the risk of losing by Summary Judgment if an adequate response is not filed and the court may seek to reassure itself by

some examination of the record before granting Summary Judgment that was scheduled last, days before 7-30-14. Plaintiff enters they did not assist or notify him about Responding and he didn't even know that he had to return a Response.

18. Judge Dennis did in fact consider it a big deal in this MUSC case when the Defendant stated Mr. Powell didn't Respond and Judge Dennis stated MSJ is granted right after I stated; I have Zero Discovery in this case and the Defendant has entered an inflammatory statement. Plaintiff deserves the same ruling in this case as other Judge Dennis cases of MSJ.

19. Rule 60 (b)(3) the contempt on the same day by Judge Dennis when he made an inflammatory personal insult about Pro Se, Plaintiff by stating; "I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of his case because of the fear of being shut down and scrutinized again in a public setting.

20. Because of Rule 56 (c) (3) unanswered 1st Production & 1st Interrogatories and evasive Admit that was unavailable for the Plaintiff's defense of the Summary Judgment. The Discovery was requested "7" months earlier and were in fact on the Court docket the very same day, as Compelled.

21. Because of Rule 56 (c) (1) & Rule 6 (b) allows the court to extend the time to respond if the Motion seems premature. AGAIN, the Plaintiff states he had improper Responses to Discovery from the Defendant and Defendants own evidence entered into the MSJ opened the door to explore MUSC procedures and relevant issues of Discovery.

22. Because the Plaintiff wasn't allowed to prove the Defendant failed to Admit the truth Pursuant RULE (36) by entering relevant Exhibits of the Defendants own hospital reports, Admit responses to Plaintiff from the first MUSC case that cites the Public Safety and Security Guard official reports that did in fact prove the False Arrest & Imprisonment, Intentional Infliction of Emotional Distress and Reckless Gross Negligence.

23. Plaintiff sent a notice of Deposition to take place one week after the 7-30-14 compelled Admit, Production and Interrogatories hearing since the Defendant had used "11" response from their

Deposition as evidence in their MSJ hearing.

PRODUCTION REQUEST EXHIBITS N & O

Unproduced Discovery

1. The name of the X-ray technician, male nurse or individual.... NOTE; (Annette Drachman has refused to give me during my FOI Act and through discovery) that came into my ER room and began pushing my bed to X-rays and I told him a pain shot was on the way and he asked me did I want to go to X-rays or wait for the pain shot?
5. Documentation of MUSC ER procedure why, when or should a patient may or be given pain medication after they are discharged.
6. Documentation of MUSC procedures when a patient is pushed out in a wheelchair and what MUSC is suppose to do "right then" if the patient states they are in pain and needs help getting out of the wheelchair so they can get into their car.
7. Documentation of Doctor Jacobsen or Watson or any nurse that warned or communicated to the Public Safety that Mr. Powell had received pain medication just minutes before they arrived and he would have slowed reaction time, impaired judgment and should not do anything requiring mental alertness.
11. All Documentation of whether to take Mr. Powell to Roper hospital since he asked for a second opinion, back into MUSC to be re-examined, jail or public safety headquarters after it was determined Mr. Powell had medical issues when handcuffing him in front.

ADMIT

1. Admit: A nurse or Doctor is suppose to assure the proper discharge of the patient that is not under arrest, by taking them directly to the car that is waiting for them, assist them into the car if they ask for help out of the wheelchair so they can leave promptly and freely.
5. Admit: that Mr. Powell was not given up to an hour for the pain medication to take effect before the MUSC security grasped Mr. Powell's legs & arms and then tried to assist him to a seated

position.

12. Dr. Watson. Admit; you should have told MUSC security to stop trying to assist Mr. Powell up when he stated he would not inflict any more pain on himself and you had just given him pain medication before this happened.

13. Admit; Mr. Powell was pushed in the wheelchair by the Public Safety directly to the patrol car so he could get in and leave freely. Note; obviously the Police can't Admit to this.

14. Judge Dennis signed the Order after stating after all arguments were considered and evidence reviewed. Plaintiff submits Judge Dennis erred because the Plaintiff had compelled the Defendant to appear before Judge Dennis for Admit, Production and Interrogatories, then Judge Dennis heard the Plaintiff state he had zero Discovery in this case, which in itself creates issues. He also erred when he did not allow the Plaintiff to enter any argument with relevant evidence. He erred when he ruled when he didn't know what the actual MUSC procedures were for Doctors, Nurses, Security Guards and Police. He erred when he failed to recognize the False Arrest. He erred when he signed the Order and did not submit that he had granted Summary Judgment because the Plaintiff did not Respond to the Defendant's Memorandum for Summary Judgment. Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 410 S.E.2d 537 (1991).

CONCLUSION

The MUSC staff did not follow legal procedures and therefore allowed; Intentional Infliction of Emotional Distress, Gross Negligence, False Arrest & Imprisoned and committed Assault & Battery. The MUSC staff administered pain medication and then failed to follow proper and legal procedures when they negligently allowed Assault & Battery and then the MUSC Police stated "he had to go" and then the staff negligently failed to properly discharge the Plaintiff.

Then the MUSC Police assaulted with angry threats to the Plaintiff who was very susceptible to fear by stating "better do so" or be arrested during the illegal discharge and then they falsely

arrested the Plaintiff. Therefore, MUSC recklessly exercised Intentional Infliction of Emotional Distress and Pain & Suffering when they forced their former patient after they stated he was "handcuffed in the front because of his medical issues" to painfully remain lying in their patrol car handcuffed, shackled and alone at their headquarters parking lot for about thirty four minutes.

The Defendant's Inflammatory false statement that was previously submitted was to create the image that the MUSC staff and Police were never angry. Plaintiff submits the following evidence from the Defendant's Deposition to the Plaintiff, which expresses more clearly why there was anger from both parties on 6-22-12. The Defendant's Police did not arrest the sober and drug free (before he arrived) Plaintiff because they had given him a narcotic pain medication just a few minutes before they assaulted him, twice while he was on the E.R. bed. **Then**, the Plaintiff cursed them and stated he wanted a second opinion and threatened to sue. According to the MUSC Doctor Instructions to Jack Powell he was to call the Doctor if he develops severe lightheadedness, pain radiating down an arm or leg and don't do anything requiring mental alertness

The obvious plan was to lie to the Plaintiff and get him outside and arrest him no matter what, because of anger. The MUSC Police did in fact do so illegally and gross negligently while making angry threats to the Plaintiff who was already assaulted inside and now he's outside alone with the angry Police where they completely controlled the circumstances and they intentionally ignored his request for help out of the wheelchair, so he could go freely and then arrested him.

Anger, intimidation and fear were the major emotional circumstances facing the Plaintiff after being brought to MUSC by ambulance and undergoing hours of X-rays of his injured head, neck, shoulder and knee.. Their Reckless Gross Negligence is again exposed by the Plaintiff's truthful answers during the Defendant's Deposition describing his fearful and traumatic visit to the MUSC E.R.

Q: Let me just short circuit this. You admit you cussed and yelled at the staff at the hospital; correct?

A: After they yanked and pulled on me and trying to pull my arm out of the socket, hurting me, yes.

10

Q. Because you did cuss and yell at them; correct?

A. Well, if their name is asshole then I guess I was talking to them. Because anybody that gets abused and attacked like that -- just like they did this 75 - year- old woman right here and then punch her in the chest -- what do you expect people to do?

[Dep. J. Powell, pp. 154-156].

Q. Did you let them know that you were fearful that they were a bunch of nuts and going to do this again to you?

A. Yeah. I called them a bunch of assholes and crazy assholes and everything else. Okay. Let's put the horse in front of the cart. The yanking and pulling came before the cussing.

[Dep. J. Powell pp. 101-103]

The MUSC Security stated Powell still complained that the pain was unbearable. Mckinnie, Bowers and Mullins tried to convince Powell to leave and was assisting Powell in the process, but patient became agitated and stated he would sue the hospital. Public Safety Cpl. Chapman attempted to talk Powell into leaving, patient again stated that he was not going to put any more pain on himself by moving. Lt. Warner then told Mr. Powell he "had to go." During Interrogatory;

3. Security Guard Ron Mckinnie; Why did you stop trying to pull Mr. Powell from the top of the bed?

Officer Mckinnie stopped trying to assist Plaintiff from lying to a seated position because Plaintiff stated that he would not put any more pain on himself for the hospital.

Pursuant Public Duty Rule, 15-78-40; A "special duty" to particular individuals may be created by statute when: (1) an essential purpose of the statute is to protect individuals against a particular kind of harm; (2) the statute, either directly or indirectly imposes on a specific public officer a duty to guard against harm or to not cause the harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected

class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Because of anger, MUSC did not protect their patient Jack Powell and they did in fact recklessly harm him. They knew they were harming him inside the ER, during the illegal discharge and also during the forced stay at their headquarters.

Therefore, because of the relevant evidence submitted by the Plaintiff, the multiple unanswered Discovery issues evolving around the proper Ruling by Judge Nicholson that revealed erred decisions by Judge Dennis and Pursuant Rule 56 (b) the Discovery wasn't near being closed and was an issue within itself as explained multiple times by the Plaintiff. Also because of Rule 56 (C)(1)(A)(B) & (D)(1)(2)(3) Plaintiff was denied proper access to Discovery and wasn't allowed by the court to reveal genuine disputes and;

Pursuant Rule 56 (2) Defendant intentionally submitted an Inflammatory statement to create bias and contempt towards the Plaintiff to conceal the angry manner that was pursued by the staff which violated the following South Carolina Tort Claims Act (SCTCA);

Pursuant (SCTCA); 15-78-60 (5) involving execution of a specific duty arising from fixed and designated facts. A duty is "discretionary" IF the governmental entity proves it actually weighed competing considerations, faced with alternatives and made a conscious decision based upon those considerations. *Faile v S.C. Dept. of Juvenile Justice*

Pursuant (SCTCA); 15-78-60 (25) This section defines responsibility as including control, confinement or custody of a patient; except when the responsibility or duty is exercised in a grossly negligent manner. False arrest was the failure of responsibility during a grossly negligent discharge.

Pursuant Rule 56, Subdivision (e)(2) authorizes the court to consider a fact as undisputed for purpose of the motion when response or reply requirements are not satisfied. This approach reflects the "deemed admitted" provisions in many local rules. The fact is considered undisputed

only for purposes of the motion. If summary judgment is denied, a party who failed to make a proper Rule 56 response or reply remains free to contest the fact in further proceedings. And the court may choose not to consider the fact as disputed, particularly if the court knows of record materials that show grounds for genuine dispute. Therefore, Judge Dennis knew of the Compelled zero Discovery.

Pursuant Rule 56, Subdivision (e)(4) Many courts take extra care with pro se litigants, advising them of the need to respond and the risk of losing by summary judgment if an adequate response is not filed. And the court may seek to reassure itself by some examination of the before granting summary judgment against a pro se litigant. Therefore Pro se was treated unfairly.

Therefore the court should closely examine itself and reverse this oversight by the court that scheduled 15 motions for the Pro se on July 30th 2014, that has the appearance of the Clerks office shotgunning the schedule and the In forma pauperis, Pro se was over whelmed trying to prepare for these cases and the Plaintiff was unaware he was supposed to Respond and also did not know he could Motion for more time to prepare for these Motions.

Pursuant Rule 56 Subdivision (e)(3) recognizes that the court may grant summary judgment only if the motion and supporting materials – including the facts considered undisputed under subdivision (e)(2) – show that the movant is entitled to it. Considering some facts undisputed does not of itself allow summary judgment. If there is judgment without determining whether those facts can be genuinely disputed. Once the court has determined the set of facts – both those it has chosen to consider undisputed for want of a proper response or reply and any that cannot be genuinely disputed despite a procedurally proper response or reply – it must determine the legal consequences of these facts and permissible inferences from them. Therefore, Judge Dennis did not allow Plaintiff to submit any facts other than receiving zero Discovery and an Inflammatory statement which in itself meets the standard to deny the Motion.

Also Judge Dennis erred when he stated he grants summary judgment because the Plaintiff

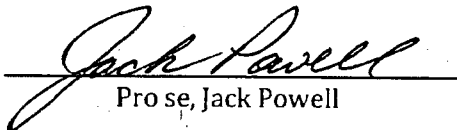
did not respond to the Defendant's Memorandum as explained, summary judgment cannot be granted by default even if there is a complete failure to respond to the motion, much less when an attempted response fails to comply with Rule 56(c) requirements. Nor should it be denied by default even if the movant completely fails to reply to a nonmovant's response.

Also Judge Dennis stated in the Order Granting MSJ, "Having considered the arguments and submissions of counsel", this court grants Defendant's Motion for Summary Judgment.

Plaintiff submits he wasn't allowed to enter any argument or evidence and Judge Dennis erred with this statement and he also failed to state he granted MSJ because of the Plaintiff's failure to respond to the Memorandum as his reason for granting the Defendant's MSJ.

Therefore, this Motion to Amend Reconsideration should be approved and the Reconsideration granted by the Honorable Court and/or the Summary Judgment set aside/vacate because the order was granted under circumstances contrary to the fair administration of justice beginning with the false statement by the Defendant and the erred rulings by Judge Dennis.

Dated & Signed on 5-6-15


Pro se, Jack Powell

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A No.: 2013-CP-10-5351

JACK POWELL,
Plaintiff,

vs.

MEDICAL UNIVERSITY OF SOUTH
CAROLINA (MUSC),
Defendant.

**ORDER GRANTING
MEDICAL UNIVERSITY OF
SOUTH CAROLINA'S MOTION
FOR SUMMARY JUDGMENT**

FILED
2014 SEP 25 PM 3:03
JULIA HARRIS-STRONG
CLERK OF COURT
BY _____

THIS MATTER came before the Court on July 30, 2014 pursuant to Defendant Medical University of South Carolina's (MUSC), Motion for Summary Judgment. Present in court was Plaintiff, Jack Powell, appearing *Pro Se*, and Defendant MUSC's counsel, John A. "Jay" Jones. Having carefully considered the arguments and submissions of counsel, this Court grants Defendant's Motion for Summary Judgment as to Plaintiff's claims for (1) reckless and gross negligence, (2) slander and libel, (3) intentional infliction of emotional distress, (4) false arrest and imprisonment, and (5) assault and battery, holding no genuine issues of material fact exist.

Statement of Facts

On June 21, 2012, Plaintiff was transported to the Emergency Department at MUSC by Charleston County EMS after tripping over an exposed and unburied cable line on Folly Road. Plaintiff claims to have suffered injuries to his head, neck, shoulder, and knee as a result of the fall. Upon arrival to the Emergency Department, Plaintiff was evaluated and attended to by the ER staff. X-rays were ordered to evaluate his potential injuries. Pain medication was ordered for the Plaintiff; however, Plaintiff was also to be

2008/1

69

transported to the radiology department for x-rays. When transport arrived to take Plaintiff to x-ray, Plaintiff asked how long it would take and asked to stay in the ER to wait for his pain medication rather than go to x-ray. The doctor asked Plaintiff if he was sure that he wanted to stay in the ER and wait for his pain medication rather than go to the x-ray department. Plaintiff replied in the affirmative and then told the doctor "that is about the stupidest question a doctor has ever asked me." After the x-rays were obtained, Plaintiff contends that the doctor came back into his room, rudely removed his neck brace, and told Plaintiff that he had been discharged. Plaintiff claimed that he could not move because of pain.

Plaintiff refused to leave the Emergency Department despite being discharged because he claimed he was in pain. As a result, MUSC security was called. Plaintiff contends that security tried to pull him from the bed. He contends that the MUSC security continued to try to pull him from the bed and finally stopped because he was "yelling from pain."

MUSC Public Safety was then called and instructed Plaintiff to leave the hospital. Plaintiff claimed that he could not move, was not going to inflict anymore pain on himself, and asked to be helped from the bed. Plaintiff then threatened to sue MUSC. Public Safety then offered to take Plaintiff home, anywhere he wanted to go, or to Roper Hospital.

Plaintiff next claims that MUSC Public Safety removed him from the ER bed and transported him out of the hospital. Once outside of the hospital, Public Safety told Plaintiff to get out of the wheelchair and leave the premises. Plaintiff refused to leave because he claimed that he was in pain. Again, Public Safety asked Plaintiff to leave the

premises and told him that if he failed to leave, he would be arrested for trespassing. Plaintiff refused, stated that he would not inflict anymore pain on himself, and asked the officers to help him get out of the wheelchair. The Public Safety Officers then lifted Plaintiff from the wheelchair and placed him in their police car where he was arrested for trespassing/refusal to leave and transported to jail.

Legal Standard

“Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Wilson v. Moseley, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997). In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Id.*

“Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). “[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.” Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). “[I]n cases applying a preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” Matsell v. Crowfield Plantation Cmty. Servs.

PMDJ/3

Ass'n, Inc., 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (*citing* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

For the reasons set forth below, Defendant is entitled to summary judgment on all claims made by Plaintiff.

Discussion

I. Reckless and Gross Negligence

Under South Carolina law, medical negligence is the failure of a physician to exercise that degree of care and skill which is ordinarily employed by the profession generally under the same or similar circumstances. Jernigan v. King, 312 S.C. 331, 440 S.E. 2d 379 (Ct. App. 1993)(*citing* Welch v. Whitaker, 282 S.C. 251, 317 S.E. 2d 758 (Ct. App. 1984)). In order to establish the requisite element of negligence in a medical malpractice action, the plaintiff must present (1) evidence of the generally recognized and accepted practices and procedures which would be exercised by average competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances; and (2) evidence that the defendant doctor departed from the recognized and generally accepted standard. See David v. McLeod Regional Medical Center, 367 S.C. 242, 626 S.E.2d 1, (2006); Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633, 634 (1986)(*citing* Cox v. Lund, 286 S.C. 410, 334 S.E.2d 116 (1985)). In South Carolina, the issue of whether a physician deviated from the applicable standard of care is to be determined by what an ordinary careful prudent physician would have done under the same or similar circumstances. McCourt by and through McCourt v. Abernathy, 318 S.C. 301, 307 457 S.E.2d 603, 607 (1995). In a medical malpractice action, the plaintiff must present evidence, by expert testimony, to establish the required standard of care and

encl 4

72

the physician's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge and experience such that no special learning is necessary to evaluate the conduct of the physician. See Pederson v. Gould, 341 S.E.2d at 634; Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 254, 487 S.E.2d 596, 599 (1997); Cox v. Lund, 334 S.E.2d at 116; Martisan v. Hilton Head Health System, L.P., 364 S.C. 430, 613 S.E. 2d 795 (Ct. App. 2005), *reh'g. denied* (2005); Botehlo v. Bycura, 282, S.C. 578, 320 S.E.2d 59 (Ct. App. 1984).

In support of his negligence claim, Plaintiff alleges that MUSC acted wrongfully and demonstrated willful gross negligence when the physicians and nurses ignored the foreseeable harm taking place when the security guards were recklessly allowed to try and take Plaintiff from his ER bed. Specifically, Plaintiff claims that the reckless act occurred after he was medically discharged, but before pain medication was administered to Plaintiff. He further contends that this occurred because he was unable to move from the ER bed. Plaintiff further claims that the ER physician made an improper and negligent decision when he ordered more medication and then allowed security to take him from the ER bed.

There is no question that, under the circumstances of this case, the decision of whether to discharge a patient and whether to order additional pain medication falls outside the ambit of common knowledge and experience such that no special learning is necessary to evaluate the conduct of the physician. Plaintiff has alleged a cause of action for medical negligence due to the actions of the Emergency Department physician, but has failed to offer expert testimony establishing a deviation from the standard of care. Accordingly, this court grants Defendant's motion for summary judgment as to Plaintiff's

cause of action for reckless and gross negligence to the extent that he asserts that the negligence resulted from the actions of the physician and other medical personnel working in the Emergency Department during his admission.

II. Slander and Libel

Under South Carolina law, the standards governing a claim of defamation are well-established:

The tort of defamation allows a complaining party to recover for injury to his reputation as the result of a false communication to others about him, made by the defendant. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "Slander is a spoken defamation, while libel is a written defamation or one accomplished through actions or conduct." *Id.* In order to prove defamation, a party must show: (1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

See Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 302-03, 631 S.E.2d 286, 292-93 (Ct. App. 2006).

Depending upon the nature of the allegedly defamatory statement, Plaintiff will be required to make different showings regarding damages to support his claim:

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

See McBride v. School Dist. of Greenville Cty., 389 S.C. 546, 560-61, 698 S.E.2d 845, 852 (Ct. App. 2010) (*citing Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006)); see also Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012)(statements were not capable of any defamatory construction); Smith v. Phoenix Furniture Co., 339 F. Supp. 969 (D.S.C. 1972)(words spoken were not actionable *per se*). "Special damages are tangible losses or injuries to the plaintiff's property, business, occupation, or profession in which it is possible to identify a specific amount of money as damages." See Erickson, 368 S.C. at 465 n.6, 629 S.E.2d at 664 n.6.

Plaintiff has testified as to what he believes comprised the Defendant's defamatory statements about him. All statements that Plaintiff cites in support of his defamation claim are statements that were made by MUSC medical personnel that were recorded in his medical record. In his deposition Plaintiff admitted that the statements recorded by MUSC medical personnel in his medical record are true.

Under South Carolina law, "truth of the matter is a complete defense to an action based on defamation." See WeSav Financial Corp. v. Forest Hills Homes, Inc., 316 S.C. 442, 450 S.E.2d 580)(*citing Ross v. Columbia Newspaper, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976)); see also Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012)(statements were true, therefore, respondent had a complete defense to defamation and summary judgment was proper). By Plaintiff's own admission, the statements recorded in the medical record by MUSC that serve as the basis for his defamation claim are true. Because truth is a complete defense to defamation, summary judgment as to Plaintiff's slander and libel causes of action is granted.

Amended

III. Outrage (Intentional Infliction of Emotional Distress)

Section 15-78-30(f) of the South Carolina Tort Claims Act specifically excludes a cause of action for intentional infliction of emotional distress against a governmental entity. Section 15-78-30(f) specifically provides:

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for **negligence, but does not include the intentional infliction of emotional harm.**

See S.C. Code Ann. §15-78-30(f)(emphasis added); see also Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished)(trial court properly granted summary judgment to respondents on the cause of action for intentional infliction of emotional distress under the Tort Claims Act). Therefore, Plaintiff's intentional infliction of emotional distress claim is prohibited by the South Carolina Tort Claims Act and summary judgment is granted in favor of Defendant.

IV. False Arrest and Imprisonment

The decision to arrest Plaintiff was clearly lawful and thus, summary judgment is appropriate as a matter of law. See Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished).

Plaintiff's false arrest and imprisonment claim centers on the fact that once he was discharged from the Emergency Department at MUSC after being evaluated on June 21, 2012, he had to be escorted from the Emergency Department by MUSC Hospital Security and Public Safety because he refused to leave. Once outside of the hospital, Plaintiff continued to refuse to leave the premises. In fact, in his deposition, Plaintiff

admitted that he did not leave the premises and was therefore arrested and convicted of trespass.

Accordingly, because the arrest was lawful, summary judgment is granted in favor of Defendant.

V. Assault and Battery

A cause of action for assault has two elements. First, it involves conduct on the part of the defendant that puts the victim in reasonable apprehension of a harmful or offensive touching. Second, the defendant must intend the conduct involved. See Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 222, 317 S.E.2d 748 (Ct. App. 1984).

To establish a claim for civil battery, the Plaintiff must establish (1) a harmful or offensive touching without consent, and (2) an intent to commit the touching or to cause an apprehension of such touching. See 6 Am. Jur.2d Assault and Battery § 111 (1963).

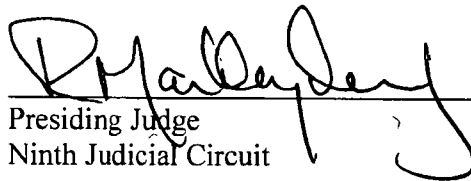
Plaintiff bases his claim for assault and battery on the fact that MUSC removed him from the stretcher in the Emergency Department after he refused to leave the hospital once he was medically discharged and MUSC Security had to physically lift him into the police car once outside the hospital because he refused to leave the hospital premises.

In Plaintiff's Complaint, he asserts that he consented to the touching. Specifically, Plaintiff asked for help in moving off of the bed. Indeed, the undisputed facts demonstrate that Plaintiff was not apprehensive about a harmful or offensive touching or that a harmful or offensive touching occurred such that he suffered harm. Any action by MUSC to remove him from the premises was absolutely necessary and justified and should have been anticipated by Plaintiff. Furthermore, Plaintiff consented to the

touching. Therefore, summary judgment as to Plaintiff's assault and battery charges is appropriate.

CONCLUSION

Based on the foregoing, this court grants Defendant's Motion for Summary Judgment as to Plaintiff's claims for (1) reckless and gross negligence, (2) slander and libel, (3) intentional inflictions of emotional distress, (4) false arrest and imprisonment, and (5) assault and battery, holding no genuine issues of material fact exist.


Presiding Judge
Ninth Judicial Circuit

September 22, 2014

Ampr/10

Order
Granting

Here

NEXT 10 P.

9. Documentation of what the Public Safety is suppose to do if the patient is complaining of severe pain in his neck or numbness in his extremities, arms and legs and is instructed by Dr. Watson to call a doctor or be taken to a hospital. NOTE; INSTRUCTIONS BY Dr. Watson!

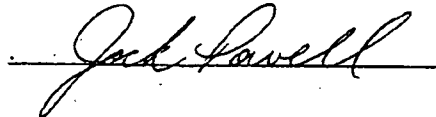
10. All Documentation concerning training or notices of being made aware and what to do if medical issues occur with the patient during discharge by an MUSC employee or representative.

11. All Documentation of whether to take Mr. Powell to Roper hospital since he asked for a second opinion, back into MUSC to be re-examined, jail or public safety headquarters after it was determined Mr. Powell had medical issues when handcuffing him in front.

12. The names of the staff, nurse, doctors, volunteers who were in the ER with other patients.

13. The names of the people who were working at the ER front desk entrance.

DATED & SIGNED ON 12-13-13



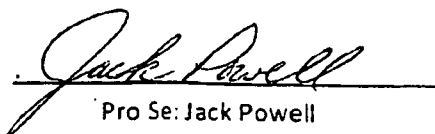
PRO SE; JACK POWELL

FILED
2013 DEC 16 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2013, I mailed a copy of the my Document Request to the Defendant with sufficient postage, correctly addressed as follows:

Barnwell & Whaley
288 Meeting St. Ste 200
Charleston S. C. 29401
CASE : 2013-CP-10-5351


Pro Se: Jack Powell

118

79

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

JACK POWELL,)
)
APPELLANT,)
)
v.)
)
MUSC PUBLIC SAFETY,)
)
APPELLEE.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-5792

**ORDER REVERSING APPELLANT'S
CONVICTION FOR TRESPASSING**

FILED
2015 MAR 20 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

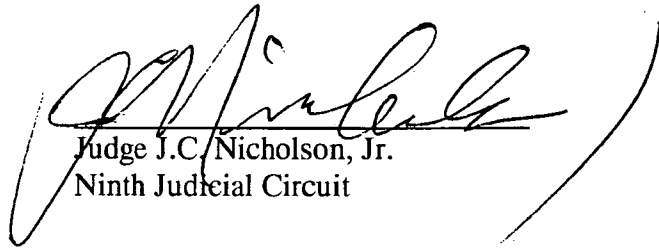
jen
This Matter came before this Court on Appellant Jack Powell's Appeal to the Circuit Court, filed September 30, 2013 and argued before this Court on September 15, 2014. Plaintiff Jack Powell is appealing a Trespassing conviction entered after a jury trial before Magistrate Judge Honorable David Coker. At the appeal, this Court took the matter under advisement and requested that the parties submit briefs on whether a person could trespass on public property. After review, it is this Court's determination that Mr. Powell was charged and convicted under the wrong statute, and that his trespassing charge shall be reversed.

According to the evidence in the record, Mr. Powell was discharged from the Medical University Hospital ("MUSC") for refusing to leave. Mr. Powell was causing a disturbance in the emergency room area, and appeared irate and potentially intoxicated. The police report states that the Appellant was taken from his bed by hospital security and MUSC Public Safety, and was escorted outside to the Clinical Science ramp area. He was then given the choice of leaving the area under his own free will or he would be arrested. Appellant refused to leave. MUSC Public Safety then placed Appellant under arrest for trespassing.

It is this Court's opinion that the jury erred when it found Appellant guilty of trespassing. Under S.C. Code Section 16-11-620, a person cannot trespass on public property. A separate statute, Section 16-11-630 penalizes trespassing on public property outside of its normal business hours when they are closed to the public. In the current scenario, Appellant was not in a place that was closed to the public until the Public Safety officers removed him from his bed and took him to the Clinical Science ramp area. It was only then that they arrested him for trespassing. By that logic, MUSC Public Safety is squarely to blame for the Appellant's trespassing, as they were responsible for taking him from a place that was open to the public to a place that was closed to the public.

While the facts and the testimony make it plausible that the Appellant could have been convicted for a number of other offenses, such as disorderly conduct, it is clear that the Appellant should not have been convicted of trespassing. Accordingly, the ruling of the Magistrate Court is hereby **REVERSED**.

AND IT IS SO ORDERED.


Judge J.C. Nicholson, Jr.
Ninth Judicial Circuit

March 19, 2015
Charleston, South Carolina

1 THE COURT: The next one, Mr. Powell, is your case also,
2 and it's Powell versus Charleston County EMS. All right.
3 Before I deal with the motions to make more definite and
4 certain, motions to compel, you filed a motion for summary
5 judgment, Mr. Jones.

6 MR. JONES: Not in this case, Your Honor. In the case
7 against MUSC.

8 THE COURT: MUSC, all right.

9 MR. JONES: I have four cases with Mr. Powell against
10 various entities.

11 THE COURT: That's fine.

12 MR. JONES: This one in particular --

13 THE COURT: Motion to make more definite and certain.

14 MR. JONES: Yes, Your Honor. He has a motion to compel
15 against EMS. Much like Mr. Dean didn't respond because he
16 had a motion to dismiss pending, if you look at the
17 complaint, it just says EMS is liable for various causes of
18 action. There's no who, what, where, when or why. There's
19 no factual basis for it. And so based on that, not only can
20 we not respond, but we don't have an obligation to until
21 there's some sort of factual basis on which we can, and so we
22 filed the motion for more definite statement and had not
23 responded. We told Mr. Powell we would gladly respond once
24 an amended complaint with sufficient factual information is
25 filed and we can file our responsive pleading.

82

1 THE COURT: Okay. Mr. Powell, what's your response to
2 the motion to make more definite and certain?

3 MR. POWELL: Well, Your Honor, if I was given 15 days to
4 do that, I wouldn't have a problem with it; but it says right
5 here in the breach of duty that the EMT defendant did not
6 apply a neck collar and assist me up. That is a specific
7 person. I only mentioned EMS about five or six sentences
8 down.

9 THE COURT: Just one second. I see that.

10 (Brief pause.)

11 THE COURT: All right. I'd agree with Mr. Jones it's
12 not artfully drafted, but I think this is sufficient
13 specificity here that you can answer, and it frames some
14 issues, so I would deny your motion to make more definite and
15 certain.

16 MR. JONES: Can we get clarification on one issue?

17 THE COURT: Sure.

18 MR. JONES: The complaint we received, there's a cover
19 sheet, a summons, I guess, and then it starts on page -- hand
20 numbered page 3, and we weren't sure if there was perhaps
21 maybe a page that was inadvertently not filed or --

22 THE COURT: Mine says Complaint No. 1, 2, 3, and then
23 there's 4 -- I have four pages. You don't have four pages?

24 MR. JONES: We did not receive four pages, Your Honor.

25 THE COURT: You haven't been provided with a copy of the

83

1 complaint, and that may be why -- because if you start on
2 page 3, I would agree with you. What I have goes forward
3 with what happened -- what allegedly happened that caused
4 them to respond, and that's what you're missing.

5 MR. JONES: Yes, Your Honor.

6 THE COURT: So, Mr. Powell, I'm going to ask you to
7 provide them with a copy of the complaint that you filed.

8 MR. POWELL: Okay.

9 THE COURT: You haven't done that apparently.

10 MR. POWELL: All right.

11 THE COURT: But it's online, Mr. Jones. If you want to
12 download it, it's there.

13 MR. JONES: I will do that, Your Honor.

14 THE COURT: Okay. With respect to his motion -- has he
15 filed a motion against you?

16 MR. JONES: I believe he filed a motion to compel
17 against EMS, yes.

18 THE COURT: All right. What is it you want from EMS,
19 Mr. Powell, specifically?

20 MR. POWELL: Specifically?

21 THE COURT: Yes..

22 MR. POWELL: It's concerning information about their
23 procedures and why they didn't assist me off the ground in a
24 proper amount of time and then gave information to MUSC that
25 was basically untrue. I wanted to find out specifics on

✓

84

1 that.

2 THE COURT: What is it specifically you want to find
3 out?

4 MR. POWELL: Okay.

5 THE COURT: I mean, have you sent them and said I need
6 to know specifically this, or did you just file a general --

7 MR. POWELL: No, sir, I sent them a copy.

8 THE COURT: What is it you sent them?

9 MR. POWELL: I sent them, on No. 1 it was, admit you
10 arrived, it was dark, and Mr. Powell was lying on the side of
11 the road, face down not moving. And they denied it.

12 THE COURT: All right. That's fine. They've denied
13 that. That's all they're required to do. It's a request to
14 admit which they denied. So that means you have to prove it.
15 What else?

16 MR. POWELL: So that's not considered an evasive answer?

17 THE COURT: No, sir. That's an answer. They deny it.
18 They don't believe that to be the case, that they knew that.

19 Mr. Powell, let me ask you -- let me suggest something,
20 else that you do: Your snickering at my rulings is improper
21 decorum.

22 MR. POWELL: I didn't mean it towards you, sir.

23 THE COURT: Well, you need to be careful about your
24 persona in a courtroom, sir.

25 MR. POWELL: Thank you, sir. I'm sorry.

1 THE COURT: I take it seriously. I hope you do.

2 MR. POWELL: Oh, I take it seriously. I mean, I'm
3 just -- I guess that's just a habit I've got of trying to
4 be -- when I do that, I'm really just trying to be nice. I'm
5 not really trying to insult you, sir.

6 THE COURT: I don't take it as an insult. It doesn't
7 offend me in the slightest. It's the position I'm holding
8 that doesn't need that. I'm not offended at all. I'd laugh
9 at you too, so anyway -- I'd laugh with you, excuse me, not
10 at you.

11 Okay. What else?

12 MR. POWELL: Female EMT, you did not know for a fact
13 that Mr. Powell was hearing and understanding these questions
14 properly because he may have had a concussion.

15 THE COURT: What did they do?

16 MR. POWELL: They denied it.

17 THE COURT: Well, how did they know that?

18 MR. POWELL: Well, that's my question is how did they --
19 how did she know.

20 THE COURT: You have to take depositions. That's what
21 lawyers do. You try to find information. You've gotten
22 basically what -- I'm not going to require them to answer any
23 more than what they've done, so if you want to find out more,
24 you take depositions.

25 MR. POWELL: Okay. Yes, sir.

1 THE COURT: Thank you, sir. All right. So that's been
2 resolved. What else do we have pending in this case?

3 MR. JONES: I believe that's it, Your Honor, in that
4 case.

5 THE COURT: So the next case we have is MUSC, and you
6 have a motion for summary judgment in that case.

7 MR. JONES: I do, Your Honor.

8 THE COURT: I'll be happy to hear from you.

9 MR. JONES: Court's indulgence for one moment.

10 THE COURT: Surely. Change hats.

11 MR. JONES: I'll just very briefly pick up where Mr.
12 Dean left off on the previous hearing.

13 THE COURT: Yes, sir.

14 MR. JONES: After Mr. Powell fell on the night of June
15 21st, 2012, he was transported by EMS to MUSC. He was taken
16 to the -- EMS noted he was verbally abusive en route. It was
17 also documented in medical records he was verbally abusive to
18 the staff at MUSC. He was medically examined. He was
19 x-rayed. He was medically cleared. He was given pain
20 medications. In fact, he was going to get a pain shot when
21 they were going to take him to get x-rays -- and this is all
22 from his complaint -- they asked him whether he would rather
23 wait for the pain shot. He said, that's the stupidest
24 question I've ever heard, and he said, yes, I'll wait for the
25 pain shot.

1 He did, received the shot, went and got the x-rays, came
2 back, was medically discharged by the staff at MUSC. When he
3 was discharged he quite simply refused to leave. He said he
4 was in pain, he couldn't move, he couldn't get up off the bed
5 in the ER. The -- not public safety but the hospital staff
6 person came over to try to assist him. He screamed out. He
7 tried to assist him again. He yelled again he was in pain,
8 so they stopped. Public safety was called.

9 At this time Mr. Powell admits in his complaint that he
10 asked them to help him get off the bed. They did. They put
11 him in a wheelchair and took him outside, where again he
12 refused to leave the premises after being medically
13 discharged. He said he could not get out of the wheelchair
14 because he was in too much pain. They told him he had to
15 leave. They offered to take him home, take him somewhere
16 else, take him to Roper Hospital. They offered to take him
17 anywhere he wanted to go. He wouldn't leave.

18 Finally, he said, I can't get up, I'm in too much pain.
19 He asked to be helped out of the wheelchair, which he was,
20 and he was subsequently placed in the back of a police car,
21 taken and arrested for trespass. Mr. Powell was subsequently
22 tried and convicted for the trespass charge, and then he
23 filed the present lawsuit. He's alleged five causes of
24 action against MUSC: Reckless and gross negligence, slander
25 and libel, intentional infliction of emotional distress,

88

1 false arrest, imprisonment, and assault and battery. I'll
2 just briefly address each cause of action and then --

3 THE COURT: You filed a memorandum.

4 MR. JONES: I did, and I don't want to rehash it.

5 THE COURT: You certainly are entitled to rely on the
6 positions stated fully. I'm incorporating it for purposes of
7 review should that become necessary.

8 MR. JONES: I appreciate that, Your Honor. Very
9 briefly, the negligence and gross negligence, the basis of
10 that is essentially that the medical staff and the staff at
11 MUSC didn't properly discharge him. There were some issues
12 with whether or not he should have been discharged with pain
13 medication pending. Those are all questions of medical
14 negligence. There's been no expert affidavit. There's been
15 no evidence establishing the standard of care or any
16 deviation therefrom. Slander and libel, Mr. Powell alleges
17 that the statements actually by the MUSC staff contained in
18 the medical records are slanderous and libelous for I believe
19 saying that he, -- bear with me one moment, that he was
20 verbally abusive and that he was quote, unquote, poorly
21 groomed. However, in his deposition Mr. Powell admitted to
22 all of this. As you know, truth is a complete defense to
23 defamation.

24 Moreover, these statements would be qualifiedly
25 privileged because they're in medical records. They weren't

1 disseminated to anybody. They were only for the purpose of
2 putting down factual documentation of the incidents, nor
3 could they be disseminated to anyone else under HIPAA.
4 Finally, he certainly hasn't demonstrated or offered any
5 evidence to show how, much less if he was damaged by any such
6 slanderous or libelous statements. But I would just point
7 out to the Court that from his deposition:

8 "Question, did you cuss at any of the nurses or
9 technicians or doctors?

10 "Answer, I was cussing at all of them, whoever was part
11 of it. I guess if you're standing there, maybe you would
12 think I was cussing. Maybe the doc thought I was cussing at
13 him, but they were all part of it, so I assume when I say
14 assholes, that includes all the assholes there, all the
15 assholes that allowed these public safety people to start
16 pulling me and yanking me off the bed when I was screaming
17 and hollering in pain, and they allowed it to happen again."

18 That's from Mr. Powell's deposition. He was also asked
19 in his deposition about the statements he made because he's
20 made these allegations that there was in the EMS record that
21 he was verbally abusive. He was questioned about that, and
22 that again, when questioned about the statements to the
23 doctor, he was asked what happened:

24 "Question, did you tell them what happened? Did you
25 tell EMS?

1 "Answer, I don't know. I didn't tell EMS. They asked
2 me at the hospital.

3 "Question, and you told them then?

4 "Answer, yes, I tripped over some type of cable line or
5 something because I remember feeling something catching my
6 foot.

7 "So somebody got this information from you; is that
8 right?

9 "Answer, right.

10 "They didn't just make this up?

11 "No, they didn't. They didn't make it up.

12 It goes on to say: Verbally abusive to EMS and staff;
13 stated, quote, between the dumb asses who moved me up and the
14 dumb asses taking care of me, I don't know who was worse, end
15 quote.

16 He corrected it, said picked me up.

17 Then he said: "Answer, we're talking about EMS, and you
18 know why that's written there, because I'm complaining about
19 them, and I'm glad they wrote that down."

20 Then it says right here, quote, and the dumb asses
21 taking care of me, which I'm referring to the doctors, and I
22 don't know who was worse.

23 "Question, so you were verbally abusive to EMS and
24 staff.

25 "Answer, yes. After they yanked and pulled on me two

1 different times, trying to force me off the bed and I'm
2 screaming and hollering, yes" --

3 THE COURT: Mr. Jones, I've read it. I have it, and I
4 have reviewed it. Thank you, sir.

5 MR. JONES: Bottom line, he also admitted that he was
6 covered in dirt when he arrived and that he appeared poorly
7 kept.

8 Intentional infliction of emotional distress quite
9 simply is prohibited under the Tort Claims Act, this is MUSC,
10 a governmental entity, under 15-78-30(f). Moreover, there's
11 no evidence that the conduct by any of the defendants at MUSC
12 was so extreme and outrageous as to exceed all --

13 THE COURT: The case I mentioned earlier, Luba Lynch, I
14 found -- let that go to the jury, and they reversed that,
15 said it wasn't intentional infliction to incarcerate somebody
16 when they had no reason to for 13 hours, so I understand it's
17 a very, very difficult threshold.

18 - MR. POWELL: Then that segues into false imprisonment.
19 *Jones JP*

20 THE COURT: He was convicted.

21 - MR. POWELL: He was convicted, and it's barred by
22 15-78-65. *Jones JP*

23 THE COURT: All right.

24 - MR. POWELL: Which allows for discretion of a
25 governmental employee in the performance or nonperformance of
their duties.

1 THE COURT: Okay.

2 MR. JONES: And finally, assault and battery. I won't
3 go into the elements, but quite simply, there's no evidence
4 of a harmful or offensive touching here. Whether there's a
5 sufficient threat made to a victim is a reasonable victim's
6 standard. Here, by his own admission in his complaint, he
7 asked for help. The times he was touched, he asked to be
8 helped up not only from the hospital bed but from the
9 wheelchair, so there was no evidence of a harmful or
10 offensive touching. And the alleged touching is privileged
11 if done in defense of others. This is all in our memo, but
12 he admitted he was verbally abusive to the staff. He
13 admitted that he thought the defendants viewed him as, quote,
14 unquote, a combative wino. He admitted that he refused to
15 leave the hospital and hospital premises after being
16 medically discharged. So, therefore, the actions by MUSC to
17 remove him were necessary and justified and the reasonable
18 victim should have anticipated that they may be escorted into
19 a police car to be arrested. Thank you.

20 THE COURT: Thank you, sir. All right, sir, Mr. Powell,
21 do you wish to respond?

22 MR. POWELL: Yes, sir.

23 THE COURT: Sure.

24 MR. POWELL: Yes, sir, to begin with, he was correct, I
25 was found guilty in that case. Of course, I was defending

1 myself, but I did win an appeal from Columbia to try that
2 again. And, of course, he had mentioned there's no evidence
3 of offensive touching. I would like to touch on that here in
4 a few minutes. But if I could, I think what they've
5 dismissed does have something to do with discovery that I may
6 or may have not received, but so far at this time they've
7 received all the discovery they wanted from me in this case.
8 They have sent me zero. But I do have some evidence from the
9 first --

10 THE COURT: What is it you think they may have that
11 would help your case?

12 MR. POWELL: Well, that's a good question. I've got
13 some things I'd like to point out right here that I need. I
14 need those answers to questions plus the deposition.

15 THE COURT: What is it that they have that you think
16 would help you? Not what you hope they have. What is it you
17 think they have that would be helpful in your case and make
18 it survive a motion for summary judgment? Did you file any
19 affidavits in response to the motion for summary judgment?

20 MR. POWELL: No, sir.

21 THE COURT: Okay. Well, you have to.

22 MR. POWELL: Okay. I've got everything -- I've got the
23 answers to what you're looking for. I'm just trying to
24 explain, he says right here --

25 THE COURT: I'm trying to explain to you that a

1 procedure for summary judgment is, when they file it, they
2 base it on certain things such as deposition testimony, which
3 he cited, and other matters which have been part of the
4 record and filed to support his motion for summary judgment.
5 When a person is served with that, they're required to file
6 basically a responsive affidavit which contradicts that and
7 creates some issue of fact to warrant dismissing or denying
8 the motion for summary judgment. You haven't filed any, so I
9 don't have anything to review. Your statements are not
10 sufficient.

11 MR. POWELL: I thought I could discuss his statements
12 because he's entered false statements in this Court.

13 THE COURT: I don't know about false statements.

14 MR. POWELL: I can prove it right here. It's his
15 document. It's on the summary judgment, Your Honor.

16 THE COURT: That's fine. He doesn't have to -- you
17 don't have to prove it. It speaks for itself. For you to
18 say it's false, that's just your position. I don't have
19 anything that contradicts it by way of affidavit.

20 MR. POWELL: He left out vital information. I made a
21 complaint. He took that complaint and recreated it and took
22 out vital information to try to get the Court to have an
23 inflammatory opinion towards me.

24 THE COURT: Inflammatory opinion has nothing to do with
25 it. First of all, where is your affidavit that is required

1 in a medical negligence case concerning the standard of care?

2 MR. POWELL: I didn't file a medical negligence case.

3 THE COURT: Yes, you did. That's what you filed when
4 you alleged negligence on the performance of a medical --
5 some medical provider. You're asserting a medical negligence
6 case.

7 MR. POWELL: Well, I checked into it, and I couldn't get
8 anybody expert to say they could testify under oath why these
9 officers kept trying to pull me off the bed when I was
10 screaming in pain.

11 THE COURT: Thank you, sir. The medical negligence case
12 is dismissed. The negligence case is dismissed. Let's
13 address the defamation. Where is the dissemination, other
14 than in the reports themselves? Where is that? I don't have
15 any evidence.

16 MR. POWELL: I'm sorry?

17 THE COURT: The defamation. Who have they disclosed
18 these things that you claim to be defamatory? They're
19 contained in records. Where else do you have them? Do you
20 have them being told to anyone outside of the hospital? Do
21 you have any evidence of that?

22 MR. POWELL: No, sir. Just in their documents they were
23 discussing with each other.

24 THE COURT: Thank you, sir. Your motion for summary
25 judgment on the defamation action is granted. Let's see, the

1 other is intentional infliction of emotional distress.

2 MR. JONES: That's one of them, yes, Your Honor.

3 THE COURT: That's granted. There's no basis for that
4 based on all the pleadings that have been filed. What else?

5 MR. JONES: False imprisonment.

6 THE COURT: False imprisonment. You were convicted, and
7 all they have to prove is probable cause. Clearly they had
8 probable cause because it resulted in a trial, so that motion
9 is likewise granted. What other causes of action do you
10 have?

11 MR. JONES: Assault and battery, Your Honor.

12 MR. POWELL: Your Honor, I can't present anything
13 concerning false arrest?

14 THE COURT: I just told you, you didn't file an
15 affidavit. That's the reason I'm doing this. You haven't
16 responded as you're required by law to the summary judgment,
17 so, yes, you're correct, it's matter of law, has nothing to
18 do with you, has nothing to do with you as a person, it deals
19 with the law. I'm ruling on matters of law.

20 MR. POWELL: Yes, sir.

21 THE COURT: As to the assault and battery, that likewise
22 is granted based on those positions stated in your
23 memorandum. Anything else on this one?

24 MR. POWELL: Thank you.

25 THE COURT: Thank you very much. All the other motions

1 are now moot. Now Knology.

2 MR. JONES: Your Honor, we have one more actually.

3 THE COURT: Okay.

4 MR. JONES: I'm sorry. Bear with me. Your Honor, no,
5 there was the Charleston County Detention Center case,
6 CP-10-7125.

7 THE COURT: No. 78. We're going to set this aside for
8 right now, and I'm going to take some of these others that
9 have been waiting, and we'll pick this up at the end. Thank
10 you very much.

11 MR. JONES: Thank you.

12 THE COURT: We'll be with you shortly, Mr. Powell, give
13 you a chance to review those files.

14 MR. POWELL: All right. Thank you.

15 --- END OF TRANSCRIPT OF RECORD ---
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

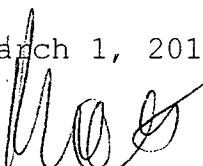
2 STATE OF SOUTH CAROLINA

3 COUNTY OF CHARLESTON

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 30th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 March 1, 2016

16 
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

A.

Try a fast, secure browser with updates built in [Yes, get Chrome now](#) [No, not interested](#)

label:lawsuits

Gmail

Remove label

More

COMPOSE

RE: Powell v. MUSC (C/A No.: 2013-CP-10-1297)- MSJ

lawsuits x

Inbox (13)

Starred

Important

Jack

Chris Kovach

Good Afternoon Caroline. I am follow-uping on Jay's behalf to find out if the...

Caroline Crisler. Leonard <cleonard@charlestoncounty.org>

7/23.

to Chris, Don, me

I know Mr. Powell has numerous cases filed. Is this the correct case number because this case is now closed in the system.

Caroline C. Leonard
Non Jury Docket Coordinator
Charleston, County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401
cleonard@charlestoncounty.org
843-958-5049 (Office)
843-958-4440 (Fax)



No Hangouts Contacts

[Find someone](#)

From: Chris Kovach [mailto:ckovach@barnwell-whaley.com]

Sent: Wednesday, July 23, 2014 1:31 PM

To: Caroline Crisler. Leonard; Don Michel

Cc: Carolineschair@gmail.com

Subject: RE: Powell v. MUSC (C/A No.: 2013-CP-10-1297)- MSJ

100

B
X

Patient: POWELL, JACK A

MRN: 001413630

Procedure: 6717626

Date Exam Completed: 2012/06/22

Accession# 6717626

Last Update: 2012/06/22

EXAMINATION: BRAIN CT 06/22/12 00:09:00

ACCESSION NUMBER: 6717626

INDICATION: acute pain due to fall, loss of consciousness, cervical spine tenderness

COMPARISON: None

TECHNIQUE: Multiple contiguous CT images of the brain without intravenous contrast were obtained.

FINDINGS: There is no contusion, subarachnoid hemorrhage, extra-axial collections, or other intracranial bleed. There are no signs of acute infarction. The ventricles and other CSF spaces are unremarkable. Irregularity of the tip of the nasal bone noted. The paranasal sinuses and mastoid air cells are clear.

IMPRESSION:

No acute intracranial injury.

Irregularity of the tip of the nasal bone likely due to prior fracture. Clinical correlation recommended.

VOICE DICTATED BY: Dr. Shree Subedi

History: acute pain due to fall, loc+, c spine tenderness

Technologist: BETH POTTS

Date Dictated:

Radiologist 1: M, MATHEUS MD

Proxy Signer:

Radiologist 2: SHREE SUBEDI RAD
RESIDENT

Authenticating Radiologist: M, MATHEUS GISELE RADIOLOGIST

Radiologist 3: BORKO KERESHI RAD
RESIDENT

Transcribed By:

Date Authenticated: 6/22/12 10:13 AM

101

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2015-001331

RECEIVED

OCT 13 2016

SC Court of Appeals

Jack Powell,

Appellant,

v.

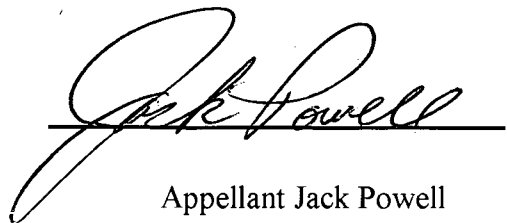
Medical University
of South Carolina,

Respondent,

RECORD ON APPEAL CERTIFIED

Appellant Jack Powell hereby certifies that his Record on Appeal contains material proposed to be included in the Appeal and not any other matter that is not relevant.

Barnwell & Whaley
288 Meeting St. Ste 200
Charleston, S.C. 29401
(843)577-7700
Attorney for Respondent
Attorney, John Arthur Jones.

A handwritten signature in black ink, appearing to read "Jack Powell", is written over a horizontal line.

Appellant Jack Powell
1402 Camp Road Unit 8-A
Charleston, S.C. 29412
(843)952-4762