

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No.: 2019-002099

Machelle Smith.....Appellant,

-v-

Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts and Spa;
Columbia Sussex Management, LLC; and,
Columbia Properties Hilton Head, LLC Respondents

RECORD ON APPEAL

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INDEX

ORDERS

1. Order Granting Defendants Motion for Summary Judgment filed February 5, 2019.....3
2. Order Denying Plaintiffs Motion to Alter, Amend, and/or Reconsider filed November 18, 2019.....19

PLEADINGS

3. Summons and Complaint, filed March 31, 2016.....21
4. Answer to Complaint, filed May 3, 2016.....29
5. Defendants' Motion for Summary Judgment filed August 27, 2018.....40
6. Defendants' Memorandum in Support of Motion for Summary Judgment filed Oct 05, 2018.....43
7. Plaintiff's Motion to Alter or Amend, filed February 15, 2019.....98

TRANSCRIPT

8. Transcript of Plaintiffs deposition, March 15, 2017.....101

EXHIBITS

9. Beaufort County Sheriff's Office Report.....147
10. Hotel Incident Report.....156
11. Guest Statement Report.....157
12. Photographs.....158
13. Payroll Employee Master Inquiry.....161
14. Briana Cohen Application.....162
15. October 5, 2018, Email with Court.....165

16.	December 10, 2018, Email Correspondence from Judge Maddox.....	166
-----	--	-----

OTHER MATERIALS

17.	Certificate of Appellate	.167
-----	--------------------------------	------

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Machelle Smith,	)	Civil Action No.: 2016-CP-07-0777
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Columbia Sussex Corporation d/b/a Hilton	)	
Head Marriott Resorts & Spa; Columbia	)	
Sussex Management, LLC; and Columbia	)	
Properties Hilton Head, LLC,	)	
	)	
Defendants.	)	

This matter comes before the Court pursuant to Defendants Columbia Sussex Management, LLC, Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa; and Columbia Properties Hilton Head, LLC's ("Defendants") Motion for Summary Judgment, which was filed on August 27, 2018. After consideration of the motion, written memorandum of law, and other materials submitted to the Court, the Court makes the following findings of fact and conclusions of law.

FACTS/PROCEDURAL BACKGROUND

Plaintiff Machelle Smith, a hotel guest of Defendants, avers that her jewelry and cash were stolen from her hotel room by hotel housekeeper Briana Cohen,¹ an employee of Defendants, on April 26, 2013, at the Hilton Head Marriott. She alleges Defendants were negligent in hiring, supervising, and retaining employee Cohen and alleges vicarious liability and *respondeat superior*. [Complaint ¶ 10, 11, 12]. Defendants assert immunity from liability for the theft under the Innkeeper Statute because Plaintiff failed to place her valuables in the room safe. [Answer ¶ 30,

¹ Cohen was neither charged with a property offense, such as larceny, nor were Plaintiff's alleged stolen jewelry or cash recovered from Cohen.

31].

On or about April 26, 2013, Plaintiff and her husband checked into room 618. [Complaint □ 6; Plaintiff's Dep., p.16, line 22]. Each room has a sign on the back of the door that a safe is provided for valuable items and that, should guests not utilize the safe, the hotel is not liable for any loss. [Photographs]. Prior to attending a spa treatment, Plaintiff removed her jewelry. [Complaint □ 6; Plaintiff's Dep., p. 26, lines 11-13]. Plaintiff stated her jewelry included her diamond band wedding ring, diamond engagement ring, emerald and diamond ring, and a diamond pendant. [Plaintiff's Dep., p. 17, lines 12-14]. She could not locate the safe; rather, Plaintiff decided to hide her jewelry in the pockets of her suitcase. [Plaintiff's Dep., p. 27, line 19 – p. 28, line 6; Guest Statement Report]. During Plaintiff's spa appointment, her husband attended meetings at a medical conference. [Plaintiff's Dep., p. 26, lines 8-14; p. 29 lines 6-7]. When Plaintiff and her husband returned to the room, they noted the deadbolt was in the door as if to keep the door ajar but did not think anything of it because the housekeeping cart was on the floor, and they assumed the room was being cleaned. [Police Report, Interview with Machel Smith]. Plaintiff avers that she immediately realized her jewelry—which was stored in her suitcase—was missing upon her return to the room. (Plaintiff's Dep., p. 30, lines 5-7).

After discovering that her jewelry was missing, Plaintiff's husband contacted an employee, who returned to Plaintiff's room with her husband, and reported to the employee what happened. (Plaintiff's Dep., p. 33, line 4-9). Law enforcement subsequently arrived and placed the hotel on lockdown. (Plaintiff's Dep., p. 33, line 21 – p. 34, line 18). Law enforcement advised Plaintiff that an employee, Cohen, ran out of the hotel and that law enforcement were completing a search of Cohen's vehicle, cart, and other parts of the premises. (Plaintiff's Dep., p. 35, line 9-15).

During law enforcement's investigation, it was discovered that Cohen used a housekeeping key to enter Plaintiff's room. [Police Report, Interview with General Manager; Hotel Incident Report]. However, Cohen denied entering Plaintiff's room and stated that someone must have taken her key from her cart. While Cohen's belongings were searched, Plaintiff's jewelry was never recovered. [Police Report, Interview with Briana Cohen]. Cohen was ultimately terminated.

Defendants were never aware that Cohen had a criminal history. She was hired on April 16, 2013, and indicated she had never been convicted of a felony or misdemeanor. [Payroll Employee Master Inquiry; Briana Cohen Application].

Defendants moved for summary judgment on several grounds. First, Defendants argue that the South Carolina Innkeeper Statute provides complete immunity to Defendants for any alleged act of its employee Cohen. Second, Defendants contend that they are not liable to Plaintiff under a theory of *respondeat superior* because the employee acted outside the scope of employment.² Finally, Defendants aver that Plaintiff has failed to present a scintilla of evidence that Defendants knew or should have known of any alleged criminal propensities of its employees and, therefore, Defendants are not liable to Plaintiff under a claim for negligent hiring, supervision, or retention. For the reasons articulated in this Order, Defendants motion is hereby granted.

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when there exists no genuine issue of material fact, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32,

² Defendants do not concede that employee Cohen committed the purported theft.

533 S.E.2d 312 (2000). Nonetheless, a court, “cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).³ With respect to an issue on which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party’s case. Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001). The non-moving party must then “do more

³ In Bass v. Gopal, Inc., 384 S.C. 238, 247 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), the Court of Appeals addressed the recent change in summary judgment standard. In granting the summary judgment motion, the South Carolina Court of Appeals noted:

[I]n Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), our Supreme Court stated that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in footnote 3 of the opinion, the Court was careful to point out that its pronouncement concerning a mere scintilla of evidence was not necessary for its determination of the outcome in the Hancock case. In any event, we must assume any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative.

The Hancock Court also cited McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947), for the proposition “that although there was a scintilla of testimony that could be used to support the claimants’ position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants’ position rested on speculation and thus had no probative value.” Id.

than simply show that there is some metaphysical doubt as to the material facts[.]” but “must come forward with specific facts showing that there is a genuine issue for trial.” Id. “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

LAW/ANALYSIS

I. Law of Negligence in South Carolina

Plaintiff’s claim sounds in negligence. In South Carolina, to establish a cause of action for negligence, a plaintiff must prove the following four elements:

- (1) a duty of care owed by defendant to plaintiff;
- (2) breach of that duty by a negligent act or omission;
- (3) resulting in damages to the plaintiff; and
- (4) damages proximately resulted from the breach of duty.

E.g., Fettler v. Gentner, 396 S.C. 461, 466-67, 722 S.E.2d 26, 29 (Ct. App. 2012) (quoting Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002); see also Bloom v. Ravoir, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000)).

Plaintiff bears the burden of proving these elements by the preponderance of the evidence. A duty is defined as “the obligation to conform to a particular standard of conduct toward another.” Hubbard v. Taylor, 339 S.C. 582, 588, 529 S.E.2d 549 552 (Ct. App. 2000). If there is no legal duty, then the defendant is entitled to summary judgment as a matter of law. Singleton, 377 S.C. at 200, 659 S.E.2d at 204.

Furthermore, the party alleging negligence has the burden of proving actionable negligence and “[t]his burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence.” King v. J.C. Penney Co., 238 S.C. 336, 120 S.E.2d

229 (1961); see also Hunter v. Dixie Home Stores, 232 S.C. 139, 141, 101 S.E.2d 262, 265 (1957) (stating “[i]t is elementary that in order for a plaintiff to recover damages there must be proof not only of injury, but also that it was caused by the actionable negligence of the defendant. It should be kept in mind that the doctrine of res ipsa loquitur does not apply in this State.”).

II. Defendants Are Immune From Liability Pursuant to the Innkeeper Statute

In South Carolina,

[w]henver an innkeeper shall post and keep posted in a conspicuous manner in the room occupied by any guest a notice requiring such guest . . . to deposit such money and jewels as are not ordinarily carried upon the person⁴ in the office safe, and the guest shall neglect to comply with the requirements of such notice, the innkeeper shall not be liable for the loss of any baggage of such guest which may be lost or stolen from his room or for the loss of any money or jewels not deposited in the safe.

S.C. Code Ann. § 45-1-40 (2015).

The statute continues, “*Provided*, however, that notwithstanding the provisions of this section, any innkeeper who by his own willfulness contributes to the loss or damage to the personal property of a guest shall not have his liability limited in any manner by the provisions of this section.” Id. (Emphasis in original). “[E]ven if an innkeeper is negligent, so long as the innkeeper properly posts notice, the innkeeper will not be liable for any money or jewelry left in the guest’s room.” Ippolito v. Hospitality Mgmt. Assoc., 352 S.C. 563, 575 S.E.2d 562 (Ct. App. 2003) (interpreting the Innkeeper statute as a matter of first impression).

South Carolina Courts have not had much opportunity to interpret the Innkeeper Statute, which provides protection to innkeepers for theft of guest’s personal property if they fail to put

⁴ For purposes of this statute, diamond rings have been held to be jewels that are not ordinarily carried upon a person. See Bischoff v. Days Inn of America, Inc., 568 F. Supp. 1065 (D.C.S. 1983).

valuables in safe provided by innkeeper. Further, neither the statute, nor case law, provides guidance whether an innkeeper is afforded the same protections under the Statute when Plaintiff alleges theft or negligence on the part of the innkeeper or employee. Accordingly, this Court looks to other jurisdictions and whether these Courts have provided protection to an Innkeeper.

Innkeeper statutes in other jurisdictions, such as Ohio⁵ and Michigan,⁶ have provisions expressly eliminating any protection afforded under the statutes to innkeepers for alleged theft or negligence by an innkeeper or employee. See, e.g., Layton v. Seward Corp., 320 Mich. 418, 31 N.W.2d 678 (1948); World Diamond, Inc. v. Hyatt Corp., 121 Ohio App. 3d 297, 699 N.E.2d 980 (Ct. App. 1997); Busley v. Hotel Wisconsin Realty Co., 166 Wis. 294, 164 N.W. 826 (1917). “The minority view appears to be that the innkeeper, while not held as an insurer, is liable for the negligence or wrongful act of himself or his servants and may escape liability by showing that the loss was not attributable to his or his servants’ or agents’ fault. It would seem that the standard of care in most of the jurisdictions which base an innkeeper’s liability on negligence is more than that of ordinary care” 9 A.L.R.2d 818, Effect of Notice Limiting Liability for Valuables or Effects of Guest in Hotel (emphasis added).

Other jurisdictions unequivocally limit liability and contain no exceptions for loss caused by employee dishonesty or for losses caused by negligence by the innkeeper or employee. See Duvall v. Ritz Carlton Hotel Co., 946 F.2d 418, 421 (5th Cir. 1991) (applying California law) (“These code sections limit the liability of the innkeeper to the statutory amount even if the loss

⁵ The Ohio Innkeeper statute provides: “An innkeeper shall be liable for a loss of any such property of a guest in his inn caused by the theft or negligence of the innkeeper or his servant.” R.C. 4721.02.

⁶ Michigan’s Innkeeper Statute provides: “[E]very innkeeper shall be liable for any loss of the articles of a guest enumerated in this section in the inn, which loss was caused by the theft or negligence of the innkeeper or any of the innkeeper’s servants.” M.C.L.A. 427.102.

results from theft or intentional tort committed by one of its hotel employees.”); Taylor v. Forte Hotels Int’l, 235 Cal. App. 3d 1119, 1 Cal. Rptr. 2d 189 (4th Dist. 1991) (“That limitation on liability applies to losses resulting from theft by employees and to losses from negligence.”); Associated Mills, Inc. v. Drake Hotel, Inc., 31 Ill. App. 3d 304, 309-310, 334 N.E.2d 746, 750 (1st Dist. 1975) (legislative intent to cap maximum liability even when loss of “property is the result of theft or the fault or negligence of the proprietor or manager or of his agents or employees”); Nova Stylings, Inc. v. Red Roof Inns, Inc., 242 Kan. 318, 747 P.2d 107 (1987); Kahn v. Hotel Ramada of Nevada, 799 F.2d 199 (5th Cir. 1986) (applying Nevada law); Goodwin v. Georgian Hotel Co., 197 Wash. 173, 187, 84 P.2d 681, 687 (1938) (“[I]t intended that the limitation of liability should apply to losses occasioned by the theft of an employee or by the gross negligence of the hotelkeeper or his, or its, employees.”).

The reason for providing a hotel safe in compliance with § 200 and the reason for limiting a hotel’s liability under § 201 is to protect against just such situations. When a hotel room is let to a guest, the innkeeper has lost a large measure of control and supervision over the hotel room and its contents. While housekeeping and security staff can enter the room at reasonable hours and on notice to any persons present therein, essentially, for most of the time at least, property of a guest which is present in a hotel room can be said to be under the exclusive dominion and control of the hotel guest, rather than the innkeeper.

We have been cited to no case extending the limited immunity provided by statute against the common law liability of innkeepers, where the liability sought to be founded on the innkeeper was based on the exercise of unlawful dominion and control by the innkeeper himself, or his agents and employees acting in the course of their employment; as contrasted with mysterious disappearances due to causes unknown, or criminal acts of third parties or employees acting for themselves rather than for the employer. As noted above, it was only for the latter class of cases that the statutes granted immunity.

Bhattal v. Grand Hyatt-New York, 563 F.Supp. 277 (S.D.N.Y. 1983) (emphasis added).

New York cases have consistently held that employee theft was a wrongful act outside the scope of employment and for his own enrichment. See, e.g., Millhiser v. Beau Site Co., 251 N.Y. 290, 295, 167 N.E. 447, 447 (1929). The Georgia courts have likewise held that if an innkeeper posts notice, “it is not liable for articles stolen from a guest’s room even if its own employees were negligent in preventing the theft or were actually parties to the theft.” Gooden v. Day’s Inn, 196 Ga. App. 324, 325, 395 S.E.2d 876, 878 (Ct. App. 1990). The Georgia court favorably cited Millhiser, and quoted:

During the many years that a statute has been in existence in this state limiting the liability of a hotel to a guest, no case has been decided by this court indicating that such limited liability did not exist in case the property of a guest deposited for safe-keeping was stolen from a hotel by an employee thereof. Such a holding by this court would nullify the purpose of the statute and be in conflict with the spirit and intent thereof.

Millhiser, 251 N.Y. 290, 167 N.E. 447, 448 (1929).

Some courts have held that the legislature’s failure to carve out an exception for negligence is enough to find the immunity under statute is absolute. See, e.g., Ely v. Charellen Corp., 120 F.2d 984 (5th Cir. 1941) (“Had the legislature intended to make an exception to the proprietor’s freedom from liability in circumstances where the loss of jewelry proximately resulting from his negligence, whether or not a deposit with the hotel had been made, we think the legislature would have framed the statute so as to evidence such fact.”)

Other jurisdictions generally place liability with the party best positioned to avoid the loss. The economic loss doctrine in tort law holds that the objective of the law is to reduce the incidence of loss by placing it on the party in the best position to efficiently avoid it. The “basic function of tort law is to shift the burden of loss from the injured plaintiff to one who is at fault or to one who is better able to bear the loss and prevent its occurrence.” Sidney R. Barrett, Jr., Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis, 40 S.C.L.REV. 891, 935

(1989). The purpose of a duty in tort is to protect society's interest in being free from harm, and the cost of protecting society from harm is borne by society in general. Spring Motors Distribs. v. Ford Motor Co., 98 N.J. 555, 489 A.2d 660 (1985).

South Carolina Courts have not previously addressed whether the Innkeeper Statute provides for immunity without exception for a guest's loss. However, the Innkeeper Statute does not contain explicit exception language that the minority of jurisdictions' legislatures have included. See, e.g., Layton v. Seward Corp., 320 Mich. 418, 31 N.W.2d 678 (1948); World Diamond, Inc. v. Hyatt Corp., 121 Ohio App. 3d 297, 699 N.E.2d 980 (Ct. App. 1997); Busley v. Hotel Wisconsin Realty Co., 166 Wis. 294, 164 N.W. 826 (1917). The Court finds that the language of South Carolina's Statute is more in line with the statutes provided for exclusive limited liability for innkeepers. Here, Plaintiff could best avoid the loss by placing valuables in the safe provided in the room for that express purpose. If she had, Plaintiff's jewelry and cash would have been safe. To hold otherwise renders Defendants to be Plaintiff's insurer, in direct contravention of the Innkeeper Statute.

Additionally, to hold that an Innkeeper could be liable for its employee's theft of a guest's belongings would circumvent the well-established law regarding *respondeat superior* for an employee's criminal actions outside the scope of employment. See Section III.

Therefore, the Court finds that Defendants are immune from liability pursuant to the South Carolina Innkeeper Statute.

III. Defendants Are Not Liable for the Alleged Conduct of its Employee

Plaintiff has also alleged a cause of action against Defendants under a theory of *respondeat superior*, and contend that Defendants are liable to Plaintiff for its employee's purported acts. The Court finds that Defendants are not liable for the alleged conduct of Cohen.

“The doctrine of *respondeat superior* rests upon the relation of master and servant.” Armstrong v. Food Lion, Inc., 371 S.C. 271, 275, 639 S.E.2d 50, 52 (2006); see also Lane v. Modern Music, Inc., 244 S.C. 299, 136 S.E.2d 713 (1964). A plaintiff who seeks to recover from an employer (a master) for injuries sustained by the acts of an employee (servant) must establish that the relationship between the master and servant existed at the time of the injuries, and that the employee was “then about his master’s business and acting within the scope of his employment.” Armstrong, 371 S.C. at 275, 639 S.E.2d at 52. “An act is within the scope of a servant’s employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the master’s business.” Id. “If ... the servant is doing some act in furtherance of the master’s business, he will be regarded as acting within the scope of his employment, although he may exceed his authority. Jones v. Elbert, 211 S.C. 553, 558, 34 S.E.2d 796, 798-99 (1945).

On the other hand, if the servant acts for some independent purpose of his own, his conduct falls outside the scope of his employment. Crittenden v. Thompson Walker Co., 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986). “If a servant steps aside from the master’s business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time.” Lane, 244 S.C. at 305, 136 S.E.2d at 716.

To survive a motion for summary judgment, plaintiff, who seeks to recover from the employer under the doctrine of *respondeat superior*, must present at least a scintilla of evidence from which it could be inferred that the employee who was responsible for the plaintiff’s injury was carrying out his employer’s business and acting within the scope of employment at the time the plaintiff was injured. Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The Court notes as an initial matter, the alleged jewelry and cash were never recovered from Defendants' premises nor from Cohen's person or areas within her control. Regardless, even taking the facts in the light most favorable to Plaintiff as the nonmoving party, to the extent Plaintiff is able to establish Cohen stole Plaintiff's jewelry and cash, the Court finds that Defendants are not liable for Cohen's conduct.

Plaintiffs have alleged that Cohen, an employee of Defendants, accessed Plaintiff's room using her keycard, and while in the room, stole Plaintiff's jewelry and cash. However, the only competent evidence in this matter shows Cohen (whether she entered the room or not) was not scheduled to clean Plaintiff's room. Cohen, to the extent she entered the room, exceeded the scope of work.

Moreover, assuming Cohen committed the alleged act, Cohen's actions were clearly of a personal nature, indulged in for her own personal amusement. See Hamilton v. Davis, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990) (affirming grant of summary judgment in favor of master where servant momentarily stepped away from master's business and committed assault on plaintiff, which was "clearly of a personal nature, indulged in for his own personal amusement."). There is no evidence in the record that Cohen's alleged conduct was in furtherance of Defendants' business or for the benefit of Defendants. Accordingly, the Court finds that Defendants cannot be liable for the alleged conduct of Cohen.

IV. Defendants Were Not Negligent in the Hiring, Supervisor, or Retention of Their Employee

"Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort. In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the

employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.” James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330-31 (2008) (citing Restatement (Second) of Torts § 317 (1965) (cited with approval in Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992))). Negligent hiring cases generally turn on two elements—knowledge of the employer and foreseeability of harm to third parties.

To prevail on a negligent supervision claim, plaintiff must necessarily show the employer knew or should have known its employee behaved in a dangerous or otherwise incompetent or unfit manner, and that the employer, armed with this actual or constructive knowledge, failed to adequately supervise the employee.

Although foreseeability is usually an issue of fact, “the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find that risk foreseeable or the employer’s conduct to have fallen below the acceptable standard.” Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011). “In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring ... the employee” James, 377 S.C. at 661 S.E.2d at 330.

While Plaintiff has not pled a separate cause of action for negligent hiring, supervision and retention, Plaintiff has alleged negligence on these grounds. However, to hold that liability exists under this common law cause of action would eviscerate the protections afforded by the Innkeeper Statute. See Argument, Section II, *supra*. The Innkeeper statute and others like it nationwide were passed to limit common law liability that would otherwise attach in recognition of the fact that the guest, not the innkeeper, is best positioned to avoid the loss and that the innkeeper is largely unable

to control what happens within the rooms. The legislature has evinced a clear intent to replace common law liability.⁷

Further, “an affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” Hendricks v. Clemson Univ., 353 S.C. 449, 456 S.E.2d 711, 714 (2013). “There is no statute or common law precedent in South Carolina that requires employers to conduct background checks on employees[.]” Kirk v. Mumford, Inc., 20016 WL 7285832, n.2 (S.C. Ct. App. April 4, 2006). Plaintiff has not presented any evidence to establish a separate standard of care that would have made Defendants aware of any prior criminal acts or conduct of Cohen, nor is there any evidence in the record that Cohen committed any improper acts during her employment prior to the alleged incident. In short, the Court finds that there is no evidence that Defendants knew or should have known, by way of an affirmative legal duty to discover, that would have put Defendants on notice of Cohen’s alleged criminal background. Accordingly, Plaintiff’s claims for negligence hiring, supervision, and retention fail as a matter of law.

⁷ Statutes must be interpreted in such a way as to effectuate the legislature’s intention. It is well established in South Carolina that the legislature must be presumed to have meant to do something by passing a law and did not intend a futile act. See, e.g., Bruning v. SCDHEC, 418 S.C. 537, 545, 795 S.E.2d 290, 295 (Ct. App. 2016); State v. Sweat, 379 S.C. 367, 373, 665 S.E.2d 645, 648 (Ct. App. 2008).

CONCLUSION

Based on the findings of facts and conclusions of law contained herein, it is orders that Defendants' Motion for Summary Judgment be granted and Plaintiff's Complaint be dismissed with prejudice.

AND IT IS SO ORDERED.

THE HONORABLE CORDELL MADDOX
Presiding Judge, Fourteenth Judicial Circuit

_____, South Carolina

_____, 201____



Beaufort Common Pleas

Case Caption: Machelles Smith VS Columbia Sussex Corporation , defendant, et al

Case Number: 2016CP0700777

Type: Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-02-05 15:41:00 page 16 of 16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	C.A. No. 2016-CP-07-00777
	)	
Machelle Smith,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO ALTER, AMEND, AND/OR
	)	RECONSIDER
Plaintiff,	)	
v.	)	
	)	
Columbia Sussex Corporation	)	
d/b/a Hilton Head Marriott	)	
Resorts & Spa; Columbia	)	
Sussex Management, LLC; and	)	
Columbia Properties Hilton	)	
Head, LLC,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the Court through the Plaintiff's Motion to Alter, Amend, and/or Reconsider. After careful consideration and review, the Court finds that Plaintiff's Motion to Alter, Amend, and/or Reconsider should be denied.

It is hereby ordered that Plaintiff's Motion to Alter, Amend, and/or Reconsider is denied.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court



Beaufort Common Pleas

Case Caption: Machel Smith VS Columbia Sussex Corporation , defendant, et al

Case Number: 2016CP0700777

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-11-18 13:17:32 page 2 of 2

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MACHELLE SMITH

Plaintiff(s)

vs.

Columbia Sussex Corporation d/b/a Hilton
Head Marriott Resort & Spa; Columbia Sussex
Management, LLC; and Columbia Properties
Hilton Head, LLC,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-07-00777

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Fax #: (843) 726-3057
Other:
E-mail: mcreech@pmped.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NL-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☒ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

ROA-021

Date: March 31, 2016

Page 1 of 2

Submitting Party Signature:

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

MACHELLE SMITH,)

Plaintiff,)

v.)

Columbia Sussex Corporation d/b/a Hilton
Head Marriott Resort & Spa; Columbia
Sussex Management, LLC; and Columbia
Properties Hilton Head, LLC)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-07-

SUMMONS

(Jury Trial Requested)

2016 MAR 31 PM 2:49
JEREMY L. ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 690 North Green Street, Post Office Box 2500, Ridgeland, SC 29936, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

Matthew V. Creech
690 North Green Street
Post Office Box 2500
Ridgeland, SC 29936
(843) 726-6131

ATTORNEYS FOR PLAINTIFF

March 31, 2016
Ridgeland, South Carolina

specifically, Defendant Columbia Properties owns, operates, manages, and controls the Hilton Head Marriott Resort located at One Hotel Circle, Hilton Head Island, S.C.

5. That the above named Defendants shall hereinafter be referred to collectively as “Defendants” and/or “Hilton Head Marriott.”

6. That on or about April 26, 2013, the Plaintiff Machele Smith and her husband were paying guests and customers at the Defendants’ hotel property located on Hilton Head Island, S.C., while her husband attended a medical convention. After checking in to Room 618, the Plaintiff attended a spa treatment. Upon return to her room, she found that her jewelry, which had been tucked deep inside her suitcase within the room, had been stolen.

7. Upon reporting the theft to the Defendants, it was learned that an employee, agent, servant, and/or representative of the hotel, Briana Cohen, had utilized her employee room key to gain access to the room, thereby stealing the Plaintiff’s jewelry.

8. That at all times relevant herein Briana Cohen was an employee, agent, servant, and/or representative of the Defendants. Furthermore, at all times described herein, Cohen was at the time on the clock, under the actual control, custody and supervision of the Defendants. Additionally, the means of access was a room key issued to her by the Defendants and for which the Defendants were responsible for the key’s use.

9. At all times in the hiring, retention, and supervision of Cohen, the Defendants had a duty and responsibility to exercise care and caution in the hiring, supervision, and retention of Cohen as an employee who as part of job was given access to the hotel rooms occupied by the Defendants’ guests.

10. But for the Defendants’ negligent hiring, supervision, and retention of Cohen and providing her with access cards/keys to guests’ rooms, the theft of the Plaintiff’s personal items and jewelry would not have occurred.

11. Defendants owed to the Plaintiff duties arising out of contract; duties by undertaking; legal duties; non-delegable duties; and/or vicarious duties, one or more of which were breached by the Defendants.

12. Defendants are responsible for the acts and omissions of its agents and/or employees under the doctrine of *respondeat superior*.

13. Prior to April 26, 2013, the Defendants either knew or should have known that its employee/servant/agent/representative Cohen had, or was capable of, and had the criminal propensities, ideations, and proclivities to engage in activities and actions that would result in harm to the Plaintiff and other guests, and furthermore that such criminal proclivities and propensities should have precluded her from being employed by the Defendants and being entrusted with room keys that would provide access to guests' rooms and their personal belongings stored therein.

14. As a result of the acts and omissions of its employee/agent/servant/representative under the theory of *respondeat superior*, as well as through the acts and omissions of the Defendants themselves in negligently, recklessly, willfully, and wantonly hiring, supervising and retaining its agent Cohen, the Plaintiff suffered damages in the theft of her personal property of jewelry, such damages being comprised of the actual value of the items, as well as sentimental and personal values attached to the jewelry.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

15. Plaintiff realleges each and every allegation of the Complaint as if stated within this cause of action herein verbatim.

16. Plaintiff Machel Smith is informed and believes that the Defendants Hilton Head Marriott were negligent, careless, reckless, willful, wanton, and grossly negligent in at least one of the following ways:

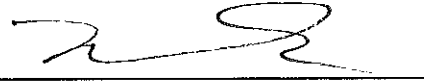
- a. In failing to use that degree of care and caution that an ordinarily prudent corporation or person would have exercised under the same or similar circumstances;
- b. In entrusting to its employee/agent/servant/representative a room key or access card to access guests' rooms and personal belongings when the Defendants knew, or should have known, of Cohen's proclivities to engage in criminal acts similar to the conduct causing injury to the Plaintiff;
- c. In failing to properly perform employment or background checks and hiring Cohen, when cursory inspection of public records would have shown criminal proclivities.
- d. In failing to properly perform and adequately supervise and train Cohen.
- e. In failing to adequately maintain control over its employees.
- f. In failing to adequately prevent the use of its room keys and access cards to prevent their use in theft;
- g. In such other and further ways as the evidence at trial will prove.

17. As a direct and proximate result of the negligence of the Defendants, whether under a theory of *respondeat superior* or through independent acts and omissions of the Defendants' own negligent, reckless, willful, wanton, and grossly negligent conduct, the plaintiff Machelles Williams is informed and believes that she is entitled to fair and just compensation for the actual damages sustained as a result of the loss of her personal property, and requests an award of damages against the Defendants, plus punitive damages, in amount to be determined by the jury.

WHEREFORE, Plaintiff requests a jury trial, and prays for the award of actual and punitive damages, plus the costs of this action, and for such other and further relief as the Court deems appropriate, the sum total of any and all such damages not to exceed Seventy Four Thousand – Five Hundred and no/100 (\$74,500.00) Dollars.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____



Matthew V. Creech
690 North Green Street
Post Office Box 2500
Ridgeland, SC 29936
(843) 726-6131

ATTORNEYS FOR PLAINTIFF

March 31, 2016

Ridgeland, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 2016 JUN -3 PM 3:17) FOURTEENTH JUDICIAL CIRCUIT

Machelle Smith,

Plaintiff,

vs.

Columbia Sussex Corporation d/b/a Hilton
Head Marriott Resorts & Spa; Columbia
Sussex Management, LLC; and Columbia
Properties Hilton Head, LLC,

Defendants.

Civil Action No.: 2016-CP-07-0777

**ANSWER OF
DEFENDANTS COLUMBIA SUSSEX
MANAGEMENT LLC
(The Real Party in Interest)
AND COLUMBIA SUSSEX
CORPORATION D/B/A HILTON HEAD
MARRIOTT RESORTS & SPA AND
COLUMBIA PROPERTIES HILTON
HEAD, LLC
(Jury Trial Requested)**

TO: MATTHEW V. CREECH, ESQUIRE, COUNSEL TO PLAINTIFF:

Defendant Columbia Sussex Management, LLC (the real party in interest), on behalf of itself and Defendants Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa; and Columbia Properties Hilton Head, LLC, ("Defendants"), reserving the right to file a motion under Rule 12 of the South Carolina Rules of Civil Procedure, or any other dispositive motion, respond to the Complaint of Machelle Smith ("Plaintiff") by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further responds as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation not herein admitted is hereby denied and strict proof thereof demanded.
2. Defendants lack sufficient knowledge or information in which to form a belief as to the allegations of Paragraph 1 regarding Plaintiff's county of residency; therefore, Defendants deny the same and demand strict proof thereof. Defendants do admit, upon information and belief, that Plaintiff is a citizen of South Carolina.

3. Defendants admit only so much of the allegations of Paragraph 2 that assert Defendant Columbia Sussex Corporation is a foreign corporation organized and existing under the law of the state of Kentucky. Defendants deny the allegations of Paragraph 2 that allege or could be construed as alleging negligence or other wrongdoing by Defendant Columbia Sussex Corporation and/or its employees and demand strict proof thereof. Defendants further maintain that Defendant Columbia Sussex Corporation is not a proper party to the instant action. Defendants additionally aver that "Marriott" is not a proper entity in the instant action.
4. Defendants admit only so much of the allegations of Paragraph 3 that assert Defendant Columbia Sussex Management, LLC is a foreign corporation organized and existing under the laws of the state of Kentucky and does business in Beaufort County, South Carolina. Defendants deny the allegations of Paragraph 3 that allege or could be construed as alleging negligence or other wrongdoing by Defendant Columbia Sussex Management, LLC and/or their employees and demand strict proof thereof. Defendant Columbia Sussex Management, LLC is the real party in interest in the case at bar.
5. Defendants admit only so much of the allegations of Paragraph 4 that assert Defendant Columbia Properties Hilton Head, LLC is a foreign limited liability company organized and existing under the laws of the state of Delaware. Defendants deny the allegations of Paragraph 4 that allege or could be construed as alleging negligence or other wrongdoing by Defendant Columbia Properties Hilton Head, LLC and/or its employees (of which there are none) and demand strict proof thereof. Defendants further maintain that Defendant Columbia Properties Hilton Head, LLC is not a proper party to the instant action.

6. Defendants need not make a response to Paragraph 5. Defendants additionally aver that "Marriott" is not a proper entity in the instant action.
7. Defendants admit only so much of the allegations of Paragraph 6 regarding Plaintiff and her husband's status as registered guests of Defendants' hotel property. Defendants deny the remaining allegations of Paragraph 6 as stated and demand strict proof thereof. Defendants reiterate that Defendant Columbia Sussex Management, LLC is the real party in interest in the case at bar.
8. Defendants deny the allegations of Paragraph 7 as stated and demand strict proof thereof.
9. Defendants admit only so much of the allegations of Paragraph 8 that assert Briana Cohen was an associate employed at the hotel property on April 26, 2013. However, Defendants deny the remaining allegations of Paragraph 8 as stated and demand strict proof thereof.
10. The allegations of Paragraph 9 contain conclusions of law to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations of Paragraph 9 that are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
11. Defendants deny the allegations of Paragraph 10 as stated and demand strict proof thereof.
12. The allegations of Paragraph 11 contain conclusions of law to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations of Paragraph 11 that are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.

13. The allegations of Paragraph 12 contain conclusions of law to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations of Paragraph 12 that could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
14. Defendants deny the allegations of Paragraph 13 as stated and demand strict proof thereof.
15. Defendants deny the allegations of Paragraph 14 as stated and demand strict proof thereof.
16. In response to the allegations contained in Paragraph 15, Defendants restate and reassert their defenses in Paragraphs 1-14 as if set forth verbatim herein.
17. Defendants deny the allegations of Paragraph 16—including all subparts—and demand strict proof thereof.
18. Defendants deny the allegations of Paragraph 17 as stated and demand strict proof thereof.
19. Defendants deny that Plaintiff is entitled to the relief sought in her “Wherefore” paragraph and demand strict proof thereof. Defendants also deny any allegations of the “Wherefore” clause that are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.

FOR A SECOND DEFENSE

20. The Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCF.

FOR A THIRD DEFENSE

21. Any injuries or damages sustained by Plaintiff were due to and caused and occasioned by Plaintiff's own action or conduct, or negligence, gross negligence, recklessness, willfulness and wantonness which was the direct and proximate cause of Plaintiff's alleged injuries or damages, if any, and without which the same would not have occurred and, therefore, due to Plaintiff's sole negligence, gross negligence, recklessness, willfulness and wantonness, Plaintiff's claims are barred.

FOR A FOURTH DEFENSE

22. Even if Defendants were negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's injuries, if any, which is expressly denied, Defendants allege the Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct contributed more than fifty percent (50%) to the cause of the accident, and therefore, Plaintiff's claims are barred.

FOR A FIFTH DEFENSE

23. Even if Defendants were negligent in any respect, which is expressly denied, and even if such conduct on the part of Defendants operated as a greater than fifty percent (50%) cause of Plaintiff's injuries, if any, which is also denied, Defendants are entitled to a determination as to the percentage which Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct contributed to Plaintiff's accident and resulting injuries, if any, and to a reduction of any amount awarded to the Plaintiff by an amount equal to the percentage of Plaintiff's own negligence.

FOR A SIXTH DEFENSE

24. A patron is charged with exercising ordinary care for personal safety and using ordinary care to avoid the effect of the owner/occupier's negligence after that negligence becomes apparent to the patron or in the exercise of ordinary care the invitee should have learned of it. In the exercise of ordinary care, the patron must use all senses to discover and avoid hurtful things. Assuming, arguendo, a negligent condition existed in the instant case, which is strictly denied, Plaintiff nevertheless failed to exercise ordinary care to discover and avoid hurtful things in the instant case. Plaintiff's failure to exercise this ordinary care bars her from recovery in the instant case.

FOR SEVENTH DEFENSE

25. Plaintiff's claims may be barred by the doctrines of waiver, estoppel, and/or laches.

FOR AN EIGHTH DEFENSE

26. Plaintiff's claims may be barred or otherwise reduced due to Plaintiff's failure to mitigate damages as required by law.

FOR A NINTH DEFENSE

27. Any injuries sustained by the Plaintiff may be due to and caused by the sole negligence of third persons over whom Defendants had no control, and therefore, Defendants should not be liable to the Plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE

28. Any injuries sustained by the Plaintiff may be due to and caused by the intervening and superseding acts of negligence, carelessness, recklessness, and gross negligence on the part of third persons as a proximate cause of injuries as alleged, if any, and therefore, Defendants should not be liable to the Plaintiff in any sum whatsoever.

FOR AN ELEVENTH DEFENSE

29. To the extent applicable in the instant case, Defendants assert that some or all of the claims against Defendants may be barred by applicable statutes of limitation or repose.

FOR A TWELFTH DEFENSE

30. Defendants crave reference to and rely upon S.C. Code Ann § 40-1-40, commonly referred to as the Innkeeper's Statute, as a complete defense in this instant case.

FOR A THIRTEENTH DEFENSE

31. Notwithstanding Defendants' previously asserted defenses and answers, to the extent necessary, Defendants aver they are not liable for the demonstrated criminal acts of employees. See, e.g., Armstrong v. Food Lion, 371 S.C. 271, 639 S.E.2d 50 (2006).

FOR A FOURTEENTH DEFENSE

32. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003), and the cases upon which it is based.

FOR A FIFTEENTH DEFENSE

33. Pursuant to Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 522 U.S. 424 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore, Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR A SIXTEENTH DEFENSE

34. The United States Constitution's Due Process Clause "forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those

whom they directly [do not] represent,” Phillip Morris USA v. Williams, 549 U.S. 346, 353 (2007), and, therefore, to the extent that Plaintiff seeks an award of punitive damages for potential or speculative harm to non-parties to the present action, such prayer for relief is unconstitutional and must be struck from the pleadings and is otherwise inadmissible at trial.

FOR A SEVENTEENTH DEFENSE

35. Notwithstanding Defendants’ prior defenses incorporating Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 522 U.S. 424 (2001) and State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003), and the cases upon which they are based, in the event the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury’s award of actual damages, as explicated within Exxon Shipping Company v. Baker, 554 U.S. 471 (2008).

FOR AN EIGHTEENTH DEFENSE

36. Defendants plead any and all applicable protections afforded to it under the South Carolina Fairness and Civil Justice Act of 2011, codified at S.C. Code Ann. §§ 15-32-510 to -540 as a defense to Plaintiff’s claims or requests for an award of punitive damages.

FOR AN NINETEENTH DEFENSE

37. Defendants specifically reserve any additional and/or affirmative defenses as may be available to it or revealed to it during the course of the investigation and/or discovery in this case.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants respectfully request that:

1. Plaintiff takes nothing by this action;
2. A judgment of dismissal be entered in favor of Defendants;
3. Defendants be awarded the cost of the suit incurred; and
4. Defendants be awarded such other and further relief as the Court deems proper.

Respectfully submitted,

COLLINS & LACY, P.C.

By: 
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
KELSEY J. BRUDVIG
kbrudvig@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR COLUMBIA SUSSEX
MANAGEMENT, LLC (THE REAL PARTY
IN INTEREST) AND COLUMBIA SUSSEX
CORPORATION D/B/A HILTON HEAD
MARRIOTT RESORTS & SPA AND
COLUMBIA PROPERTIES HILTON HEAD,
LLC

ANSWER TO PLAINTIFF'S COMPLAINT

These Defendants Request a Jury Trial

Columbia, South Carolina
April 28, 2016

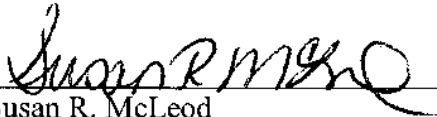
CERTIFICATE OF SERVICE
(2016-CP-07-0777)

The undersigned employee of Collins & Lacy, P.C., hereby certify that (s)he has served the following named individual(s) with a copy of the pleading(s) indicated below via electronic mail and/or by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Matthew V. Creech, Esquire
Peters Murdaugh Parker Eltzroth & Detrick
Post Office Box 2500
Ridgeland, SC 29936
Counsel for Plaintiff

PLEADING: *Defendants' Answer to Plaintiff's Complaint*



Susan R. McLeod

Columbia, South Carolina
April 28, 2016

2016 MAY -3 PM 3:17
CLERK OF COURT
JAMES W. HARRIS, JR.
CLERK OF COURT
JAMES W. HARRIS, JR.



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

April 28, 2016

VIA UNITED STATES MAIL

The Honorable Jerri Ann Roseneau
Beaufort County Court Clerk of Court
Post Office Drawer 1128
Beaufort, South Carolina 29901-1128

Re: *Machelle Smith v. Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa; Columbia Sussex Management, LLC; and Columbia Properties Hilton Head, LLC*
Civil Action No. 2016-CP-07-0777
Claim No. 007164-006563-GD-01
C&L File No. 001831-00104

Dear Ms. Roseneau:

Enclosed for filing please find the original and one (1) copy of Defendants Columbia Sussex Management, LLC and Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa and Columbia Properties Hilton Head, LLC's Answer to Plaintiff's Complaint in the above matter. Please return the clocked copy to me in the self-addressed stamped envelope provided for your convenience.

By copy of this letter, I am providing a copy of the same to Plaintiff's counsel.

Please do not hesitate to contact me should you have any questions or concerns. Thank you for time and attention.

Respectfully,

Christian Stegmaier

CS:srm
Enclosures

cc: Matthew V. Creech, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Machelle Smith,	)	Civil Action No.: 2016-CP-07-0777
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Columbia Sussex Corporation d/b/a Hilton	)	
Head Marriott Resorts & Spa; Columbia	)	
Sussex Management, LLC; and Columbia	)	
Properties Hilton Head, LLC,	)	
	)	
Defendants.	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Columbia Sussex Management, LLC (the real party in interest), on behalf of itself and Defendants Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa; and Columbia Properties Hilton Head, LLC (“Defendants”) moves this Court for an order granting summary judgment in favor of Defendants in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law in its favor. Summary judgment is appropriate where it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

The parties disagree about the applicability of the Innkeeper statute in limiting liability in this case.

Defendants would argue that they are immune from liability because, inter alia, they complied with the Innkeeper Statute and provided written notice to guests that a safe was available to secure valuables. Plaintiff’s failure to avail herself of that safe was the proximate cause of the loss. The Innkeeper Statute shields Defendants from liability where notice is properly posted, and negligent hiring and supervision are not applicable where the legislature has

enacted the Innkeeper statute with the express purpose of limiting common law liability.

There is only one South Carolina case interpreting the statute. As such, to facilitate resolution of this case, Defendants would respectfully request the Court to rule expressly on the applicability of that statute.

Additionally, Defendants aver Plaintiff has not demonstrated the existence of a colorable duty of law as it pertains to any duty relating to pre-employment background checks.

This motion is based upon the pleadings, the affidavits attached hereto or which will be served prior to the hearing, memoranda of law in support of this motion and attachments thereto, Rule 56 of the South Carolina Rules of Civil Procedure, and any such additional law and argument as shall be appropriate.

Defendants respectfully request arguments on their Motion. Defendants reserve the right to amend this Motion and the attached Memorandum prior to argument and disposition of the motion. Further, Defendants reserve the right to supplement its arguments by a written memorandum of law, affidavits, and other materials permitted under Rule 56 of the South Carolina Rules of Civil Procedure.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

By: /s/ Christian Stegmaier

CHRISTIAN STEGMAIER

SC Bar No. 68648

cstegmaier@collinsandlacy.com

KELSEY J. BRUDVIG

SC Bar No. 101680

kbrudvig@collinsandlacy.com

1330 Lady Street, Sixth Floor (29201)

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR COLUMBIA SUSSEX
MANAGEMENT, LLC (THE REAL PARTY
IN INTEREST) AND COLUMBIA SUSSEX
CORPORATION D/B/A HILTON HEAD
MARRIOTT RESORTS & SPA AND
COLUMBIA PROPERTIES HILTON HEAD,
LLC

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Columbia, South Carolina
August 27, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Machelle Smith,	)	Civil Action No.: 2016-CP-07-0777
	)	
Plaintiff,	)	
	)	DEFENDANTS' MEMORANDUM IN
vs.	)	SUPPORT OF MOTION FOR SUMMARY
	)	JUDGMENT
Columbia Sussex Corporation d/b/a Hilton	)	
Head Marriott Resorts & Spa; Columbia	)	
Sussex Management, LLC; and Columbia	)	
Properties Hilton Head, LLC,	)	
	)	
Defendants.	)	

TO: MATTHEW V. CREECH, ESQUIRE, COUNSEL TO PLAINTIFF:

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Columbia Sussex Management, LLC (the real party in interest), on behalf of itself and Defendants Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa; and Columbia Properties Hilton Head, LLC ("Defendants") move this Court for an order granting summary judgment in the above-referenced case.

Defendants assert that they are immune from liability. Defendants specifically aver that they complied with the Innkeeper Statute and provided written notice to guests that a safe was available to secure valuables. Plaintiff's failure to avail herself of the in-room safe was the proximate cause of the loss.

Further, there is no evidence that the alleged conduct of Defendants' employee was in furtherance of Defendants practice or for the benefit of Defendants and, therefore, Defendants are not liable under the theory of *respondeat superior*.

Finally, Plaintiffs have failed to establish an affirmative duty owed by Defendants to Plaintiff and a breach of any alleged duty that proximately caused Plaintiff's damages.

Accordingly, Plaintiff's claim for negligent hiring, supervision, and retention fails as a matter of law.

Defendants submit the following memorandum of law in support of their motion.

FACTS/ PROCEDURAL BACKGROUND

Plaintiff Machele Smith ("Plaintiff"), a hotel guest of Defendants, avers that her jewelry and cash were stolen from her hotel room by hotel housekeeper Briana Cohen,¹ an employee of Defendants, on April 26, 2013, at the Hilton Head Marriott. She alleges Defendants were negligent in hiring, supervising, and retaining employee Cohen and alleges vicarious liability and *respondeat superior*. [Complaint ¶ 10, 11, 12]. Defendants assert immunity from liability for the theft under the Innkeeper Statute because Plaintiff failed to place her valuables in the room safe. [Answer ¶ 30, 31].

On or about April 26, 2013, Plaintiff and her husband checked into room 618. [Complaint ¶ 6; **Exhibit A**, Plaintiff's Deposition Transcript, p.16, line 22]. Each room has a sign on the back of the door that a safe is provided for valuable items and that, should guests not utilize the safe, the hotel is not liable for any loss. [**Exhibit B**, Photographs]. Prior to attending a spa treatment, Plaintiff removed her jewelry. [Complaint ¶ 6; **Exhibit A**, p. 26, lines 11-13]. Plaintiff stated her jewelry included her diamond band wedding ring, diamond engagement ring, emerald and diamond ring, and a diamond pendant. [**Exhibit A**, p. 17, lines 12-14]. She could not locate the safe; rather, Plaintiff decided to hide her jewelry in the pockets of her suitcase. [**Exhibit A**, p. 27, line 19 – p. 28, line 6; **Exhibit C**, Guest Statement Report]. During Plaintiff's spa appointment, her husband attended meetings at a medical conference. [**Exhibit A**, p. 26, lines 8-14; p. 29 lines 6-7]. When Plaintiff and her husband returned to the room, they noted the

¹ Cohen was neither charged with a property offense, such as larceny, nor were Plaintiff's alleged stolen jewelry or cash recovered from Cohen.

deadbolt was in the door as if to keep the door ajar but did not think anything of it because the housekeeping cart was on the floor, and they assumed the room was being cleaned. [Exhibit D, Police Report, Interview with Machel Smith]. Plaintiff avers that she immediately realized her jewelry—which was stored in her suitcase—was missing upon her return to the room. (Exhibit A, p. 30, lines 5-7).

After discovering that her jewelry was missing, Plaintiff's husband contacted an employee, who returned to Plaintiff's room with her husband, and reported to the employee what happened. (Exhibit A, p. 33, line 4-9). Law enforcement subsequently arrived and placed the hotel on lockdown. (Exhibit A, p. 33, line 21 – p. 34, line 18). Law enforcement advised Plaintiff that an employee, Cohen, ran out of the hotel and that law enforcement were completing a search of Cohen's vehicle, cart, and other parts of the premises. (Exhibit A, p. 35, line 9-15).

During law enforcement's investigation, it was discovered that Cohen used a housekeeping key to enter Plaintiff's room. [Exhibit D, Police Report, Interview with General Manager; Exhibit E, Hotel Incident Report]. However, Cohen denied entering Plaintiff's room and stated that someone must have taken her key from her cart. While Cohen's belongings were searched, Plaintiff's jewelry was never recovered. [Exhibit D, Police Report, Interview with Briana Cohen]. Cohen was ultimately terminated.

Defendants were never aware that Cohen had a criminal history. She was hired on April 16, 2013, and indicated she had never been convicted of a felony or misdemeanor. [Exhibit F, Payroll Employee Master Inquiry; Exhibit G, Briana Cohen Application]

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when there exists no genuine issue of material fact, and that party is entitled to judgment as a matter of law. Rule

56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000). Nonetheless, a court, “cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoir, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).² With respect to an issue on

² In Bass v. Gopal, Inc., 384 S.C. 238, 247 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), the Court of Appeals addressed the recent change in summary judgment standard. In granting the summary judgment motion, the South Carolina Court of Appeals noted:

[I]n Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), our Supreme Court stated that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in footnote 3 of the opinion, the Court was careful to point out that its pronouncement concerning a mere scintilla of evidence was not necessary for its determination of the outcome in the Hancock case. In any event, we must assume any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative.

The Hancock Court also cited McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947), for the proposition “that although there was a scintilla of testimony that could be used to support the claimants’ position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants’ position rested on speculation and thus had no probative value.” Id.

which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party's case. Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001). The non-moving party must then "do more than simply show that there is some metaphysical doubt as to the materials facts[,] but "must come forward with specific facts showing that there is a genuine issue for trial." Id. "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

LAW/ANALYSIS

The Court must grant summary judgment in favor of Defendants because Defendants are immune from liability under the Innkeeper Statute where Mrs. Smith did not use the safe; *respondeat superior* does not apply where the employee acted with criminal intent for her own purposes outside the scope of employment; and negligent supervision and hiring does not apply where the hotel had no reason to know of Cohen's criminal history.

I. Law of Negligence in South Carolina

Plaintiff's claim sounds in negligence. In South Carolina, to establish a cause of action for negligence, a plaintiff must prove the following four elements:

- (1) a duty of care owed by defendant to plaintiff;
- (2) breach of that duty by a negligent act or omission;
- (3) resulting in damages to the plaintiff; and
- (4) damages proximately resulted from the breach of duty.

E.g., Fettle v. Gentner, 396 S.C. 461, 466-67, 722 S.E.2d 26, 29 (Ct. App. 2012) (quoting Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002); see also Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000)). Plaintiff bears the burden of proving these elements

by the preponderance of the evidence. A duty is defined as “the obligation to conform to a particular standard of conduct toward another.” Hubbard v. Taylor, 339 S.C. 582, 588, 529 S.E.2d 549 552 (Ct. App. 2000). If there is no legal duty, then the defendant is entitled to summary judgment as a matter of law. Singleton, 377 S.C. at 200, 659 S.E.2d at 204.

Furthermore, the party alleging negligence has the burden of proving actionable negligence and “[t]his burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence.” King v. J.C. Penney Co., 238 S.C. 336, 120 S.E.2d 229 (1961); see also Hunter v. Dixie Home Stores, 232 S.C. 139, 141, 101 S.E.2d 262, 265 (1957) (stating “[i]t is elementary that in order for a plaintiff to recover damages there must be proof not only of injury, but also that it was caused by the actionable negligence of the defendant. It should be kept in mind that the doctrine of res ipsa loquitur does not apply in this State.”).

II. Defendants Are Immune From Liability Pursuant to the Innkeeper Statute

In South Carolina,

[w]henver an innkeeper shall post and keep posted in a conspicuous manner in the room occupied by any guest a notice requiring such guest . . . to deposit such money and jewels as are not ordinarily carried upon the person³ in the office safe, and the guest shall neglect to comply with the requirements of such notice, the innkeeper shall not be liable for the loss of any baggage of such guest which may be lost or stolen from his room or for the loss of any money or jewels not deposited in the safe.

S.C. Code Ann. § 45-1-40 (2015). The statute continues, “*Provided*, however, that notwithstanding the provisions of this section, any innkeeper who by his own willfulness contributes to the loss or damage to the personal property of a guest shall not have his liability

³ For purposes of this statute, diamond rings have been held to be jewels that are not ordinarily carried upon a person. See Bischoff v. Days Inn of America, Inc., 568 F. Supp. 1065 (D.C.S. 1983).

limited in any manner by the provisions of this section. Id. (Emphasis in original). “[E]ven if an innkeeper is negligent, so long as the innkeeper properly posts notice, the innkeeper will not be liable for any money or jewelry left in the guest’s room.” Ippolito v. Hospitality Mgmt. Assoc., 352 S.C. 563, 575 S.E.2d 562 (Ct. App. 2003) (interpreting the Innkeeper statute as a matter of first impression).

South Carolina Courts have not had much opportunity to interpret the Innkeeper Statute, which provides protection to innkeepers for theft of guest’s personal property if they fail to put valuables in safe provided by innkeeper. Further, neither the statute, nor case law, provides guidance whether an innkeeper is afforded the same protections under the Statute when Plaintiff alleges theft or negligence on the part of the innkeeper or employee.

Innkeeper statutes in other jurisdictions, such as Ohio⁴ and Michigan,⁵ have provisions expressly eliminating any protection afforded under the statutes to innkeepers for alleged theft of negligence by an innkeeper or employee. See, e.g., Layton v. Seward Corp., 320 Mich. 418, 31 N.W.2d 678 (1948); World Diamond, Inc. v. Hyatt Corp., 121 Ohio App. 3d 297, 699 N.E.2d 980 (Ct. App. 1997); Busley v. Hotel Wisconsin Realty Co., 166 Wis. 294, 164 N.W. 826 (1917). “The minority view appears to be that the innkeeper, while not held as an insurer, is liable for the negligence or wrongful act of himself or his servants and may escape liability by showing that the loss was not attributable to his or his servants’ or agents’ fault. It would seem that the standard of care in most of the jurisdictions which base an innkeeper’s liability on

⁴ The Ohio Innkeeper statute provides: “An innkeeper shall be liable for a loss of any such property of a guest in his inn caused by the theft or negligence of the innkeeper or his servant.” R.C. 4721.02.

⁵ Michigan’s Innkeeper Statute provides: “[E]very innkeeper shall be liable for any loss of the articles of a guest enumerated in this section in the inn, which loss was caused by the theft or negligence of the innkeeper or any of the innkeeper’s servants.” M.C.L.A. 427.102.

negligence is more than that of ordinary care. . . .” 9 A.L.R.2d 818, Effect of Notice Limiting Liability for Valuables or Effects of Guest in Hotel (emphasis added).

Other jurisdictions unequivocally limit liability and contain no exceptions for loss caused by employee dishonesty or for losses caused by negligence by the innkeeper or employee. See Duvall v. Ritz Carlton Hotel Co., 946 F.2d 418, 421 (5th Cir. 1991) (applying California law) (“These code sections limit the liability of the innkeeper to the statutory amount even if the loss results from theft or intentional tort committed by one of its hotel employees.”); Taylor v. Forte Hotels Int’l, 235 Cal. App. 3d 1119, 1 Cal. Rptr. 2d 189 (4th Dist. 1991) (“That limitation on liability applies to losses resulting from theft by employees and to losses from negligence.”); Associated Mills, Inc. v. Drake Hotel, Inc., 31 Ill. App. 3d 304, 309-310, 334 N.E.2d 746, 750 (1st Dist. 1975) (legislative intent to cap maximum liability even when loss of “property is the result of theft or the fault or negligence of the proprietor or manager or of his agents or employees. . . .”); Nova Stylings, Inc. v. Red Roof Inns, Inc., 242 Kan. 318, 747 P.2d 107 (1987); Kahn v. Hotel Ramada of Nevada, 799 F.2d 199 (5th Cir. 1986) (applying Nevada law); Goodwin v. Georgian Hotel Co., 197 Wash. 173, 187, 84 P.2d 681, 687 (1938) (“[I]t intended that the limitation of liability should apply to losses occasioned by the theft of an employee or by the gross negligence of the hotelkeeper or his, or its, employees.”).

The reason for providing a hotel safe in compliance with § 200 and the reason for limiting a hotel’s liability under § 201 is to protect against just such situations. When a hotel room is let to a guest, the innkeeper has lost a large measure of control and supervision over the hotel room and its contents. While housekeeping and security staff can enter the room at reasonable hours and on notice to any persons present therein, essentially, for most of the time at least, property of a guest which is present in a hotel room can be said to be under the exclusive dominion and control of the hotel guest, rather than the innkeeper.

We have been cited to no case extending the limited immunity provided by statute against the common law liability of innkeepers,

where the liability sought to be founded on the innkeeper was based on the exercise of unlawful dominion and control by the innkeeper himself, or his agents and employees acting in the course of their employment; as contrasted with mysterious disappearances due to causes unknown, or criminal acts of third parties or employees acting for themselves rather than for the employer. As noted above, it was only for the latter class of cases that the statutes granted immunity.

Bhattal v. Grand Hyatt-New York, 563 F.Supp. 277 (S.D.N.Y. 1983) (emphasis added). New York cases have consistently held that employee theft was a wrongful act outside the scope of employment and for his own enrichment. See, e.g., Millhiser v. Beau Site Co., 251 N.Y. 290, 295, 167 N.E. 447, 447 (1929). The Georgia courts have likewise held that if an innkeeper posts notice, “it is not liable for articles stolen from a guest’s room even if its own employees were negligent in preventing the theft or were actually parties to the theft.” Gooden v. Day’s Inn, 196 Ga. App. 324, 325, 395 S.E.2d 876, 878 (Ct. App. 1990). The Georgia court favorably cited Millhiser, and quoted:

During the many years that a statute has been in existence in this state limiting the liability of a hotel to a guest, no case has been decided by this court indicating that such limited liability did not exist in case the property of a guest deposited for safe-keeping was stolen from a hotel by an employee thereof. Such a holding by this court would nullify the purpose of the statute and be in conflict with the spirit and intent thereof.

Millhiser, 251 N.Y. 290, 167 N.E. 447, 448 (1929). Some courts have held that the legislature’s failure to carve out an exception for negligence is enough to find the immunity under statute is absolute. See, e.g., Ely v. Charellen Corp., 120 F.2d 984 (5th Cir. 1941) (“Had the legislature intended to make an exception to the proprietor’s freedom from liability in circumstances where the loss of jewelry proximately resulting from his negligence, whether or not a deposit with the hotel had been made, we think the legislature would have framed the statute so as to evidence such fact.”)

Courts generally place liability with the party best positioned to avoid the loss. The economic loss doctrine in tort law holds that the objective of the law is to reduce the incidence of loss by placing it on the party in the best position to efficiently avoid it. The “basic function of tort law is to shift the burden of loss from the injured plaintiff to one who is at fault or to one who is better able to bear the loss and prevent its occurrence.” Sidney R. Barrett, Jr., Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis, 40 S.C.L.REV. 891, 935 (1989). The purpose of a duty in tort is to protect society’s interest in being free from harm, and the cost of protecting society from harm is borne by society in general. Spring Motors Distribs. v. Ford Motor Co., 98 N.J. 555, 489 A.2d 660 (1985).

South Carolina Courts have not previously addressed whether the Innkeeper Statute provides for immunity without exception for a guest’s loss. However, the Innkeeper Statute does not contain explicated exception language that the minority of jurisdictions’ legislatures have included. See, e.g., Layton v. Seward Corp., 320 Mich. 418, 31 N.W.2d 678 (1948); World Diamond, Inc. v. Hyatt Corp., 121 Ohio App. 3d 297, 699 N.E.2d 980 (Ct. App. 1997); Busley v. Hotel Wisconsin Realty Co., 166 Wis. 294, 164 N.W. 826 (1917). The language of South Carolina’s Statute is more in line with the statutes provided for exclusive limited liability for innkeepers. Here, Plaintiff could best avoid the loss by placing valuables in the safe provided in the room for that express purpose. If she had, Plaintiff’s jewelry and cash would have been safe. To hold otherwise renders Defendants to be Plaintiff’s insurer, in direct contravention of the Innkeeper Statute.

III. Defendants Are Not Liable for the Alleged Conduct of its Employee

While South Carolina courts have not interpreted the extent of the limitations of liability afforded under the Innkeeper Statute, Defendants are not liable for the alleged conduct of Cohen.

“The doctrine of *respondeat superior* rests upon the relation of master and servant.” Armstrong v. Food Lion, Inc., 371 S.C. 271, 275, 639 S.E.2d 50, 52 (2006); see also Lane v. Modern Music, Inc., 244 S.C. 299, 136 S.E.2d 713 (1964). A plaintiff who seeks to recover from an employer (a master) for injuries sustained by the acts of an employee (servant) must establish that the relationship between the master and servant existed at the time of the injuries, and that the employee was “then about his master’s business and acting within the scope of his employment.” Armstrong, 371 S.C. at 275, 639 S.E.2d at 52. “An act is within the scope of a servant’s employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the master’s business.” Id. “If ... the servant is doing some act in furtherance of the master’s business, he will be regarded as acting within the scope of his employment, although he may exceed his authority.” Jones v. Elbert, 211 S.C. 553, 558, 34 S.E.2d 796, 798-99 (1945).

On the other hand, if the servant acts for some independent purpose of his own, his conduct falls outside the scope of his employment. Crittenden v. Thompson Walker Co., 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986). “If a servant steps aside from the master’s business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time.” Lane, 244 S.C. at 305, 136 S.E.2d at 716.

To survive a motion for summary judgment, plaintiff, who seeks to recover from the employer under the doctrine of *respondeat superior*, must present at least a scintilla of evidence from which it could be inferred that the employee who was responsible for the plaintiff’s injury was carrying out his employer’s business and acting within the scope of employment at the time the plaintiff was injured. Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d

801, 803 (2009).

As an initial matter, the alleged jewelry and cash were never recovered from Defendants' premises nor from Cohen's person or areas within her control. Regardless, even taking the facts in the light most favorable to Plaintiff as the nonmoving party, to the extent Plaintiff is able to establish Cohen stole Plaintiff's jewelry and cash, Defendants are not liable for Cohen's conduct. Plaintiffs have alleged that Cohen, an employee of Defendants, accessed Plaintiff's room using her keycard, and while in the room, stole Plaintiff's jewelry and cash. However, the only competent evidence in this matter shows Cohen (whether she entered the room or not) was not scheduled to clean Plaintiff's room. Cohen, to the extent she entered the room, exceeded the scope of work.

Moreover, assuming Cohen committed the alleged act, Cohen's action were clearly of a personal nature, indulged in for her own personal amusement. See Hamilton v. Davis, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990) (affirming grant of summary judgment in favor of master where servant momentarily stepped away from master's business and committed assault on plaintiff, which was "clearly of a personal nature, indulged in for his own personal amusement."). There is no evidence in the record that Cohen's alleged conduct was in furtherance of Defendants' business or for the benefit of Defendants. Accordingly, Defendants cannot be liable for the alleged conduct of Cohen.

IV. Defendants Were Not Negligence in the Hiring, Supervisor, or Retention of Their Employee

"Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort. In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the

employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.” James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330-31 (2008) (citing Restatement (Second) of Torts § 317 (1965) (cited with approval in Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992))). Negligent hiring cases generally turn on two elements—knowledge of the employer and foreseeability of harm to third parties. Although foreseeability is usually an issue of fact, the court may dispose of the matter on a dispositive motion when no reasonable fact finder could find the risk foreseeable or the employer’s conduct to have fallen below the acceptable standard. Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011). To prevail on a negligent supervision claim, plaintiff must necessarily show the employer knew or should have known its employee behaved in a dangerous or otherwise incompetent or unfit manner, and that the employer, armed with this actual or constructive knowledge, failed to adequately supervise the employee.

Although foreseeability is usually an issue of fact, “the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find that risk foreseeable or the employer’s conduct to have fallen below the acceptable standard.” Id. at 207, 624 S.E.2d at 451. “In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring ... the employee” James, 377 S.C. at 661 S.E.2d at 330.

While Plaintiff has not pled a separate cause of action for negligent hiring, supervision and retention, Plaintiff has alleged negligence on these grounds. However, to hold that liability exists under this common law cause of action would eviscerate the protections afforded by the

Innkeeper Statute. See Argument, Section II, *supra*. The Innkeeper statute and others like it nationwide were passed to limit common law liability that would otherwise attach in recognition of the fact that the guest, not the innkeeper, is best positioned to avoid the loss and that the innkeeper is largely unable to control what happens within the rooms. The legislature has evinced a clear intent to replace common law liability.⁶

Further, “an affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” Hendricks v. Clemson Univ., 353 S.C. 449, 456 S.E.2d 711, 714 (2013). “There is no statute or common law precedent in South Carolina that requires employers to conduct background checks on employees[.]” Kirk v. Mumford, Inc., 20016 WL 7285832, n.2 (S.C. Ct. App. April 4, 2006). Plaintiff has not presented any evidence to establish a separate standard of care that would have made Defendants aware of any prior criminal acts or conduct of Cohen, nor is there any evidence in the record that Cohen committed any improper acts during her employment prior to the alleged incident. In short, there is no evidence that Defendants knew or should have known, by way of an affirmative legal duty to discover, that would have put Defendants on notice of Cohen’s alleged criminal background. Accordingly, Plaintiff’s claims for negligence hiring, supervision, and retention must fail as a matter of law.

⁶ Statutes must be interpreted in such a way as to effectuate the legislature’s intention. It is well established in South Carolina that the legislature must be presumed to have meant to do something by passing a law and did not intend a futile act. See, e.g., Bruning v. SCDHEC, 418 S.C. 537, 545, 795 S.E.2d 290, 295 (Ct. App. 2016); State v. Sweat, 379 S.C. 367, 373, 665 S.E.2d 645, 648 (Ct. App. 2008).

CONCLUSION

Here, Defendants are immune from liability because it complied with the Innkeeper Statute and provided written notice to guests that a safe was available to secure valuables. Plaintiff's failure to avail herself of the safe provided in her room was the proximate cause of the loss.

Further, Respondeat superior/vicarious liability does not apply because the alleged conduct of Cohen was outside her scope of employment. Negligent hiring and supervision is not applicable where the legislature has enacted the Innkeeper Statute with the express purpose of limiting common law liability and there is no evidence of an affirmative duty or other standard of care regarding the alleged criminal background of Cohen.

Based on the aforementioned, Defendants respectfully request the Court enter judgment in favor of Defendants.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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MARRIOTT RESORTS & SPA AND
COLUMBIA PROPERTIES HILTON HEAD,
LLC

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

Columbia, South Carolina
October 5, 2018

EXHIBIT A

In the Matter Of:

Smith, Machelles v
Columbia Sussex Corp., et al

Machelle Smith

March 15, 2017



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 2 COUNTY OF BEAUFORT
 3 MACHELLE SMITH,
 4 Plaintiff,
 5 vs. CASE NO. 2016-CP-07-0777
 6 COLUMBIA SUSSEX CORPORATION D/B/A HILTON HEAD
 7 MARRIOTT RESORTS & SPA; COLUMBIA SUSSEX
 8 MANAGEMENT, LLC; AND COLUMBIA PROPERTIES HILTON
 9 HEAD, LLC,
 Defendants.

10 DEPOSITION OF: MACHELLE SMITH

11 DATE: March 15, 2017

12 TIME: 10:02 a.m.

13 LOCATION: HATFIELD TEMPLE
 14 170 Courthouse Square
 15 Florence, SC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: Lauren A. Balogh, Court Reporter

18
 19 A. WILLIAM ROBERTS, JR., & ASSOCIATES
 20 Fast, Accurate & Friendly
 21

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(INDEX AT REAR OF TRANSCRIPT)

1 registered guest at the hotel? How long were you
2 planning on staying there?

3 A. Can you clarify?

4 Q. Sure.

5 What was your length of stay at the
6 hotel in April of 2013?

7 A. It was for a medical conference, so it
8 was a weekend. We would have checked out Sunday, I
9 believe. We got there Friday evening.

10 Q. Had you ever stayed at that property
11 before?

12 A. No.

13 Q. Have you stayed at that property since?

14 A. No.

15 Q. Now, I'll represent to you the hotel
16 room that you were staying in was 618. Does that
17 comport with your recollection?

18 A. I don't remember.

19 Q. Okay. That's fine.

20 Was the hotel -- and I'll just
21 represent to you, it's our understanding it was
22 618. Was that the only room you stayed in during
23 your time at the hotel?

24 A. Yes.

25 Q. Okay. And if you checked in on Friday

1 and checked out on Sunday, what day did this
2 incident occur?

3 A. I believe it was Saturday.

4 Q. All right. And when you say -- and
5 we've obviously read the pleadings, and I've
6 listened to what you have to say. Your position is
7 that property that belonged to you was stolen; is
8 that correct?

9 A. Yes.

10 Q. And with regard to what you maintain
11 was stolen, what specifically are we talking about?

12 A. I had a diamond wedding ring. A
13 diamond band. An emerald and diamond ring. A
14 diamond pendant, and cash.

15 Q. Okay. With regard to the cash, do you
16 remember the amount of money in cash that you had?

17 A. At this time, no.

18 Q. All right. Do you have a ballpark
19 idea?

20 A. \$200.

21 Q. All right. So a diamond engagement
22 ring. Now, was that yellow gold?

23 A. Yes.

24 Q. And there was a wedding band with
25 diamonds in it, correct?

1 A. Yes.

2 Q. And that was yellow gold as well?

3 A. Yes.

4 Q. And then there was a diamond pendant.

5 And did that -- was that yellow gold?

6 A. Yes.

7 Q. All right. And then you said an
8 emerald and diamond ring, too, as well?

9 A. Yes.

10 Q. All right. Let me show you what's been
11 marked as Exhibit 1. And with more specificity,
12 it's Bates-stamped as Defendant's 10 through
13 Defendant's 14. And I believe that Mr. Temple had
14 forwarded these to us when the claim was initially
15 made.

16 Let me show those to you and take a
17 look through that. And what I will relate to you
18 is these are documents that were forwarded to us by
19 your Florence counsel that contain some appraisals
20 as well as some bills of sale.

21 A. (Witness reviewing documents.)

22 Q. And let me just go -- I'm just going to
23 go through these one by one with you to make sure
24 we're on the same page.

25 So page one of Exhibit 1, it says

1 A. They are moissanite.

2 Q. Okay.

3 A. They're like a CZ type of...

4 Q. Okay. All right. So Friday night
5 comes and goes. You have Saturday morning. What
6 do you remember about waking up on Saturday and
7 getting going with your day?

8 A. I remember that my -- we were there for
9 a medical conference. My husband had a medical
10 conference, that he was getting ready to go to a
11 conference. And I thought I would just spoil
12 myself with a massage. I've never had a massage.
13 So I had set up an appointment for a massage that
14 day.

15 Q. Okay. So was that at the spa at the
16 property?

17 A. Yes.

18 Q. All right. So what point of time, what
19 time of day did that massage take place?

20 A. I don't recall the exact time.

21 Q. All right. Did you go to it?

22 A. Yes.

23 Q. All right. And was that service
24 satisfactory to you?

25 A. Yes.

1 Q. All right. So at what point did you
2 discover about the jewelry that you had was
3 missing?

4 A. When I came back to the room.

5 Q. Okay. So you didn't wear any of that
6 jewelry with you --

7 A. No.

8 Q. Let me finish my question.

9 A. I'm sorry.

10 Q. That's okay.

11 So you didn't wear any of that jewelry
12 to the spa with you?

13 A. No.

14 Q. What did you take to the spa with you?

15 A. Myself.

16 Q. Okay. With regard to the -- your
17 jewelry and when you left to go to the spa, how did
18 you store it?

19 A. I -- we could not find the safe when we
20 looked for one. And I looked in the closet because
21 they're usually bolted to the floor.

22 Q. Right.

23 A. My husband said that he had been in the
24 dresser, and we said, you know, we couldn't find
25 the safe. So when I left, I didn't want to wear my

1 jewelry because of all of that oils and stuff that
2 they put on you. So I rolled it up in some
3 clothing and put it in a pocket, like a zippered
4 pocket in the side, to hide it as best as possible.

5 Q. The side of what?

6 A. In my suitcase.

7 Q. Okay. With regard to the luggage that
8 you had, how much luggage did you have? And I'm
9 just talking about you personally.

10 A. A duffle bag and a fairly large
11 suitcase.

12 Q. Okay. And with regard to you storing
13 the jewelry before you going down to the spa, you
14 were storing it in the side pocket of the suitcase?

15 A. Inside the suitcase.

16 Q. Okay. So there's no question, in your
17 mind, as we sit here today, that you weren't
18 wearing the jewelry when you went to the spa?

19 A. I was not wearing the jewelry.

20 Q. Okay. You're absolutely certain of
21 that?

22 A. Yes.

23 Q. All right. Did anybody go to the spa
24 with you?

25 A. No.

1 Q. All right. Did anybody come back to
2 the spa with you -- I'm sorry.

3 Did anybody come back from the spa to
4 your room with you?

5 A. No.

6 Q. Where was your husband the whole time?

7 A. In a conference.

8 Q. So he didn't see you, he didn't engage
9 with you, while you were at the spa?

10 A. No.

11 Q. When was the next -- after you come
12 back to the room, that's when you make the
13 discovery that your jewelry wasn't there?

14 A. Yes. When I entered the room, my
15 intention was to go and put my jewelry on now,
16 because we were meeting for lunch, and so I wanted
17 to put on my jewelry. And I started looking for
18 it, and I frantically was going, where is it?

19 Q. Okay. With regard to you storing the
20 jewelry where you say you did, inside the pocket of
21 your suitcase, are you absolutely certain that's
22 what you did?

23 A. Absolutely certain, yes.

24 Q. Okay. You didn't put it anywhere else,
25 in any other luggage or any other suitcase or any

1 other part of the room?

2 A. No.

3 Q. All right. Completely certain?

4 A. Completely certain.

5 Q. How soon after you got into the room
6 did you make your discovery?

7 A. Immediately.

8 Q. Now, let me ask you this: When you
9 left for the spa, was the room already made up from
10 housekeeping?

11 A. No.

12 Q. All right. So the bed was unmade and
13 the bathroom had been used but not cleaned up?

14 A. Yes.

15 Q. With regard to your use of the
16 housekeeping, was it your intention to have
17 housekeeping service the room that day? And I'll
18 be more specific. Sometimes when people travel
19 they'll say "do not disturb" or they'll want
20 housekeeping to pass the room. They might say
21 something to housekeeping like, don't worry about
22 my room today. Had you indicated any of that to
23 the hotel?

24 A. No.

25 Q. All right. So having housekeeping in

1 don't recall. We said we would meet for lunch.
2 And he entered the room, and I told him that we
3 were robbed.

4 Q. Okay. What happened next?

5 A. He ran out of the room to go get
6 someone from the hotel.

7 Q. What happened after that?

8 A. He came back with someone, a hotel
9 employee.

10 Q. Do you remember who that employee was?

11 A. No.

12 Q. Man or woman?

13 A. Man.

14 Q. White or black?

15 A. I don't remember.

16 Q. And what happened?

17 A. We started -- we told them what had
18 happened to us. And it's kind of blurry because I
19 was crying. I was pretty upset.

20 Q. Sure.

21 A. And then the next thing I remember is
22 the police showed up.

23 Q. Now, with regard to the law enforcement
24 showing up, was it the hotel security or was it
25 actual law enforcement?

1 A. It was actual law enforcement.

2 Q. Okay. That's fine.

3 Do you remember it being the Beaufort
4 County Sheriff's Office?

5 A. I don't remember where exactly they
6 were from.

7 Q. All right. Other than the man from the
8 hotel that you were telling me about that your
9 husband had brought back, did any other hotel
10 employee engage you in the interim between your
11 husband looking to find somebody and law
12 enforcement showing up?

13 A. I don't believe so.

14 Q. All right. So law enforcement shows
15 up. What happens next?

16 A. I tell them what happened, and they
17 look at the suitcase and my purse. And then they
18 put a lockdown on the hotel, I believe. And he
19 left, this officer left. And then he came back to
20 tell me, and I was told that she had ran from the
21 -- she was running down the road. They had to
22 chase her down.

23 Q. Who is "she"?

24 A. Brianna Cohen.

25 Q. The law enforcement officer told you

1 that?

2 A. Yes.

3 Q. All right. So he had left and then he
4 came back?

5 A. Yes.

6 Q. Did he come back to the room or some
7 other location of the hotel?

8 A. He came back to the room.

9 Q. What happened next?

10 A. I did not leave the room during the
11 whole incident while the police were there. This
12 police officer told me that they were going to
13 start -- they were going to search the premises.
14 So they were going to search her car and the
15 cleaning carts and things like that.

16 Q. To your knowledge, was any of the
17 property that you say belonged to you located?

18 A. No.

19 Q. All right. To your knowledge, did
20 those searches that law enforcement told you that
21 were going to be conducted, were they, in fact,
22 conducted?

23 A. To my knowledge, I believe so.

24 Q. To your knowledge, was Brianna Cohen
25 arrested for stealing your property?

EXHIBIT B

618

ROA-075

DEFENDANT'S
EXHIBIT
48 2 3/15/17
SMITH
PENGAD 800-631-6989

Smith, Machelles

DEF_0004

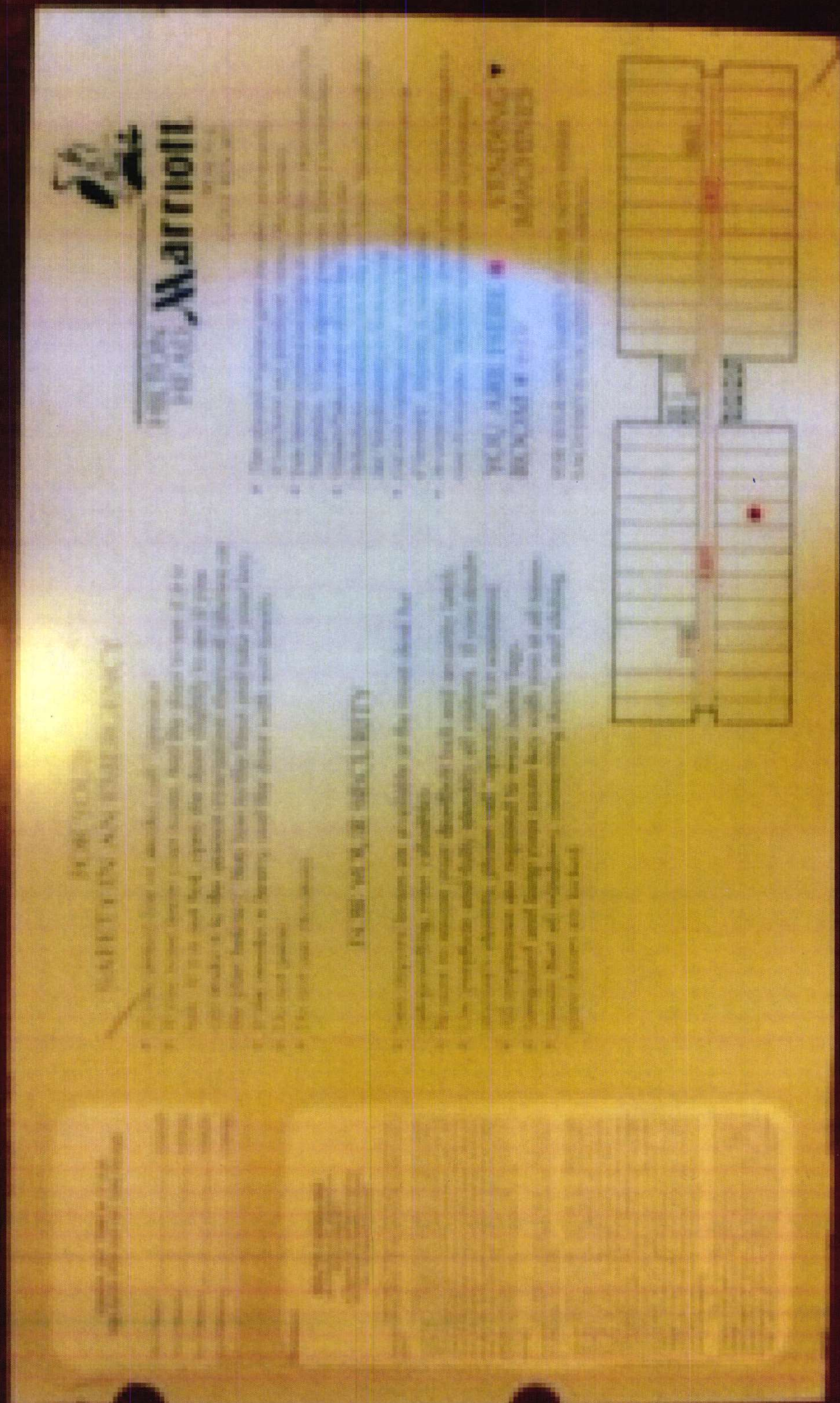
Page 1



ROA-076

Smith, Machelle

DEF_0005



Smith, Machel

DEF_0006

EXHIBIT C



GUEST STATEMENT REPORT

NAME: Machelle & David Smith MALE / FEMALEADDRESS: 3821 Byrnes Blvd., Florence, S.C. 29506
(843) 229-8109TELEPHONE: 843-229-5948 DATE OF INCIDENT: 4-26-13TIME: 12⁰⁰ am/pm PLACE OF INCIDENT: Marriott Hotel & SPA Rm 618

Describe What Occurred: (Include injuries and/or property damage)

- Robbed of jewelry/cash @ approx. 11:30 A.M.
- Wedding Ring, ^{3K} Wedding Band, ^{1K} Emerald Ring, ^{2K} Diamond Necklace
Cash ~\$150. TOTAL ~\$50,000.
- We looked for a safe but couldn't find one.
- It is in cheson That we did not see.

Wife came to Room @ 11:12

Signed: David M. SmithDate: 4-26-13 Time: 13⁰⁰ am/pm

Rev. 2/02

EXHIBIT D

Is this report a General Sessions Case which needs to go to the G/S Court Coordinator? ☐ YES ☒ NO

INCIDENT REPORT							
Agency ID: SC 0070000		Burns, Lindsay		Case Number 201304260438			
Available for Records Section ☒		04/30/2013		Section Patrol (S) Juvenile		NO	
Incident Type	Completed	Forced Entry	Premise Type	# Units			
Burglary 2nd	☒ Yes ☐ No	☐ Yes ☒ No	Hotel/Motel/Temp Lodging	1			
Grand Larceny	☒ Yes ☐ No	☐ Yes ☒ No	Hotel/Motel/Temp Lodging	1			
INCIDENT LOCATION:							
Victim Type	Latitude		Longitude		NCIC Inq	NCIC Ent'd	
Individual	32.167063		-80.717256				
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	Grid #
1	Hotel Circle	R...	Marriott Resort	Hilton Head Islar	SC	29926	5Q09
Incident Date		Incident Time		Incident Date		Incident Time	
04/26/2013		08:00		TO 04/26/2013		12:10	
Dispatch Date		Dispatch Time		Arrival Time		Departure Time	
04/26/2013		12:47		13:11		15:20	
						Weapon Type	
						None	
Reporting Officer		Date	Unit #	Shift Supervisor		Date	Unit #
Rioux, George		04/26/2013	R9606	Simmons, A		04/26/2013	S8386
Division Supervisor		Date	Unit #	Reviewed By Investigator		Date	Unit #
Covington, Jason		04/26/2013	C2070	Chapman, Brian		04/26/2013	C2188
Case Dispo.	Reason for Ex-Clear		Follow Up Inv.		Officer Assigned		Unit #
Active			☒ Yes ☐ No		Nelson, Derek		N1375

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copy of the original document on file
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Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Provided by: Beaufort County Sheriff's Office
Criminal Records Division

Released by: *MB* Date *11/2*

COMPLAINANT/VICTIM/SUSPECT:

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race			
Victim	Smith	Machelle	Speicher			Female	W			
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect	#1	#2	#3
46	Not of	508	135	BLO	BLU	S	Stranger	Stranger	Stranger	
Facial Hair/Scars/Tattoos/Etc								* J-This Jurisdiction/S-State/O-Out of State/U-Unknown		
None Noted										
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip				
3821	Byrnes Blvd			Florence	SC	29506				
Home Phone			Work Phone			Cell Phone				
843-229-5948										
FOR VICTIMS		Visible Injury		Explain				Complaint Non-Visible Injury		
		☐ Yes ☒ No						☐ Yes ☒ No		
		Victim Using		Alcohol: ☐ Yes ☒ No ☐ Unknown				Drugs: ☐ Yes ☒ No ☐ Unknown		
		Subst. Type								
FOR SUSPECTS		Type		☐ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons						
Identified		Arrested Near Scene		#Arrested		Date/Time of Incident		Date/Time of Arrest		
☐ Yes ☐ No		☐ Yes ☐ No								
Located		Suspect Using		Alcohol: ☐ Yes ☐ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown		
☐ Yes ☐ No		Subst. Type								

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race			
Suspect	Cohen	Briana	Lynette			Female	B			
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect	#1	#2	#3
21	Not of	502	120	BLK	BRO	J				
Facial Hair/Scars/Tattoos/Etc								* J-This Jurisdiction/S-State/O-Out of State/U-Unknown		
None Noted										
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip				
2	Buddy Bryant Road			Saint Helena	SC	29920				
Home Phone			Work Phone			Cell Phone				
000-000-0000			843-686-8410			000-000-0000				
FOR VICTIMS		Visible Injury		Explain				Complaint Non-Visible Injury		
		☐ Yes ☐ No						☐ Yes ☐ No		
		Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown		
		Subst. Type								
FOR SUSPECTS		Type		☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons						
Identified		Arrested Near Scene		#Arrested		Date/Time of Incident		Date/Time of Arrest		
☒ Yes ☐ No		☐ Yes ☐ No								
Located		Suspect Using		Alcohol: ☐ Yes ☒ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown		
☒ Yes ☐ No		Subst. Type								

Smith, Machelle
ROA-082

1st Deputy, Beaufort County Sheriff's Office

DEF_0016
10/20/2016

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
Suspect	Trejo	Suri				Female	W
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect
28	Hispan	501	120	BLK	BRO	J	
Facial Hair/Scars/Tattoos/Etc							
None Noted							
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	
20	Simmons ville Road	1910	Bluffton House Apts	Bluffton	SC	29910	
Home Phone		Work Phone		Cell Phone			
843-338-7557		843-686-8410					
FOR VICTIMS		Visible Injury		Explain		Complaint Non-Visible Injury	
		☐ Yes ☐ No				☐ Yes ☐ No	
Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☐ Unknown			
Subst. Type							
FOR SUSPECTS		Type	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons				
Identified	Arrested Near Scene	#Arrested	Date/Time of Incident		Date/Time of Arrest		
☒ Yes ☐ No	☐ Yes ☐ No						
Located	Suspect Using	Alcohol: ☐ Yes ☒ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☒ Unknown			
☒ Yes ☐ No	Subst. Type						

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
Suspect	Holmes	Sherl	L			Female	B
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect
39	Not of	509	150	BLK	BRO	J	
Facial Hair/Scars/Tattoos/Etc							
None Noted							
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	
1010	Church Street			Beaufort	SC	29902	
Home Phone		Work Phone		Cell Phone			
843-441-8987		843-686-8410					
FOR VICTIMS		Visible Injury		Explain		Complaint Non-Visible Injury	
		☐ Yes ☐ No				☐ Yes ☐ No	
Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☐ Unknown			
Subst. Type							
FOR SUSPECTS		Type	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons				
Identified	Arrested Near Scene	#Arrested	Date/Time of Incident		Date/Time of Arrest		
☒ Yes ☐ No	☐ Yes ☐ No						
Located	Suspect Using	Alcohol: ☐ Yes ☒ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☒ Unknown			
☒ Yes ☐ No	Subst. Type						

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Michael M. Hatfield

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
	Smith	Machelle					
Chief Deputy, Beaufort County Sheriff's Office							
ROA-083							

DEF_0017
10/20/2016

Suspect		Smalls-Allen		Nizika						Female		B
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect	#1	#2	#3		
30	Not of	507	145	BLK	BRO	J						
Facial Hair/Scars/Tattoos/Etc								* J-This Jurisdiction/S-State/O-Out of State/U-Unknown				
None Noted												
St #	Street Name			Unit	Subdivision/Complex			City	State	Zip		
2200	Lafayette Street			ID				Beaufort	SC	29902		
Home Phone				Work Phone				Cell Phone				
843-605-8691												
FOR VICTIMS		Visible Injury		Explain				Complaint Non-Visible Injury				
		☐ Yes ☐ No						☐ Yes ☐ No				
		Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown				
		Subst. Type										
FOR SUSPECTS		Type	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons									
Identified		Arrested Near Scene	//Arrested	Date/Time of Incident				Date/Time of Arrest				
☒ Yes ☐ No		☐ Yes ☐ No										
Located		Suspect Using	Alcohol: ☐ Yes ☒ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☒ Unknown					
☒ Yes ☐ No		Subst. Type										

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Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machelie
ROA-084

10/20/2016

WITNESSES/OTHER:

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
General Manager	Cox	Kristine				Female	W
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect
35	Not of	509	109	BLO	BLU	J	
Facial Hair/Scars/Tattoos/Etc							* J-This Jurisdiction/S-State/O-Out of State/U-Unknown
None Noted							
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	
1	Hotel Circle		Marriott Resort	Hilton Head Island	SC	29926	
Home Phone		Work Phone		Cell Phone			
		843-686-8410					

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Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machele
ROA-085

DEF_0019
10/20/2016

Jurisdiction of Theft Law Enforcement Agency			Jurisdiction of Recovery Law Enforcement Agency		
Beaufort County Sheriff's Office			Select or type...		
Type Group	Jewelry/PM	Money			Total Value
Stolen	45000	150			\$45,150
Damaged					\$0
Burned					\$0
Recovered					\$0
Seized					

ELECTRONICALLY FILED - 2018 Oct 05 2:55 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700777

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Michael M. Hartfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machelie
ROA-086

DEF_0020
10/20/2016

Status	Type	VIN and/or Owner Applied No.			Boat Hull No. and/or Reg No.	
☐ Stolen	☒ Vehicle	1J4GZ4851WC225918			HRS 747	
☐ Recovered	☐ Gun	Serial No. and/or Owner Applied No.			State	
☐ Found	☐ Boat				South Carolina	
☐ Towed	☐ License Plate	Year of Reg.	Year of Exp.	Year	Make	Type
☒ Suspect	☐ Securities/Bonds- Stocks	2014	2014	1998	Jeep	SU
☐ Victim	☐ Article	Model	Style	Color	Brand Name	Caliber
		Grand Cher...		Black		
		NIC No.	Denomination	Issuer	Securities Date	
		Miscellaneous				

Status	Type	VIN and/or Owner Applied No.			Boat Hull No. and/or Reg No.	
☐ Stolen	☒ Vehicle	2FMZA524X3BA56849			IVL 689	
☐ Recovered	☐ Gun	Serial No. and/or Owner Applied No.			State	
☐ Found	☐ Boat				South Carolina	
☐ Towed	☐ License Plate	Year of Reg.	Year of Exp.	Year	Make	Type
☒ Suspect	☐ Securities/Bonds- Stocks	2014	2015	2003	Ford	VN
☐ Victim	☐ Article	Model	Style	Color	Brand Name	Caliber
		Windstar		Green		
		NIC No.	Denomination	Issuer	Securities Date	
		Miscellaneous				

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Michael M. Hatfield

Smith, Machele
ROA-087

Chief Deputy, Beaufort County Sheriff's Office
DEF-0021

10/20/2016

Interview with Victim: (Smith, Machele)

Smith stated she and her husband, David Smith are staying at the Marriott hotel on vacation. Smith stated on 04-26-2013 at approximately 0800 hours she and her husband left the room and all of their belongings were secure in the room and the door to their room (# 618) was shut completely. Smith stated on 04-26-2013 at approximately 1210 hours they both returned to their room. Smith stated when they returned she observed that the door to the room was partially open by the dead bolt holding the door open. Smith stated she began checking her belongings and observed that her jewelry listed below was stolen from out of her suitcase. Smith stated \$150.00 was also stolen from a black handbag that was on top of the suitcase. Smith stated after this discovery she contacted the hotel management and local law enforcement for assistance. Smith stated she is absolutely sure the door to their room was shut and she believes due to the way it was left open that someone with an access card to the room stole these items.

Interview with General Manager: (Cox, Kristine)

Cox stated there were three house keeping employees working the 6th floor today. Cox stated she is aware of the incident and she is conducting an investigation into her employees. Cox stated that every time someone enters a room with a key card it is recorded in a database. Cox stated that each employee is issued a numbered card that identifies each employee. Cox stated on 04-26-2013 at approximately 1123 hours room # 618 was entered by using key card # 14 that is issued to Briana Cohen. This information was obtained from the key card information database. Cox stated Cohen is a house keeping employee. Cox stated Cohen was not scheduled to be in the room or cleaning the room and should not have a reason to be in the room. Cox stated she learned that during Cohen's lunch break she was sitting in the parking lot with another female employee named, Nizika Smalls-Allen. Cox stated the females were sitting inside Smalls-Allen's van in the parking lot during their break.

Interview with Suspect: (Cohen, Briana)

Cohen stated she does work at the hotel as a house keeper. Cohen stated she did not steal the items and did not enter room 618 today. Cohen stated she has had her key card # 14 in her possession for the day. Cohen stated she does not know why her card showed her entering the room. Cohen stated she did not drive to work today, but then Cohen changed her statement after Cox contradicted this statement. Cohen stated she did drive to work today in her vehicle and BCSO was welcome to search her vehicle for the stolen items. Cohen did state to Sgt. Simmons who was on scene that she could of left her key card on top of her cleaning cart and someone else could of used it while she was cleaning a room.

Interview with Suspect: (Smalls-Allen)

Smalls-Allen stated on 04-26-2013 at approximately 1230 hours she and Cohen were sitting inside her 2003 Ford van in the parking lot on their lunch break. Smalls-Allen stated she does not know anything about the burglary and did not see Cohen in possession of any stolen jewelry. Smalls-Allen stated BCSO was welcome to search her vehicle for the stolen items.

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Holtfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machele
ROA-088

DEF_0022

10/20/2016

Interview with Suspect: (Trejo, Suri)

Trejo stated she is a house keeping employee at the resort. Trejo stated she was working on the 6th floor and it was her responsibility to clean room 618 today, however she had not yet cleaned the room today. Trejo stated she may have observed Cohen enter the room around 1100 hours but was not sure because she was busy cleaning. Trejo stated I was welcome to search her cleaning cart for the items.

Interview with Suspect: (Holmes, Sherl)

Holmes stated she is a house keeping employee at the resort. Holmes stated she was working on the 6th floor today when she observed Cohen in the hallway in front of room 618. Holmes stated Cohen was talking on her cell phone loudly in the hallway. Holmes stated she did not observe Cohen enter the room, but did observe her standing near the doorway. Holmes stated I was welcome to search her cleaning cart for the items.

Officer's Observations/Actions:

I conducted a field interview with the complainant/victim. I observed the hotel door to room # 618 was propped open by the top dead bolt. I observed the suitcase that the victim stated the items were stolen from. I processed the door for latent prints and did not locate any. I was unable to process the suitcase and black handbag due to the coarse surface. I made contact with the General Manager and conducted a field interview. I conducted a field interview with all three house keepers working the 6th floor. I conducted a search of Holmes and Trejo's cleaning carts and did not locate the stolen items. A search of Cohen's cleaning cart was not conducted by this officer, but by the hotel manager. I was advised by the hotel manager there was no stolen jewelry in the cart. I conducted a search of Smalls-Allen's vehicle and Cohen's vehicle for the stolen items and did not locate them. I asked Cohen where key card # 14 was located and she pulled it out of her front shirt pocket and showed it to me. There is no surveillance of the hallway where room # 618 is located. Cohen was initially cooperative during the investigation, but fled the area on foot after being asked to wait in a waiting room by the general manager. Cohen eventually returned and then stated she is tired of being accused of stealing because she was named as a suspect in a similar incident a few weeks ago. I issued the victim the case number and advised her to contact BCSO if she need further assistance.

Description of Stolen Property:

U.S. Currency
One 3K diamond wedding ring
One 2K emerald solitaire ring
One 2K pear shaped diamond pendant
One multi diamond wedding band

Estimated Value:

\$150.00
\$15,000.00
\$15,000.00
\$10,000.00
\$5,000.00

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hootfield

Chief Deputy, Beaufort County Sheriff's Office

EXHIBIT E

HOTEL INCIDENT REPORT

ELECTRONICALLY FILED - 2018 Oct 05 2:55 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700777

PROPERTY #: 131 Hotel Name HH Marriott Hotel Phone# 843 686 8400

Guest/Claimant Name: Machelie and David Smith Address: 3821 Byrnes Blvd, Florence S.C. 29506

Is Claimant a Minor? Yes ☒ No ☐ Date of Birth 5/17/66 Parent/Guardian Name (if applicable)

Daytime Phone Number 843 229 5948 MISSMICH Evening Phone Number 843-678-9670

Who Was Incident Reported To? Police Notified? ☒ Yes ☐ No Badge NumberWas Medical Treatment Offered? Yes ☐ N/A ☒ No Accepted? Yes ☐ N/A ☒ No Medical Provider N/A

Date of Incident 04/26/2013 Time 12:10 PM (a.m.)(p.m.) Location room 618

Describe, in detail, what occurred (i.e., Who/What/Where/When/How) Always visit the incident location. Take photographs.

12:10 PM Mr. Smith reported to Matt Butdorf (Housekeeping Supervisor) his entry door (room 618) was open and his Wife's Jewelry was missing from the room

12:20PM Fred Morrall and Joe Simmons(Chief Engineer and Engineer) did key log Interrogation and Housekeeping key #14 was used to enter room 618 at 11:25 AM and 11:30AM.

key was issued to Briana Cohen . Briana Cohen was not assigned room 618 to clean on 04/26/2013 , Briana Cohen was unaccounted for

between 12:30PM and 1:00PM . at 1:00 PM Simon Mikhael Questioned Briana Cohen where about she was, she replied she was with Nizika Smalls and

Shaquera Harris in Nizika Smalls Van (which was unauthorized break)Simon Mikhael asked Briana Cohen if she gave her HK Key to anyone .

she replied no she did not. Simon Mikhael asked Briana Cohen if she left her key Unattended she replied no she did not

01:05 PM Matt Butdorff searched Briana Cohen purse/Car/ HK cart and couldn't find anything that link to the incident

01:10 PM Briana Cohen was taken by Simon Mikhael to Kristine Cox office for Interrogation and Kristine Cox questioned Briana Cohen where she was Between the

hours 11:00 AM and 1:00 PM on 04/26/13 (reference Kristine Cox Report for Full statement) Witnesses on Kristine Cox Report are

Simon Mikhael, Joe Rosa, Matt Butdorf, and Fred Morrall 02:00PM Beaufort County Officer arrived on property, Interrogated Briana Cohen and

searched her Car , and searched Nizika Smalls Car and didnt find anything that link to the incident

03:00 PM Krisitine Cox searched all employee Lockers couldn't find anything that link to the incident

Use Supplemental Addendum Page, If Necessary.

Witnesses? Yes ☒ No ☐

Name: Phone Number:

Address: City: State Zip Code

Name: Phone Number:

Address: City: State Zip Code

Hotel associates, please note: Do NOT make any promises for settlement of alleged theft of personal property, or damage to parked guest vehicles. Advise the guest that further investigation of their claim will be required. Please refer guest's additional questions to the General Manager.

Prepared By: SIMON MIKHAEL Position ASSISTANT EX. HK Date 04/28/2013

General Manager Signature: Date: 4/29/13

Note to Home Office/Risk Management: Please contact the guest: ☒ Yes ☐ No

FOR HOTEL USE ONLY. COLUMBIA SUSSEX CORPORATION.

THIS REPORT HAS BEEN PREPARED SPECIFICALLY IN ANTICIPATION OF LITIGATION, AND CONSTITUTES ATTORNEY/CLIENT PRODUCT, AND AS SUCH, IS PRIVILEGED INFORMATION rev. 08/02

Smith, Machelie

DEF_0001

ROA-091

EXHIBIT F

PAYROLL EMPLOYEE MASTER INQUIRY

Company 900 COLUMBIA SUSSEX MANAGEMENT LLC

Employee No..	194705	Employee Name...	BRIANA COHEN		
Prefix		Last, First, Mid..	COHEN	BRIANA	LYNETTE
Suffix		Address Line 1..	PO BOX 526		
Search Word....		Address Line 2..			
COHE		City/State/Zip..	ST HELENA	SC 29920	
LOCATION	HILTON HEAD MARRIOTT RESORT	Misc. Codes.....			
DEPARTMENT	ROOMS	Date of Hire....	04/16/2013		
Social Sec. No	[REDACTED]	Date Terminated.	4/26/13		
Last Pay Raise..	0/00/00	Status.....	TERMINATED		
State.....	SOUTH CAROLINA	Federal Dep.....			
Locality 1.....		State Dep.....			
Locality 2.....		Addl. Fed. W/H..	.00		
Locality 3.....		Addl. State W/H.	.00		
Marital Status..	SINGLE	Pay Code Type...	HOURLY		
Pay Frequency...	BI-WEEKLY	Pay Rate.....	9.000		
Job Class.....	HOUSEKEEPER	Work Status.....	BWK-SALARY		
Workers Comp #..	F0209	Max Net Pay...	.00		
Pension Plan....	N	Misc Alpha....			
Gender.....	F	Misc Numeric..	.00		
Employee 1099...		F12=Vac/Sick			
Direct Deposit..	Y	F8=Comments F9=Earn F10=Taxe			
EIC.....	N				
COLA - None					

F3=Exit F2=Restart F5=Deduc F6=Checks/Advices

ELECTRONICALLY FILED - 2018 Oct 05 2:55 PM - BEAUFORT - COMMON PLEAS - CASE#2016CPCP0700777

EXHIBIT G

COLUMBIA SUSSEX CORPORATION

APPLICATION FOR EMPLOYMENT (An Equal Opportunity Employer)

2

DATE April 10, 2013

PERSONAL INFORMATION

NAME Briana L Cohen

SOCIAL SECURITY # [REDACTED]

PRESENT ADDRESS [REDACTED]

Street

City

State

Zip

How long have you lived at this address? _____

PREVIOUS ADDRESS _____

Street

City

State

Zip

How long did you live at this address? _____

PHONE NUMBER [REDACTED]

1530

REFERRED BY _____

Can you present proof of your right to work legally in the United States?

YES ☒ NO ☐

Have you ever been convicted of a felony or misdemeanor? NO

If yes, give details, _____

Do you have any friends or relatives who work for the Columbia Sussex Corp. or related company?

YES ☐ NO ☒

If yes, please list them, _____

EMPLOYMENT DESIRED

POSITION House keeping

Date you can start April 11, 2013

Are you employed now? NO

If so, may we contact your present employer? _____

Have you applied to or worked for the Columbia Sussex Corp. before?

YES ☐ NO ☒

If "YES," when? _____

-1-

Smith, Machele

RQA-095

DEF_0310

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EDUCATION

	Name & Location of School Attended	How many years?	Did you Graduate?	Subjects Studied
Grammar School				
High School	Battery Creek High School	10	no	
College				
Other	Adult Aid	2	G.S.D	

Subjects of special study or research work _____

U.S. Military Service or Reserves (Dates, rank, discharge) _____

REFERENCES

Give below the names of 3 persons not related to you, whom you have known at least one year.

Name _____ Business _____

Address _____ Phone # _____

Name _____ Business _____

Address _____ Phone # _____

Name _____ Business _____

Address _____ Phone # _____

IN CASE OF EMERGENCY NOTIFY:

Name Elizabeth Ramos / mother Phone # [REDACTED] - 2552

Address _____

Name _____ Phone # _____

Address _____

I certify that the information provided in this Application for Employment is true, correct and complete. I agree that, if I am employed, the Columbia Sussex Corp. may terminate my employment for any false or misleading statements or omissions in this application, whenever they may be discovered.

I authorize a medical examination, including a drug screen, by an examiner selected by the Columbia Sussex Corp.

I agree that, if hired, my employment is for no definite period and may be terminated at any time for any reason by either me or Columbia Sussex Corp. I agree that this cannot be changed except in writing by the Company's President, and that any representations to the contrary are not binding on the Columbia Sussex Corp.

AUTHORIZATION FOR RELEASE OF INFORMATION

I authorize the Columbia Sussex Corp. to investigate my personal history and financial and credit record through any investigative or credit agency of its choice.

I authorize any reference, school, hospital, doctor, former employer or other person to disclose to Columbia Sussex Corp. upon request any information they may have about me and I release them from all liability for disclosing such information to the Columbia Sussex Corp. I understand that Columbia Sussex Corp. may obtain or prepare an investigative consumer report in connection with my application for employment. I understand that I may make a written request for disclosure of the nature and scope of the investigation.

Date: April 10/13

Signature

Briana J. Cohen

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C/A No.: 2016-CP-07-0777
	)	
MACHELLE SMITH,	)	
	)	
Plaintiff,	)	Plaintiff's Motion to Alter, Amend, and/or
	)	Reconsider Pursuant to Rule 59(e), SCRCP
v.	)	
	)	
COLUMBIA SUSSEX CORPORATION	)	
d/b/a HILTON HEAD MARRIOTT	)	
RESORTS & SPA; COLUMBIA SUSSEX	)	
MANAGEMENT, LLC; and COLUMBIA	)	
PROPERTIES HILTON HEAD, LLC,	)	
	)	
Defendants.	)	
	)	

TO: THE HONORABLE J. CORDELL MADDUX, JR., PRESIDING JUDGE, and
CHRISTIAN STEGMAIER, ESQUIRE, COUNSEL FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, respectfully moves pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for an order altering, amending or reconsidering the Court's Order Granting Summary Judgment of February 5, 2019.

This motion is made pursuant to Rule 59, SCRCP. A Rule 59(e) motion is not only "a vehicle to request the trial court 'alter or amend the judgment,' but also a vehicle to seek 'reconsideration' of issues and arguments." *See, Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-779 (2004). Such a motion is due ten (10) days after receipt of the entry of the Order. This motion is timely filed, as the Court's Order granting summary judgment was filed February 5, 2019.

The grant of summary judgment covers three grounds: (1) immunity under the Innkeeper Statute (S.C. Code Ann. Section 45-1-40 (2015)); (2) the acts of Defendant's employee falling

outside of the scope of employment and Defendants therefore not being liable under the doctrine of *respondeat superior*; and, (3) a finding that the defendants were not negligent in their hiring, firing, supervision or retention of its employee.

Plaintiff does not move for reconsideration of the finding concerning negligent hiring, supervision, or retention. Thus, to the extent that the Court allowed this case to move forward and granted reconsideration, Plaintiff waives all claims of negligent supervision, hiring and retention. However, as to the issues of immunity under the Innkeeper statute and claims of Defendants' liability through the doctrine of *respondeat superior*, Plaintiff respectfully seeks reconsideration. As to the Innkeeper's statute, the Order fails to recognize the entirety of the statute. The immunity offered by the statute is qualified as follows:

Provided, however, that notwithstanding the provisions of this section any innkeeper who by his own negligence contributes to the loss or damage to baggage or personal property, other than money or jewelry, from guest rooms, or to the loss or damage to money or jewelry from his safe, may be liable to the guest for the actual value of such baggage or personal property or five hundred dollars, whichever is less, or the actual value of such money or jewelry or two thousand dollars, whichever is less. Provided, however, that, notwithstanding the provisions of this section, any innkeeper who by his own wilfulness contributes to the loss or damage to the personal property of a guest shall not have his liability limited in any manner by the provisions of this section.

S.C. Code Ann. Section 45-1-40. The statute at issue protects the "Innkeeper." While the term itself is perhaps antiquated, in this case, the "innkeeper" is the defendant corporation. Corporations can only act through their agents, here its employee. Thus, the employee's willful conduct of using the hotel issued master key to enter the room is the Innkeeper itself willfully contributing to the loss. The protection of the statute is therefore not available, or at least factual issues exist as to the element of willfulness. The same agency issues preclude the grant of summary judgment as to liability of Defendants under the doctrine of *respondeat superior*.

Plaintiff respectfully seeks reconsideration of these two issues and an opportunity to be heard.

Respectfully submitted,

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: /s Matthew V. Creech
Matthew V. Creech
Post Office Box 2500
Ridgeland, S.C. 29936
(843) 726-6131

February 15, 2019
Ridgeland, South Carolina

ATTORNEYS FOR THE PLAINTIFF

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 MACHELLE SMITH,

4 Plaintiff,

5 vs. CASE NO. 2016-CP-07-0777

6 COLUMBIA SUSSEX CORPORATION D/B/A HILTON HEAD
7 MARRIOTT RESORTS & SPA; COLUMBIA SUSSEX
8 MANAGEMENT, LLC; AND COLUMBIA PROPERTIES HILTON
9 HEAD, LLC,

Defendants.

10 DEPOSITION OF: MACHELLE SMITH

11 DATE: March 15, 2017

12 TIME: 10:02 a.m.

13 LOCATION: HATFIELD TEMPLE
14 170 Courthouse Square
15 Florence, SC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: Lauren A. Balogh, Court Reporter

18
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21
22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

scheduledepo.com
ROA-101

1 APPEARANCES OF COUNSEL:

2 ATTORNEY FOR PLAINTIFF
3 MACHELLE SMITH:

4 PETERS, MURDAUGH, PARKER, ELTZROTH &
5 DETRICK
6 BY: MATTHEW V. CREECH
7 690 North Green Street
8 Ridgeland, SC 29936
9 (843) 726-6131
10 Mcreech@pmped.com

11 ATTORNEY FOR DEFENDANTS
12 COLUMBIA SUSSEX CORPORATION D/B/A
13 HILTON HEAD MARRIOTT RESORTS & SPA;
14 COLUMBIA SUSSEX MANAGEMENT, LLC; AND
15 COLUMBIA PROPERTIES HILTON HEAD, LLC:

16 COLLINS & LACY, P.C.
17 BY: CHRISTIAN STEGMAIER
18 1330 Lady Street, Suite 601
19 Columbia, SC 29201
20 (803) 256-2660
21 Cstegmaier@collinsandlacy.com

22 (INDEX AT REAR OF TRANSCRIPT)

(DFT. EXH. 1, appraisals from Azura,
L.J. Marks Co., and Galloway & Moseley,
Bates-stamped DEF_0010 through 0014, were marked
for identification.)

(DFT. EXH. 2, three colored photographs
Bates-stamped DEF_0004 through 0006, were marked
for identification.)

(DFT. EXH. 3, guest statement report
Bates-stamped DEF_0003, was marked for
identification.)

MACHELLE SMITH

being first duly sworn, testified as follows:

EXAMINATION

BY MR. STEGMAIER

Q. Mrs. Smith, good morning.

A. Good morning.

Q. We were introduced briefly, but, again,
for purposes of the record, my name is Christian
Stegmaier, and I'm a lawyer in Columbia with
Collins & Lacy, and we represent the hotel in this
case. Specifically we represent an entity known as
Columbia Sussex Management, which is the management
company for the hotel, the Marriott branded
property in Hilton Head.

A. Okay.

1 Q. I had reviewed your interrogatory
2 responses when they had come in and then again in
3 preparation for this deposition, but I understand
4 this lawsuit is your first litigation that you've
5 been involved in?

6 A. Yes.

7 Q. All right. So you've never sued
8 anybody or been sued?

9 A. No.

10 Q. And so have you ever given testimony
11 under oath at any point in time?

12 A. No.

13 Q. All right. So I'm sure your very
14 capable counsel, Mr. Creech, has explained to you
15 completely what to expect today, but just so that
16 we're all on the same page, let me just give you
17 some of the ground rules.

18 By virtue of the fact that you have
19 filed a lawsuit down in Beaufort County against our
20 client, the parties are permitted to engage in what
21 is known as discovery, and discovery takes many
22 forms. There are questions that we ask one another
23 in paper form. There are requests we make of one
24 another concerning any documents we might have in
25 our possession. And then we have what is today,

1 known as a deposition. And a deposition is not
2 unlike if we were in Beaufort and inside the open
3 courthouse -- or open courtroom where I would be
4 asking you questions and you're answering it, but
5 we don't have a judge and we don't have a jury, but
6 we do have a court reporter, and she's taking
7 everything I say, you say, your lawyer says.
8 Hopefully he doesn't have to say too much today.

9 A. Okay.

10 Q. And you're under oath, and I'm sure
11 that you understand the significance of providing
12 testimony under oath?

13 A. Uh-huh.

14 Q. Correct?

15 A. Yes, correct.

16 Q. All right. And so I want to know more
17 about your position and the allegations you made
18 against the hotel, and today is an opportunity to
19 do so. So I'm going to ask questions and you do
20 your best to answer them. Keep in mind that we are
21 creating what is known as a transcript. And I
22 don't know if you've ever seen a transcript, but
23 it's essentially a black-and-white book of
24 everything that we say today. So a couple of
25 things about that. If you'll make your responses

1 audible so the court reporter can get them. From
2 time to time I'm going to ask you a yes-or-no
3 question. If you can do your best to answer "yes"
4 or "no" rather than head shakes or head nods or
5 "uh-huhs" or "uh-uhs", that would be great because
6 six months from now that "uh-huh" might be
7 misinterpreted, and we want to avoid any sort of
8 circumstance like that.

9 The other thing, too, is this, is that
10 there will be points in time where I ask you a
11 question where you can already anticipate what I'm
12 asking you, and you will go ahead and answer. And
13 that's fine in normal ordinary course of life, but
14 it makes trouble for the court reporter because we
15 end up talking over each other. So if we can do
16 this, if I can get my question completely out, even
17 if you can anticipate what I'm going to ask you,
18 and then you answer for as long as you want, as far
19 as that goes, and I won't talk over you either.

20 I don't anticipate today's proceeding
21 to be -- going to take a great deal of time, but if
22 you need to take a break just let me know. This
23 isn't any sort of death march or endurance contest.
24 The only thing, and I'm sure your lawyer has
25 already relayed it to you, 99 percent of the time

1 in the course of any litigation you can have
2 whatever conversation you want to have with your
3 lawyer. Today is one of those exceptions to the
4 rule. So if we take a break, you're precluded from
5 having any sort of substantive conversation with
6 him about "how am I doing" or "how should I be
7 answering that question" or anything along those
8 lines.

9 Everything clear?

10 A. Yes.

11 Q. Do you have any questions for me?

12 A. No.

13 Q. All right. Your full legal name is
14 what?

15 A. Machele Speicher Smith.

16 Q. And you live here in Florence County?

17 A. Yes.

18 Q. And specifically where do you live?

19 A. On -- in the Country Club of South
20 Carolina.

21 Q. Okay. So that's up going towards the
22 interstate?

23 A. Yes, off of -- heading towards 95.

24 Q. And where did you grow up?

25 A. In Pennsylvania.

1 Q. What part?

2 A. It's called Dilliner, Pennsylvania.

3 Q. What part of Pennsylvania is that?

4 A. It's just the very -- it's about
5 60 miles south of Pittsburgh.

6 Q. Okay. And you've been living in South
7 Carolina for how long?

8 A. 18 years.

9 Q. And you went to high school where?

10 A. In Pennsylvania. Greensboro.

11 Q. And after you finished high school, did
12 you pursue any college?

13 A. Yes.

14 Q. Where did you go to college?

15 A. I went to x-ray school. It's in West
16 Virginia. Morgantown, West Virginia.

17 Q. Did you say "x-ray" or "actuary"?

18 A. X-ray.

19 Q. Okay.

20 A. Yes, x-ray.

21 Q. I was going to say, my wife is an
22 actuary.

23 A. Oh, okay.

24 Q. And there are very few of them, so she
25 would have been interested to know that.

1 So x-ray school in West Virginia.

2 And did you finish that program?

3 A. Yes, I graduated from that. Then I
4 continued on to get a bachelor's degree.

5 Q. Where was the bachelor's degree from?

6 A. West Virginia University.

7 Q. Okay. And the x-ray program, was that
8 at West Virginia, too?

9 A. Yes.

10 Q. Okay. Your bachelor's degree you
11 finished when?

12 A. In the '90s. '92, I believe.

13 Q. All right. And your bachelor's degree
14 is in what?

15 A. I have two. A bachelor of arts, is
16 that one.

17 Q. What was your study?

18 A. It was a liberal arts degree.

19 Q. Okay.

20 A. It included my x-ray background.

21 Q. Okay.

22 A. And so it's a special program that they
23 have through West Virginia University that you
24 could -- they would count those credits. So you
25 got, like, 55 credits. And then I just had to get

1 -- and I was going to go to medical school, so I
2 took biology, chemistry --

3 Q. Okay.

4 A. -- and things like that.

5 Q. Okay. So those bachelor's degrees, did
6 you get them at the same time?

7 A. No.

8 Q. The second bachelor's degree, where is
9 that from?

10 A. That's from the University of South
11 Carolina.

12 Q. And what --

13 A. Bachelor's in nursing.

14 Q. All right. And when did you finish
15 that?

16 A. That was in 2005.

17 Q. And was that the Columbia campus?

18 A. Spartanburg.

19 Q. All right. And you had relayed to me,
20 you lived in South Carolina for 18 years. Where
21 have you lived in South Carolina?

22 A. At the same place, Florence. The same
23 house.

24 Q. Florence?

25 A. Uh-huh.

1 Q. Okay. So with regard to your studies
2 at the university's campus in Spartanburg, you were
3 doing that remotely?

4 A. Online.

5 Q. All right. And when did you finish
6 that?

7 A. 2005.

8 Q. Now, are you licensed as a nurse?

9 A. Yes.

10 Q. And that license is active?

11 A. Yes.

12 Q. Do you work anywhere?

13 A. Yes.

14 Q. Where do you work?

15 A. McLeod.

16 Q. Where specifically at McLeod?

17 A. In the recovery room.

18 Q. All right. And how long have you
19 worked for McLeod?

20 A. I started in 2000. And then I went to
21 nursing school in 2003. So from 2000 to 2003 I
22 worked in ultrasound, because I have an ultrasound
23 degree also that I obtained in Pittsburgh,
24 Pennsylvania. And then I graduated from nursing
25 school in 2003, and started working in the

1 intensive care unit. And while I was working, I
2 was pursuing my bachelor's in nursing. So since
3 2003, pretty much.

4 Q. Now, when you say "recovery room", is
5 there a particular specialty that you have?

6 A. No.

7 Q. All right. Now, how long have you been
8 in the recovery room?

9 A. Recovery room, ten years.

10 Q. Now, you're married, correct?

11 A. Yes.

12 Q. And your husband is who?

13 A. David Michael Smith.

14 Q. And this will be the only question I
15 ask about this: Are you all separated at this
16 point?

17 A. No.

18 Q. All right. You're not separated?

19 A. No.

20 MR. CREECH: Can we go off for a
21 second?

22 MR. STEGMAIER: Yeah, that's fine.

23 (Off-the-record conference.)

24 BY MR. STEGMAIER:

25 Q. All right. So you have a home at the

1 Country Club of South Carolina?

2 A. Yes, sir.

3 Q. And your second home is where -- I'm
4 sorry. Let me ask: Do you have any other homes?

5 A. Yes.

6 Q. All right. Where is your other home?

7 A. It is in Ridgeway, South Carolina on
8 Lake Wateree.

9 Q. Now, with regard to your husband, is he
10 a physician?

11 A. Yes.

12 Q. All right. Now, where does he work?

13 A. He just recently retired.

14 Q. And where was he working?

15 A. McLeod.

16 Q. And what was his specialty?

17 A. Anesthesiology.

18 Q. Now, with regard to your home in Jasper
19 County, how long have you owned that home?

20 Did you say Richland?

21 MR. CREECH: You said Jasper.

22 He's thinking of me because I'm in
23 Jasper.

24 THE WITNESS: Okay. It's Fairfield
25 County.

1 BY MR. STEGMAIER:

2 Q. Oh, you said "Ridgeway"?

3 A. Yes. Sorry.

4 Q. All right. So your second home is in
5 Ridgeway?

6 A. Yes.

7 Q. Which is obviously Fairfield County?

8 A. Yes.

9 Q. How long have you owned the home in
10 Ridgeway?

11 A. 2006, I believe.

12 Q. And you said it's at the river?

13 A. Lake Wateree.

14 Q. All right. Doesn't everybody call it
15 "the river"?

16 A. I've never heard anyone call it that.

17 Q. I lived a summer in Winnsboro one time,
18 and they all called it "the river".

19 A. Okay.

20 Q. All right. Well -- and how long have
21 you all been married?

22 A. 13 years.

23 Q. So you met obviously after you moved to
24 South Carolina?

25 A. No.

1 Q. No? All right. I don't mean to
2 assume.

3 A. We've been together 20 years.

4 Q. Understood.

5 Where did you all first meet?

6 A. In West Virginia.

7 Q. All right. All right. Let me just ask
8 you an overarching question, and we can move from
9 there: Why have you filed suit against our client?

10 A. I feel that the hotel was negligent in
11 the employee that they allowed into my room.

12 Q. Okay. With regard to the employee, do
13 you know the employee's name?

14 A. Yes.

15 Q. Okay. Tell me that.

16 A. Brianna Cohen.

17 Q. Now, when you talk about the hotel,
18 we're obviously talking about the property -- the
19 Marriott-branded property in Hilton Head?

20 A. Hilton Head, yes.

21 Q. And this incident arose in April of
22 2013; is that --

23 A. Yes.

24 Q. At the point in time when this incident
25 occurred, how long had you been staying as a

1 registered guest at the hotel? How long were you
2 planning on staying there?

3 A. Can you clarify?

4 Q. Sure.

5 What was your length of stay at the
6 hotel in April of 2013?

7 A. It was for a medical conference, so it
8 was a weekend. We would have checked out Sunday, I
9 believe. We got there Friday evening.

10 Q. Had you ever stayed at that property
11 before?

12 A. No.

13 Q. Have you stayed at that property since?

14 A. No.

15 Q. Now, I'll represent to you the hotel
16 room that you were staying in was 618. Does that
17 comport with your recollection?

18 A. I don't remember.

19 Q. Okay. That's fine.

20 Was the hotel -- and I'll just
21 represent to you, it's our understanding it was
22 618. Was that the only room you stayed in during
23 your time at the hotel?

24 A. Yes.

25 Q. Okay. And if you checked in on Friday

1 and checked out on Sunday, what day did this
2 incident occur?

3 A. I believe it was Saturday.

4 Q. All right. And when you say -- and
5 we've obviously read the pleadings, and I've
6 listened to what you have to say. Your position is
7 that property that belonged to you was stolen; is
8 that correct?

9 A. Yes.

10 Q. And with regard to what you maintain
11 was stolen, what specifically are we talking about?

12 A. I had a diamond wedding ring. A
13 diamond band. An emerald and diamond ring. A
14 diamond pendant, and cash.

15 Q. Okay. With regard to the cash, do you
16 remember the amount of money in cash that you had?

17 A. At this time, no.

18 Q. All right. Do you have a ballpark
19 idea?

20 A. \$200.

21 Q. All right. So a diamond engagement
22 ring. Now, was that yellow gold?

23 A. Yes.

24 Q. And there was a wedding band with
25 diamonds in it, correct?

1 A. Yes.

2 Q. And that was yellow gold as well?

3 A. Yes.

4 Q. And then there was a diamond pendant.

5 And did that -- was that yellow gold?

6 A. Yes.

7 Q. All right. And then you said an
8 emerald and diamond ring, too, as well?

9 A. Yes.

10 Q. All right. Let me show you what's been
11 marked as Exhibit 1. And with more specificity,
12 it's Bates-stamped as Defendant's 10 through
13 Defendant's 14. And I believe that Mr. Temple had
14 forwarded these to us when the claim was initially
15 made.

16 Let me show those to you and take a
17 look through that. And what I will relate to you
18 is these are documents that were forwarded to us by
19 your Florence counsel that contain some appraisals
20 as well as some bills of sale.

21 A. (Witness reviewing documents.)

22 Q. And let me just go -- I'm just going to
23 go through these one by one with you to make sure
24 we're on the same page.

25 So page one of Exhibit 1, it says

1 platinum ring with emerald. And that is from
2 Azura, A-Z-U-R-A, by Jewels. Have you ever seen
3 this document before?

4 A. Yes.

5 Q. All right. And does this document,
6 page one of Exhibit 1, does this reflect an
7 appraisal that you said was made for the platinum
8 emerald and diamond ring?

9 A. Yes.

10 Q. All right. Do you know when this
11 appraisal -- it says here, it says March 15, 2007.
12 So would that be the date, to your knowledge, that
13 this appraisal was made?

14 A. Yes, that was the appraisal they gave
15 us when the ring was purchased.

16 Q. Okay. So the purchase would have been
17 made somewhere around that time?

18 A. Yes.

19 Q. All right. And here is another
20 appraisal. This is page two of Exhibit 1 marked as
21 Defendant's 11. And it's from a company in
22 Pittsburgh, L. J. Marks Company. And it reflects
23 an appraisal for a one 14-karat yellow gold diamond
24 engagement ring. Have you seen that document
25 before?

1 A. Yes.

2 Q. And this appraisal seems to have been
3 made or appears to have been made on or around
4 March 26th, 1991. Was that about the time when the
5 ring was purchased?

6 A. Yes.

7 Q. Was the ring purchased from this
8 jeweler?

9 A. Yes.

10 Q. All right. And I'm just going to skip
11 ahead to the last page of this exhibit. This
12 appears to be a copy of a bill of sale to your
13 husband, David Smith. But if you could help me --

14 A. Okay.

15 Q. -- with identifying what piece of
16 jewelry we're talking about.

17 A. This was for the diamond band to go
18 with my engagement ring.

19 Q. So that would be for the wedding band?

20 A. Yes.

21 Q. And, again, that's the last page of
22 Exhibit 1, Defendant's 14.

23 And pages three and four we'll go back
24 to, that are marked as Defendant's 12 and 13, this
25 is from an entity here in Florence, Galloway &

1 Moseley. And it appears the date that this
2 appraisal was made -- or I say "appraisal", but
3 it's actually a description of a replacement cost
4 estimate, was approximately May 4, 2013. And have
5 you seen that document before?

6 A. Yes.

7 Q. All right. And the reason why that
8 cost estimate by Galloway & Moseley was created was
9 because of why?

10 A. To see about replacing my jewelry.

11 Q. All right. So my question here is:
12 Was there ever a claim made to an insurance company
13 of yours for the replacement of this jewelry?

14 A. No.

15 Q. All right. Was this jewelry insured?

16 A. It was on -- it did not have a rider.
17 It was just basic -- whatever his insurance was;
18 whatever the general amount they cover.

19 Q. Okay.

20 A. So...

21 Q. So Dr. Smith never made a claim to your
22 homeowners coverage saying, we've lost this
23 jewelry; it's worth approximately \$50,000, correct?

24 A. No, not to my knowledge.

25 Q. All right. So you've never gotten a

1 check from a --

2 A. No.

3 Q. Let me finish my question. That's
4 okay.

5 So you've never gotten a check, or you
6 or Dr. Smith have never gotten a check, from an
7 insurance company for what is alleged to be the
8 replacement cost of this jewelry?

9 A. No.

10 Q. All right. So if the jewelry is, in
11 fact, worth a sum total of approximately \$50,000,
12 today as we sit here in March 2017, you're out
13 \$50,000?

14 A. Yes.

15 Q. All right. Thank you. Okay.

16 So you all check in on Friday. Tell me
17 what you recall at all about the events of the
18 evening on Friday once you check in.

19 A. Okay. We pulled up and we were greeted
20 by -- I don't know what you would call them. The
21 bell people or whatever.

22 Q. Sure.

23 A. And my husband said that he was going
24 to check into the room. And they were going to
25 valet park his car. And then a bellman came up and

1 loaded our luggage, and he actually escorted me to
2 the hotel room.

3 Q. Okay. With regard to the car that your
4 husband was driving at that time, do you remember
5 what it was?

6 A. Yes, it was a black Avalanche.

7 Q. And that's a Chevrolet?

8 A. Yes.

9 Q. So did you have anything to do with
10 checking into the room?

11 A. No.

12 Q. All right. So you were escorted by the
13 bell people to your room?

14 A. Yes.

15 Q. And your husband took care of the
16 registration?

17 A. Yes.

18 Q. All right. So what happened that
19 evening once you checked in and got to your room?
20 Did you go out to dinner? Was there a reception?

21 A. I don't remember.

22 Q. Okay. Do you remember leaving your
23 room at all after checking in?

24 A. I don't remember.

25 Q. Okay. With regard to any sort of

1 engagement with any hotel employee on Friday night,
2 other than the bell person that went to the room
3 with you, did you talk with or engage with anybody
4 else at the hotel on Friday night?

5 A. I don't remember.

6 Q. To your knowledge, did your husband,
7 other than the people that he checked in with at
8 the front desk, did he have any engagement with
9 anybody else at the hotel?

10 A. I don't know.

11 Q. Did you -- to your recollection, did
12 you have any engagement with any housekeeping
13 person on Friday night?

14 A. No.

15 Q. All right. When you got into the room
16 did everything appear to be in order? Was the room
17 clean? Were the beds made? Was the bathroom
18 satisfactory, all of that?

19 A. Can you clarify.

20 Q. Sure.

21 Was the room ready for your occupancy
22 when you got into it on Friday night?

23 A. Yes.

24 Q. All right. So you didn't have any
25 problems? You didn't have to call housekeeping to

1 get something straightened out? Made no complaints
2 to the front desk?

3 A. No.

4 Q. With regard to the jewelry that we had
5 talked about, were you wearing it? Did you have it
6 stored in your baggage? What do you remember about
7 that?

8 A. I was wearing.

9 Q. Okay. So you had your engagement ring
10 and your wedding band?

11 A. Yes.

12 Q. And maybe you had the other ring, the
13 emerald ring?

14 A. Yes.

15 Q. And with regard to the pendant, tell me
16 about that. Was that a necklace?

17 A. Yes.

18 Q. And you were wearing that?

19 A. Yes.

20 Q. Did you have any other jewelry with
21 you, like a class ring or anything like that?

22 A. Earrings.

23 Q. All right. What type of earrings?

24 A. These (pointing.)

25 Q. All right. Those are diamond earrings?

1 A. They are moissanite.

2 Q. Okay.

3 A. They're like a CZ type of...

4 Q. Okay. All right. So Friday night
5 comes and goes. You have Saturday morning. What
6 do you remember about waking up on Saturday and
7 getting going with your day?

8 A. I remember that my -- we were there for
9 a medical conference. My husband had a medical
10 conference, that he was getting ready to go to a
11 conference. And I thought I would just spoil
12 myself with a massage. I've never had a massage.
13 So I had set up an appointment for a massage that
14 day.

15 Q. Okay. So was that at the spa at the
16 property?

17 A. Yes.

18 Q. All right. So what point of time, what
19 time of day did that massage take place?

20 A. I don't recall the exact time.

21 Q. All right. Did you go to it?

22 A. Yes.

23 Q. All right. And was that service
24 satisfactory to you?

25 A. Yes.

1 Q. All right. So at what point did you
2 discover about the jewelry that you had was
3 missing?

4 A. When I came back to the room.

5 Q. Okay. So you didn't wear any of that
6 jewelry with you --

7 A. No.

8 Q. Let me finish my question.

9 A. I'm sorry.

10 Q. That's okay.

11 So you didn't wear any of that jewelry
12 to the spa with you?

13 A. No.

14 Q. What did you take to the spa with you?

15 A. Myself.

16 Q. Okay. With regard to the -- your
17 jewelry and when you left to go to the spa, how did
18 you store it?

19 A. I -- we could not find the safe when we
20 looked for one. And I looked in the closet because
21 they're usually bolted to the floor.

22 Q. Right.

23 A. My husband said that he had been in the
24 dresser, and we said, you know, we couldn't find
25 the safe. So when I left, I didn't want to wear my

1 jewelry because of all of that oils and stuff that
2 they put on you. So I rolled it up in some
3 clothing and put it in a pocket, like a zippered
4 pocket in the side, to hide it as best as possible.

5 Q. The side of what?

6 A. In my suitcase.

7 Q. Okay. With regard to the luggage that
8 you had, how much luggage did you have? And I'm
9 just talking about you personally.

10 A. A duffle bag and a fairly large
11 suitcase.

12 Q. Okay. And with regard to you storing
13 the jewelry before you going down to the spa, you
14 were storing it in the side pocket of the suitcase?

15 A. Inside the suitcase.

16 Q. Okay. So there's no question, in your
17 mind, as we sit here today, that you weren't
18 wearing the jewelry when you went to the spa?

19 A. I was not wearing the jewelry.

20 Q. Okay. You're absolutely certain of
21 that?

22 A. Yes.

23 Q. All right. Did anybody go to the spa
24 with you?

25 A. No.

1 Q. All right. Did anybody come back to
2 the spa with you -- I'm sorry.

3 Did anybody come back from the spa to
4 your room with you?

5 A. No.

6 Q. Where was your husband the whole time?

7 A. In a conference.

8 Q. So he didn't see you, he didn't engage
9 with you, while you were at the spa?

10 A. No.

11 Q. When was the next -- after you come
12 back to the room, that's when you make the
13 discovery that your jewelry wasn't there?

14 A. Yes. When I entered the room, my
15 intention was to go and put my jewelry on now,
16 because we were meeting for lunch, and so I wanted
17 to put on my jewelry. And I started looking for
18 it, and I frantically was going, where is it?

19 Q. Okay. With regard to you storing the
20 jewelry where you say you did, inside the pocket of
21 your suitcase, are you absolutely certain that's
22 what you did?

23 A. Absolutely certain, yes.

24 Q. Okay. You didn't put it anywhere else,
25 in any other luggage or any other suitcase or any

1 other part of the room?

2 A. No.

3 Q. All right. Completely certain?

4 A. Completely certain.

5 Q. How soon after you got into the room
6 did you make your discovery?

7 A. Immediately.

8 Q. Now, let me ask you this: When you
9 left for the spa, was the room already made up from
10 housekeeping?

11 A. No.

12 Q. All right. So the bed was unmade and
13 the bathroom had been used but not cleaned up?

14 A. Yes.

15 Q. With regard to your use of the
16 housekeeping, was it your intention to have
17 housekeeping service the room that day? And I'll
18 be more specific. Sometimes when people travel
19 they'll say "do not disturb" or they'll want
20 housekeeping to pass the room. They might say
21 something to housekeeping like, don't worry about
22 my room today. Had you indicated any of that to
23 the hotel?

24 A. No.

25 Q. All right. So having housekeeping in

1 your room making up the beds, straightening up the
2 bathroom, that was something that you and your
3 husband desired?

4 A. I hadn't really thought about it.

5 Q. When you left the hotel room to go to
6 the spa, did you have the do-not-disturb sign put
7 out?

8 A. No.

9 Q. All right. Did you make any other
10 communication or did you create any other notice to
11 the hotel that you didn't want the room serviced
12 that day?

13 A. No.

14 Q. All right. And you stayed in hotel
15 rooms before, correct?

16 A. Yes.

17 Q. All right. And it's been your
18 experience, isn't it, that when you leave the room
19 for the morning or the afternoon and you don't put
20 out the do-not-disturb sign or make any other
21 communication to the hotel about passing by, as far
22 as housekeeping, generally your experience is the
23 room gets made up, right?

24 A. Yes.

25 Q. All right. So when you got back to the

1 room had the room been made up?

2 A. No.

3 Q. Oh, it had not?

4 A. No.

5 Q. All right. What time did you come back
6 from the spa?

7 A. It was -- I do not recall the exact
8 time, but it was somewhere close to lunch --

9 Q. Okay.

10 A. -- time because...

11 Q. Okay. So that would be -- so if we
12 call lunchtime approximately noon, would it be
13 before noon?

14 A. Yes.

15 Q. Okay. So you come back to the room
16 with the intention of putting your jewelry on. You
17 make the discovery the jewelry isn't there and the
18 room hasn't been made up?

19 A. That's correct.

20 Q. What did you do next?

21 Let me ask that question better.

22 You make the discovery that you do that
23 the jewelry isn't there. What do you do next?

24 A. At that time my husband had entered the
25 room because we had communicated, texted or -- I

1 don't recall. We said we would meet for lunch.
2 And he entered the room, and I told him that we
3 were robbed.

4 Q. Okay. What happened next?

5 A. He ran out of the room to go get
6 someone from the hotel.

7 Q. What happened after that?

8 A. He came back with someone, a hotel
9 employee.

10 Q. Do you remember who that employee was?

11 A. No.

12 Q. Man or woman?

13 A. Man.

14 Q. White or black?

15 A. I don't remember.

16 Q. And what happened?

17 A. We started -- we told them what had
18 happened to us. And it's kind of blurry because I
19 was crying. I was pretty upset.

20 Q. Sure.

21 A. And then the next thing I remember is
22 the police showed up.

23 Q. Now, with regard to the law enforcement
24 showing up, was it the hotel security or was it
25 actual law enforcement?

1 A. It was actual law enforcement.

2 Q. Okay. That's fine.

3 Do you remember it being the Beaufort
4 County Sheriff's Office?

5 A. I don't remember where exactly they
6 were from.

7 Q. All right. Other than the man from the
8 hotel that you were telling me about that your
9 husband had brought back, did any other hotel
10 employee engage you in the interim between your
11 husband looking to find somebody and law
12 enforcement showing up?

13 A. I don't believe so.

14 Q. All right. So law enforcement shows
15 up. What happens next?

16 A. I tell them what happened, and they
17 look at the suitcase and my purse. And then they
18 put a lockdown on the hotel, I believe. And he
19 left, this officer left. And then he came back to
20 tell me, and I was told that she had ran from the
21 -- she was running down the road. They had to
22 chase her down.

23 Q. Who is "she"?

24 A. Brianna Cohen.

25 Q. The law enforcement officer told you

1 that?

2 A. Yes.

3 Q. All right. So he had left and then he
4 came back?

5 A. Yes.

6 Q. Did he come back to the room or some
7 other location of the hotel?

8 A. He came back to the room.

9 Q. What happened next?

10 A. I did not leave the room during the
11 whole incident while the police were there. This
12 police officer told me that they were going to
13 start -- they were going to search the premises.
14 So they were going to search her car and the
15 cleaning carts and things like that.

16 Q. To your knowledge, was any of the
17 property that you say belonged to you located?

18 A. No.

19 Q. All right. To your knowledge, did
20 those searches that law enforcement told you that
21 were going to be conducted, were they, in fact,
22 conducted?

23 A. To my knowledge, I believe so.

24 Q. To your knowledge, was Brianna Cohen
25 arrested for stealing your property?

1 A. No.

2 Q. Let me show you what -- we're skipping
3 ahead just a little bit to Exhibit 3. And I know
4 that Mr. Smith or Dr. Smith is probably the person
5 I need to ask, but since he's not here, let me see
6 what you know.

7 This is a document entitled "guest
8 statement report", and it's ultimately signed by
9 your husband. Does that -- does the signature at
10 the bottom there, do you recognize that as being
11 his signature?

12 A. Yes.

13 Q. Did you fill out a guest statement
14 report like your husband did or was he talking for
15 the both of y'all?

16 A. I don't remember.

17 Q. Okay. That's fine.

18 Have you seen that document before
19 today?

20 A. This is -- today was the first day that
21 I saw it.

22 Q. Okay. Do you remember when your
23 husband created that document?

24 A. No.

25 Q. All right. Were you there with him, to

1 your recollection, when he created that document?

2 A. I don't remember.

3 Q. All right. Now, let me show you what's
4 been marked as Exhibit 2. And I apologize for the
5 blurriness. They will be reproduced. I will
6 represent to you that these were photographs that
7 were created by the property contemporaneous with
8 the incident. It's a three-page exhibit. First is
9 a screenshot of your guest room door, 618. So,
10 again, I represent to you that's the room you were
11 staying in.

12 Page two is a photograph of the in-room
13 safe that was in your room. I'll represent to you
14 that was in your room.

15 Let me ask you this: Did you ever see
16 the safe at any point in time during your stay
17 before or after your discovery?

18 A. We did see the safe after someone from
19 the hotel, after all of this happened, showed us
20 where it was.

21 Q. Where was it?

22 A. It was in a dresser that had a -- how
23 do you -- they were kind of, like, hidden. It
24 looks like their drawers, but it was actually a
25 door.

1 Q. Okay.

2 A. So it looked like drawers. And when
3 they pulled on it, it actually opened like a door,
4 and they showed us where the safe was.

5 Q. All right. Now, Exhibit 3 -- and
6 you're not going to be able to read a word of this,
7 but I represent to you that this is the customary
8 notice that is in hopefully every hotel room in the
9 country. And I'll represent to you, too, that this
10 signage is on the back of the door in your guest
11 room. And, again, we'll reproduce this so it's
12 more clear and more legible.

13 Now, let me ask you this: I had
14 inquired in some previous question about you stayed
15 in hotels before. When was the last time you took
16 a vacation?

17 A. Probably two years ago.

18 Q. Okay. Let me ask you just a little bit
19 better question about that: In any given year,
20 say, like, just for calendar year 2016, how many
21 nights in a year are you staying at a hotel?

22 A. Over a specific time?

23 Q. Yeah. 2016, for example.

24 A. Oh, 2016?

25 Q. Yeah.

1 A. Once a year.

2 Q. Okay. How about 2013, to the best of
3 your knowledge?

4 A. The same.

5 Q. Okay. So at least once a year?

6 A. Yes.

7 Q. And I think you and I are probably
8 about the same age. How old are you?

9 A. 50.

10 Q. Okay. I'm a little bit less, but not
11 too much.

12 So you've been staying in hotels, more
13 or less, your entire life; is that fair to say?

14 A. Yes.

15 Q. All right. With regard to the signage
16 that I'll represent to you was in the room that's
17 page three of Exhibit 2, have you seen similar
18 signage to this in other hotels that you've stayed
19 in?

20 A. I can't say --

21 Q. Okay.

22 A. -- that I have.

23 Q. Okay.

24 A. That I've ever read them.

25 Q. Okay. So you don't remember actually

1 ever reading this signage?

2 A. No.

3 Q. All right. But you've seen the signage
4 in hotel rooms you've stayed in before, haven't
5 you?

6 A. I can't say --

7 Q. Okay.

8 A. -- for sure.

9 Q. With regard to the signage that appears
10 here on page three of Exhibit 2, do you remember
11 seeing that signage when you were in the room?

12 A. No.

13 Q. Okay. But in order to get to the spa
14 you had to open the door to the hotel room to get
15 into the hall, correct?

16 A. Yes.

17 Q. All right. And, again, I'll represent
18 to you this was on the back of the door.

19 Let me ask you this question: With
20 regard to the jewelry that you say was in your
21 possession when you checked into the hotel, did you
22 -- other than looking for a safe inside the room,
23 did you make any inquires of the hotel management
24 about a safe that they would have, at the
25 registration area?

1 A. No.

2 Q. Okay. Going back to you calling law
3 enforcement and them responding. You told me about
4 a second occasion where law enforcement had come
5 back and related to you the status of the
6 investigation. What happened next, to your
7 recollection?

8 A. That's when I believe that we met with
9 the manager --

10 Q. Okay.

11 A. -- of the hotel.

12 Q. And that was a lady?

13 A. Yes.

14 Q. All right. And what happened there?

15 A. We told her what happened. And she
16 kind of took our information and apologized and --
17 I don't know. That's about all I remember.

18 Q. Okay. What happened then or what
19 happened next?

20 A. I believe we went back to our room.

21 Q. What point in the time on Saturday was
22 this, approximately?

23 A. Afternoon, early afternoon.

24 Q. What happened for the rest of the day
25 into the evening? Did you all go to dinner? Did

1 your husband go to any more meetings? Did you go
2 to a reception?

3 A. I think we met his daughter to tell her
4 what happened, since she lives on the island.

5 Q. And who is Dr. Smith's daughter?

6 A. Her name is Erika Waronsky.

7 Q. Could you spell that for us?

8 A. Yeah. W-A-R-O-N-S-K-Y.

9 Q. And Erika has lived on Hilton Head for
10 how long?

11 A. 16 years.

12 Q. All right. Is she an adult?

13 A. Yes.

14 Q. How old is she?

15 A. 37.

16 Q. So your recollection is that you met
17 with her at one point?

18 A. Yes.

19 Q. All right. Was that dinner or was that
20 something else?

21 A. Dinner.

22 Q. All right. Did you go back to the room
23 after dinner?

24 A. Yes.

25 Q. Now, skipping ahead -- well, let me ask

1 you this: After you came back to the room after
2 dinner, did you go back out at any point in time?

3 A. No.

4 Q. All right. Sunday morning, how long
5 were you at the hotel until you checked out?

6 A. We got up in the morning and left.

7 Q. All right. Have you had any
8 communications with the hotel or any of the hotel's
9 representatives after you checked out, from then
10 until today?

11 A. In the beginning at first there was a
12 representative's name, and I'm sure it's written
13 down somewhere, that I was supposed to call --

14 Q. Okay.

15 A. -- and talk to about this, and that's
16 the only person.

17 Q. Okay. Did you actually make that call?

18 A. Yes.

19 Q. All right. So you had that
20 communication?

21 A. Uh-huh.

22 Q. Now, that was a telephone call?

23 A. Yes. I had to call him multiple times
24 before he would return my call.

25 Q. Okay. And so with regard to that call,

1 what did -- what was the basis or what was the
2 reason for the call? What was the purpose of the
3 call?

4 A. To tell him what happened.

5 Q. All right. Have you gotten any
6 additional communication from the hotel or its
7 representatives after that communication?

8 A. No.

9 Q. To your knowledge, with regard to
10 Dr. Smith, has he spoken or talked with anybody
11 since the time you checked out of the hotel until
12 today?

13 A. Not to my knowledge.

14 MR. STEGMAIER: I think that's all the
15 questions I have. I really do appreciate your
16 time.

17 THE WITNESS: Thank you.

18 MR. STEGMAIER: Thank you.

19 MR. CREECH: I don't have any
20 questions.

21 (The witness, after having been advised
22 of her right to read and sign this transcript,
23 waives that right.)

24 (The deposition was concluded at 10:45
25 a.m.)

CERTIFICATE OF REPORTER

I, Lauren A. Balogh, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

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

Witness my hand, I have hereunto
affixed my official seal this 22nd day of March,
2017 at Murrells Inlet, Horry County, South
Carolina.



Lauren A. Balogh

Lauren A. Balogh
My Commission expires
April 13, 2020

I N D E X

	Page	Line
MACHELLE SMITH	3	11
EXAMINATION	3	13
BY MR. STEGMAIER		
CERTIFICATE OF REPORTER	45	1

REQUESTED INFORMATION INDEX
(No Information Requested)

E X H I B I T S

	Page	Line
DFT. EXH. 1, appraisals from Azura, L.J. Marks Co., and Galloway & Moseley, Bates-stamped DEF_0010 through 0014	3	1
DFT. EXH. 2, three colored photographs Bates-stamped DEF_0004 through 0006	3	5
DFT. EXH. 3, guest statement report Bates-stamped DEF_0003	3	8

Is this report a General Sessions Case which needs to go to the G/S Court Coordinator? ☐ YES ☒ NO

INCIDENT REPORT							
Agency ID: SC 0070000		Burns, Lindsay		Case Number 201304260438			
Available for Records Section ☒		04/30/2013		Section Patrol (S) Juvenile		NO	
Incident Type	Completed	Forced Entry	Premise Type	# Units			
Burglary 2nd	☒ Yes ☐ No	☐ Yes ☒ No	Hotel/Motel/Temp Lodging	1			
Grand Larceny	☒ Yes ☐ No	☐ Yes ☒ No	Hotel/Motel/Temp Lodging	1			
INCIDENT LOCATION:							
Victim Type	Latitude		Longitude		NCIC Inq	NCIC Ent'd	
Individual	32.167063		-80.717256				
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	Grid #
1	Hotel Circle	R...	Marriott Resort	Hilton Head Islar	SC	29926	5Q09
Incident Date		Incident Time		Incident Date		Incident Time	
04/26/2013		08:00		TO 04/26/2013		12:10	
Dispatch Date		Dispatch Time		Arrival Time		Departure Time	
04/26/2013		12:47		13:11		15:20	
						Weapon Type	
						None	
Reporting Officer		Date	Unit #	Shift Supervisor		Date	Unit #
Rioux, George		04/26/2013	R9606	Simmons, A		04/26/2013	S8386
Division Supervisor		Date	Unit #	Reviewed By Investigator		Date	Unit #
Covington, Jason		04/26/2013	C2070	Chapman, Brian		04/26/2013	C2188
Case Dispo.	Reason for Ex-Clear		Follow Up Inv.		Officer Assigned		Unit #
Active			☒ Yes ☐ No		Nelson, Derek		N1375

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with the Office of Sheriff for Beaufort County.

Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Provided by: Beaufort County Sheriff's Office
Criminal Records Division

Released by: *MB*

Date: 11/2

COMPLAINANT/VICTIM/SUSPECT:

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race			
Victim	Smith	Machelle	Speicher			Female	W			
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect	#1	#2	#3
46	Not of	508	135	BLO	BLU	S	Stranger	Stranger	Stranger	
Facial Hair/Scars/Tattoos/Etc								* J-This Jurisdiction/S-State/O-Out of State/U-Unknown		
None Noted										
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip				
3821	Byrnes Blvd			Florence	SC	29506				
Home Phone			Work Phone			Cell Phone				
843-229-5948										
FOR VICTIMS		Visible Injury		Explain				Complaint Non-Visible Injury		
		☐ Yes ☒ No						☐ Yes ☒ No		
		Victim Using		Alcohol: ☐ Yes ☒ No ☐ Unknown				Drugs: ☐ Yes ☒ No ☐ Unknown		
		Subst. Type								
FOR SUSPECTS		Type		☐ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons						
Identified		Arrested Near Scene		#Arrested		Date/Time of Incident		Date/Time of Arrest		
☐ Yes ☐ No		☐ Yes ☐ No								
Located		Suspect Using		Alcohol: ☐ Yes ☐ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown		
☐ Yes ☐ No		Subst. Type								

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race			
Suspect	Cohen	Briana	Lynette			Female	B			
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect	#1	#2	#3
21	Not of	502	120	BLK	BRO	J				
Facial Hair/Scars/Tattoos/Etc								* J-This Jurisdiction/S-State/O-Out of State/U-Unknown		
None Noted										
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip				
2	Buddy Bryant Road			Saint Helena	SC	29920				
Home Phone			Work Phone			Cell Phone				
000-000-0000			843-686-8410			000-000-0000				
FOR VICTIMS		Visible Injury		Explain				Complaint Non-Visible Injury		
		☐ Yes ☐ No						☐ Yes ☐ No		
		Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown		
		Subst. Type								
FOR SUSPECTS		Type		☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons						
Identified		Arrested Near Scene		#Arrested		Date/Time of Incident		Date/Time of Arrest		
☒ Yes ☐ No		☐ Yes ☐ No								
Located		Suspect Using		Alcohol: ☐ Yes ☒ No ☐ Unknown				Drugs: ☐ Yes ☐ No ☐ Unknown		
☒ Yes ☐ No		Subst. Type								

Smith, Machelle
ROA-148

1st Deputy, Beaufort County Sheriff's Office

DEF_0016
10/20/2016

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
Suspect	Trejo	Suri				Female	W
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect
28	Hispan	501	120	BLK	BRO	J	
Facial Hair/Scars/Tattoos/Etc							
None Noted							
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	
20	Simmons ville Road	1910	Bluffton House Apts	Bluffton	SC	29910	
Home Phone		Work Phone		Cell Phone			
843-338-7557		843-686-8410					
FOR VICTIMS		Visible Injury		Explain		Complaint Non-Visible Injury	
		☐ Yes ☐ No				☐ Yes ☐ No	
Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☐ Unknown			
Subst. Type							
FOR SUSPECTS		Type	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons				
Identified		Arrested Near Scene	#Arrested	Date/Time of Incident		Date/Time of Arrest	
☒ Yes ☐ No		☐ Yes ☐ No					
Located		Suspect Using	Alcohol: ☐ Yes ☒ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☒ Unknown		
☒ Yes ☐ No		Subst. Type					

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
Suspect	Holmes	Sherl	L			Female	B
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect
39	Not of	509	150	BLK	BRO	J	
Facial Hair/Scars/Tattoos/Etc							
None Noted							
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	
1010	Church Street			Beaufort	SC	29902	
Home Phone		Work Phone		Cell Phone			
843-441-8987		843-686-8410					
FOR VICTIMS		Visible Injury		Explain		Complaint Non-Visible Injury	
		☐ Yes ☐ No				☐ Yes ☐ No	
Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☐ Unknown			
Subst. Type							
FOR SUSPECTS		Type	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons				
Identified		Arrested Near Scene	#Arrested	Date/Time of Incident		Date/Time of Arrest	
☒ Yes ☐ No		☐ Yes ☐ No					
Located		Suspect Using	Alcohol: ☐ Yes ☒ No ☐ Unknown		Drugs: ☐ Yes ☐ No ☒ Unknown		
☒ Yes ☐ No		Subst. Type					

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Michael M. Hatfield

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
	Smith	Machelle					
ROA-149							

DEF_0017
10/20/2016

Suspect		Smalls-Allen		Nizika						Female		B
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect	#1	#2	#3		
30	Not of	507	145	BLK	BRO	J						
Facial Hair/Scars/Tattoos/Etc										* J-This Jurisdiction/S-State/O-Out of State/U-Unknown		
None Noted												
St #	Street Name			Unit	Subdivision/Complex			City	State	Zip		
2200	Lafayette Street			ID				Beaufort	SC	29902		
Home Phone				Work Phone				Cell Phone				
843-605-8691												
FOR VICTIMS		Visible Injury		Explain					Complaint Non-Visible Injury			
		☐ Yes ☐ No							☐ Yes ☐ No			
		Victim Using		Alcohol: ☐ Yes ☐ No ☐ Unknown					Drugs: ☐ Yes ☐ No ☐ Unknown			
		Subst. Type										
FOR SUSPECTS		Type	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Jail ☐ Summons									
Identified		Arrested Near Scene	//Arrested	Date/Time of Incident					Date/Time of Arrest			
☒ Yes ☐ No		☐ Yes ☐ No										
Located		Suspect Using	Alcohol: ☐ Yes ☒ No ☐ Unknown					Drugs: ☐ Yes ☐ No ☒ Unknown				
☒ Yes ☐ No		Subst. Type										

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Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machelie
ROA-150

10/20/2016

WITNESSES/OTHER:

Person Type	Last Name	First Name	Middle Name	Suffix	DOB	Sex	Race
General Manager	Cox	Kristine				Female	W
Age	Eth	Ht	Wt	Hair	Eyes	J/S/O/U	Relationship to Suspect
35	Not of	509	109	BLO	BLU	J	
Facial Hair/Scars/Tattoos/Etc							* J-This Jurisdiction/S-State/O-Out of State/U-Unknown
None Noted							
St #	Street Name	Unit	Subdivision/Complex	City	State	Zip	
1	Hotel Circle		Marriott Resort	Hilton Head Island	SC	29926	
Home Phone		Work Phone		Cell Phone			
		843-686-8410					

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Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machel
ROA-151

DEF_0019

10/20/2016

Jurisdiction of Theft Law Enforcement Agency			Jurisdiction of Recovery Law Enforcement Agency		
Beaufort County Sheriff's Office			Select or type...		
Type Group	Jewelry/PM	Money			Total Value
Stolen	45000	150			\$45,150
Damaged					\$0
Burned					\$0
Recovered					\$0
Seized					

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Michael M. Hartfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machelie
ROA-152

DEF_0020
10/20/2016

Status	Type	VIN and/or Owner Applied No.			Boat Hull No. and/or Reg No.	
☐ Stolen	☒ Vehicle	1J4GZ4851WC225918			HRS 747	
☐ Recovered	☐ Gun	Serial No. and/or Owner Applied No.			State	
☐ Found	☐ Boat				South Carolina	
☐ Towed	☐ License Plate	Year of Reg.	Year of Exp.	Year	Make	Type
☒ Suspect	☐ Securities/Bonds- Stocks	2014	2014	1998	Jeep	SU
☐ Victim	☐ Article	Model	Style	Color	Brand Name	Caliber
		Grand Cher...		Black		
		NIC No.	Denomination	Issuer	Securities Date	
		Miscellaneous				

Status	Type	VIN and/or Owner Applied No.			Boat Hull No. and/or Reg No.	
☐ Stolen	☒ Vehicle	2FMZA524X3BA56849			IVL 689	
☐ Recovered	☐ Gun	Serial No. and/or Owner Applied No.			State	
☐ Found	☐ Boat				South Carolina	
☐ Towed	☐ License Plate	Year of Reg.	Year of Exp.	Year	Make	Type
☒ Suspect	☐ Securities/Bonds- Stocks	2014	2015	2003	Ford	VN
☐ Victim	☐ Article	Model	Style	Color	Brand Name	Caliber
		Windstar		Green		
		NIC No.	Denomination	Issuer	Securities Date	
		Miscellaneous				

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Michael M. Hatfield

Smith, Machele
ROA-153

Chief Deputy, Beaufort County Sheriff's Office
DEF-0021

10/20/2016

Interview with Victim: (Smith, Machelles)

Smith stated she and her husband, David Smith are staying at the Marriott hotel on vacation. Smith stated on 04-26-2013 at approximately 0800 hours she and her husband left the room and all of their belongings were secure in the room and the door to their room (# 618) was shut completely. Smith stated on 04-26-2013 at approximately 1210 hours they both returned to their room. Smith stated when they returned she observed that the door to the room was partially open by the dead bolt holding the door open. Smith stated she began checking her belongings and observed that her jewelry listed below was stolen from out of her suitcase. Smith stated \$150.00 was also stolen from a black handbag that was on top of the suitcase. Smith stated after this discovery she contacted the hotel management and local law enforcement for assistance. Smith stated she is absolutely sure the door to their room was shut and she believes due to the way it was left open that someone with an access card to the room stole these items.

Interview with General Manager: (Cox, Kristine)

Cox stated there were three house keeping employees working the 6th floor today. Cox stated she is aware of the incident and she is conducting an investigation into her employees. Cox stated that every time someone enters a room with a key card it is recorded in a database. Cox stated that each employee is issued a numbered card that identifies each employee. Cox stated on 04-26-2013 at approximately 1123 hours room # 618 was entered by using key card # 14 that is issued to Briana Cohen. This information was obtained from the key card information database. Cox stated Cohen is a house keeping employee. Cox stated Cohen was not scheduled to be in the room or cleaning the room and should not have a reason to be in the room. Cox stated she learned that during Cohen's lunch break she was sitting in the parking lot with another female employee named, Nizika Smalls-Allen. Cox stated the females were sitting inside Smalls-Allen's van in the parking lot during their break.

Interview with Suspect: (Cohen, Briana)

Cohen stated she does work at the hotel as a house keeper. Cohen stated she did not steal the items and did not enter room 618 today. Cohen stated she has had her key card # 14 in her possession for the day. Cohen stated she does not know why her card showed her entering the room. Cohen stated she did not drive to work today, but then Cohen changed her statement after Cox contradicted this statement. Cohen stated she did drive to work today in her vehicle and BCSO was welcome to search her vehicle for the stolen items. Cohen did state to Sgt. Simmons who was on scene that she could of left her key card on top of her cleaning cart and someone else could of used it while she was cleaning a room.

Interview with Suspect: (Smalls-Allen)

Smalls-Allen stated on 04-26-2013 at approximately 1230 hours she and Cohen were sitting inside her 2003 Ford van in the parking lot on their lunch break. Smalls-Allen stated she does not know anything about the burglary and did not see Cohen in possession of any stolen jewelry. Smalls-Allen stated BCSO was welcome to search her vehicle for the stolen items.

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Michael M. Holtfield

Chief Deputy, Beaufort County Sheriff's Office

Smith, Machelles
ROA-154

DEF_0022

10/20/2016

Interview with Suspect: (Trejo, Suri)

Trejo stated she is a house keeping employee at the resort. Trejo stated she was working on the 6th floor and it was her responsibility to clean room 618 today, however she had not yet cleaned the room today. Trejo stated she may have observed Cohen enter the room around 1100 hours but was not sure because she was busy cleaning. Trejo stated I was welcome to search her cleaning cart for the items.

Interview with Suspect: (Holmes, Sherl)

Holmes stated she is a house keeping employee at the resort. Holmes stated she was working on the 6th floor today when she observed Cohen in the hallway in front of room 618. Holmes stated Cohen was talking on her cell phone loudly in the hallway. Holmes stated she did not observe Cohen enter the room, but did observe her standing near the doorway. Holmes stated I was welcome to search her cleaning cart for the items.

Officer's Observations/Actions:

I conducted a field interview with the complainant/victim. I observed the hotel door to room # 618 was propped open by the top dead bolt. I observed the suitcase that the victim stated the items were stolen from. I processed the door for latent prints and did not locate any. I was unable to process the suitcase and black handbag due to the coarse surface. I made contact with the General Manager and conducted a field interview. I conducted a field interview with all three house keepers working the 6th floor. I conducted a search of Holmes and Trejo's cleaning carts and did not locate the stolen items. A search of Cohen's cleaning cart was not conducted by this officer, but by the hotel manager. I was advised by the hotel manager there was no stolen jewelry in the cart. I conducted a search of Smalls-Allen's vehicle and Cohen's vehicle for the stolen items and did not locate them. I asked Cohen where key card # 14 was located and she pulled it out of her front shirt pocket and showed it to me. There is no surveillance of the hallway where room # 618 is located. Cohen was initially cooperative during the investigation, but fled the area on foot after being asked to wait in a waiting room by the general manager. Cohen eventually returned and then stated she is tired of being accused of stealing because she was named as a suspect in a similar incident a few weeks ago. I issued the victim the case number and advised her to contact BCSO if she need further assistance.

Description of Stolen Property:

U.S. Currency
One 3K diamond wedding ring
One 2K emerald solitaire ring
One 2K pear shaped diamond pendant
One multi diamond wedding band

Estimated Value:

\$150.00
\$15,000.00
\$15,000.00
\$10,000.00
\$5,000.00

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Michael M. Hatfield

Chief Deputy, Beaufort County Sheriff's Office

HOTEL INCIDENT REPORT

ELECTRONICALLY FILED - 2018 Oct 05 2:55 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700777

PROPERTY #: 131 Hotel Name HH Marriott Hotel Phone# 843 686 8400

Guest/Claimant Name: Machelie and David Smith Address: 3821 Byrnes Blvd, Florence S.C. 29506

Is Claimant a Minor? Yes ☒ No ☐ Date of Birth 5/17/66 Parent/Guardian Name (if applicable)

Daytime Phone Number 843 229 5948 MISSMICH Evening Phone Number 843-678-9670

Who Was Incident Reported To? Police Notified? ☒ Yes ☐ No Badge NumberWas Medical Treatment Offered? Yes ☐ N/A ☒ No Accepted? Yes ☐ N/A ☒ No Medical Provider N/A

Date of Incident 04/26/2013 Time 12:10 PM (a.m.)(p.m.) Location room 618

Describe, in detail, what occurred (i.e., Who/What/Where/When/How) Always visit the incident location. Take photographs.

12:10 PM Mr. Smith reported to Matt Butdorf (Housekeeping Supervisor) his entry door (room 618) was open and his Wife's Jewelry was missing from the room

12:20PM Fred Morrall and Joe Simmons(Chief Engineer and Engineer) did key log Interrogation and Housekeeping key #14 was used to enter room 618 at 11:25 AM and 11:30AM.

key was issued to Briana Cohen . Briana Cohen was not assigned room 618 to clean on 04/26/2013 , Briana Cohen was unaccounted for

between 12:30PM and 1:00PM . at 1:00 PM Simon Mikhael Questioned Briana Cohen where about she was, she replied she was with Nizika Smalls and

Shaquera Harris in Nizika Smalls Van (which was unauthorized break)Simon Mikhael asked Briana Cohen if she gave her HK Key to anyone .

she replied no she did not. Simon Mikhael asked Briana Cohen if she left her key Unattended she replied no she did not

01:05 PM Matt Butdorff searched Briana Cohen purse/Car/ HK cart and couldn't find anything that link to the incident

01:10 PM Briana Cohen was taken by Simon Mikhael to Kristine Cox office for Interrogation and Kristine Cox questioned Briana Cohen where she was Between the

hours 11:00 AM and 1:00 PM on 04/26/13 (reference Kristine Cox Report for Full statement) Witnesses on Kristine Cox Report are

Simon Mikhael, Joe Rosa, Matt Butdorf, and Fred Morrall 02:00PM Beaufort County Officer arrived on property, Interrogated Briana Cohen and

searched her Car , and searched Nizika Smalls Car and didnt find anything that link to the incident

03:00 PM Kristine Cox searched all employee Lockers couldn't find anything that link to the incident

Use Supplemental Addendum Page, If Necessary.

Witnesses? Yes ☒ No ☐

Name: Phone Number:

Address: City: State Zip Code

Name: Phone Number:

Address: City: State Zip Code

Hotel associates, please note: Do NOT make any promises for settlement of alleged theft of personal property, or damage to parked guest vehicles. Advise the guest that further investigation of their claim will be required. Please refer guest's additional questions to the General Manager.

Prepared By: SIMON MIKHAEL Position ASSISTANT EX. HK Date 04/28/2013

General Manager Signature: Date: 4/29/13

Note to Home Office/Risk Management: Please contact the guest: ☒ Yes ☐ No

FOR HOTEL USE ONLY. COLUMBIA SUSSEX CORPORATION.

THIS REPORT HAS BEEN PREPARED SPECIFICALLY IN ANTICIPATION OF LITIGATION, AND CONSTITUTES ATTORNEY/CLIENT PRODUCT, AND AS SUCH, IS PRIVILEGED INFORMATION rev. 08/02

Smith, Machelie

DEF_0001

ROA-156



GUEST STATEMENT REPORT

NAME: Machelle & David Smith MALE / FEMALEADDRESS: 3821 Byrnes Blvd., Florence, S.C. 29506
(843) 229-8109TELEPHONE: 843-229-5948 DATE OF INCIDENT: 4-26-13TIME: 12⁰⁰ am/pm PLACE OF INCIDENT: Marriott Hotel & SPA Rm 618

Describe What Occurred: (Include injuries and/or property damage)

- Robbed of jewelry/cash @ approx. 11:30 A.M.
- Wedding Ring, ^{3K} Wedding Band, ^{1K} Emerald Ring, ^{2K} Diamond Necklace
Cash ~\$150. TOTAL ~\$50,000.
- We looked for a safe but couldn't find one.
- It is in cheson That we did not see.

Wife came to Room @ 11:12Signed: David M. SmithDate: 4-26-13 Time: 13⁰⁰ am/pm

Rev. 2/02

618

ROA-158

DEFENDANT'S
EXHIBIT
48 2 3/15/17
SMITH
PENGAD 800-631-6989

Smith, Machelles

DEF_0004

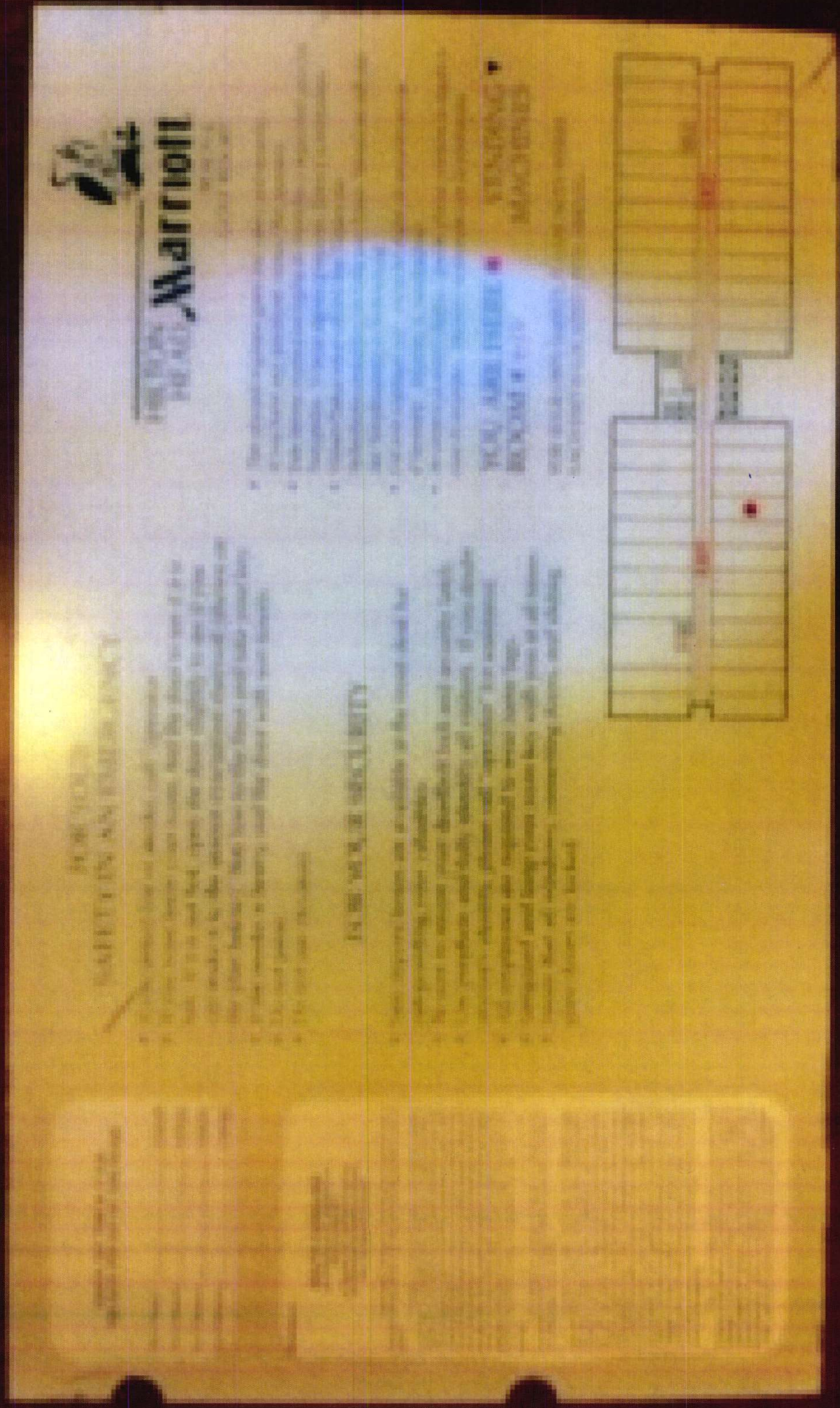
Page 1



ROA-159

Smith, Machelie

DEF_0005



Smith, Machelle

DEF_0006

PAYROLL EMPLOYEE MASTER INQUIRY

Company 900 COLUMBIA SUSSEX MANAGEMENT LLC

Employee No..	194705	Employee Name...	BRIANA COHEN		
Prefix		Last, First, Mid..	COHEN	BRIANA	LYNETTE
Suffix		Address Line 1..	PO BOX 526		
Search Word....		Address Line 2..			
COHE		City/State/Zip..	ST HELENA	SC 29920	
LOCATION	HILTON HEAD MARRIOTT RESORT	Misc. Codes.....			
DEPARTMENT	ROOMS	Date of Hire....	04/16/2013		
Social Sec. No	[REDACTED]	Date Terminated.	4/26/13		
Last Pay Raise..	0/00/00	Status.....	TERMINATED		
State.....	SOUTH CAROLINA	Federal Dep.....			
Locality 1.....		State Dep.....			
Locality 2.....		Addl. Fed. W/H..	.00		
Locality 3.....		Addl. State W/H.	.00		
Marital Status..	SINGLE	Pay Code Type...	HOURLY		
Pay Frequency...	BI-WEEKLY	Pay Rate.....	9.000		
Job Class.....	HOUSEKEEPER	Work Status.....	BWK-SALARY		
Workers Comp #..	F0209	Max Net Pay...	.00		
Pension Plan....	N	Misc Alpha....			
Gender.....	F	Misc Numeric..	.00		
Employee 1099...		F12=Vac/Sick			
Direct Deposit..	Y	F8=Comments F9=Earn F10=Taxe			
EIC.....	N				
COLA - None					

F3=Exit F2=Restart F5=Deduc F6=Checks/Advices

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COLUMBIA SUSSEX CORPORATION

APPLICATION FOR EMPLOYMENT (An Equal Opportunity Employer)

2

DATE April 10, 2013

PERSONAL INFORMATION

NAME Briana L Cohen SOCIAL SECURITY # [REDACTED]
PRESENT ADDRESS [REDACTED] St. Helena Island SC 29920
Street City State Zip

How long have you lived at this address? _____

PREVIOUS ADDRESS _____
Street City State Zip

How long did you live at this address? _____

PHONE NUMBER (843) 575-1530 REFERRED BY _____

Can you present proof of your right to work legally in the United States?

YES ☒ NO ☐ * *

Have you ever been convicted of a felony or misdemeanor? NO

If yes, give details, _____

Do you have any friends or relatives who work for the Columbia Sussex Corp. or related company?

YES ☐ NO ☒

If yes, please list them, _____

EMPLOYMENT DESIRED

POSITION House keeping Date you can start April 11, 2013

Are you employed now? NO If so, may we contact your present employer? _____

Have you applied to or worked for the Columbia Sussex Corp. before?

YES ☐ NO ☒ If "YES," when? _____

-1-

Smith, Machelie
RQA-162

DEF 0310
App. 183

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EDUCATION

	Name & Location of School Attended	How many years?	Did you Graduate?	Subjects Studied
Grammar School				
High School	Battery Creek High School	10	no	
College				
Other	Adult Aid	2	G.S.D	

Subjects of special study or research work _____

U.S. Military Service or Reserves (Dates, rank, discharge) _____

REFERENCES

Give below the names of 3 persons not related to you, whom you have known at least one year.

Name _____ Business _____

Address _____ Phone # _____

Name _____ Business _____

Address _____ Phone # _____

Name _____ Business _____

Address _____ Phone # _____

IN CASE OF EMERGENCY NOTIFY:

Name Elizabeth Ramos / mother Phone # [REDACTED] - 2552

Address _____

Name _____ Phone # _____

Address _____

I certify that the information provided in this Application for Employment is true, correct and complete. I agree that, if I am employed, the Columbia Sussex Corp. may terminate my employment for any false or misleading statements or omissions in this application, whenever they may be discovered.

I authorize a medical examination, including a drug screen, by an examiner selected by the Columbia Sussex Corp.

I agree that, if hired, my employment is for no definite period and may be terminated at any time for any reason by either me or Columbia Sussex Corp. I agree that this cannot be changed except in writing by the Company's President, and that any representations to the contrary are not binding on the Columbia Sussex Corp.

AUTHORIZATION FOR RELEASE OF INFORMATION

I authorize the Columbia Sussex Corp. to investigate my personal history and financial and credit record through any investigative or credit agency of its choice.

I authorize any reference, school, hospital, doctor, former employer or other person to disclose to Columbia Sussex Corp. upon request any information they may have about me and I release them from all liability for disclosing such information to the Columbia Sussex Corp. I understand that Columbia Sussex Corp. may obtain or prepare an investigative consumer report in connection with my application for employment. I understand that I may make a written request for disclosure of the nature and scope of the investigation.

Date: April 10/13

Signature

Briana J. Cohen

Kelsey J. Brudvig

From: Kelsey J. Brudvig
Sent: Friday, October 5, 2018 3:15 PM
To: 'cmaddoxj@sccourts.org'; 'cmaddoxlc@sccourts.org'
Cc: Christian Stegmaier; 'mcreech@pmped.com'; Natalia V. Ertseva-Thomas
Subject: 2016-CP-07-0777 Smith v. Columbia Sussex
Attachments: M4SJ (with exhibits).pdf

Judge Maddox,

Defendants' motion for summary judgment in the above-referenced matter was on last week's motions docket in Beaufort County Court of Common Pleas. Due to Plaintiff's counsel's conflict, the Court agreed to resolve Defendants' motion via briefing. Attached, please find Defendants' memorandum of law and exhibits in support of their motion for summary judgment. The same has been e-filed with the Court.

Please let us know if the Court needs anything further.

Opposing counsel is copied on this correspondence.

Respectfully,

Kelsey Brudvig
Counsel for Defendants

From: "Maddox, J. Cordell Law Clerk (Anna Kirkland)" <cmaddoxlc@sccourts.org>
Date: December 10, 2018 at 1:59:48 PM EST
To: "mcreech@pmped.com" <mcreech@pmped.com>, "kbrudvig@collinsandlacy.com" <kbrudvig@collinsandlacy.com>, "Christian Stegmaier (cstegmaier@collinsandlacy.com)" <cstegmaier@collinsandlacy.com>
Cc: "Maddox, J. Cordell Secretary (Cynthia Hicks)" <cmaddoxsc@sccourts.org>
Subject: Smith v Columbia Sussex (2016CP0700777)

Mr. Creech, Ms. Brudvig, and Mr. Stigmaier,

Judge Maddox has made a decision concerning the motion for summary judgment in the Smith v Columbia Sussex case (2016CP0700777). The motion for summary judgment is granted. Please have an order concerning the motion e-filed for Judge Maddox to review and sign by December 28, 2018.

Thank you,
Anna Kirkland
Law Clerk for the Honorable Judge J. Cordell Maddox, Jr.

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IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

\_\_\_\_\_  
APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge  
\_\_\_\_\_

Appellate Case No.: 2019-002099  
\_\_\_\_\_

**RECEIVED**

**Nov 13 2020**

**SC Court of Appeals**

Machelle Smith.....Appellant,

-v-

Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts and Spa;  
Columbia Sussex Management, LLC; and,  
Columbia Properties Hilton Head, LLC .....Respondents

\_\_\_\_\_  
**CERTIFICATE OF COUNSEL**  
\_\_\_\_\_

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.



\_\_\_\_\_  
John E. Parker, Jr., Esquire  
PETERS, MURDUAGH, PARKER, ELTZROTH,  
& DETRICK, P.A.  
101 Mulberry Street East  
Post Office Box 457  
Hampton, SC 29924  
Phone: (803) 943-2111  
ATTORNEYS FOR APPELLANT

November 13, 2020