

The State of South Carolina
In the Court of Appeals

Appeal from Dillon County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

RECEIVED
NOV 14 2018
SC Court of Appeals

Case # 2014-CP-17-00348

Christopher Lampley, Appellant

v.

Major Hulon, Dillon County Sheriff, Respondent

Record on Appeal

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COPY

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

Christopher Lampley,)

Plaintiff,)

versus)

Major Hulon, Dillon County Sheriff,)

Defendant.)

FILED

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2015 NOV 16

CLERK OF COURT
DILLON COUNTY

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

Case No: 2014-CP-17-348

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT

CERTIFIED

TRUE COPY

CLERK OF COURT
DILLON COUNTY

This matter was before the Court at a regular term of common pleas non-jury on October 6, 2015 pursuant to the Defendant's Motion to Dismiss and to Strike, and Motion to Dismiss or, in the Alternative, for Summary Judgment.

FACTS

The facts relevant to the Defendant's pending motions are not in dispute:

1. Both the Plaintiff and the Defendant's Deputy were responding to a house fire with entrapment, and both were on duty and acting within the course and scope of their employment.
2. In the process of responding to the fire, there was a collision between the two vehicles on Highway 301 just outside Dillon, South Carolina.
3. The Plaintiff claimed injuries as a result of the accident, pursued that claim by filing for workers' compensation benefits through Dillon County, and has received workers' compensation benefits as a result of that claim.
4. On August 8, 2014, the Plaintiff filed suit against Dillon County for property damage only.
5. The Defendant County filed a Motion to Dismiss and to Strike¹ on the basis that Dillon

¹ The Defendant County moved to strike all reference to punitive damages in the Complaint pursuant to § 15-78-120 of the South

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County was not the proper defendant, and that the proper party defendant was the Dillon County Sheriff.

6. On September 18, 2014, the Plaintiff filed an Amended Summons and Amended Complaint:

- a. Naming the Sheriff as the Defendant; and
- b. Adding a claim for bodily injury to the prior claim for property damage.

7. The Defendant Sheriff then filed a Motion to Dismiss, or, in the Alternative, for Summary Judgment that is now before the Court.

Upon review of the Court's file, hearing the argument of counsel for both parties, and reviewing the relevant statutory and case law, the Court makes the findings and conclusions as set forth herein. "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the [c]ourt, the motion shall be treated as one for summary judgment. . . ." *Hooper v. Ebenezer Senior Services & Rehabilitation Center*, 377 S.C. 217, 225, 659 S.E.2d 213, 217 (Cl. App. 2008). To the extent any matter(s) outside of the pleadings form the basis for any findings or conclusions herein, the Court has considered such as a motion for summary judgment and the Defendant has, in the alternative, moved for summary judgment.

STATUTE OF LIMITATIONS

The Defendant asserts that the two year statute of limitations contained in the South Carolina Tort Claims Act bars the Plaintiff's action in its entirety, or, in the alternative, bars the Plaintiff's claim for bodily injuries which was included only in the Amended Complaint. Section 15-78-110 of the Tort Claims Act provides as follows, "Any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the

Carolina Tort Claims Act. The Plaintiff's Amended Complaint omitted any request for punitive damages rendering the Defendant's Motion to Strike moot.

loss was or should have been discovered. . . .”

Under the general two year statute of limitations, the Plaintiff in this case had until August 12, 2014 to file and serve his Complaint. The Plaintiff's initial Summons and Complaint named Dillon County as the Defendant and, at oral argument, Plaintiff's counsel indicated this was based on the fact that the State Trooper's Accident Report listed Dillon County as the owner of the vehicle driven by the Sheriff's Deputy. Plaintiff's counsel further argued that, shortly after the filing of Defendant Dillon County's Motion to Dismiss alleging that the proper party defendant was the Dillon County Sheriff, Plaintiff filed an Amended Summons and Amended Complaint properly naming the Sheriff and including a previously unasserted claim for bodily injuries.

Rule 15(c), *SCRPC* states:

Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Section 23-13-10 of the South Carolina Code, as amended, clearly states that, "The sheriff in all cases be answerable for neglect of duty or misconduct in office of any deputy." Regardless of the owner of the vehicle listed on the Accident Report, the Plaintiff knew, or should have known, that the proper party defendant was the Dillon County Sheriff at the time of

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filing his initial Complaint. Rule 15(a), *SCRCP*, however, does permit the Plaintiff to amend his pleadings "as a matter of course" as the amended pleadings were filed within thirty days after the Defendant's Answer. Further, the Court finds that, as set forth above in Rule 15(c), the amendment changing the party defendant from the County to the Sheriff relates back to the date of the original pleading which was filed prior to the running of the two year statute of limitations. *See Jackson v. Doe*, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Cl. App 2000). Additionally, the Plaintiff's claim for bodily injuries arose out of the exact same conduct previously set forth in the original Complaint. Therefore, under Rule 15(c), the amendment relates back to the date of the original pleading that was filed within the statute of limitations. *See Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995) (purpose of Rule 15(c) is to salvage causes of action otherwise barred by statute of limitations).

Therefore, the Defendant's Motion to Dismiss/for Summary Judgment on the basis of the statute of limitations is denied.

TORT CLAIMS ACT IMMUNITY

The Defendant also moved for dismissal on the basis of Section 15-78-60(14) of the South Carolina Tort Claims Act which states: "The governmental entity is not liable for a loss resulting from any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer." There is no dispute as to coverage of the Plaintiff's claim by the Workers' Compensation Act. The question is whether or not the Plaintiff's bodily injury claim in the present case is "a claim by or on behalf of an employee to recover damages from any person *other than the employer.*" (Emphasis added).

Plaintiff asserts that he is an employee of the County and that the Defendant's Deputy is

an employee of the Sheriff; therefore, neither the exclusivity provision of the Workers' Compensation Act nor the immunity provided by § 15-78-60(14) applies. Defendant claims that, as to the collection of workers' compensation benefits, County and Sheriff are, for all intents and purposes, the same "employer" as contemplated by § 15-78-60(14).

This appears to be a matter of first impression. In *Buff v. SCDOT*, 332 S.C. 472, 505 S.C.2d 360 (Ct. App. 1998), the Court of Appeals held that a private employee may receive workers' compensation benefits from his private employer and maintain an action in tort against a third-party governmental tortfeasor, but the Court is unaware of any reported decision involving a workers' compensation claim and third-party tort action against a government employer as in the case at bar.

Whether the exclusivity provision of the Act applies, barring an employee-plaintiff's tort claim against a defendant-employer, is a jurisdictional question; therefore, it is a question of law. See *Sabb v. S.C. State University*, 350 S.C. 416, 422-23, 567 S.E.2d 231, 234 (2002) (noting whether the Act's exclusivity provision applies invokes a question of the circuit court's original jurisdiction); *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 320, 331, 523 S.E.2d 766, 769, 775 (1999) (noting the determination of statutory employment and the consequent application of the exclusivity provision is a question of law); *Glass v. Dow Chemical Company*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 50-51 (1997) (reviewing the appellant's argument that the Act provided the exclusive remedy for the respondent as a question of law because it was jurisdictional in nature). In such cases, "this [c]ourt has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." *Harrell*, 337 S.C. at 320, 523 S.E.2d at 769. "In determining jurisdictional questions, doubts of jurisdiction will be resolved in favor of inclusion of employees within workers' compensation coverage

pmb

rather than exclusion.” *Hill v. Eagle Motor Lines*, 373 S.C. 422, 429, 645 S.E.2d 424, 427 (2007) (quoting *Wilson v. Georgetown County*, 316 S.C. 92, 94, 447 S.E.2d 841, 842 (1994)).

In the present case, the County and Sheriff are so closely related for purposes of workers' compensation claims and benefits so as to constitute the same “employer” as that term is used in § 15-78-60(14). First, to interpret § 15-78-60(14) as narrowly as argued by the Plaintiff would render it meaningless as the exclusivity provision of the Workers' Compensation Act already prohibits an employee from recovering workers' compensation benefits and maintaining an action in tort against his employer. The Court must presume the legislature intended to accomplish something with an enacted statute and did not intend for a section or provision to be purposeless or futile. *Duvall v. S.C. Budget and Control Board*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008); *Ellison v. Frigidaire Home Products*, 371 S.C. 159, 164, 638 S.E.2d 664, 666 (2006); *Duke Power Company v. Laurens Elec. Co-op., Inc.*, 344 S.C. 101, 106, 543 S.E.2d 560, 563 (Ct. App. 2000); see *State ex-rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (“In seeking the intention of the legislature, we must presume that it intended by its actions to accomplish something and not to do a futile thing.”) To construe § 15-78-60(14) of the Tort Claims Act as interpreted by the Plaintiff would accomplish nothing more than what the exclusivity provision of the Workers' Compensation Act already accomplishes.

Section 4-9-30 of the S.C. Code, as amended, enumerates the powers of county governing bodies and subsection (5)(a) includes the power:

to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations *for functions and operations of the county*, including, but not limited to, appropriations for public safety, *including police protection*; and to provide for the regulation and enforcement of the above.

(Emphasis added).

Dillon County levies ad valorem property taxes and makes appropriations for the function and operation of the Dillon County Sheriff's Department, including the provision of the required workers' compensation coverage, the same workers' compensation coverage through Dillon County under which the Plaintiff made a claim and collected benefits. To permit the Plaintiff to now pursue a claim for the same bodily injuries against the Sheriff would defeat the clear intention of the immunity provided by § 15-78-60(14) which prevents a double recovery from the same governmental entity, in workers' compensation benefits and then in tort.

Based on the foregoing, the Defendant is granted partial summary as to the Plaintiff's claim for bodily injuries as pled in the Amended Complaint.

IT IS THEREFORE ORDERED:

- A. That the Plaintiff's claim for bodily injuries is dismissed with prejudice for the reasons set forth herein.
- B. That the Plaintiff's remaining claim for property damage remains pending and shall proceed accordingly.

IT IS SO ORDERED.



HONORABLE PAUL M. BURCH
CIRCUIT JUDGE
FOURTH JUDICIAL CIRCUIT

November 9th, 2015
Pageland, South Carolina.

FORM 4

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

FILED
ROBERT T. HYATT

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CPI700348

Christopher Lampley	2018 FEB 14 AM 9:56 CLERK OF COURT DILLON COUNTY	Major Hulon, Dillon County Sheriff
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT:** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT:** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j), SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

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 CLERK OF COURT
 DILLON COUNTY
 FEB 14 2018

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

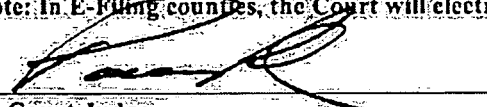
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
<i>See Attached Verdict</i>		

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


 Circuit Court Judge

2048
 Judge Code

2/13/2018
 Date

For Clerk of Court Office Use Only

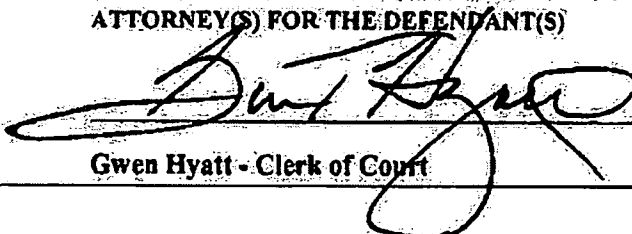
This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

William P. Hatfield PO Box 1770 Florence, SC 29503
Linda Weeks Gangl Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

C. Heath Ruffner PO Drawer 1449 Cheraw, SC 29520
Kevin Lindsay Terrell The Ward Law Firm, P.A. PO Box
5663 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Gwen Hyatt - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

Christopher Lampley,
Plaintiff,

Vs.

Major Hulon, Dillon County Sheriff,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A # 2014-CP-17-348

VERDICT FORM

FILED
GMENT HYATT
2018 FEB 14 AM 9:58
CLERK OF COURT
DILLON COUNTY

1. Was the Defendant, Major Hulon, negligent and was his negligence a proximate cause of the Plaintiff's damages?
 YES - Go to Question 2
 NO - Go to Question 6
2. Was the Plaintiff, Chris Lampley, negligent and was his negligence a proximate cause of the Defendant's damages?
 YES - Go to Question 3
 NO - Go to Question 6
3. (a) Was the Plaintiff's negligence a proximate cause of the Plaintiff's damages?
 YES - Go to Question 4
 NO - Go to Question 6

(b) Was the Defendant's negligence a proximate cause of the Defendant's damages?
 YES - Go to Question 4
 NO - Go to Question 6
4. If you have determined that both the Plaintiff and Defendant were negligent and that their negligence caused their respective damages, please assign the percentage of negligence which you attribute to each party. [The percentage must add up to 100%.]

Plaintiff	<u>50</u>	%
Defendant	<u>50</u>	%
Total	<u>100</u>	%

5. (a) Was the Plaintiff's negligence greater than fifty (50%) in your answer to Question 4 above?

 YES - Stop deliberations
 NO - Go to Question 6

(b) Was the Defendant's negligence greater than fifty (50%) in your answer to Question 4 above?

 YES - Stop deliberations
 NO - Go to Question 6

6. Please state the amount of damages, if any, sustained by the Plaintiff or Defendant. [Do not reduce the Plaintiff's or Defendant's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge will compute the amount of damages for which the Plaintiff or Defendant is responsible based on the percentage of the Plaintiff's or Defendant's negligence which you have decided proximately caused the Plaintiff's or Defendant's damages. You are to determine only the total amount of the Plaintiff's or Defendant's damages and enter that amount below.]

Actual Damages for the Plaintiff	<u> \$ 5,200.00 </u>	Total Loss Loss of Use Storage
	<u> 9,000.00 </u>	
	<u> = 0.00 </u>	
Total	<u> \$ 16,100.00 </u>	
Actual Damages for Defendant	<u> \$ 1,600.00 </u>	

Maurice Howell
FOREMAN
February 13, 2018

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

FILED
IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A:#

2014 AUG -8 PM 2:26

Christopher Lampley,
Plaintiff,

CLERK OF COURT
DILLON COUNTY

2014-CP-17 348

Vs.

County of Dillon,
Defendants.

COMPLAINT
(Jury Trial Requested)

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DILLON COUNTY
Dillon, S.C.
CLERK OF COURT
DILLON COUNTY

The Plaintiff, complaining of the Defendant herein, alleges:

1. That the Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.
2. That the Defendant, County of Dillon, is a governmental subdivision in the County of Dillon, State of South Carolina.
3. That at all times hereinafter mentioned, Randolph Curtis Tyler, was acting as the agent, servant and employee of the Defendant, County of Dillon.
4. On or about August 12, 2012, at approximately 1:26 a.m., the Plaintiff, who is a fireman, was traveling on Hwy. 301 to a fire call with entrapment when he was struck by a Deputy Sheriff who crossed four lanes and collided with Plaintiff; that as a result of the collision the Plaintiff was injured and damaged as more specifically hereinafter set forth.
5. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent and unlawful conduct on the part of Randolph Curtis Tyler acting as the agent, servant, or employee of the Defendant, County of Dillon, in one or more of the following particulars, to-wit:
 - (a) In failing and omitting to heed, observe, or obey a red traffic light at the said time and place;

- (b) In failing and omitting to heed, observe, or obey a stop sign at the said time and place;
- (c) In failing to have the vehicle equipped with adequate brakes or if the said automobile was equipped with adequate brakes, in failing to properly apply the same;
- (d) In driving a vehicle in an unsafe condition upon the roadways of the State of South Carolina;
- (e) In driving a vehicle at an excessive rate of speed, too fast for the conditions then and there existing;
- (f) In failing to yield the right of way to the Plaintiff;
- (g) In failing to keep a proper lookout;
- (h) In failing to maintain proper control over the vehicle which Randolph Curtis Tyler was driving;
- (i) In driving a motor vehicle in a dangerous and improper manner without regard for the rights of others on said road;
- (j) In failing to avoid colliding with Plaintiff's vehicle after having ample opportunity to do so, thus failing to exercise the doctrine of last clear chance;
- (k) In driving said vehicle into and against the Plaintiff's vehicle;
- (l) In failing to give any warning or signal to the Plaintiff that Randolph Curtis Tyler was about to collide with the vehicle of the Plaintiff;
- (m) In operating a motor vehicle on the wrong side of the roadway;
- (n) In changing lanes improperly;
- (o) In turning unlawfully;
- (p) In passing unlawfully.

All of the above being in violation of the laws of the State of South Carolina.

6. That as a direct and proximate result of the negligence, wantonness, recklessness, carelessness and unlawfulness on the part of Randolph Curtis Tyler, acting as the agent, servant, or employee of the Defendant, County of Dillon:

- (a) The Plaintiff's automobile was extensively damaged;
- (b) It will be necessary for the Plaintiff to incur expenses for the repair of the automobile or replacement of the automobile and the storage of the vehicle pending its repair or replacement;
- (c) The Plaintiff will be without the use of the automobile during the time that it is undergoing repairs if it can be repaired;
- (d) The Plaintiff's automobile will greatly depreciate in value due to its wrecked condition.

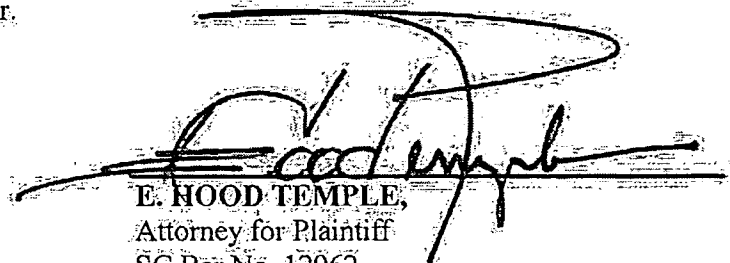
7. That the Plaintiff is informed and believes that he is entitled to an award of actual damages.

8. That the Plaintiff is informed and believes that he is entitled to an award of punitive damages.

WHEREFORE, Plaintiff prays judgment against the Defendant for an award of actual damages, an award of punitive damages, the costs of this action, and for such other and further relief as this court deems just and proper.

Florence, SC

July 15, 2014



E. HOOD TEMPLE,
Attorney for Plaintiff
SC Bar No. 12962

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)
)
Christopher Lampley,)
)
Plaintiff,)
)
versus)
)
County of Dillon,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
Case No. 2014-CP-17-348

ANSWER AND COUNTERCLAIM
(Jury Trial Requested)

The Defendant, subject to any motions and preserving all defenses under Rule 12 of the South Carolina Rules of Civil Procedure, by way of Answer to the Complaint herein and by way of Counterclaim, would respectfully allege and show:

FOR A FIRST DEFENSE

1. That the Defendant is informed and believes that it is not a proper defendant and, therefore, the Complaint against it should be dismissed pursuant to S.C. Code Ann. § 15-78-70, as amended, as the proper party defendant is the Dillon County Sheriff.

FOR A SECOND DEFENSE

2. That the Defendant reiterates all allegations contained in the First Defense above as fully as if repeated verbatim herein.

3. That the Defendant is informed and believes that there has been insufficiency of process and insufficiency of service of process of the Summons and Complaint and, therefore, this action should be dismissed pursuant to Rule 12(b)(4) and/or (5) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

4. That the Defendant reiterates all allegations contained in the First and Second Defenses above as fully as if repeated verbatim herein.

5. That the Defendant denies each and every allegation set forth in the Complaint not hereinafter admitted, qualified or explained and demands strict proof thereof.

Law Offices:

Harris, McLeod &
Ruffner

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222 Market Street
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6. That the Defendant admits, upon information and belief, the allegations set forth in paragraph 1 of the Complaint.

7. That the Defendant admits the allegations set forth in paragraph 2 of the Complaint.

8. That the Defendant denies the allegations set forth in paragraph 3 of the Complaint as Deputy Sheriff Randolph Curtis Tyler (hereinafter "Tyler") was an employee of the Dillon County Sheriff.

9. That, as to the allegations set forth in paragraph 4 of the Complaint, the Defendant admits so much of said paragraphs as may be construed to allege that a collision occurred between the vehicle driven by the Plaintiff and the vehicle driven by Tyler, but the Defendant denies all remaining or inconsistent allegations of paragraph 4, including, but not limited to, any allegations which may be construed to allege that the Defendant or Tyler, was in any way careless, negligent, grossly negligent, reckless, heedless, willful, wanton or unlawful.

10. That the Defendant denies the allegations set forth in paragraphs 5, 6, 7 and 8 of the Complaint.

FOR A FOURTH DEFENSE

11. That the Defendant reiterates all allegations contained in the First, Second and Third Defenses above as fully as if repeated verbatim herein.

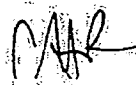
12. That the collision and damages complained of in the Complaint, if any, were caused solely and proximately by one or more of the following careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful acts of omission or commission on the part of the Plaintiff in the operation and management of the vehicle he was driving, to wit:

- a) In driving and operating said vehicle at a rate of speed too fast for the conditions then and there existing;
- b) In driving and operating said vehicle at a rate of speed in excess of the posted speed limits;
- c) In failing to yield the right-of-way;
- d) In failing to properly apply the brakes upon said vehicle, or, if he did apply the brakes, then failing to have the brakes in proper working order;

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Harris, McLeod &
Ruffner

Post Office Drawer 1449
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Cheraw, South Carolina
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- e) In failing to keep a proper lookout for others using the highway;
- f) In failing to observe and heed the road and traffic conditions then and there existing;
- g) In failing to stop said vehicle so as to avoid said collision;
- h) In failing to turn said vehicle so as to avoid said collision;
- i) In failing to have his vehicle equipped with a siren and, if so equipped, in failing to have the siren activated;
- j) In failing to sound the horn on said vehicle as a warning to the Defendant;
- k) In then and there driving said vehicle into the vehicle driven by the Defendant;
- l) In failing to take any evasive action so as to avoid said collision;
- m) In failing to reduce the speed of said vehicle upon approaching and passing through an intersection;
- n) In driving and operating said vehicle with reckless disregard for the safety of others;
- o) In failing to use that degree of care and caution as a reasonable and prudent person would have under the same or similar circumstances;
- p) In being otherwise careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful in the operation, management and control of said vehicle, and in violation of the Regulations and Statutes governing the use of highways in South Carolina generally, and in violation of the cases made and provided.

FOR A FIFTH DEFENSE

13. That the Defendant reiterates all allegations contained in the First, Second, Third and Fourth Defenses above as fully as if repeated verbatim herein.

14. That if Tyler was in any way careless, negligent, grossly negligent, reckless, heedless, willful, wanton or unlawful in the operation, management and control of his vehicle, which he specifically denies, then the Plaintiff was likewise careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful in the operation, management and control of the vehicle he

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was driving in one or more of the particulars enumerated in the Defendant's Fourth Defense above, the same being incorporated herein and made a part of these allegations by reference thereto, and that said acts of omission and commission on the part of the Plaintiff, were proximate, contributing causes of the aforesaid collision and constitute a greater degree of negligence than any negligence on the part of Tyler. Therefore, the Plaintiff is barred from recovery from this Defendant, or, in the alternative, the Plaintiff's damages should be reduced in accordance with the percentage of negligence attributable to the Plaintiff.

FOR A SIXTH DEFENSE

15. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth and Fifth Defenses above as fully as if repeated verbatim herein.

16. That the collision complained of and damages of the Plaintiff, if any, were caused solely and proximately by the negligent, careless, grossly negligent, reckless, heedless, willful, wanton and unlawful acts of omission and commission on the part of some person or entity other than this Defendant. Therefore, as to this Defendant, the Plaintiff is barred from recovery.

FOR A SEVENTH DEFENSE

17. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth and Sixth Defenses above as fully as if repeated verbatim herein.

18. That on the date, time and place as generally set forth in the Complaint, Tyler was engaged in the proper operation of an "authorized emergency vehicle" pursuant to § 56-5-760 of the 1976 South Carolina Code of Laws, as amended, and craves reference to and specifically pleads the privileges set forth therein.

FOR AN EIGHTH DEFENSE

19. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Defenses above as fully as if repeated verbatim herein.

20. That the collision between the vehicle operated by the Plaintiff and the vehicle operated by Tyler was unavoidable. Therefore, the Defendant pleads unavoidable accident as a complete bar to this action.

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FOR A NINTH DEFENSE

21. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Defenses above as fully as if repeated verbatim herein.

22. That on the date, time and place as generally set forth in the Complaint, Tyler was placed in a sudden emergency, through no fault of his own, and he acted as a reasonable and prudent person would have under the same or similar circumstances. Therefore, the Defendant pleads sudden emergency as a complete bar to this action.

FOR TENTH DEFENSE

23. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eight and Ninth Defenses above as fully as if repeated verbatim herein.

24. That any liability on the part of the Defendant is limited by the terms of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., as amended, and the Defendant pleads the South Carolina Tort Claims Act as a defense and craves reference thereto as it contains limitations applying to this case. Further, the Defendant specifically pleads S.C. Code Ann. § 15-78-60(14), as amended, as a bar to the Plaintiff's causes of action. The Defendant also pleads S.C. Code Ann. § 15-78-120, as amended, and craves reference to the limitations on liability found therein, including, but not limited to, the damages caps and limitations set forth therein.

FOR AN ELEVENTH DEFENSE

25. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses above as fully as if repeated verbatim herein.

26. That the evidence of recklessness and/or any degree of fault, as alleged by the Plaintiffs in seeking punitive damages from this Defendant, would not be, upon information and belief, clear and convincing as required by S.C. Code Ann. § 15-33-135, as amended. Further, the imposition of punitive damages against this Defendant in the context of this lawsuit is prohibited by S.C. Code Ann. § 15-78-120, as amended, and is unconstitutional under both the South Carolina and United States Constitutions. Therefore, the Plaintiff's request for punitive damages should be stricken from the Complaint.

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FOR A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM

27. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Defenses above as fully as if repeated verbatim herein.

28. That the Defendant (improperly named as County of Dillon, the proper Defendant being the Dillon County Sheriff) is the duly elected Sheriff of the County of Dillon, State of South Carolina.

29. That upon information and belief, the Plaintiff is a citizen and resident of the County of Dillon, State of South Carolina.

30. That the collision which is the subject of this action occurred in the County of Dillon, State of South Carolina.

31. That, at all times hereinafter mentioned, Tyler was operating a patrol car within the course and scope of his employment for the Dillon County Sheriff.

32. That, on or about August 12, 2012, at approximately 1:26 a.m., Tyler was operating said patrol car proceeding east on Mark Road and arrived at the intersection of Mark Road and Highway 301. At that time, Deputy Tyler was responding to a house fire with entrapment and was traveling with the emergency lights and siren activated on his patrol car.

33. That, at or about the same date and time, the Plaintiff was operating his vehicle in a southerly direction on Highway 301.

34. That, at the date and time in question, the Plaintiff did fail to yield the lawful right-of-way to Tyler's patrol car resulting in a collision between the two vehicles.

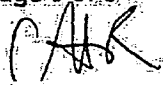
35. That the Plaintiff had, or should have had, adequate opportunity to perceive the road conditions then and there existing and to see, and/or hear the patrol car being operated by Tyler, such that said Plaintiff was negligent, grossly negligent, careless, reckless, willful and wanton in his acts and/or omissions, in one or more of the following particulars, to wit:

- a) In driving and operating said vehicle at a rate of speed too fast for the conditions then and there existing;
- b) In driving and operating said vehicle at a rate of speed in excess of the posted speed limits;

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- c) In failing to yield the right-of-way;
- d) In failing to properly apply the brakes upon said vehicle, or, if he did apply the brakes, then failing to have the brakes in proper working order;
- e) In failing to keep a proper lookout for others using the highway;
- f) In failing to observe and heed the road and traffic conditions then and there existing;
- g) In failing to stop said vehicle so as to avoid said collision;
- h) In failing to turn said vehicle so as to avoid said collision;
- i) In failing to have his vehicle equipped with a siren and, if so equipped, in failing to have the siren activated;
- j) In failing to sound the horn on said vehicle as a warning to the Defendant;
- k) In then and there driving said vehicle into the vehicle driven by the Defendant;
- l) In failing to take any evasive action so as to avoid said collision;
- m) In failing to reduce the speed of said vehicle upon approaching and passing through an intersection;
- n) In driving and operating said vehicle with reckless disregard for the safety of others;
- o) In failing to use that degree of care and caution as a reasonable and prudent person would have under the same or similar circumstances;
- p) In being otherwise careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful in the operation, management and control of said vehicle, and in violation of the Regulations and Statutes governing the use of highways in South Carolina generally, and in violation of the cases made and provided;

which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Plaintiff directly and proximately caused property damages to the patrol car operated by Tyler.

36. That, as the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts or omissions of the Plaintiff, the Defendant suffered

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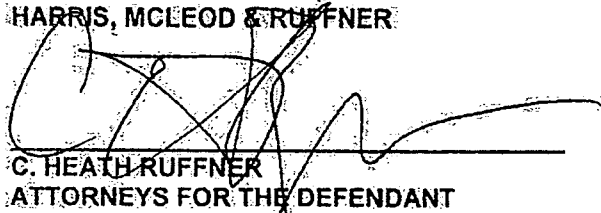
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property damage to the patrol car and is informed and believes that it should have judgment against the Plaintiff for said property damage.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant demands that the Complaint be dismissed with prejudice, for the costs and disbursements of this action, for judgment against the Plaintiff on its counterclaim, and for such other and further relief as the Court deems just and proper.

HARRIS, MCLEOD & RUFFNER

BY:


C. HEATH RUFFNER
ATTORNEYS FOR THE DEFENDANT
POST OFFICE DRAWER 1449
222 MARKET STREET
CHERAW, SC 29520
(843) 537-5204

September 9, 2014
Cheraw, South Carolina.

Law Offices

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(843) 537-5204

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)
)
 Christopher Lampley,)
)
 Plaintiff,)
)
 versus)
)
 County of Dillon,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 Case No. 2014-CP-17-348

NOTICE OF MOTION AND
 MOTION TO DISMISS AND TO STRIKE

TO: E. HOOD TEMPLE, ATTORNEY FOR THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE That the undersigned, C. Heath Ruffner, as attorney for the Defendant, will move before the presiding judge of the Fourth Judicial Circuit at the Dillon County Courthouse located in Dillon, South Carolina, not less than ten (10) days hence, or at such time as may be scheduled by the Court, for the following relief:

1. Dismissal of the Plaintiff's Complaint on the basis that it fails to state facts sufficient to constitute a cause of action;
2. Dismissal of the Plaintiff's Complaint on the basis that the Defendant is not a proper party as, pursuant to S.C. Code Ann. § 15-78-70, the proper party defendant is the Dillon County Sheriff;
3. Dismissal of the Plaintiff's Complaint on the basis of insufficiency of process and insufficiency of service of process pursuant to Rule 12(b)(2), (4) and (5), SCRPC, to wit: the Plaintiff has failed to personally serve the Sheriff, a state officer, as required by Rule 4(d)(5), SCRPC, and the Plaintiff has failed send a copy of the Summons and Complaint by registered or certified mail to the Attorney General at Columbia as required by Rule 4(d)(5), SCRPC;
4. Striking all reference to punitive damages from the Plaintiff's Complaint pursuant to S.C. Code Ann. § 15-78-120.

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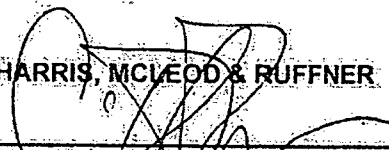
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ROA24

Respectfully submitted:

HARRIS, MCLEOD & RUFFNER

BY:


C. HEATH RUFFNER
ATTORNEYS FOR DEFENDANT
POST OFFICE DRAWER 1449
222 MARKET STREET
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(843) 537-5204

September 9, 2014
Cheraw, South Carolina.

Law Offices

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STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Christopher Lampley,

Plaintiff,

Vs.

Major Hulon, Dillon County Sheriff,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

C/A # 2014-CP-17-348

AMENDED COMPLAINT

(Jury Trial Requested)

A CERTIFIED
TRUE COPY

Shirley T. Hyatt

CLERK OF COURT
DILLON COUNTY

2014 SEP 18 AM 10:37
CLERK OF COURT
DILLON COUNTY

FILED
GWENT. HYATT

The Plaintiff, complaining of the Defendant herein, alleges:

1. That the Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.
2. That the Defendant, Major Hulon, is a citizen and resident of the County of Dillon, State of South Carolina and at all times hereinafter mentioned is the duly elected Sheriff.
3. On or about August 12, 2012, at approximately 1:26 a.m., the Plaintiff, who is a fireman, was traveling on Hwy. 301 to a fire call with entrapment when he was struck by a vehicle operated by a Dillon County Deputy Sheriff who at the time was acting in his official capacity as an employee of the Defendant, crossed four lanes and collided with Plaintiff; that as a result of the collision the Plaintiff was injured and damaged as more specifically hereinafter set forth.
4. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent and unlawful conduct on the part of the Defendant, acting through its agents, servants, or employees, in one or more of the following particulars, to-wit:

- (a) In failing and omitting to heed, observe, or obey a red traffic light at the said time and place;
- (b) In failing and omitting to heed, observe, or obey a stop sign at the said time and place;
- (c) In failing to have the vehicle equipped with adequate brakes or if the said automobile was equipped with adequate brakes, in failing to properly apply the same;
- (d) In driving a vehicle in an unsafe condition upon the roadways of the State of South Carolina;
- (e) In driving a vehicle at an excessive rate of speed, too fast for the conditions then and there existing;
- (f) In failing to yield the right of way to the Plaintiff;
- (g) In failing to keep a proper lookout;
- (h) In failing to maintain proper control over the vehicle which the Defendant was driving;
- (i) In driving a motor vehicle in a dangerous and improper manner without regard for the rights of others on said road;
- (j) In failing to avoid colliding with Plaintiff's vehicle after having ample opportunity to do so, thus failing to exercise the doctrine of last clear chance;
- (k) In driving said vehicle into and against the Plaintiff's vehicle;
- (l) In failing to give any warning or signal to the Plaintiff that Defendant was about to collide with the vehicle of the Plaintiff;

- (m) In operating a motor vehicle on the wrong side of the roadway;
- (n) In changing lanes improperly;
- (o) In turning unlawfully;
- (p) In passing unlawfully; and,
- (q) In failing to exercise due care.

All of the above being in violation of the laws of the State of South Carolina.

5. That as a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendant, acting through its agents, servants, or employees, the Plaintiff was thrown violently in and about Plaintiff's automobile; that the Plaintiff was greatly and severely injured in and about Plaintiff's head, neck, arms, body, back, limbs and other parts of the Plaintiff's body; that Plaintiff was rendered sick, sore, lame, disabled, bruised and shocked thereby and continues so to be; that all of such injuries have caused Plaintiff extreme and excruciating pain continuously to this date and the Plaintiff will suffer such pain in the future; that as a direct and proximate result of the negligence of the Defendant as aforementioned the Plaintiff suffered severe bruises, lacerations and contusions, and great pain and suffering.
6. That as a direct and proximate result of the negligence, wantonness, recklessness, carelessness and unlawfulness on the part of the Defendant, acting through its agents, servants, or employees:
 - (a) The Plaintiff's automobile was extensively damaged;

- (b) It will be necessary for the Plaintiff to incur expenses for the repair of the automobile or replacement of the automobile and the storage of the vehicle pending its repair or replacement;
- (c) The Plaintiff will be without the use of the automobile during the time that it is undergoing repairs if it can be repaired; and,
- (d) The Plaintiff's automobile will greatly depreciate in value due to its wrecked condition;

7. That the Plaintiff is informed and believes that he is entitled to an award of actual damages

WHEREFORE, Plaintiff prays judgment against the Defendant, acting through its agents, servants, or employees, for an award of actual damages, the costs of this action, and for such other and further relief as this court deems just and proper.

Florence, South Carolina

September 17, 2014



WILLIAM P. HATFIELD,
Attorney for Plaintiff
SC Bar No. 2840
HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
wphatfield@htlawsc.com

ROA29

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
Christopher Lampley,)
Plaintiff,)
versus)
Major Hulon, Dillon County Sheriff,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
Case No. 2014-GP-17-348

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM
(Jury Trial Requested)

The Defendant, subject to any motions and preserving all defenses under Rule 12 of the South Carolina Rules of Civil Procedure, by way of Answer to the Amended Complaint herein and by way of Counterclaim, would respectfully allege and show:

FOR A FIRST DEFENSE

1. That the Defendant is informed and believes that there has been insufficiency of process and insufficiency of service of process of the Summons and Amended Complaint and, therefore, this action should be dismissed pursuant to Rule 12(b)(4) and/or (5) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

2. That the Defendant reiterates all allegations contained in the First Defense above as fully as if repeated verbatim herein.

3. That the collision complained of occurred on August 12, 2012, and the Plaintiff presented no claim for bodily injuries until his Amended Summons and Amended Complaint were filed on September 18, 2014; therefore, the Plaintiff's claim for bodily injuries is time barred by the two year statute of limitations pursuant to S.C. Code Ann. § 15-78-110, as amended, and should be dismissed.

FOR A THIRD DEFENSE

4. That the Defendant reiterates all allegations contained in the First and Second Defenses above as fully as if repeated verbatim herein.

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5. That the collision complained of occurred on August 12, 2012, and the Plaintiff presented no claim against the Defendant, Major Hulon, Dillon County Sheriff, until his Amended Summons and Amended Complaint were filed on September 18, 2014; therefore, all of the Plaintiff's claims against this Defendant are time barred under the two year statute of limitations pursuant to S.C. Code Ann. § 15-78-110, as amended, and should be dismissed.

FOR A FOURTH DEFENSE

6. That the Defendant reiterates all allegations contained in the First, Second and Third Defenses above as fully as if repeated verbatim herein.

7. That the Plaintiff's claim for bodily injury is barred by S.C. Code Ann. § 15-78-60(14), as amended.

FOR A FIFTH DEFENSE

8. That the Defendant denies each and every allegation set forth in the Amended Complaint not hereinafter admitted, qualified or explained and demands strict proof thereof.

9. That the Defendant admits, upon information and belief, the allegations set forth in paragraph 1 of the Amended Complaint.

10. That the Defendant admits the allegations set forth in paragraph 2 of the Amended Complaint.

11. That the Defendant denies the allegations set forth in paragraph 3 of the Amended Complaint, the Defendant admits so much of said paragraph as may be construed to allege that a collision occurred between the vehicle driven by the Plaintiff and the vehicle driven by the Defendant's Deputy, but the Defendant denies all remaining or inconsistent allegations of paragraph 3, including, but no limited to, any allegations which may be construed to allege that the Defendant or his Deputy, were in any way careless, negligent, grossly negligent, reckless, heedless, willful, wanton or unlawful.

12. That the Defendant denies the allegations set forth in paragraphs 4, 5, 6 and 7 of the Complaint.

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FOR A SIXTH DEFENSE

13. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth and Fifth Defenses above as fully as if repeated verbatim herein.

14. That the collision and damages complained of in the Amended Complaint, if any, were caused solely and proximately by one or more of the following careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful acts of omission or commission on the part of the Plaintiff in the operation and management of the vehicle he was driving, to wit:

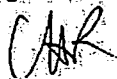
- a) In driving and operating said vehicle at a rate of speed too fast for the conditions then and there existing;
- b) In driving and operating said vehicle at a rate of speed in excess of the posted speed limits;
- c) In failing to yield the right-of-way;
- d) In failing to properly apply the brakes upon said vehicle, or, if he did apply the brakes, then failing to have the brakes in proper working order;
- e) In failing to keep a proper lookout for others using the highway;
- f) In failing to observe and heed the road and traffic conditions then and there existing;
- g) In failing to stop said vehicle so as to avoid said collision;
- h) In failing to turn said vehicle so as to avoid said collision;
- i) In failing to have his vehicle equipped with a siren and, if so equipped, in failing to have the siren activated;
- j) In failing to sound the horn on said vehicle as a warning to the Defendant;
- k) In then and there driving said vehicle into the vehicle driven by the Defendant;
- l) In failing to take any evasive action so as to avoid said collision;
- m) In failing to reduce the speed of said vehicle upon approaching and passing through an intersection;
- n) In driving and operating said vehicle with reckless disregard for the safety of others;

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ROA32



- o) In failing to use that degree of care and caution as a reasonable and prudent person would have under the same or similar circumstances;
- p) In being otherwise careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful in the operation, management and control of said vehicle, and in violation of the Regulations and Statutes governing the use of highways in South Carolina generally, and in violation of the cases made and provided.

FOR A SEVENTH DEFENSE

15. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth and Sixth Defenses above as fully as if repeated verbatim herein.

16. That if Defendant's Deputy was in any way careless, negligent, grossly negligent, reckless, heedless, willful, wanton or unlawful in the operation, management and control of his vehicle, which he specifically denies, then the Plaintiff was likewise careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful in the operation, management and control of the vehicle he was driving in one or more of the particulars enumerated in the Defendant's Sixth Defense above, the same being incorporated herein and made a part of these allegations by reference thereto, and that said acts of omission and commission on the part of the Plaintiff, were proximate, contributing causes of the aforesaid collision and constitute a greater degree of negligence than any negligence on the part of Defendant's Deputy. Therefore, the Plaintiff is barred from recovery from this Defendant, or, in the alternative, the Plaintiff's damages should be reduced in accordance with the percentage of negligence attributable to the Plaintiff.

FOR AN EIGHTH DEFENSE

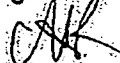
17. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Defenses above as fully as if repeated verbatim herein.

18. That the collision complained of and damages of the Plaintiff, if any, were caused solely and proximately by the negligent, careless, grossly negligent, reckless, heedless, willful, wanton and unlawful acts of omission and commission on the part of some person or entity other than this Defendant. Therefore, as to this Defendant, the Plaintiff is barred from recovery.

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FOR A NINTH DEFENSE

19. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Defenses above as fully as if repeated verbatim herein.

20. That on the date, time and place as generally set forth in the Amended Complaint, Defendant's Deputy was engaged in the proper operation of an "authorized emergency vehicle" pursuant to § 56-5-760 of the 1976 South Carolina Code of Laws, as amended, and craves reference to and specifically pleads the privileges set forth therein.

FOR A TENTH DEFENSE

21. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Defenses above as fully as if repeated verbatim herein.

22. That the collision between the vehicle operated by the Plaintiff and the vehicle operated by Defendant's Deputy was unavoidable. Therefore, the Defendant pleads unavoidable accident as a complete bar to this action.

FOR AN ELEVENTH DEFENSE

23. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses above as fully as if repeated verbatim herein.

24. That on the date, time and place as generally set forth in the Amended Complaint, Defendant's Deputy was placed in a sudden emergency, through no fault of his own, and he acted as a reasonable and prudent person would have under the same or similar circumstances. Therefore, the Defendant pleads sudden emergency as a complete bar to this action.

FOR A TWELFTH DEFENSE

25. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Defenses above as fully as if repeated verbatim herein.

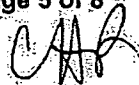
26. That any liability on the part of the Defendant is limited by the terms of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., as amended, and the Defendant pleads the South Carolina Tort Claims Act as a defense and craves reference thereto as it contains

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limitations applying to this case. Further, the Defendant specifically pleads S.C. Code Ann. § 15-78-60(14), as amended, as a bar to the Plaintiff's causes of action. The Defendant also pleads S.C. Code Ann. § 15-78-120, as amended, and craves reference to the limitations on liability found therein, including, but not limited to, the damages caps and limitations set forth therein.

FOR A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM

27. That the Defendant reiterates all allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Defenses above as fully as if repeated verbatim herein.

28. That the Defendant is the duly elected Sheriff of the County of Dillon, State of South Carolina.

29. That, upon information and belief, the Plaintiff is a citizen and resident of the County of Dillon, State of South Carolina.

30. That the collision which is the subject of this action occurred in the County of Dillon, State of South Carolina.

31. That, at all times hereinafter mentioned, Defendant's Deputy was operating a patrol car within the course and scope of his employment for the Dillon County Sheriff.

32. That, on or about August 12, 2012, at approximately 1:26 a.m., Defendant's Deputy was operating said patrol car proceeding east on Mark Road and arrived at the intersection of Mark Road and Highway 301. At that time, Defendant's Deputy was responding to a house fire with entrapment and was traveling with the emergency lights and siren activated on his patrol car.

33. That, at or about the same date and time, the Plaintiff was operating his vehicle in a southerly direction on Highway 301.

34. That, at the date and time in question, the Plaintiff did fail to yield the lawful right-of-way to Defendant's Deputy's patrol car resulting in a collision between the two vehicles.

35. That the Plaintiff had, or should have had, adequate opportunity to perceive the road conditions then and there existing and to see, and/or hear the patrol car being operated by Defendant's Deputy, such that said Plaintiff was negligent, grossly negligent, careless, reckless, willful and wanton in his acts and/or omissions, in one or more of the following particulars, to wit:

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- a) In driving and operating said vehicle at a rate of speed too fast for the conditions then and there existing;
- b) In driving and operating said vehicle at a rate of speed in excess of the posted speed limits;
- c) In failing to yield the right-of-way;
- d) In failing to properly apply the brakes upon said vehicle, or, if he did apply the brakes, then failing to have the brakes in proper working order;
- e) In failing to keep a proper lookout for others using the highway;
- f) In failing to observe and heed the road and traffic conditions then and there existing;
- g) In failing to stop said vehicle so as to avoid said collision;
- h) In failing to turn said vehicle so as to avoid said collision;
- i) In failing to have his vehicle equipped with a siren and, if so equipped, in failing to have the siren activated;
- j) In failing to sound the horn on said vehicle as a warning to the Defendant;
- k) In then and there driving said vehicle into the vehicle driven by the Defendant;
- l) In failing to take any evasive action so as to avoid said collision;
- m) In failing to reduce the speed of said vehicle upon approaching and passing through an intersection;
- n) In driving and operating said vehicle with reckless disregard for the safety of others;
- o) In failing to use that degree of care and caution as a reasonable and prudent person would have under the same or similar circumstances;
- p) In being otherwise careless, negligent, grossly negligent, reckless, heedless, willful, wanton and unlawful in the operation, management and control of said vehicle, and in violation of the Regulations and Statutes governing the use of highways in South Carolina generally, and in violation of the cases made and provided;

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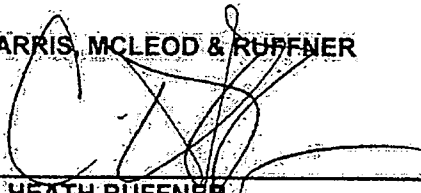
which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Plaintiff directly and proximately caused property damages to the patrol car operated by Defendant's Deputy.

36. That, as the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts or omissions of the Plaintiff, the Defendant suffered property damage to the patrol car and is informed and believes that it should have judgment against the Plaintiff for said property damage.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, the Defendant demands that the Complaint be dismissed with prejudice, for the costs and disbursements of this action, for judgment against the Plaintiff on its counterclaim, and for such other and further relief as the Court deems just and proper.

HARRIS, MCLEOD & RUFFNER

BY:


C. HEATH RUFFNER
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October 20, 2014
Cheraw, South Carolina

Law Offices

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)
)
 Christopher Lampley,)
)
 Plaintiff,)
)
 versus)
)
 Major Hulon, Dillon County Sheriff,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 Case No. 2014-CP-17-348

NOTICE OF MOTION AND
 MOTION TO DISMISS OR, IN THE
 ALTERNATIVE, FOR SUMMARY JUDGMENT

TO: WILLIAM P. HATFIELD, ATTORNEY FOR THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE That the undersigned, C. Heath Ruffner, as attorney for the Defendant, will move before the presiding judge of the Fourth Judicial Circuit at the Dillon County Courthouse located in Dillon, South Carolina, not less than ten (10) days hence, or at such time as may be scheduled by the Court, for the following relief:

1. Dismissal of the Plaintiff's Amended Complaint on the grounds that there has been insufficiency of process and that there is a lack of jurisdiction over the Defendant, to wit: the Plaintiff has failed send a copy of the Amended Summons and Amended Complaint by registered or certified mail to the Attorney General at Columbia as required by Rule 4(d)(5), SCRPC, inasmuch as the Sheriff is a state officer;
2. Dismissal of the Plaintiff's Amended Complaint against the Defendant as it is time barred under the two year statute of limitations contained in S.C. Code Ann. § 15-78-110, to wit:
 - a. The automobile accident giving rise to the Plaintiff's Amended Complaint occurred on August 12, 2012.
 - b. The Plaintiff filed a Summons and Complaint against the County of Dillon on August 8, 2014, but the County of Dillon was not the proper party defendant.
 - c. The Plaintiff filed an Amended Summons and Amended Complaint against the above named Defendant on September 18, 2014, beyond the two year statute of limitations as set forth in § 15-78-110 of the South Carolina Tort Claims Act.

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Page 1 of 2

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3. Dismissal of the Plaintiff's Amended Complaint for bodily injuries as the Plaintiff's Amended Complaint for bodily injuries is time barred under the two year statute of limitations contained in S.C. Code Ann. § 15-78-110, to wit:

- a. The automobile accident giving rise to the Plaintiff's Amended Complaint occurred on August 12, 2012.
- b. The Plaintiff filed a Summons and Complaint on August 8, 2014, but said Complaint contained no claim whatsoever for bodily injuries.
- c. The Plaintiff filed an Amended Summons and Amended Complaint on September 18, 2014, containing a claim for bodily injuries, but it was filed beyond the two year statute of limitations as set forth in § 15-78-110 of the South Carolina Tort Claims Act.

4. Dismissal of the Plaintiff's Amended Complaint on the basis that the Plaintiff's bodily injury claim is barred by S.C. Code Ann. § 15-78-60(14), as the Plaintiff's claim is covered by the South Carolina Workers' Compensation Act and the Plaintiff has made a claim and received benefits pursuant to said Act.

Respectfully submitted.

HARRIS, MCLEOD & RUFFNER

BY:

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ATTORNEYS FOR DEFENDANT
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October 20, 2014
Cheraw, South Carolina

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DILLON) 2014-CP-17-00348

CHRISTOPHER LAMPLEY)
) PLAINTIFF)
) VS.) TRANSCRIPT OF RECORD)
)))
COUNTY OF DILLON ET AL)
) DEFENDANTS)

October 6, 2015
Dillon, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE:

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

C. HEATH RUFENER, ESQUIRE
Attorney for the Defendants

WILLIAM P. HATFIELD, ESQUIRE
Attorney for the Plaintiff

P. CHRISTOPHER SMITH, JR., ESQUIRE
Attorney for the Plaintiff

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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Colloquy	4
Certificate of Reporter	12

E X H I B I T S

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

2

MR. RUFENER: May it please the Court, Your Honor.

3

This is Case Number 2014-CP-17-348. Christopher Lampley

4

versus Major Hubon, Dillon County Sheriff. I'm here today

5

representing the Defendants. Mr. Hatfield is here today

6

representing the Plaintiff. I'm also joined by

7

Mr. Christopher Smith who is appearing on behalf of the

8

Plaintiff's U.I.M. carrier.

9

There are two motions before you, Your Honor. This

10

arises out of an accident involving the Plaintiff who was

11

a Dillon County fireman and Randy Tyler who is a Dillon

12

County Sheriff's deputy. The accident occurred on

13

August 12th of 2012. I don't think any of the facts

14

relevant to these motions today are in dispute.

15

Both the Plaintiff and deputy Tyler were responding

16

to a house fire where there was entrapment. At the time

17

of the accident both were on duty. Both were acting in

18

the course and scope of their employment. I don't think

19

any of that is in dispute.

20

In the process of responding to a fire there was a

21

collision between the two vehicles driven by these two

22

gentlemen on Highway 301 just outside of Dillon. As a

23

result of that accident the Plaintiff claimed injuries.

24

He pursued a Worker's Comp claim filed through the County,

25

and he received benefits through Worker's Comp as a result.

1 of that claim.

2 On August 8 of 2014, almost two years after the
3 accident, the Plaintiff filed a suit against Dillon County
4 and that suit was for property damage only. In response
5 to that the County filed a motion to dismiss, and the
6 basis of that motion, which is the first motion on Your
7 Honor's docket, was that the proper defendant was the
8 Dillon County Sheriff since it was a Dillon County
9 Sheriff's deputy and not the County.

10 In response to that motion on September 18 of 2014,
11 which would have been outside the two years, the Plaintiff
12 filed an amended summons and an amended complaint. The
13 amended summons names the Sheriff rather than the County.
14 And the amended complaint adds a bodily injury claim in
15 addition to the property damage claim.

16 The Sheriff then filed what is second on Your Honor's
17 docket which is a motion to dismiss or in the alternative
18 a motion for summary judgment. And that's what's before
19 the Court now. That second motion, Your Honor, is based
20 on the following:

21 First, that the Plaintiff's complaint in it's
22 entirety should be dismissed because it is barred by the
23 two year statute of limitation. As I said the accident
24 occurred on August 12th of 2012. The initial summons and
25 complaint was filed on August the 8th of 2012. It was

1 against the County which was not the proper party
2 defendant; that being the Sheriff.

3 The amended summons and complaint which named the
4 correct defendant was not filed until September 18 of
5 2014, which again would be outside the two year statute.

6 Alternatively, if the Court were to permit the
7 Plaintiff to substitute the Sheriff as the proper party
8 defendant which, you know, admittedly is somewhat a
9 technical requirement, then we certainly don't believe
10 that the Plaintiff should be permitted to add an
11 additional cause of action for bodily injury that was not
12 included in the initial complaint in which the Defendant
13 has no notice. So at least as to the bodily injury claim
14 it should be barred by the two year statute of limitation
15 under the Tort Claims Act.

16 And then we also included, Your Honor, as a grounds
17 for dismissal Section 15-78-60, Subsection 14 of the Tort
18 Claims Act. That's the section that lists the exceptions
19 to the waiver of immunity. And that particular subsection
20 provides that the governmental entity is not liable for
21 any claims -- for liability of any claims covered by the
22 South Carolina Worker's Compensation Act except when by or
23 on behalf of the injured employee recover damages for whom
24 first and other than the employer South Carolina
25 Unemployment Compensation Act or the South Carolina State

1 Employees Freedom Act.

2 I, as I said, made a Worker's Comp claim through the
3 County. So the only question really becomes can he
4 recover damages in the case under tort. At first blush it
5 may seem like I'm arguing out of both sides of my mouth on
6 this and saying that the County and the Sheriff are each
7 separate entities for purpose of applying the truth, but
8 if you look at that statute in context I think those two
9 positions can be reconciled.

10 First, this statute has got to do something other
11 than simply -- a plaintiff/employee can't sue a
12 tenant/employer cause that's covered by the Worker's
13 Compensation Act, and that should be a provision of the
14 Worker's Compensation Act. So it's got to mean something
15 more than that.

16 In this case it would appear to me that the rationale
17 is that the exception of waiver of immunity is to prevent
18 somebody from collecting from the same pot of money, so to
19 speak. As Your Honor is aware Dillon County is one area
20 of control that it would have under the Sheriff is through
21 its budget. It's through that budget that it provides for
22 worker's comp coverage through which this claim was made.

23 If you look at the spirit of the exception I think it
24 would apply in this situation to bar the Plaintiff from
25 bringing an action in court when he's already collected

1 the Worker's Comp Act.

2 And, obviously, when the initial claim was filed the
3 Plaintiff didn't include a bodily injury claim, and it
4 think it was because he had already collected worker's
5 compensation. I have not found any cases directly on
6 point with that. The only reported case is a Court of
7 Appeals Case. It is Buff v. South Carolina Department of
8 Transportation. That was later overturned by the South
9 Carolina Supreme Court on other ground.

10 That case simply tells that this provision of the
11 Tort Claims Act did not prevent someone from collecting
12 from a private employer and then bringing a suit against
13 the governmental entity, which obviously, that is not what
14 we have here.

15 To my knowledge that issue has not been addressed in
16 any of those cases. There is an unreported Court of
17 Appeals case that I can't recall the name of right now
18 where you had a county employee in the Department of
19 Transportation, and the Court of Appeals found that that
20 issue was not preserved; that it was not raised in the
21 initial pleadings and was not raised by counsel until
22 after trial was over.

23 And for that reason the Court of Appeals did not
24 address that issue. They didn't address it. So the
25 reason I'm bringing this up today may be a bit premature

1 or, obviously, using some issues that are outside of the
2 pleadings, but in an abundance of caution to make sure
3 that issue is preserved I just want to raise it. I
4 specifically raised it in my pleadings.

5 However, going back to my argument with regard to the
6 statute of limitation I think that clearly applies. If
7 not for the entire complaint then certainly to the bodily
8 injury claim. And on that basis, Your Honor, we ask that
9 the Plaintiff's claim be dismissed. Thank you.

10 THE COURT: All right.

11 MR. HATFIELD: All right. Thank you. The basis for
12 bringing the claim against Dillon County initially was
13 based on the investigation report that was done by the
14 South Carolina Highway Patrol. The report itself shows
15 the owner of the vehicle as Dillon County. The initial
16 claim for property damage was limited just to property
17 damage because of the provisions in the Worker's
18 Compensation Act and in the Tort Claims Act that would bar
19 a claim against a fellow civil servant believing that the
20 employee of.

21 Now, we learn this deputy sheriff being an employee
22 of Dillon County and Mr. Lampley as being an employee of
23 Dillon County would not have been able to make a bodily
24 injury claim believing that the other driver was a Dillon
25 County employee. So the accident was filed in good faith.

1 based on the investigation report and it was filed within
2 the two year statute of limitations.

3 Motion to dismiss has been filed where the Plaintiff
4 first learned that it was Major Hulon, Dillon County
5 Sheriff, that was the actual employer of the deputy
6 sheriff. At that time an amended complaint was filed
7 within 30 days of that motion naming Major Hulon as the
8 party defendant.

9 And because Major Hulon and Dillon County are not the
10 same entity; they're not the same employer, the bodily
11 injury claim against Mr. Lampley was then included in the
12 complaint where it could not have been before believing
13 that Dillon County was the employer of both parties.

14 This case, the two year statute of limitations does
15 not bar this claim because Major Hulon was sued when it
16 was discovered by the Plaintiff that he was the proper
17 party. Again, the Highway Patrol report shows Dillon
18 County as the proper party, and they were first sued
19 initially.

20 So that is a question of fact for the jury. What did
21 Mr. Lampley know and when did Mr. Lampley know it. So it
22 wouldn't be appropriate to dismiss this claim in summary
23 proceedings. Thank you.

24 THE COURT: All right. Y'all get me proposed orders.
25 What do you need? Ten days? Fifteen days? Twenty days?

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MR. HATFIELD: Twenty days.

MR. RUEFNER: Sounds good.

MR. HATFIELD: Thank you.

END OF TRANSCRIPT OF RECORD.

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The State of South Carolina
In the Court of Appeals

Appeal from Dillon County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

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SC Court of Appeals

Case # 2014-CP-17-00348

Christopher Lampley, Appellant

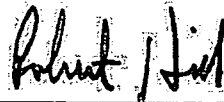
v.

Major Hulon, Dillon County Sheriff Respondent

Notice of Appeal

Christopher Lampley appeals from the intermediate order granting a partial summary judgment of the Honorable Paul M. Burch, entered November 19, 2015, and from the final judgment entered February 14, 2018.

March 7, 2018



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By:

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The State of South Carolina
In the Court of Appeals

Appeal from Dillon County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case # 2014-CP-17-00348

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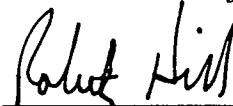
Christopher Lampley, Appellant

v.

Major Hulon, Dillon County Sheriff, Respondent

Rule 210(g), SCACR, Certificate

I, Robert Hill, certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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