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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2018-001600

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SC Court of Appeals

Gregory T. Christian, Appellant,

v.

Anna Healy,
Greenville Police Officer Andrew League,
City of Greenville, South Carolina, Defendants,

Of whom Anna Healy is the Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Gregory T. Christian, Plaintiff, vs. Anna Healy, Greenville Police Officer Andrew League, City of Greenville, South Carolina, Defendants.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No.: 2018-CP-23-02513 **ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND DENYING PLAINTIFF'S MOTION TO AMEND**

This matter is before the Court on Defendants' Motions to Dismiss. On July 17, 2018, a hearing was held on these motions and the following were in attendance: Gregory T. Christian (*pro se* Plaintiff); Ross B. Plyler (counsel for Defendants Greenville Police Officer Andrew League and City of Greenville, South Carolina); and Carl F. Muller (counsel for Defendant Anna Healy). After careful consideration of the motions, the memoranda and materials filed by the parties, arguments at the hearing, the Court GRANTS Defendants' motions to dismiss.

Factual and Procedural History

This case arises out of an incident on April 23, 2016, when Gregory T. Christian ("Plaintiff") attended a yard sale at the Studio of Michael McDunn located at 741 Rutherford Road in Greenville, South Carolina. (Compl. at 6-7, 9.) Plaintiff alleges that an operator of the yard sale, Defendant Anna Healy, questioned Plaintiff about a missing ring, and asked to search him. (Id. at 6-7.) Plaintiff alleges that he refused and suggested that Healy call the police and he would wait until they arrived. (Id. at 8.) The Complaint further states that Healy called 911 and informed the operator that "I'm having a yard sale and I believe somebody just stole a diamond ring from me and he's sitting here kind of being belligerent" (Id. at 9.)

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City of Greenville Police Officers K.A. Payne and Defendant Andrew League ("League") responded to the call of the suspected ring theft. (Id. at 13.) Payne and League conducted a consensual search of Plaintiff's pockets and clothing, but they did not find the missing ring. (Compl. at 17.) Plaintiff filed this Complaint in the Greenville County Court of Common Pleas on April 23, 2018, alleging a cause of action against Defendants for defamation. (Id. 20-25.) On May 21, 2018, Defendants City of Greenville and Defendant League filed an Answer to the Complaint and a Motion to Dismiss on the grounds of insufficiency of service of process, failure to state a claim and *res judicata*. On May 21, 2018, Defendant Healy filed a Motion to Dismiss on the grounds of failure to state a claim and insufficiency of service of process.

Defendant City of Greenville and Defendant League are Dismissed for Res Judicata

Plaintiff's causes of action against the City of Greenville and League are dismissed pursuant to *res judicata*. This lawsuit is Plaintiff's second bite at the apple. On June 1, 2016, Plaintiff filed suit under 28 U.S.C. § 1983 captioned *Gregory T. Christian v. City of Greenville, South Carolina, Greenville Police Officer K.A. Payne, Greenville Police Officer Andrew League*, Case No. 6:16-1757-TMC, in the United States District Court for the District of South Carolina, Greenville Division (the "Federal Lawsuit"). Plaintiff alleged in the Federal Lawsuit that on April 23, 2016 at a yard sale, he was improperly searched by officers of the City of Greenville Police Department in violation of the Fourth Amendment to the United States Constitution. On January 26, 2017, the United States District Court dismissed Plaintiff's claims against City of Greenville with prejudice. (See Exhibit A to Defendants' Motion to Dismiss.)[1] Subsequently, on February 28,

[1] "When entertaining a motion to dismiss on the grounds of res judicata, a court may take judicial notice of facts from a prior judicial proceeding when the res judicata defense raises no disputed issue of fact." Andrews v. Daw, 201 F.3d 521 n.1 (4th Cir. 2000). Plaintiff has not disputed the rulings in the Federal Case and has acknowledged the rulings at the hearing of July 17, 2018, so the Court takes judicial notice of the Orders.

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2018, the United States District Court granted summary judgment for Defendant League in the Federal Lawsuit. (See Exhibit B to Defendants' City/League Mot. to Dismiss; Exhibit A to Defendants' City/League Memo in Supp.)

Plaintiff's Complaint against Defendants City and League is dismissed pursuant to *res judicata*. "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which *might have been* raised in the former suit." S.C. Public Interest Found. v. Greenville County, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2013) (quoting Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (emphasis added). "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." RIM Assocs. v. Blackwell, 359 S.C. 170, 183, 597 S.E.2d 152, 159 (Ct. App. 2004). "To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Id. at 182, 597 S.E.2d at 159. "Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." S.C. Public Interest Found. v. Greenville County, 401 S.C. at 386, 737 S.E.2d at 507. "Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." Nelson v. OHG of S.C. Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003).

The Court finds that Defendants City of Greenville and League establish each element of res judicata, warranting dismissal. First, the parties in this lawsuit (Plaintiff, City of Greenville, League) are identical to those in the Federal Lawsuit. Second, the judgments in this lawsuit were final, valid, and on the merits. The District Court granted the City of Greenville's motion to dismiss with prejudice and granted League's motion for summary judgment.

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Last, the subject matter of the two lawsuits is identical. Plaintiff argues that he seeks a different cause of action pursuant to state law in this second lawsuit and is not barred. "Whether res judicata precludes a claim because the first and subsequent suits involve the same cause of action is not merely a matter of aligning identical causes of action or theories of liability; rather, the subject matter of the two suits must be the same." Judy v. Judy, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009). "South Carolina courts use various tests in determining whether a claim should have been raised in a prior suit: 1) when there is identity of the subject matter in both cases; 2) where the cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; 3) when there is the same evidence in both cases; and recently 4) when the claims arise out of the same transaction or occurrence." Id. at 9, 677 S.E.2d at 217. Analysis under any of these tests leads to the conclusion that Plaintiff's claims should or might have been raised in the Federal Lawsuit. This case and the Federal Lawsuit involve the same transaction or occurrence, the same evidence, and the same primary wrong committed by Defendants. Both cases revolve around the police officers' actions, discussions with Plaintiff, and search of Plaintiff's person at a yard sale.

Even "seeking a different remedy in the second suit for the same wrong does not alter the identical nature of the subjects of the two actions." Judy v. Judy, 383 S.C. 1, 9, 677 S.E.2d 213, 218 (Ct. App. 2009). "For purposes of res judicata, cause of action is not the form of action in which a claim is asserted but, rather the cause *for* action, meaning the *underlying facts* combined with the law giving the party a right to a remedy of one form or another based thereon." RIM Assocs. v. Blackwell, 359 S.C. 170, 184, 597 S.E.2d 152, 160 (Ct. App. 2004) (emphasis added).

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Defendant City of Greenville and Defendant League are Dismissed for Insufficiency of Service of Process

Alternatively, Plaintiff's Complaint against the City and League are dismissed pursuant to Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure* based on insufficiency of service of process, because service was not made in accordance with Rule 4 of the *South Carolina Rules of Civil Procedure*. Plaintiff conceded that service of process was insufficient both at the hearing of July 17, 2018 and in his Response to Defendant's Motion to Dismiss. (Pl's Resp. to City/League Mot. to Dismiss, 1). Specifically, Rule 4(d)(6) requires service on a local government to be made by delivering a copy of the summons and complaint to the chief executive officer or clerk. Plaintiff attempted to serve the summons and complaint on the Mayor, who is neither the chief executive officer nor the clerk of the City. See S.C. Code Ann 5-13-90 (in a council-manager form of government, "the manager shall be the chief executive officer..."); Greenville, S.C. Code of Ord. 2-1(a) (adopting council-manager form of government"). Further, Rule 4(d)(8) does not permit service by certified mail on a governmental entity. Therefore, service on Defendant City was insufficient. In fact, Plaintiff admits service was insufficient but argues it was "harmless error."

Service was also insufficient on League, because Plaintiff served the summons and complaint by mailing pleadings to League's place of employment in violation of Rule 4(d)(1) which requires service on an individual by delivering it personally or by leaving copies at his dwelling house or usual place of abode. Again, Plaintiff has conceded at the hearing and in responsive brief that service of process on Defendant League was insufficient. (Pl's Resp. to City/League Mot. to Dismiss, 2.)

Defendant Healy is Dismissed for Insufficiency of Service of Process

Plaintiff's Complaint against Healy is dismissed pursuant to Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure* based on insufficiency of service of process, because service

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was not made in accordance with Rule 4 of the *South Carolina Rules of Civil Procedure*. Plaintiff Christian conceded that service of process was insufficient both at the hearing of July 17, 2018 and in his Response to Defendant's Motion to Dismiss. (Pl's Resp. to Healy Mot. to Dismiss, 6.) Specifically, the Court finds that service of process on Defendant Healy did not comply with Rule 4(d)(8) of the South Carolina Rules of Civil Procedure as it was not mailed certified mail, return receipt requested, restricted delivery.

Defendant Healy is Dismissed for Failure to State a Claim

Plaintiff's Complaint against Healy is dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* based on failure to state a claim. Of special note to the Court is Paragraph 24 of the Complaint, in which Plaintiff alleges that Defendant Healy did not defame him. Defamation is the sole cause of action. Plaintiff cannot maintain it against Healy when he alleges that she did not defame him.

In addition, the Complaint shows that Plaintiff invited the police to the scene. For that reason, Plaintiff cannot complain that Healy called them. South Carolina Jurisprudence, Vol. 20, Libel & Slander, p. 110. According to the facts alleged, the communication was privileged. Manley v. Manley, 312, S.C. 291, 353 S.E.2d 312 (Ct. App. 1987). The Complaint does not allege publication or fault, both of which are required elements of defamation, and is generally deficient with respect the required elements of that cause of action. Kendrick v. Citizens & Southern Nat'l Bank, 266 S.C. 450, 223 S.E.2d866 (1976); Erickson v. Jones Street Publishers, 368 S.C. 444, 629 S.E.2d 653 (2006).

Plaintiff's Motion to Amend is Denied

On July 3, 2018, Plaintiff filed an amended summons and complaint, which are identical to the original pleadings. However, more than thirty (30) days have passed since Defendants had

filed responsive pleadings. Therefore, Rule 15(a) of the *South Carolina Rules of Civil Procedure* states Plaintiff cannot file amended pleadings as a matter of right and is now required to have either consent of the parties or leave of court. Therefore, filing or attempted service of amended pleadings has no legal effect and are disregarded by the Court.

At the hearing on July 17, 2018, Plaintiff made an oral motion to amend his pleadings, and the Court denied that motion. The Court finds that any amended pleadings would be futile and would be prejudicial to Defendants. Specifically, nothing in amended pleadings could change the fact that any subsequent litigation arising out of this same transaction or occurrence is *res judicata*, and therefore, is barred as to Defendant City of Greenville and Defendant League. Also, for the reasons previously reviewed, it fails to state a claim.

THEREFORE, IT IS ORDERED

1. That Defendant City of Greenville and Defendant Andrew League's Motions to Dismiss for *res judicata* and pursuant to Rule 12(b)(5) for insufficiency of service are GRANTED.
2. That Defendant Healy's Motions to Dismiss pursuant to Rule 12(b)(5) for insufficiency of service and Rule 12(b)(6) for failure to state a claim are GRANTED.
3. That Plaintiff's oral motion to amend the pleadings is DENIED.
4. That this matter is dismissed with prejudice.

IT IS SO ORDERED.

By: _____
Alex Kinlaw, Jr.
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina
July _____, 2018

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Greenville Common Pleas

Case Caption: Gregory T Christian vs. Anna Healy , defendant, et al

Case Number: 2018CP2302513

Type: Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Gregory T. Christian, Plaintiff	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
v.	)	C.A. No.: 2018-CP-23-02513
Anna Healy, Greenville Police Officer Andrew League, City of Greenville, South Carolina Defendants	)	**COMPLAINT**

2018 APR 23 PM 2:09
FILED-CLERK OF COURT
PAUL D. WICKENSIMER
GREENVILLE CO SC

COMES NOW. Plaintiff, Gregory T. Christian, and respectfully files this Complaint against the above captioned Defendants for making false and defamatory spoken, recorded, and written statements against Plaintiff, as set forth herein, causing him to suffer personal injury, anxiety, stress, and other emotional pain and suffering.

PARTIES AND JURISDICTION

1. Plaintiff, Gregory T. Christian, is and was during the events at issue a resident of Greenville County, South Carolina.

2. Defendant, Anna Healy, to Plaintiff's knowledge and belief is and was during the events at issue a resident of Greenville County, South Carolina.

3. Defendant, Greenville Police Officer Andrew League, to Plaintiff's knowledge and belief is and was during the events at issue a resident of Greenville County, South Carolina.

4. Defendant, City of Greenville, South Carolina, is a municipality in Greenville County.

5. The acts complained of herein occurred in the County of Greenville, South Carolina, and therefore jurisdiction and venue are proper.

FACTUAL BACKGROUND

6. On Saturday, April 23, 2016, as Plaintiff was leaving a yard sale at 741 Rutherford Rd.,

approximately one mile from Plaintiff's home in Greenville, South Carolina, Plaintiff was accosted from a distance of approximately twenty feet by Defendant Anna Healy, operator of the yard sale, who claimed to have seen Plaintiff steal a ring.

7. Plaintiff denied having stolen a ring, whereupon Defendant Healy sought to search Plaintiff. Plaintiff refused, and told Defendant Healy "If you think a crime has been committed you should call the police, and I will wait here until they arrive".

8. Defendant Healy took out her phone and turned and walked away from Plaintiff.

9. Defendant Healy called 911 and told the operator "I'm having a yard sale and I believe somebody just stole a diamond ring from me and he's sitting here kind of being belligerent."

10. Defendant Healy subsequently claimed in a police interview that Plaintiff was one of three people in some proximity to a ring before she could not find it.

11. Greenville Police Officer K.A. Payne subsequently stated he was told by Defendant Healy that Plaintiff was the last person near the ring before she could not find it.

12. Micheal McDunn, Defendant Healy's father, present at the yard sale, subsequently claimed in a police interview that Plaintiff was one of several people in some proximity to the ring before it could not be found.

13. Upon arrival of Greenville Police Officer K.A. Payne, Plaintiff approached Officer Payne, introduced himself, and informed him of events. Defendant League arrived at approximately this time.

14. During the incident, Defendant League claimed that several people had seen Plaintiff put a ring in his pocket.

15. Greenville Police Report #16000024859, written by Defendant League, states "Anna

Brennan Healy advising that a subject had taken a ring from the her (sic) yard sale without paying for it".

16. Defendant League declared Plaintiff a suspected criminal in Greenville Police Report #16000024859. Defendant League subsequently claimed in a recorded statement that he did not want to declare Plaintiff a suspected criminal, but was compelled to do so by the records department.

17. Three police officers publicly searched Plaintiff twice, with Plaintiff bent over the trunk of a police car with his hands thereupon and his legs spread apart. No ring was found.

18. Except for being listed as a suspected criminal in Greenville Police Report #16000024859, Plaintiff has no criminal record.

19. Plaintiff did not steal a ring.

FOR A FIRST CAUSE OF ACTION

(Defamation and/or Defamation per se)

20. Defendant Anna Healy falsely claimed to have seen Plaintiff steal a ring.

21. Defendant Anna Healy falsely claimed Plaintiff had stolen a ring.

22. Defendant Anna Healy falsely claimed Plaintiff was the last person in proximity to a ring before it could not be found.

23. Defendant Andrew League falsely claimed Plaintiff was seen by several people to steal a ring.

24. Defendant Andrew League falsely claimed in writing that Defendant Anna Healy told police Plaintiff stole a ring.

25. Defendant Andrew League falsely claimed in writing Plaintiff was a suspected criminal.

26. Defendant City of Greenville falsely claimed in writing Plaintiff was a suspected criminal.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendants and for Plaintiff, as a result of the claims laid out above:

A. Judgment against Defendant Anna Healy for actual and other compensatory damages and punitive damages in the amount of $5000, said amount being equal to the maximum fine for slander and libel per §16-7-150 of the South Carolina criminal code, and such additional damages as the Court may deem appropriate and in the public interest.

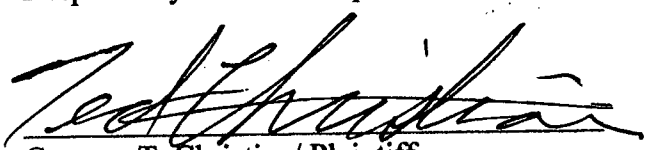
B. Judgment against Defendant Andrew League for actual and other compensatory damages and punitive damages in the amount of $5000, said amount being equal to the maximum fine for slander and libel per §16-7-150 of the South Carolina criminal code, and such additional damages as the Court may deem appropriate and in the public interest.

C. Judgment against Defendant City of Greenville for actual and other compensatory damages and punitive damages in such amount as the Court deems appropriate and in the public interest.

NON-JURY TRIAL

Plaintiff does not at this time believe the matter warrants trial by jury.

Respectfully submitted April 23, 2018



Gregory T. Christian/ Plaintiff
15 Gallivan St.
Greenville, SC 29609

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Gregory T. Christian, Plaintiff v. Anna Healy, Greenville Police Officer Andrew League, City of Greenville, South Carolina Defendants	IN THE COURT OF COMMON PLEAS THIRTIENTH JUDICIAL CIRCUIT CA No.: 2018-CP-23-02513 Amended COMPLAINT

'18 JUL 9 PM 3:04
Paul Wickensimer COC GVL SC

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8. Defendant Healy took out her phone and turned and walked away from Plaintiff.

9. Defendant Healy called 911 and told the operator "I'm having a yard sale and I believe somebody just stole a diamond ring from me and he's sitting here kind of being belligerent."

10. Defendant Healy subsequently claimed in a police interview that Plaintiff was one of three people in some proximity to a ring before she could not find it.

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C. Judgment against Defendant City of Greenville for actual and other compensatory damages and punitive damages in such amount as the Court deems appropriate and in the public interest.

NON-JURY TRIAL

Plaintiff does not at this time believe the matter warrants trial by jury.

Respectfully submitted ~~April 23~~ July 3, 2018

Gregory T. Christian/ Plaintiff
15 Gallivan St.
Greenville, SC 29609

ELECTRONICALLY FILED - 2018 May 21 2:41 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302513

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
GREGORY T. CHRISTIAN)	CASE NO.: 2018-CP-23-02513
)	
PLAINTIFF,)	
)	
VS.)	MOTION TO DISMISS
)	
ANNA HEALY, GREENVILLE POLICE OFFICER ANDREW LEAGUE, CITY OF GREENVILLE, SOUTH CAROLINA,)	
)	
DEFENDANTS.)	

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Defendant Anna Healy, by and through her undersigned counsel, hereby moves this Court for an Order dismissing the Complaint for failure to state facts sufficient to constitute a cause of action.

The Complaint fails to state facts sufficient to satisfy the required elements of a cause of action for slander, which is the sole cause of action alleged against this Defendant. The Complaint is insufficient because:

1. The allegation that the Defendant Anna Healy "accosted" the Plaintiff is not slander;

2. The Plaintiff has not alleged that the alleged slander was published to other persons;

3. The Plaintiff has not alleged that the alleged slander injured his reputation or otherwise damaged him;

4. The Plaintiff alleges that he told the Defendant Healy to call the police, and thereby consented.

5. The Complaint alleges matters that are privileged and protected, namely a report to law enforcement and an investigation by law enforcement.

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6. The Complaint alleges in Paragraph 24 that the Defendant Anna Healy did not tell the police that the Plaintiff stole a ring, which is the sole allegation of slander. The Complaint itself refutes the allegation of slander against her.

6. The Complaint does not allege fault.

7. The Complaint does not allege malice.

8. The Complaint does not allege special or general damages.

9. The Complaint shows that it is barred by the applicable two year statute of limitations for slander.

Also, pursuant to Rule 12(b)(5) SCRCP the Defendant Anna Healy moves to dismiss the Complaint because service upon her was by certified mail in a manner that did not comply with Rule 4(d)(8) SCRCP. Delivery was not restricted to her, as required.

This motion is based upon the Complaint and the applicable law.

_____/s/ Carl F. Muller _____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
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Attorney for Defendants

Greenville, SC

May 21, 2018

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTIENTH JUDICIAL CIRCUIT
Gregory T. Christian, Plaintiff v. Anna Healy, Greenville Police Officer Andrew League, City of Greenville, South Carolina Defendants	CA No.: 2018-CP-23-02513 **PLAINTIFF'S RESPONSE TO DEFENDANT HEALY'S MOTION TO DISMISS**

INTRODUCTION

Defendant Healy moves for dismissal on ten enumerated grounds (the number six is used twice) and on eleventh unnumbered ground of insufficient service of process. Plaintiff responds sequentially below.

ARGUMENT

1. "The allegation that the Defendant Anna Healy "accosted" the Plaintiff is not slander;"

Plaintiff alleges in the Complaint at **(6)** that Defendant Healy publicly accosted Plaintiff at a yard sale and claimed to have seen Plaintiff steal a ring. Publicly claiming someone has committed a criminal act is defamatory and is actionable per se.

2. "The Plaintiff has not alleged that the alleged slander was published to other persons;"

Plaintiff alleges defamatory statements made by Defendant Healy imputing a criminal act by Plaintiff per §16-7-150 of the South Carolina criminal code and thus actionable per se. Per the Complaint, defamatory statements were made in a public venue in the presence of a number of persons, to a 911 operator, to police officers, and to a police investigation.

3. "The Plaintiff has not alleged that the alleged slander injured his reputation or otherwise damaged him;"

"Under South Carolina law defamatory statements that an individual broke the law or was unfit for her profession are defamatory per se." (*Brailsford v. Wateree Community Action, Inc.*, 135 F.Supp. 3d 433 (D.S.C. 2015)) "As a general rule, words charging one with a crime are actionable per se." (*See: Davis v. Niederhof*, 246 SC 192, 143 S.E. 2d 367 (1965); *Porter v. News and Courier Co.*, 237 SC 102, 115 S.E. 2d 656 (1960); *Flowers v. Price*, 192 SC 373, 6 S.E. 2d 750 (1939). "Several cases have held that any words that distinctly assume or imply that one has committed a crime, or which raise a strong suspicion in the minds of those who heard the statement, are actionable per se." (*See: Sandifer v. Electrolux Corp.*, 172 F.2d 548, 550 (4th Cir. 1949) (applying South Carolina law); F*lowers v. Price*, 192 SC 373, 6 S.E. 2d 750 (1940) (per curium); *Reynolds v. Southern Grocery Stores, Inc.*, 192 SC 293, 6 S.E. 2d 470 (1939); *Norton v. Great Atlantic & Pacific Tea Co.*, 184 SC 525, 193 S.E. 126 (1937); *Lily v. Belk's Dept. Store*, 178 SC 278, 182 S.E. 889 (1935). "If a defamatory statement is actionable per se, the law dispenses with the requirement of proof of damages and instead presumes that certain "general damages" are the natural and proximate result of the defamation; such presumed damages include injury to reputation, mental suffering, hurt feelings, and "similar injuries, incapable of definite money valuation". (*See: Whitaker v. Sherbrook Distribution Co.*, 189 SC 243, 246, 200 S.E. 848, 849 (1939); see also *Capps v. Watts*, 271 SC 276, 281, 246 S.E. 2d 606, 609 (1978); *Lily v. Belk's Dept. Store*, 178 SC 278, 284, 182 S.E. 889, 891 (1935).

4. "The Plaintiff alleges that he told the Defendant Healy to call the police, and thereby consented."

Calling police is not a consensual act. As related in the Complaint at **(7)**, Plaintiff told Defendant Healy "If you think a crime has been committed you should call the police, and I will

wait here until they arrive." This appeared to Plaintiff the only alternative to either leaving the scene of an alleged crime, to which Defendant Healy claimed to be an eyewitness, or submitting to the search being sought by Defendant Healy.

5. "The Complaint alleges matters that are privileged and protected, namely a report to law enforcement and an investigation by law enforcement."

Privilege does not hold. Per *Eubanks v. Smith*, 354 SE 2d 898, SC Supreme Court 1987, "A qualified privilege, even if it does apply, does not prevent liability for defamation where the statement is made with actual malice. Id.; *Bell v. Bank of Abbeville,* 208 S.C. 490, 38 S.E. (2d) 641 (1947). Actual malice is ill will, recklessness, wantonness, or conscious indifference to the plaintiff's rights. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E. (2d) 30 (1982)."

"In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. 50 Am.Jur.2d Libel and Slander § 276 (1995). However, the question whether the privilege has been abused is one for the jury. *Id.* Factual inquiries, such as whether the defendants acted in good faith in making the statement ... are generally left in the hands of the jury to determine whether the privilege was abused. *Id.; see also* Restatement (Second) of Torts §§ 599-610." (*Swinton Creek Nursery v. Edisto Farm Credit*, 514 SE 2d 126 - SC: Supreme Court 1999)

6. "The Complaint alleges in Paragraph 24 that the Defendant Anna Healy did <u>not</u> tell the police that the Plaintiff stole a ring, which is the sole allegation of slander. The Complaint itself refutes the allegation of slander against her."

1) The Complaint alleges in Paragraph 24: "Defendant Andrew League falsely claimed in writing that Defendant Anna Healy told police Plaintiff stole a ring".

2) The Complaint alleges in Paragraph 22: "Defendant Anna Healy falsely claimed Plaintiff was the last person in proximity to a ring before it could not be found". This claim was made by Defendant Healy to Greenville police.

3) The Complaint alleges in Paragraph 20: "Defendant Anna Healy falsely claimed to have seen Plaintiff steal a ring". Defendant Healy's claim was made in public before some number of persons, and was not privileged.

4) The Complaint alleges in Paragraph 21: "Defendant Anna Healy falsely claimed Plaintiff had stolen a ring". This claim was made by Defendant Healy to a 911 operator.

5) The Complaint alleges in Paragraph 10: "Defendant Healy subsequently claimed in a police interview that Plaintiff was one of three people in some proximity to a ring before she could not find it".

6) The Complaint alleges in Paragraph 12: "Micheal McDunn, Defendant Healy's father, present at the yard sale, subsequently claimed in a police interview that Plaintiff was one of several people in some proximity to the ring before it could not be found".

Defendant Healy does not deny any of the above allegations.

6. (repeated) "The Complaint does not allege fault."

The Complaint, per **(5)** above, alleges multiple false, mutually contradictory, and defamatory statements made by Defendant Healy about Plaintiff, sufficient to establish a fraudulent, persistent, and wanton disregard for Plaintiff's rights beyond a simple claim of fault.

7. "The Complaint does not allege malice."

As related in **(1)** and **(3)** above, publicly claiming someone has committed a criminal act is defamatory per se. Per *Brailsford v. Wateree Community Action, Inc.*, 135 F.Supp. 3d 433

(D.S.C. 2015), "Malice and damages are presumed in the case of defamation per se. See: *Holtzscheiter v. Thomson Newspapers*, Inc., 332 S.C. 502, 506 S.E.2d 497, 501-02 (1998) (*Holtzscheiter* II)." Plaintiff has alleged facts establishing Defendant communicated multiple fraudulent and contradictory falsehoods to multiple persons imputing criminal conduct by Plaintiff and clearly establishing malice. As related in (**5**) above, the sufficiency of fact to establish actionable defamation is a matter generally left in the hands of the jury.

8. "The Complaint does not allege special or general damages."

As related in (**3**) above, imputation of a criminal act is defamatory per se and thus presumes general damages. "Under South Carolina law defamatory statements that an individual broke the law or was unfit for her profession are defamatory per se". *Brailsford v. Wateree Community Action, Inc.*, 135 F.Supp. 3d 433 (D.S.C. 2015). "If a defamatory statement is actionable per se, the law dispenses with the requirement of proof of damages and instead presumes that certain "general damages" are the natural and proximate result of the defamation; such presumed damages include injury to reputation, mental suffering, hurt feelings, and "similar injuries, incapable of definite money valuation". (*Whitaker v. Sherbrook Distribution Co.*, 189 SC 243, 246, 200 S.E. 848, 849 (1939); see also *Capps v. Watts*, 271 SC 276, 281, 246 S.E. 2d 606, 609 (1978); *Lily v. Belk's Dept. Store*, 178 SC 278, 284, 182 S.E. 889, 891 (1935).

9. "The Complaint shows that it is barred by the applicable two year statute of limitations for slander."

The Complaint was filed two years to the day after the incident giving rise to the causes of action. Plaintiff discovered a substantial number of material facts in subsequent months. Time tolls from discovery to two years inclusive.

10. The following claim was not enumerated by Defendant Healy in motion to dismiss:

"Also, pursuant to Rule 12(b)(5) SCRCP the Defendant Anna Healy moves to dismiss the Complaint because service upon her was by certified mail in a manner that did not comply with Rule 4(d)(8) SCRCP. Delivery was not restricted to her, as required."

Plaintiff mistakenly believed the proviso concerning restricted delivery was fulfilled by certified mail with return receipt. Plaintiff avers the error harmless and mailed amended process July 3 to Defendant Healy with restricted delivery per SCRCP 4(d)(8).

CONCLUSION

Defendant Healy publicly proclaimed Plaintiff a thief, and gave multiple false and mutually contradictory reasons for doing so to a number of persons. Defendant Healy does not deny any of the facts claimed in the Complaint, and has offered the Court no justification for her actions, which led to an innocent man, with no criminal record, twice being forced to spread his legs and bend over a police car to be searched in full view of his neighbors, and to be listed as a suspected criminal in a police report. If the remedy for defamation applies anywhere, it applies in this case. Plaintiff respectfully requests the Court deny Defendant Healy's Motion to Dismiss.

Respectfully submitted July 6, 2018

Gregory T. Christian/ Plaintiff
15 Gallivan St.
Greenville, SC 29609

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTIENTH JUDICIAL CIRCUIT

Gregory T. Christian,
Plaintiff

v.

Anna Healy,
Greenville Police Officer Andrew League,
City of Greenville, South Carolina
Defendants

CA No.: 2018-CP-23-02513

PLAINTIFF'S RESPONSE TO DEFENDANTS OFFICER LEAGUE AND CITY OF GREENVILLE'S MOTION TO DISMISS AND PRAYER FOR DISMISSAL IN DEFENDANTS' ANSWER

19 JUL 5 PM 2:48
Paul Hekkesman GVL SC

INTRODUCTION

Defendants Greenville Police Officer Andrew League and City of Greenville move for dismissal on five grounds listed **a-e.** Plaintiff responds below. Additionally, Plaintiff responds to multiple grounds for dismissal claimed in Defendants' Answer. Plaintiff also responds to denials in Defendants' Answer of Statements of Fact in Complaint, attendant to which Plaintiff attaches Exhibits A-D.

ARGUMENT

a. Defendant City of Greenville avers insufficient service of process because Plaintiff personally served Defendant City in violation of SCRCP 4(d)(6) and (8). Plaintiff notes the exclusion of governmental subdivisions from service of process by plaintiffs via certified mail is omitted in the information distributed by the Clerk's Office ("Requirements for Filing a Civil Lawsuit, 2010, p.3, #3), which states "You can send the papers you wish to serve by Certified Mail, Restricted Delivery, Return Receipt Requested", without regard to defendant class. Plaintiff should have verified this. Plaintiff avers the error harmless, and on July 3 delivered amended process to the sheriff's office for service per SCRCP 4(d)(6).

Defendant Greenville Police Officer Andrew League avers insufficient service of process because service was made at Defendant's place of employment rather than Defendant's "dwelling house or usual place of abode" as specified in SCRCP 4(d)(1). Plaintiff had previously served federal process on Defendant League at his place of employment per instruction of opposing counsel, and presumed such delivery was a security protocol However, an internet search indicates a home address for Officer League of 313 Old Williamston Rd., Piedmont, SC 29673-8012. Plaintiff avers the error harmless, and mailed amended process July 3 to Defendant Officer League's home address per SCRCP 4(d)(1).

b. Defendant City of Greenville avers the action should be dismissed pursuant to SCRCP 12(b)(6) and *res judicata* because the issues raised "were adjudicated in a former suit or could have been raised in a former suit", specifically a federal action initiated by Plaintiff against Defendants in 2016. Opposing counsel does not specify the issues common to the two actions. Plaintiff discerns no basis for federal jurisdiction in the present action, nor is any suggested by opposing counsel. Plaintiff's federal suit pursues redress for violation of a Constitutionally guaranteed right, specifically 4th Amendment protection against unreasonable search, whereas the present action before the Court pursues redress for defamation pursuant to state law. The two actions were filed in separate jurisdictions, proceed by way of separate legal avenues pursuant to separate statutory frameworks, and pursue redress founded upon separate and distinct issues. SCRCP 12(b)(6) and *res judicata* do not apply.

c. Defendant Officer League avers the action should be dismissed pursuant to SCRCP 12(b)(6) and *res judicata* because the issues raised "were adjudicated in a former suit or could have been raised in a former suit". Opposing counsel does not specify the issues common to the two

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actions. Again, as noted by Plaintiff in **(b)** immediately above, SCRCP 12(b)(6) and r*es judicata* do not apply.

d. Defendant Officer League avers the action should be dismissed pursuant to SCRCP 12(b)(8) because the federal action referenced in **(b)** and **(c)** above is currently on appeal. Again, for the reasons stated in **(b)** above, SCRCP 12(b)(8) does not apply.

e. Defendant Officer League avers the action should be dismissed pursuant to SCRCP 12(b)(6) because the South Carolina Tort Claims Act provides exclusive remedy and claims against Defendant Officer League should be dismissed under §15-78-70 thereof. However, §15-78-70(b) of the South Carolina Tort Claims Act states:

> §15-78-70(b): Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

The present action arises from multiple claims of defamation by Defendant Officer League alleging Plaintiff committed a criminal act, ie theft, which claims are defamatory per se. Per *Brailsford v. Wateree Community Action, Inc.*, 135 F.Supp. 3d 433 (D.S.C. 2015), "Malice and damages are presumed in the case of defamation per se. See: *Holtzscheiter v. Thomson Newspapers*, Inc., 332 S.C. 502, 506 S.E.2d 497, 501-02 (1998) (*Holtzscheiter* II)." Defendant Officer League's multiple defamatory claims are demonstrably false and prima fascia fraudulent and malicious, by virtue of which the South Carolina Tort Claims Act is rendered inapplicable per §15-78-70(b) quoted above. (Malicious actions are excluded from immunity provided by South Carolina Tort Claims Act. *Pritchett v. Lanier*, 1991, 766 F.Supp, 442, affirmed and

remanded 973 F.2d 307)

Response to Various Grounds for Dismissal Claimed in Defendants' Answer:

Second Defense- Rule 12(b)(6)

"30. Plaintiff's Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the SCRCP."

Plaintiff has set forth facts sufficient to establish that Defendants falsely imputed criminal conduct to Plaintiff, such multiple fraudulent imputations being defamatory and actionable per se.

Third Defense- Statute of Limitations

"34. Plaintiff's claims against Defendants are barred by the statute of limitations of the South Carolina Tort Claims Act, §15-78-100 (sic. §15-78-110)"

The statute of limitations for both the SCTCA and defamation actions is two years. The Complaint was filed two years to the day after the incident giving rise to the causes of action. Plaintiff discovered a substantial number of material facts in the months following. Time tolls inclusive and from discovery.

Fifth Defense- South Carolina Tort Claims Act- Immunity

As related in **(e)** above, the SCTCA explicitly excludes application in cases of malice or fraud. Malice and fraud are established in this instance by clear and convincing evidence, and are presumed for defamation per se. Additionally, the SCTCA carries no proviso concerning immunity from an action for defamation.

Seventh Defense- Qualified and/or Conditional Privilege.

"46. Defendants are not liable for defamation as they have protection of qualified and/or conditional privilege."

Defendants have no qualified and/or conditional privilege attendant to defamation. False imputation of criminality is defamatory per se. Facts claimed by Plaintiff clearly establish fraud and malice.

Eighth Defense- Truth

"48. Defendants plead truth as a defense to any claim of defamation."

Defendants seem to be claiming Plaintiff is a thief. Plaintiff has had limited success proving Plaintiff is not a thief. Never stealing anything apparently does not suffice. A lack of evidence or witnesses also does not appear to establish Plaintiff's lack of guilt to Defendants' satisfaction. Plaintiff cannot go below never and zero.

Response to Defendants' Denials of Plaintiff's Statements of Fact:

Denied at 10: "Defendant Healy subsequently claimed in a police interview that Plaintiff was one of three people in some proximity to a ring before she could not find it."

See Exhibit A, Investigation Interview/Healy, pertinent text in box: "Ms. Healy stated Mr. Christian and another couple were the only people to be near the ring since she had lasted (sic) observed it lying on the table."

Denied at 12: "Micheal McDunn, Defendant Healy's father, present at the yard sale, subsequently claimed in a police interview that Plaintiff was one of several people in some proximity to the ring before it could not be found."

See Exhibit B, Investigation Interview/McDunn, pertinent text in box: "Mr. McDunn stated

there were several other people that were leaving that had been around the ring so he asked them if they had seen the ring."

Denied at 14: "During the incident, Defendant League claimed that several people had seen Plaintiff put a ring in his pocket."

See Exhibit C, Audio Transcript, pertinent text in box: "But I'm saying "If it's on you, and you know that, and we have several witnesses that stated that they saw you put the ring in your pocket, if you're willing to just confess to that and give us the ring back so we can give their property back, and they continue on with their yard sale, and you go home – I mean if it even takes me taking your butt home, I will do that."

Denied at 15: "Greenville Police Report #16000024859, written by Defendant League, states "Anna Brennan Healy advising that a subject had taken a ring from the her (sic) yard sale without paying for it.""

See Exhibit D, Police Report, pertinent text in "NARRATIVE": "On 04-23-2016 at 1006 hours, I responded to 741 Rutherford Rd., Greenville, SC 29609 (Studio of Michael) in reference to the complainant, Anna Brennan Healy advising that a subject had taken a ring from the her (sic) yard sale without paying for it."

Denied at 16: "Defendant League declared Plaintiff a suspected criminal in Greenville Police Report #16000024859. Defendant League subsequently claimed in a recorded statement that he did not want to declare Plaintiff a suspected criminal, but was compelled to do so by the records department."

See Exhibit D, Police Report, pertinent text in "SUBJECT", selected box "SUSPECT".

Dec. 6, 2016 Hearing Audio at 53:16: "I chose to go talk to Mr. Christian and say look, you are

no longer a suspect in this case because you didn't, for one, have the ring. And I told him, in the report, I would not list him as a suspect, but later on, the way it works, is records would not accept it that way. Basically, they wanted us that .. we went out there for the call and he was the suspect at first. The report was written, and as he was the suspect. But then, you know, in the report it then stated that he did not have the ring so then he wouldn't be, but that's the way they take reports in records. That was the only reason why he was still listed as a suspect in the end. But I did go speak to him. I was trying to diffuse the situation and make sure everybody was happy."

Denied at 23: "Defendant Andrew League falsely claimed Plaintiff was seen by several people to steal a ring."

See Exhibit C, Audio Transcript, pertinent text in box: "But I'm saying "If it's on you, and you know that, and we have several witnesses that stated that they saw you put the ring in your pocket, if you're willing to just confess to that and give us the ring back so we can give their property back, and they continue on with their yard sale, and you go home – I mean if it even takes me taking your butt home, I will do that."

Denied at 24: "Defendant Andrew League falsely claimed in writing that Defendant Anna Healy told police Plaintiff stole a ring."

See Exhibit D, Police Report, pertinent text in "NARRATIVE": "On 04-23-2016 at 1006 hours, I responded to 741 Rutherford Rd., Greenville, SC 29609 (Studio of Michael) in reference to the complainant, Anna Brennan Healy advising that a subject had taken a ring from the her (sic) yard sale without paying for it."

Denied at 25: "Defendant Andrew League falsely claimed in writing Plaintiff was a suspected

criminal."

See Exhibit D, Police Report, pertinent text in "SUBJECT", selected box "SUSPECT".

Denied at 26: "Defendant City of Greenville falsely claimed in writing Plaintiff was a suspected criminal."

See Exhibit D, Police Report, pertinent text in "SUBJECT", selected box "SUSPECT".

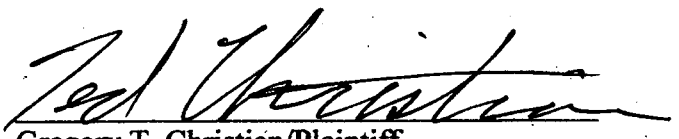
Dec. 6, 2016 Hearing Audio at 53:16: "I chose to go talk to Mr. Christian and say look, you are no longer a suspect in this case because you didn't, for one, have the ring. And I told him, in the report, I would not list him as a suspect, but later on, the way it works, is records would not accept it that way. Basically, they wanted us that .. we went out there for the call and he was the suspect at first. The report was written, and as he was the suspect. But then, you know, in the report it then stated that he did not have the ring so then he wouldn't be, but that's the way they take reports in records. That was the only reason why he was still listed as a suspect in the end. But I did go speak to him. I was trying to diffuse the situation and make sure everybody was happy."

CONCLUSION

As specified in the Complaint at 14, 15, 16, 23, 24, and 25, Defendant Officer League communicated multiple falsehoods imputing criminal conduct on Plaintiff's part, and was recorded doing so. As specified in the Complaint at 16 and 26, Defendant City of Greenville compelled Defendant Officer League to list Plaintiff as a suspected thief on a police report, against Officer League's wishes and judgment, and this is again a matter of record. Someone with no criminal history was labeled a suspected thief because a woman claimed she could not find a ring at a yard sale, and was so labeled despite being searched twice by police in full view of his

neighbors. It is unconscionable. If the statutory protection against defamation applies in any circumstances, it ought to apply in the present instance. For the reasons set forth above, Plaintiff respectfully requests the Court deny Defendants' Motion to Dismiss and prayer for dismissal in Defendants' Answer in their entirety.

Respectfully submitted July 6, 2018



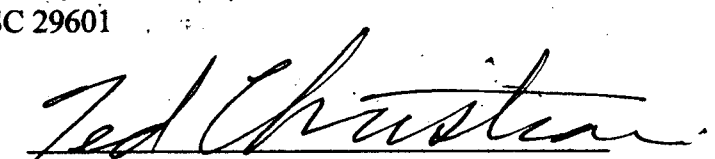
Gregory T. Christian/Plaintiff
15 Gallivan St.
Greenville, SC 29609

CERTIFICATE OF SERVICE

I certify that on July 6, 2018 I served a copy of this PLAINTIFF'S RESPONSE TO DEFENDANTS GREENVILLE POLICE OFFICER ANDREW LEAGUE AND CITY OF GREENVILLE'S MOTION TO DISMISS AND PRAYER FOR DISMISSAL IN DEFENDANTS' ANSWER on all parties, addressed as shown below:

Roe Cassidy Coates and Price
Ross B. Plyler
1052 N. Church St.
Greenville, SC 29601

Carl F. Muller
607 Pendleton St., Suite 201
Greenville, SC 29601



Gregory T. Christian/Plaintiff
15 Gallivan St.
Greenville, SC 29609

EXHIBIT A

INVESTIGATION / INTERVIEWS
(Exhibit 7)

Witness:
Ms. Anna B. Healy
6214 Enclave Paris Dr
Greenville SC 29609
(864) 561-7447

On Wednesday, May 11, 2016 at approximately 12:00 p.m., Ms. Anna B. Healy interviewed with Sergeant M. P. Austin at her officer located at 24 Mallard St. Ms. Anna B. Healy declined to be recorded. The following is a paraphrased synopsis of the interview.

Ms. Healy stated on April 23, 2016 she was having a yard sale at her father's business located at 741 Rutherford Rd (Studio of Michael).

Ms. Healy stated she had a ring along with other items lying on a table. She stated that she and her father were trying to closely watch the ring.

Ms. Healy stated she finished with a customer and noticed the ring was missing and alerted her father.

Ms. Healy stated Mr. Christian and another couple were the only people to be near the ring since she had lasted observed it lying on the table.

Ms. Healy stated her father went to speak to the couple that was leaving and she spoke to Mr. Christian.

Ms. Healy stated when she asked Mr. Christian if he had seen the ring he immediately asked if she was accusing him of stealing the ring.

Ms. Healy stated she never accused Mr. Christian of taking the ring, she only asked if he had seen it or if he picked it up with the intention of buying it and something else. She stated that she explained that to Mr. Christian but he refused to calm down.

Ms. Healy stated she told Mr. Christian to leave because it was not that big of a deal but he insisted on staying. She stated she then called the police department and then went back to helping other costumers while her father sat with Mr. Christian.

Ms. Healy stated after a few minutes of waiting for the police to arrive Mr. Christian approached her in an aggressive manner wanting to know when the police would arrive. She stated Mr. Christian was so agitated she thought Mr. Christian was going to hit her.

Ms. Healy stated Mr. Christian was causing such a scene that other customers were asking if she needed any help and if things were ok.

Ms. Healy stated she made an "off-hand" comment about Mr. Christian empting his pockets because of his behavior but that she had no intention of trying to search him nor did she ask to search him.

EXHIBIT B

INVESTIGATION / INTERVIEWS
(Exhibit 8)

Witness:
Mr. Michael McDunn
30 Meyers Dr
Greenville SC 29609
(864) 242-0311

On Tuesday, May 10, 2016 at approximately 1:00 p.m., Mr. Michael McDunn provided an audio recorded interviewed with Sergeant M. P. Austin at his business located at 741 Rutherford Rd The following is a paraphrased synopsis of the interview.

Mr. McDunn stated his daughter, Anna Healy, was having a yard sale at his business. He stated that she had a watch and a ring that they were keeping an eye on.

Mr. McDunn stated while helping a customer load their vehicle he was trying to watch the ring and the watch but that several people had come and gone while he was with the customer. He stated that as he was finishing up with the customer he heard his daughter state "the ring".

Mr. McDunn stated Ms. Healy called him over to where she and Mr. Christian were at and he stated Mr. Christian using a very threating tone asking if she was accusing him of stealing the ring.

Mr. McDunn stated there were several other people that were leaving that had been around the ring so he asked them if they had seen the ring. He stated they told him they had not and were civil about it.

Mr. McDunn stated because Mr. Christian was being so belligerent he told Ms. Healy to call the police. He stated that while they waited on the police he and Mr. Christian sat on the wall outside his business.

Mr. McDunn stated Mr. Christian questioned him repeatedly about the ring and he felt Mr. Christian was trying to start an argument over the ring. He also stated that Mr. Christian told him he wanted an apology when the Officers did not find the ring.

Mr. McDunn stated after a short period of time Mr. Christian started asking when the Police would arrive and wanting to know where Ms. Healy was.

Mr. McDunn stated Mr. Christian then started looking for Ms. Healy and appeared very agitated. He stated that he warned Mr. Christian not harass Ms. Healy.

Mr. McDunn stated when Mr. Christian found Ms. Healy he started an argument with her.

Mr. McDunn stated Mr. Christian was causing a scene and drawing attention to himself because he was so loud.

Mr. McDunn stated he observed the officers speaking with Mr. Christian but did not see or hear anything that he would consider unprofessional conduct by the officers.

EXHIBIT C
on scene audio transcript

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

GREGORY T. CHRISTIAN,	)	
Plaintiff	)	Case No. 6:16-cv-1757-TMC-KFM
v.	)	
GREENVILLE POLICE	)	
OFFICER K.A. PAYNE,	)	
GREENVILLE POLICE	)	
OFFICER ANDREW LEAGUE,	)	
Defendants.	)	

- - - - -

Transcription of the recorded audio taken from a police car video recorded at a yard sale April 23, 2016, Greenville Police Incident Report #16000024859, by Treasa Hix Court Reporter and Notary Public from the firm of Judy Comp & Associates, Inc.

- - - - -

as -- if they're saying "Look, there's a ring missing." We're here to figure that out. If it's on you, and you're -- you're willing to confess up to it, give it back, we give it to them, and you walk. If we can talk to them, you walk your way, get back to Gallivan Street, and we're done. It's easy as that. But now if --

MR. CHRISTIAN:

Well, I've been patted down. Was the ring on --

OFFICER #1:

I understand -- I didn't conduct a background. And I don't know if he (inaudible). But I'm saying "If it's on you, and you know that, and we have several witnesses that stated that they saw you put the ring in your pocket, if you're willing to just confess to that and give us the ring back so we can give their property back, and they continue on with their yard sale, and you go home -- I mean if it even takes me taking your butt home, I will do

EXHIBIT D

GREENVILLE CITY POLICE DEPARTMENT

Incident Report

Agency I.D. SC0230200 | RTA | Case Number 16000024859 | Adult/Juv

EVENT

INCIDENT TYPE	OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
0480 - Larceny: Petit	Y	N	24 - Specialty Store	0
3M412 - Trespass Notice Served	N	N	24 - Specialty Store	0

TYPE VICTIM: [X] Business

Incident Location(Subdivision, Mill Village, Apartment & Number, Street Name & Number): 741 Rutherford Rd Greenville SC (Studio of Michael) | Closest Intersection | ZipCode: 29609

Incident Date	Time	To	Date	Time	Weapon Type	Time Arrived	Time Completed	Patrol District
04/23/2016	10:06		04/23/2016	10:06	99	10:06	10:41	ECHO

Complainants Name (Last, First, Middle)	Resident	Race	Sex	Age	Business Phone	Mobile Phone
[redacted]	S	W	F	31	[redacted]	

Address	City	State	Patrol District
[redacted]	Greenville	SC	OJ

VICTIM

Victim's Name (Last, First, Middle)	Victim Relationship To Subject	Resident	Ethnicity	Race	Sex	Age	Residence Phone	Business Phone	Mobile Phone
Studio of Michael									

Address	City	State	Zip Code	Patrol District
741 Rutherford Rd	Greenville	South Carolina	29609	ECHO

Visible Injury (Vict 1) [ ] Yes [X] No Explain: | Complaint of any Non-Visible Injuries [ ] Yes [X] No

Victim (No.1) Using Alcohol [ ] Yes [ ] No [ ] Unk Drugs [ ] Yes [ ] No [ ] Unk Type:

Two-Man Veh [ ] One Man Veh [ ] Detective/SPLASMT [ ] Other [ ] ALONE [ ] ASSISTED [ ] Jurisdiction: -

SUBJECT

[X] Suspect [ ] Runaway [ ] Wanted [ ] Warrant [ ] Arrest [ ] Missing

Subject's Name (Last, First, Middle)	Ethnicity	Race	Sex	Age	Date of Birth	Height	Weight	Hair	Eyes
Christian, Gregory Teddy	N	W	M	53	07/09/1962	508	145		

Address	SSN
15 Gallivan St	UNK

Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.	City	State	Zip Code	Patrol District
	Greenville	SC	29609	ECHO

Subject (No.1) Using Alcohol [ ] Yes [X] No [ ] Unk Drugs [ ] Yes [ ] No [X] Unk Type | Arrested Near Offense Scene [ ] Yes [ ] No Total Arrested 0 | Date/Time of Offense | Date of Arrest

Arrestee Armed [ ] Yes [ ] No Weapon Type | [ ] Arrested on Current Offense [ ] Cleared By Arrest on Prior Offense

Juvenile Disposition [ ] Handled Released [ ] Referred To Other Authority [ ] On View Arrest [ ] Summoned [ ] Custody

Charge	Warrant Number	Ticket Number

Arrest Location | Gang Affiliation

NARRATIVE

On 04-23-2016 at 1006 hours, I responded to 741 Rutherford Rd. Greenville, SC 29609 (Studio of Michael) in reference to the complainant, Anna Brennan Healy advising that a subject had taken a ring from the her yard sale without paying for it.

Jurisdiction of Theft : Greenville County | Jurisdiction of Recovery :

VEHICLE

[ ] Towed [ ] Stolen [ ] Recovered [ ] Suspect [ ] Victim

Tag Number	State	Year	VIN	Value

Year	Make	Model	Style	Color

Tag Only [ ] | Additional Identifying Information

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
Stol	17 - Jewelery,Precious Metals	1	UNK	PLE	amethyst and diamond ring	NA	75

ADMIN

Subject Identified [X] Yes [ ] No | Subject Located [X] Yes [ ] No | [ ] Active [X] Admin Closed [ ] Unfounded | [ ] Arrested Under 18 [ ] Arrested 18 and Over | [ ] Ex-Cleared Under 18 [ ] Ex-Cleared 18 and Over

Reason For Exceptional Clearance [ ] Offender Death [ ] No Prosecution [ ] Victim Declines Cooperation [ ] Extradition Denied [ ] Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
LEAGUE ANDREW	04/23/2016	108 / 00810	HALL RACHEL	04/28/2016	127 / 00641
		/	Follow Up Investigation [ ] Yes [X] No		/

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2018-CP-23-02513

GREGORY T. CHRISTIAN,
PLAINTIFF,

vs.

ANNA HEALY, GREENVILLE POLICE OFFICER ANDREW LEAGUE, CITY OF GREENVILLE, SOUTH CAROLINA,
DEFENDANTS.

TRANSCRIPT OF RECORD

ORIGINAL

July 17, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

GREGORY T. CHRISTIAN
Pro Se

CARL F. MULLER, ESQ.
Attorney for Defendant Anna Healy

ROSS B. PLYLER, ESQ.
Attorney for Defendants City of Greenville, South Carolina and Greenville Police Officer Andrew League

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

PROCEEDINGS

THE COURT: This is in the interest of Gregory T. Christian v. Anna Healy, Defendant, and others. Case #2018-CP-23-02513.

Mr. Christian, that's you?

MR. CHRISTIAN: Yes.

THE COURT: Mr. Christian?

MR. CHRISTIAN: Yes, Your Honor.

THE COURT: All right. And he is present and pro se.

And I have Mr. Carl Muller and, also, Mr. -- I've got Mr. Ross B. --

MR. PLYLER: Plyler, Your Honor.

THE COURT: Plyler.

And then this young lady is assisting --

MR. MULLER: She's Anna Healy, Your Honor --

THE COURT: Ms. Healy. Okay. I got you.

MR. MULLER: -- the Defendant.

THE COURT: The Defendant.

Okay. And I think I'm ready.

And I've got two motions before the Court. Both of them motions to dismiss; is that right?

MR. PLYLER: Yes, Your Honor.

MR. MULLER: Yes, Your Honor.

THE COURT: Okay. Are we ready to proceed?

Anything, Mr. Christian, before we proceed?

(WHEREUPON, there was no response.)

THE COURT: Are you ready to proceed?

MR. CHRISTIAN: I don't know if I'd say that. But I filed this an hour ago, a written response to the memorandum in support of the motion to dismiss. So you have a copy of that.

THE COURT: All right. It's y'all's motion to dismiss, isn't it?

MR. PLYLER: Yes, Your Honor.

THE COURT: Do you want to start off?

MR. PLYLER: May it please the Court.

THE COURT: Go ahead.

MR. PLYLER: Ross Plyler here from Roe Cassidy Coates & Price. I'm here on behalf of Defendants City of Greenville and Officer Andrew League of the City of Greenville Police Department.

Your Honor, it is our motion to dismiss this case. There are multiple grounds in order for the Court to -- the Court could dismiss this case. But the -- the first and most prominent reason is under the doctrine of res judicata.

This -- a little bit of -- a little bit of procedural history, Your Honor. This case may be new to Your Honor, to this Court, but this is a -- really the continuation of litigation that these Defendants have had with

Mr. Christian that goes back over two years. We have been -- let me briefly -- this -- this -- this lawsuit arises out of an incident at -- in April of 2016 at a yard sale up on Rutherford -- up on Rutherford Road.

Mr. -- Mr. Christian was attending the yard sale. He was accused of stealing a ring at the yard sale. The Greenville City Police --

THE COURT: A ring? You said a ring?

MR. PLYLER: A ring, yes, Your Honor. A ring.

The Greenville City Police Department was called -- called to the scene. Officers came including Officer Andrew League in this -- in this -- the Defendant in this case.

The -- there was some discussion between the officers and Mr. Christian at the scene. The police officers ended up frisking him for weapons and, also, searching his person for the ring. He signed a consent to search form. And the officers searched his person. The ring was not found.

That incident resulted in a -- in a federal lawsuit -- lawsuit in U.S. District Court here across the street where the Plaintiff alleged a -- a 1983 cause of action alleging that his Fourth Amendment rights to be free from unreasonable searches and seizures was violated by the City of Greenville and -- and the officers.

And it's important to note that that case was against the City of Greenville, against Defendant Andrew League, and one other officer who is not named in this current -- in the state lawsuit, but was named in the federal lawsuit.

The -- that suit resulted -- and the results of that lawsuit was the City of Greenville was dismissed with prejudice in January of 2017. Now, that -- and that order is -- has been attached to the motion as Exhibit A for the Court's consideration.

After the city was dismissed, though, the case continued against the individually named officers. But in February of 2018, this year, Officer League was granted summary judgment by -- by the U.S. District Court. And -- and that order is -- and the order of the -- the order on summary judgment is, also, attached to our motion to dismiss and the -- the form -- detailed order from the Court is attached to the -- our memo, which was filed -- which was filed last week.

So after the -- Mr. Christian was unhappy with his -- obviously, unhappy with his result in federal court and filed this state court defamation action against both the city, Officer Andrew League, and against Ms. Healy. But, Your Honor, this case now in state court is barred by the doctrine of res judicata, meaning the claims -- the claims

are precluded. He can't take a second bite at -- at the apple.

The doctrine of res judicata -- and I've -- I've put the case law in our brief that was submitted. But it bars the relitigation of issues that were either raised or could have been or might have been raised in a prior lawsuit. And that's exactly what we have here.

Your Honor, there are three elements to res judicata. You've got to have the same parties, which we have the exact same parties here. And -- and the Plaintiff may say, well, there was an additional party in this suit that wasn't in the federal suit. But that doesn't matter. We've got the City of Greenville and the -- and Defendant Andrew League, who were in both lawsuits.

The second element is we've got the same subject matter. Your Honor, this is the exact same subject matter. We've got an incident at the -- at the yard sale, a confrontation with the police and a -- and a search.

The third element of res judicata is you have to have an adjudication on the merits in the other case. And, Your Honor, we've got a dismissal with prejudice as to the city. And we've got an -- an order of summary judgment as to Defendant -- Defendant League.

So the critical test for the Court to consider is, should these claims have been brought before? Could they

have been brought before? Might they have been brought before? And the Courts have used different tests, Your Honor, to -- to make that determination.

I've laid this all out, again, in my brief. I'm not going to go over it in detail. But the two suits have to have the same subject matter, and we've got that. They have to have -- be a part of the same transaction or occurrence. And they are here. The allegations in -- in Mr. Christian's state law complaint are the exact same allegations -- or the same facts that he's alleged in the federal case. We have the same underlying facts. We have the same evidence being presented.

And, Your Honor, the doctrine of res judicata is, obviously, there for public policy reasons that -- that we don't want to -- nobody should be sued twice for the same -- for the same thing. It promotes judicial economy here, and avoids harassing, and undue costs and prejudice to -- to the defendants who are brought into a new lawsuit out of the same -- the same circumstances.

It may be -- Mr. Christian may argue that the -- that he's got state law claims here and federal law claims that were decided in the earlier case. Your Honor, there's -- these claims might have been brought in the federal case. They could have taken supplemental jurisdiction or appendant [phonetic] jurisdiction. But we don't know

because he didn't try. And, now, he's trying to do that now with his federal case -- when his federal case is over. And the Court shouldn't allow this -- this to continue. It should dismiss pursuant to res judicata.

Briefly, Your Honor. We've got some other -- other alternative grounds to dismiss. The dismissal is proper as to Andrew -- Defendant Andrew League possibly under Rule 12(b)(8).

The summary judgment award that -- that he got in the federal case is now on appeal with the U.S. District Court in the Fourth Circuit. So they have the case -- they have the summary judgment order. It is a final order. But it is under appeal. So if Your Honor feels that that is still pending, then it should still dismiss the case as to Andrew League while that -- that appeal rumbles through the -- the appellate system.

Second, the individual officer, Andrew League, should be dismissed under the Tort Claims Act. It says that the exclusive remedy for any plaintiff is with the entity -- the governmental entity. And that'd be the -- the City of Greenville. If -- as long as he was acting within the course and scope of his employment -- there's no allegation he was not acting as a police officer on the scene, then there's no claim against him as an individual.

There are some limited exceptions if it's alleged

that he's -- had the intent to harm Mr. Christian, or acted with actual malice, or was committing a crime of moral turpitude. And none of that has been alleged. So we don't -- we don't fit into the exception that allows a Tort Claims Act to proceed against an individual officer. So that -- the case really needs to be dismissed as to Andrew League, even if the Court -- and -- but the res judicata, of course, applies to both -- both defendants.

Last, Your Honor, we've got service and process issues as to both defendants. They were both served improperly. I -- I -- we've addressed that in the brief. I'm not going to go into that again. He served the city improperly. He served Andrew League improperly.

Mr. Christian has tried to remedy that -- that deficiency by filing without leave of court an amended complaint, which we need to address today. Because that's out -- that's been filed at last -- I -- within the last week or the last two weeks. And he's attempted to serve that.

So we don't know whether the Court's going to allow that amended pleading to stand, or whether he's got to file -- our position on that is he's got to either have consent from the parties or leave of court because he's beyond his 30 days. So we've got that issue that's -- he tried to cure the service problems, but he hasn't. And

our position on the amended pleadings would be they've got no legal effect because he didn't have the Court's permission in order to file those amended -- that amended summons and complaint.

He's, also, tried to add a party, maybe. We're not sure. The summons now lists Mayor Knox White as a -- as a Defendant as well. But we don't know whether we need to answer or move to dismiss the mayor in this case, too. We -- we need some clarification from the Court on that issue.

I want to briefly address -- just because I don't want to leave it out. He filed a -- a motion to continue. I know that's been denied because we're here before you today.

He, also, asked to -- that our memo that was filed and served last week be disregarded. Your Honor, there's clearly no -- there's no reason under -- or no -- no authority for that under the rules. Your Honor's briefing preferences are to have briefs filed within 72 hours. And they were filed last Wednesday, well within the 72-hour requirements. So we ask the Court to consider anything that was filed by the Defendants -- the Defendants last week and to -- that it was -- that those things are timely.

On the other hand, what was just filed and passed up

to you by Mr. Christian is not timely. And it should not -- should not be considered.

THE COURT: All right. Mr. Christian. And I'm not going to give you any specific order in how to address the arguments. But I want you to start off with the service of process.

MR. CHRISTIAN: All right. I -- opposing counsel is correct about service of process. I have tried to get it right as best I can. It's apparently not one of my strengths. But I'm working on it.

The motion I just filed -- the response I just filed talks about --

THE COURT: So you agree that the -- there was deficiency in service?

MR. CHRISTIAN: I agree that there are deficiencies in service --

THE COURT: As to both Defendants?

MR. CHRISTIAN: Right. I think all the -- the deficiency in service -- well, I won't talk about Healy's case.

The deficiency in service in League's case, I -- I would say has been corrected. I --

THE COURT: How so?

MR. CHRISTIAN: I had it -- the process served on his home address or I, at least, mailed it. I haven't

received the green card back. But some -- a week or 10 days ago, I mailed it to Officer League's home address.

THE COURT: By -- by certified mail, not personal service? Just by mailing?

MR. CHRISTIAN: Certified mail return restricted.

THE COURT: When did you do that?

MR. CHRISTIAN: I have the -- the documentation right here. Possibly July 3rd.

(Pause.)

THE COURT: While you're looking for that, more than 30 days have passed. I think you tried to file amended pleadings more than 30 days after the Defendants had filed responsive pleading; is that right?

You filed -- I mean, you didn't get permission from the Court to file amended pleadings, so you just did it on your own?

MR. CHRISTIAN: I went to the -- the clerk's office. And they accepted the amended filing and stamped it. I mean, that's what I thought was sufficient. I did not get leave of the Court to do so, though.

I -- here's the -- I mailed service of process to Officer League. July 3rd is what this receipt shows.

THE COURT: Now, the motion for summary judgment -- the appeal on that's pending in federal court, that was as to Officer League?

MR. PLYLER: Just Officer League, Your Honor.

MR. CHRISTIAN: No. Officers League and Payne.

MR. PLYLER: For the -- purposes of this case, it was just Officer League. The city had been dismissed over a year prior.

THE COURT: Okay.

MR. CHRISTIAN: But the appeal is -- the appealees in the appeal case are Officer Payne and Officer League.

THE COURT: All right. Let's do this in some -- some form of order.

Mr. Christian, I'm going to let you address each one of the arguments presented by counsel for dismissal of the action. You can start with counsel's first argument. I'll let you go down the list and hear from you as to each one of those arguments.

MR. CHRISTIAN: All right. Your Honor, I made a list of his arguments.

I'd like to preface this by -- by saying I would not be here if I didn't have an option. I was just at a yard sale and was accosted by a woman screaming she had seen me steal -- steal a ring. I couldn't see it coming. I couldn't get out of it, couldn't prove I was innocent. And I've spent the last two and a half years trying to establish my innocence. And -- and if the circumstances weren't so stark and if there was anything I could have

done to see it coming or avoid it once it hit me, I would not be here. I absolutely do not want to do this. And if I recover any money, I don't expect it'll -- it's be worth having done this. But --

THE COURT: You were -- you were pro se in the federal court matter, too?

MR. CHRISTIAN: I was.

THE COURT: All right. You've never had a lawyer in this case?

MR. CHRISTIAN: I have not. I've never hired a lawyer. If this goes to trial, which I don't want to use the word anticipate. But I -- I will not -- I don't anticipate doing this in a pro se fashion in a courtroom. I'm in over my head far enough just with papers, and stuff.

THE COURT: Okay. Let me hear from you on the res judicata argument.

MR. CHRISTIAN: All right. The res judicata, I -- I argued this in the two briefs. Well, I'll -- I'll come back to -- to the facts that he -- but the res judicata -- the first item, the exact same parties. They are not the exact same parties. I talk about this in the brief I just filed.

THE COURT: What's the difference?

MR. CHRISTIAN: The first -- the federal action was,

initially, filed against the city. And I thought the city as the -- as the overarching entity should be responsible for it. I didn't want to pursue individuals. But then I felt compelled to add Payne when the city started -- well, I shouldn't have been surprised. But I felt compelled to add Payne.

And then I became aware six months later that Officer League -- that there was an audiotape showing Officer League claiming I had -- he had -- that several people had seen him steal -- several people told him they had seen me steal a ring. And -- and that was just argued for inclusion in the federal action.

So -- so I filed to have him added in the federal action. And then the city was dismissed. And Officer Payne and Officer League were still remaining at the appellate level. And then this action, of course, proceeds against the city, and against Officer League, and against Defendant Healy.

So the -- the parties are not identical. They're not the exact same parties.

THE COURT: Do you agree it's the same subject matter? Do you agree with that?

MR. CHRISTIAN: I do not agree that it's the same --

THE COURT: How -- how is it different?

MR. CHRISTIAN: Because as I argue in the briefs, the

first case was pursued because of violation of federally guaranteed rights, Fourth Amendment right against unreasonable search and seizure, specifically, two searches that were conducted of me.

And the first search was conducted on the allegation that I kept putting my hands in my pockets and wouldn't keep my hands out of my pockets, which is false. But that was accepted by the Court.

And then there was never a finding of probable cause for the second search. It was decided that I had consented to the second search. So I'd like to make that distinction. But the one case is about unreasonable search and seizure at the federal level.

This case arises in state court based on defamation and -- and the statute in the State of South Carolina and the case law pursuant to that. I don't see that there was a way that I could have pursued a defamation. I -- I recall thinking about it. I don't think there's a way you can pursue defamation in that circumstance in a federal court.

Opposing counsel says -- claims supplement -- supplemental or pending jurisdiction. I expect he would have argued with me if I had tried to include his client in a defamation claim based on pending jurisdiction. That's all I can say about that. The statute itself is

the State of South Carolina. There's no diversity of jurisdiction. So -- so I don't see how it would have sounded -- sounded in federal court.

So past that, I see them as two distinct issues. They arise out of substantially two different causes of action. The two searchs occurred at the yard sale. All the -- the causes of action in this case are principally things that occurred after the yard sale.

The only event that I use in the causes of action or in the claims in the complaint is that Officer League falsely claimed to have seen me -- that several people were claiming to have seen me steal a ring. All the other ones are that he put me down in a police form as a -- as a -- all the other claims are listed right here. But they did not occur at the yard sale. And they did not occur in conjunction --

THE COURT: Let me ask you this, Mr. Christian. If you were successful in the federal claim, would you have filed this suit?

MR. CHRISTIAN: I -- I do not think so. I've -- this whole time I've pursued nothing but some sort of resolution to say that it is not --

THE COURT: So you filed this suit because you were dissatisfied with the result in federal court?

(WHEREUPON, there was no response.)

THE COURT: I'm just asking you a plain, common sense question.

MR. CHRISTIAN: Yes, yes.

THE COURT: That's why you filed this suit?

MR. CHRISTIAN: Yes. I don't -- I can't say that I would not have filed this suit. I, certainly, did not want to file this suit. And I would say that the principle -- the principle motivation was that I did not receive some sort of remedy -- I have not yet received some sort of remedy --

THE COURT: You weren't satisfied with the adjudication in federal court, so you filed this suit?

MR. CHRISTIAN: Correct.

THE COURT: Is that a fair assessment?

MR. CHRISTIAN: Correct, yes.

THE COURT: Go ahead. Let me hear you on the other arguments.

MR. CHRISTIAN: Well, the res judicata claim -- again, if opposing counsel could just lay out how the two are, actually, the same. I don't see that I could -- I could have pursued this action at the federal level.

And as I talk about in the brief that I just filed, searching someone is searching someone. And defaming them is defaming them. And I don't see where they are the same thing.

THE COURT: All right. Address counsel's argument regarding his argument under Rule 12(b)(8) as it relates to Defendant League. I think one of counsel's argument was that Defendant League should be dismissed pursuant to that rule. Let me hear your position regarding --

MR. CHRISTIAN: That's the same res -- res judicata argument that res judicata doesn't apply to the case at the district level. I don't see where it applies at the appellate level.

As I say, the two cases are different. And that -- a final determination is yet to be made at the appellate level. I don't see that that impacts state adjudication of a separate set of issues.

THE COURT: So you're saying 12(b)(a) is -- 12(b)(8) is not -- doesn't apply?

MR. CHRISTIAN: It's not applicable for the same reason that it's not -- that res judicata is not applicable -- well, res judicata, it's my understanding, is -- is the basis of the 12(b) claim, motion to dismiss. So -- so I think it applies to all of them equally.

THE COURT: All right. What about the Tort Claims Act?

MR. CHRISTIAN: And then the Tort Claims Act I discuss in the brief. The -- the way I have argued this is that the Tort Claims Act explicitly excludes

application in cases of -- of malice. And it provides that the person has to be -- has to be operating within the scope of their duty.

And as I point out in that brief, Officer League had -- has no official capacity or duty to defame people. If the fact wasn't as stark as it was, I wouldn't make this argument. But he has no official duty to engage in acts of defamation. And the malice claim is effectively established by the fact that he falsely claimed criminal conduct on someone's part. So -- so it's defamatory per se. And that carries with it a -- a -- an establishment of malice.

So I don't think the SC -- the South Carolina Tort Claims Act is applicable under the circumstances.

THE COURT: Well, instead of going back to the whole process -- service of process, which you served the mayor, instead of the city manager. Why did you do that?

MR. CHRISTIAN: I did serve the mayor. I'm going to try not to make excuses for myself. But it was -- you serve the chief executive office -- officer. And I erroneously -- erroneously concluded that that would be the mayor of the city.

And as I point out -- and I knew it was the city manager form of government. I've lived here 18 or 19 years now. But as I point out in the brief, when

they -- when opposing counsel filed a motion to dismiss, they did not object to -- I don't believe objected to serving Knox, instead of the city manager. So -- so if I didn't catch it, it doesn't appear opposing counsel caught it.

And still -- and in any event, the Defendant City of Greenville has been served and given notice and submitted to the jurisdiction of the Court. And I -- and I mentioned I will serve the city manager as soon as practical, if that's an issue. But, otherwise, it shouldn't -- it -- from what I've read of -- of case law, it should not be used as a basis for a dismissal. It doesn't really prejudice any party.

THE COURT: What case law says that?

MR. CHRISTIAN: The ones that I specify --

THE COURT: You cited a case?

MR. CHRISTIAN: -- in the brief I just filed.

THE COURT: Is that the Lugo case that you cite?

MR. CHRISTIAN: Linares v. City of White Plains, Lugo v. City of Charlotte, yes, Mull v. Ridgeland Realty, Stearns Bank National Association v. Gleenwood Falls. It's -- insufficient or flawed service of process, my understanding, is not typically used as a grounds for dismissal. But it's not -- it has no -- at least, as far as I can see, no apparent effect on the course of the

case. And I have tried to -- to correctly serve process on everyone.

I pointed out when I originally served the city by mail -- this is not to excuse my actions. But the flier from the clerk's office talked about service by mail as a way that you could do it. And I -- and I preferred that, as opposed to sending sheriff's deputies out with -- with papers on somebody, which didn't seem warranted.

And so when it said you can serve by mail, it didn't say you can't serve government entities. It was a -- a blanket listing that you can serve a party by mail. I should have verified it, but I failed to.

But the city has subsequently been served. Unfortunately, it was Knox, and not the city manager. But I'll serve the city manager as soon as I get back from Texas.

THE COURT: You -- you appealed that summary judgment in federal court yourself? You did that?

MR. CHRISTIAN: I did. Your Honor, I have a copy of -- well...

THE COURT: Anything else you want to tell me?

MR. CHRISTIAN: I'd like to recap the events.

THE COURT: Recap what happened?

MR. CHRISTIAN: Opposing counsel, yes, talked about his version of events. And I made notes as I went down.

It would take a few -- if I have a few minutes, if you're not in a hurry.

THE COURT: About the events at the yard sale?

MR. CHRISTIAN: Yes. Run it down. Three minutes.

THE COURT: Okay. Were you at the yard sale?

MR. CHRISTIAN: I was at the yard sale, yes. And Officer League was at the yard sale.

THE COURT: One said something happened, you said something else happened. Is that -- is that what you're going to tell me?

MR. CHRISTIAN: I'm -- I'm the party who has all the details. The other parties do not talk about what, actually, happened. I will give you details. And all the details I provide can be backed up by 10 minutes of audio that's, thus far, been recovered.

I was accosted by a woman screaming at me that she had seen me steal something. And I simply did not know what to do.

THE COURT: Were these same facts presented in federal court?

MR. CHRISTIAN: They were, yes, Your Honor.

THE COURT: Well, I mean, I've got motions before me. And I -- I've looked at what was filed. And I'm pretty familiar with the facts. And I understand that your version of the facts would be different -- understandably

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different --

MR. CHRISTIAN: I don't --

THE COURT: -- otherwise, you wouldn't be here.

MR. CHRISTIAN: I'm not supposed to interrupt you.

THE COURT: You can.

MR. CHRISTIAN: Okay. I'm sorry.

THE COURT: I'm a Judge. You can interrupt me any time you want to.

MR. CHRISTIAN: I was going to go to a number of things and try and pick it up a little bit and couldn't. But I don't think that, for the most part, their version of events differs that much from mine, except that it doesn't have any detail.

Yes, Anna Healy stopped me. And there was a conflict, a conflict ensued. No, she -- she screamed at me from maybe 20 feet away that she'd seen me steal something as I was leaving the yard sale, which I think was the precipitating event.

And then opposing counsel claims that there was a conflict between myself and the police. The police showed up and were interested in nothing but me giving them a ring that I had no knowledge of. I didn't conflict with anybody. I just tried to get through the entire event. And I don't think anything anybody says exactly contradicts that. And it, certainly, isn't contradicted

by the audio.

THE COURT: All right. But what you're telling me today is that the State action -- which it is defamation; is that right?

MR. CHRISTIAN: Correct.

THE COURT: And you didn't think about that until after the adjudication of -- of the federal case?

MR. CHRISTIAN: No. I did not necessarily --

THE COURT: I guess -- I'm just trying to piggy back on what your explanation was a minute ago. You said, well, I don't think that I could have -- I could have raised that issue when that case was pending.

And then you said -- and my question to you was, well, you filed this case because you didn't get the adjudication in the federal court that you thought that you should have gotten. And I think your answer to me was, yes, I filed this because I didn't.

MR. CHRISTIAN: Correct.

THE COURT: But the subject matter is, essentially, the same. I'm trying -- I'm struggling with trying to distinguish between the subject matter in that case that was filed and the subject matter in this case. And, you know, of course, under the whole argument on res judicata -- and that's one of the things that I've got to consider is subject matter, whether or not there's some

parallel between the subject matter in that case and this case. You know, that's one of the prongs -- three prongs that I've got to consider.

MR. CHRISTIAN: Well --

THE COURT: And I'm struggling with your -- with your response because I'm not there to see that there's -- that the subject matter is distinguishable. I'm not there with you on that.

MR. CHRISTIAN: I approach it as an engineer.

THE COURT: An engineer.

MR. CHRISTIAN: It's two different -- two different species of subject matter. The first incident -- and this is how I would think about it. It's been two and a half years. And so I can't absolutely confirm what I did and didn't think two and a half years ago.

But I saw it initially as strictly a case because I was searched and should not have been. That people said bad things about me. People say things about others all the time. But when someone's hands go on you, when your rights like that are violated, that's a federal matter. It's an Constitutional issue. And that's one thing.

I've pursued that remedy because that was the principle, primary, fundamental remedy. And I expect I would have been satisfied with that remedy. But failing that remedy, another remedy is that it is against the law

in the State of South Carolina, and I might assume all the other 49 other states, to falsely claim someone has committed a criminal act.

And so failing remedy at the federal level for -- for violation of the Fourth Amendment, I pursued some restitution, some remedy, some closure, something to say this is not okay. I pursued it in state court. And I pursued the separate incident -- separate -- separate actual causes of action that individuals claimed that I had committed a crime, which I had not committed. They -- and they did so falsely, which should establish the -- the Illinois [phonetic] malice.

But I don't see the two cases as being the same thing. And if there was a way to file it at the federal level, I'm not aware of it.

THE COURT: All right. Anything else you want to tell me?

MR. CHRISTIAN: Well, in the event of dismissal, I'd like a -- I'd like a -- 30 days leave to file an amended complaint, if that's acceptable to the Court.

THE COURT: I -- I heard you. Anything else you want to tell me?

MR. CHRISTIAN: Not if you don't have any questions, which I would answer as best I can.

THE COURT: Let me ask you this. Mr. Muller, you

were joining in his motion, or do you got a separate motion?

MR. MULLER: I would join in his motion, Your Honor. And I, also, have a couple separate grounds as well that deal with Ms. Healy.

THE COURT: Okay.

MR. MULLER: She was improperly served as well with the original summons and complaint, which I believe the Plaintiff has acknowledged.

She was, also, improperly served with the amended complaint, which the Court did not give leave to serve for two reasons. Well, for the principle reason that it was -- it was sent to the wrong address. And for the second reason, that she did not sign for it. So she did not sign for restricted delivery. And it was mailed to the wrong address.

So neither the original summons and complaint was properly served, nor was the amended summons and complaint properly served, nor was leave of the Court properly given for service of the amended complaint.

And on those three technical grounds, the case should be dismissed.

MR. CHRISTIAN: Can I respond to that?

MR. MULLER: I'd like to finish, if I may, Your Honor.

THE COURT: Let him finish.

MR. MULLER: In addition, the complaint, specifically, in paragraph 24 says that the Defendant Andrew League falsely claimed in writing that the Defendant Anna Healy told police Plaintiff stole a ring. So in his own complaint, the Plaintiff denies that my client defamed him. And for that reason, the complaint is insufficient and should be dismissed under 12(b)(6).

In addition to that, apart from the facts of the case, which we strenuously deny, as the Plaintiff has described them to the Court. In addition to that, this is a privileged communication.

And I will read an excerpt from the South Carolina Court of Appeals, the case of Manley v. Manley where the Court of Appeals of South Carolina says, A communication made in good faith on any subject matter in which the person communicating has an interest or in reference to which he has a duty is privileged if made to a person having a corresponding interest or duty, even though it contains matter which without this privilege would be actionable. And I'd like to hand up if I may a copy of that case to the Court and, also, to opposing counsel. And that is exactly this case, Your Honor.

THE COURT: All right.

MR. MULLER: Because this case is a case where Anna

Healy was having a yard sale at the corner of Main and Rutherford at her father's place of business, Michael McDunn's studio. Mr. McDunn done is seated behind me. He makes furniture.

And Ms. Healy was having a yard sale at his place. And she noticed that a ring had become missing and that the Plaintiff was one of last people in the area. So as he was leaving the yard sale, distant from everybody else, she politely asked him if he knew anything about that. Whereupon, he flew into a rage and suggested that she call the police, which she did.

And the South Carolina courts have said that if someone invites that sort of action that they cannot complain about it. And I have an excerpt from South Carolina Juris Prudence Section 10 of libel and slander. It says, It is generally held that a publication of libel or slander is insufficient to support an action for defamation if it is invited or procured by the Plaintiff.

So the Plaintiff here is complaining about something that he himself created.

And I'd like to hand up to the Court a copy of that authority as well, Your Honor.

And then, finally, under the law, the South Carolina Supreme Court has set out the elements of defamation. One of which is that there must be publication to third

parties. That case is Kendrick v. Citizens & Southern National Bank by the South Carolina Supreme Court in 1986. And the Supreme Court Chief Justice Lewis wrote, We reach only the issue of whether there was a publication. Since we agree that there was no publication of the alleged statements, assuming that they were defamatory, we affirm upon that ground.

And there is absolutely no allegation in the complaint that these statements were published to third persons. In fact, the Plaintiff says that he was leaving the yard sale. So under his own complaint, there was an insufficient allegation for defamation.

So he has not alleged publication. He has not alleged malice. His own complaint says that Anna Healy did not defame him. And he's here taking up the Court's time and causing my client not only grief and anxiety, but money as a single woman, as a single parent trying to make a living, trying to earn enough money to buy a house at a yard sale. And he flies into a rage and invites the police to come. And when law enforcement comes, he is so out of control that they search him for weapons. And then he consents to other searchs as well.

And it's time that this case be dismissed. He's had his day in court, the federal court. And he shouldn't have any more time in this Court.

Thank you, Your Honor.

THE COURT: All right. Mr. Christian, I'll give you an opportunity to respond briefly to Mr. Muller's arguments.

MR. CHRISTIAN: I'd like to first observe their motion to dismiss cannot rely upon any disputed material fact. And I'm going to have to dispute a lot of material facts.

But taking opposing counsel's claims in order. A wrong address -- there is no mention of a wrong address in -- in Defendant's answer. I Googled whatever it was, 30 -- it's not very far from my house. And that's where I served it. And the first one appears to have -- the first one got to her. And then the second one that I mailed restricted delivery, I mailed to the same address. And she's here now. So apparently the address was -- was satisfactory.

As far as them strenuously denying the facts, I have stated what, actually, happened. And if the Court wants to dismiss the case -- I don't think you can really rely upon one or the other version. I did not fly into a rage. I was -- I didn't know what to say. The sum total of what I told her was "what" when she began screaming I had stolen a ring. Because I didn't know how to respond. And then she wanted to search me. And I said, No. That

single word "no."

And then as I talk about -- in response to the -- Healy's motion to dismiss, I'm confronted with a woman who claims direct visual observation of me committing a crime. I had no choice but to either submit to her search, which I was not going to do, being frisked by a person just was not the thing to do, or I can walk off and wait for her to call the police and tell her [sic] that a criminal has fled the scene. Neither option was -- was available to me.

When I said, you should call the police if you think a crime has been committed, I could think of no other thing to say. There was no flying into a rage or arguing. That's -- that's nonsense.

But as far as this privileged communication. For a proviso privileged communication order to remain privileged, it has to be done in good faith. You cannot make up claims as you go along. You can't claim that you saw someone steal something and then not tell that to the 911 operator and not tell that to the police. You can't just simply tell the 911 operator that -- that someone has stolen something and then tell the first police officer that that person was the last person near the ring, which I was never told at the incident. And then, subsequently, claim to -- to a police investigator that that person and

two other people were somewhere near the ring before it went missing. You have to pick a story and you have to stick to it.

So I don't think there's any privilege of communication. I think malice is effectively established by being persistently false in what she's saying about what she's claiming I did.

There was no politeness going on from Ms. Healy or from her father. And if -- if I was abrupt with them, it was because I could think of nothing else to say. I absolutely did not fly into a rage. I was incredulous and befuddled. But there -- there was no flying into a rage. I did not invite defamation. As I say, when I said you should call the police if you think a crime has been committed, I could think of nothing else to say.

And as I point out in response to her motion to dismiss, calling the police is not a consensual act. That should tell you something right there. If the Defendant really thinks she needs someone's consent to call the police, what -- what could that say about it?

As far as the public -- as the defamation being published to other parties, I state in the complaint that she claimed to have seen me steal a ring -- publicly claimed to have seen me steal a ring at a yard sale from a distance of 20 feet. Her father makes reference to

several people being at the yard sale. Defendant League makes reference to several people being at the yard sale. It was not in any sense a -- a private communication. She screamed at me. There was a person standing right next to me.

If I needed -- and I thought saying that it happened at a yard sale from a distance of 20 feet and that there were several people involved, it seemed to me that would establish that it wasn't a private communication. If I need to amend the complaint to -- to include further details, I can do that. But it absolutely was not her taking me aside and quitely and politely telling me anything.

THE COURT: All right.

MR. CHRISTIAN: From the distance of you to me was about what she was.

THE COURT: All right. Anything else?

MR. CHRISTIAN: The last thing on this list is the claim that I did not allege malice. As I talk about in the answer in response to her answer, my understanding of the law is that claiming to have seen someone commit a crime is defamatory per se and malice is -- is presumed. I don't think there's any good way to falsely claim someone has committed a crime.

And that's all I have, Your Honor.

THE COURT: All right. Anything else from either side?

(WHEREUPON, there was no response.)

THE COURT: Anything else from either side?

MR. MULLER: No, sir, Your Honor.

MR. PLYLER: No, sir, Your Honor.

THE COURT: All right. As it relates to the -- two areas. One, the -- Ms. Healy through counsel has filed a motion to dismiss. And I've heard arguments on both sides. And I've read the documents that were given to the Court, as well as the documents that were previously filed. And I'm satisfied as it relates to that Defendant that the motion to dismiss should be granted on the following grounds.

One, on the insufficiency of service of process. I'm, also, dismissing that claim under 12(b)(6). And, also, after having read the pleadings, I do not see anything in the pleadings filed by the Plaintiff that would support a -- an allegation of defamation.

I'm, also, guided by the Plaintiff's own language as it relates to Ms. Healy indicating that he didn't find or indicate that she defamed him at all. So based on that, I'm going to dismiss -- grant the Defendant Healy's motion to dismiss.

As to the other motion to dismiss filed on behalf of

the City of Greenville --

The City of Greenville; is that right, Mr. Plyler?

MR. PLYLER: Yes, Your Honor.

THE COURT: I'm inclined to, also, grant that motion to dismiss on different grounds. I have looked at the case law on res judicata. And I've read the supporting memorandums that were given. And I'm not -- I'm satisfied that the matter is res judicata.

I think the -- that the subject matter in this case, the State case, is parallel and almost identical to the subject matter in the federal case. And I, also, find that the parties are similar and, also, the third prong as well is satisfied.

So I'm going to dismiss the -- grant the motion to dismiss on the grounds of res judicata. And I'm, also, going to incorporate the fact that -- as an additional grounds for dismissal that the service of process was not proper.

I'm not satisfied -- I'm satisfied that service was not proper as it relates to the mayor. Mr. Christian on the record indicated that in his error, he thought that he was serving the chief executive officer. And I'm going to -- I'm going to dismiss using that ground as well.

And, also, I'm not going to dismiss under the Tort Claim Act as it relates to -- Claims Act as it relates to

Mr. League. But I, also, issue -- grant that motion under 12(b)(6) on that as it relates to the City of Greenville.

Anything else?

MR. MULLER: No, sir, Your Honor.

THE COURT: Anything else?

MR. PLYLER: Just to clarify. Your Honor, on the Tort Claims Act, you're not granting the dismissal on those grounds?

THE COURT: No.

MR. PLYLER: Okay.

THE COURT: Just the other three.

MR. CHRISTIAN: I don't know if I will file leave to amend the complaint or how applicable that is. But I would like the option to do so.

THE COURT: I'm going to deny that.

MR. CHRISTIAN: Okay.

THE COURT: Okay. And I'm assuming you're making an oral motion today for that. That's your oral motion to amend; is that correct?

MR. CHRISTIAN: Correct, Your Honor.

THE COURT: Okay. I'm going to do this. I'm going to do a Form 4 granting -- granting the motion to dismiss.

But could you send me a formal order?

MR. MULLER: Yes, sir. We'll take care of that.

THE COURT: Send a formal order. Send it to the

clerk. And the clerk will assign it to my que. And I'll take care of it.

MR. MULLER: Thank you.

THE COURT: All right. Thank you.

**********END OF TRANSCRIPT OF RECORD**********

CERTIFICATE OF REPORTER

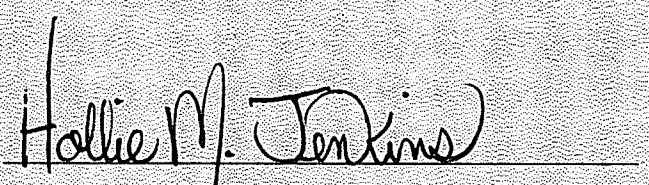
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of July, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 11, 2018



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
GREGORY T. CHRISTIAN	)	CASE NO.: 2018-CP-23-02513
	)	
PLAINTIFF,	)	
	)	
VS.	)	AFFIDAVIT OF GEORGE GREER
	)	
ANNA HEALY, GREENVILLE POLICE OFFICER ANDREW LEAGUE, CITY OF GREENVILLE, SOUTH CAROLINA,	)	
	)	
DEFENDANTS.	)	

PERSONALLY APPEARED before me GEORGE GREER, who being first duly sworn, states:

1. I have been an employee of the United States Postal Service for 29 years and serve as a LEAD CLERK SSA at the W. Washington Street location in Greenville, South Carolina.

2. I am familiar with postal charges assessed on certified, return receipt requested, restricted delivery mail.

3. Anna Healy and I discussed the certified envelope addressed to Ms. Healy and posted on April 24, 2018, a copy of which is attached hereto as Exhibit "A".

4. The postage on the envelope is insufficient for restricted delivery; therefore, the envelope would have been delivered only as "certified/return receipt requested" and not "certified/return receipt requested/restricted delivery".

5. Attached as Exhibit "B" is the USPS description of certified mail, return receipt, restricted delivery with the applicable charges, which are in addition to the applicable postage for first class mail.

SWORN TO before me this 25 day of June, 2018.

Notary Public for South Carolina
My Commission Expires: 02/20/2022

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EXHIBIT "A"

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Ivan St.
nville, SC 29609

7017 2680 0000 2782 9175

U.S. POSTAGE
PAID
GREENVILLE, SC
29602
APR 24, 18
AMOUNT
$7.41
R2305M147171-09

1000

29609

Served April 24, 2018

Anna Healy
30 Myers Ct
Greenville, SC 29609

RETURN RECEIPT
REQUESTED

RETURN RECEIPT
REQUESTED

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EXHIBIT "B"

• **Certified Mail with Return Receipt Signature with RESTRICTED DELIVERY** $11.32 (RRE-Signature Signed by addressee or authorized agent + Electronic Delivery Confirmation Report. The Certified Mail Special Service described above plus additional evidence of the letters delivery. **USPS enables delivery of the item only to the addressee or addressee's authorized agent**. The addressee must be an individual (or natural person) specified by name. Restricted delivery may be used only when combined with Certified Mail, Insured Mail over $200, and Registered Mail. Customers receive Electronic Delivery Confirmation by email (see the attached report). A record of the transaction including USPS postage, Special Service, mail piece acceptance, tracking and the delivery or the delivery attempt is kept in your account for 10 years.

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How Much Does Certified Mail® Service Cost

USPS Postage & Special Services	2017 Rates	New 2018 Rates
Certified Mail Fee	$3.35	$3.45
Electronic Delivery Confirmation Receipt	$0.80	$0.80
Return Receipt Green Card (Old Fashioned Green Card)	$2.75	$2.75
Return Receipt Electronic Signature (PDF) (replaces Green Card)	$1.45	$1.50
First Class Postage (1 OZ) (Metered Rate)	$0.46	$0.47
Additional OZ First Class Postage	$0.21	$0.21
Flats 1 OZ rate (9" X 12" or 10' X 13')	$0.98	$1.00
Restricted Delivery Service	$4.95	$5.10
Signature After Mailing	Discontinued	Discontinued

On Sunday, January 21, 2018, the U. S. Postal Service implemented the new postage rates.

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CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

April 1, 2019

Gregory T. Christian/Appellant
15 Gallivan St.
Greenville, SC 29609

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SC Court of Appeals