

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2017-001734
Case No. 2010-CP-40-5214

RECEIVED
APR 30 2018
SC Court of Appeals

Demetrius Mack, ... Respondent,

v.

Leon Lott, in his Official Capacity
as Sheriff of Richland County, ... Appellant.

RECORD ON APPEAL

Andrew F. Lindemann
LINDEMANN, DAVIS & HUGHES, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Appellant

Joshua Snow Kendrick
Christopher S. Leonard
KENDRICK & LEONARD, P.C.
Post Office Box 886
Columbia, South Carolina 29202
(803) 667-3186

Counsel for Respondent

Robert D. Garfield
CROWE LAFAVE, LLC
Post Office Box 1149
Columbia, South Carolina 29202
(803) 999-1225

Counsel for Appellant

Neal M. Lourie
LOURIE LAW FIRM, L.L.C.
Post Office Box 12089
Columbia, South Carolina 29211
(803) 799-9805

Counsel for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action Number: 10-CP-40-5214

Demetrius Mack,

Plaintiff,

v.

Richland County Sheriff's Department,

Defendant.

CONSENT ORDER

FILED
2011 JAN -5 PM 3:49
CLERK OF COURT
RICHLAND COUNTY

BY AND WITH THE CONSENT OF THE PARTIES, it is agreed that the Defendant Richland County Sheriff's Department (RCSD) is not the proper party defendant in this case. It is further stipulated that the proper defendant is Leon Lott, in his official capacity as Sheriff of Richland County and, therefore, this party should be substituted as the proper party Defendant in this matter pursuant to the South Carolina Tort Claims Act Section 15-78-10 *et. seq.*

IT IS, THEREFORE ORDERED that the Defendant Richland County Sheriff's Department is dismissed with prejudice as a party defendant from this action.

IT IS, FURTHER ORDERED that Leon Lott, in his official capacity as Sheriff of Richland County be substituted as the sole party Defendant in this matter.

IT IS, FURTHER ORDERED that the Clerk of Court amend the above caption so as to state, "*Demetrius Mack, Plaintiff, v. Leon Lott, in his official capacity as Sheriff of Richland County-Defendant.*"

EXHIBIT 1

Consent Order
C/A No. 09-CP-40-5132
Page Two

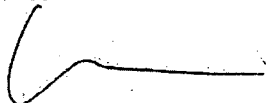
AND IT IS SO ORDERED.



The Honorable Alison R. Lee
Presiding Circuit Court Judge

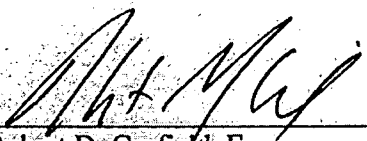
Columbia, South Carolina
~~November~~ January 4, 2011, 2010

I CONSENT:



Neal M. Lourie, Esq.
Kenneth E. Berger, Esq.
Counsel for Plaintiff

I CONSENT:



Robert D. Garfield, Esq.
Counsel for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Demetrius Mack,

Plaintiff,

v.

Leon Lott, in his official capacity
as Sheriff of Richland County,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 10-CP-40-5214

SECOND CONSENT ORDER

JEANETTE W. McBRIDE
J.C.P. & G.S.

2011 NOV 16 PM 2:31

RICHLAND COUNTY
FILED

This matter is before this Court upon a Motion for Summary Judgment filed by the Defendant Sheriff Lott. The Defendant contends in its motion that certain causes of action within Plaintiff's Complaint should be dismissed on various legal grounds. In resolution of this motion, the Plaintiff has agreed to dismiss the causes of action for gross negligence, negligence, and negligent training.

IT IS, ORDERED that the separate causes of action for gross negligence, negligence, and negligent training, be dismissed with prejudice.

IT IS, THEREFORE ORDERED that the above-captioned matter will hereafter proceed against the Defendant Lott, in his official capacity as Sheriff of Richland County with respect to the causes of action for False Arrest and/or Imprisonment, Assault, and Battery.

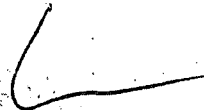
AND IT IS SO ORDERED.


The Honorable Alison R. Lee
Presiding Circuit Court Judge

Columbia, South Carolina
November 15, 2011

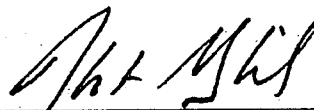
Second Consent Order
C/A No. 10-CP-40-5214
Page Two

WE CONSENT:



Neal M. Lourie, Esq.
Counsel for Plaintiff

WE CONSENT:



Robert D. Garfield, Esq.
Counsel for Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Demetrius Mack,)

Plaintiff,)

v.)

Leon Lott, in his official capacity as Sheriff)
Of Richland County,)

Defendant.)

IN THE COURT OF COMMON PLEAS

ORDER

Case No.: 10-CP-40-5214

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 APR -6 PM12:26

RICHLAND COUNTY
FILED

THIS MATTER having been scheduled for a jury trial before the undersigned judge on April 4, 2012, for adjudication of the Complaint for False Arrest filed herein by the plaintiff, at the call of the case Plaintiff withdrew his request for a jury trial. The Defendant then consented to a bench trial. The plaintiff appeared personally by his attorney, Neal Lourie, and the defendant was represented by his attorney Robbie Garfield. The Court, having heard testimony in this case for two days and having reviewed the exhibits and testimony in evidence, now enters the following:

FINDINGS OF FACT

1. That Plaintiff was arrested by Defendant on December 8, 2008 for simple assault.
2. Upon review of the testimony and exhibits regarding the location of the alleged assault, Plaintiff was arrested by Defendant on December 8, 2008 at 109 Weir Avenue in Columbia, South Carolina.

3. That Plaintiff was a licensed security officer pursuant to SC Code § 40-18-110 and the applicable South Carolina Law Enforcement Division regulations at the time of his arrest and was employed by DTH Protective Services.
4. That upon review of Plaintiff's exhibit 5 and testimony of Shawn Hale, DTH had security jurisdiction over 109 Weir Avenue at the time when Plaintiff was arrested.
5. That Plaintiff spent twelve to fourteen hours at Alvin S. Glenn Detention Center as a result of this arrest.
6. That Plaintiff was out of work from December 8, 2008 until January 6, 2009 as a result of this arrest.
7. That Plaintiff's security license was suspended on January 6, 2009 by SLED for his failure to disclose this arrest during his license renewal application.
8. That based on the Plaintiff's testimony and exhibits, Plaintiff's income at the time of his arrest was \$66.49 per day.

CONCLUSIONS OF LAW

1. That this court has jurisdiction over the parties and the subject matter.
2. That the central issue in this case is whether the Defendant had probable cause to arrest the Plaintiff on the day and time in question. The facts and circumstances must be sufficient for a reasonable person to believe that a crime has been committed by the person to be arrested and whether the arresting person has probable cause for an arrest.
3. That probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinary, prudent, and cautious man under the circumstances to believe likewise.
4. That a realistic assessment of the evidence in this case doesn't show that a crime had

been committed by the Plaintiff on December 8, 2008 at the time of his arrest.

5. That based on the exhibits, and testimony before this Court, Defendant did not have probable cause to arrest the Plaintiff for simple assault on December 8, 2008.

Based on the foregoing Findings of Fact and Conclusions of Law this court enters the following:

ORDER

IT IS ORDERED, ADJUDGED AND DECREED that the defendant is ordered to pay actual damages in the amount of seven thousand five hundred dollars (7,500.00) to the Plaintiff.

IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin
Fifth Judicial Circuit

Columbia, South Carolina

April 6, 2012

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4005214

Demetrius Mack

Richland County Sheriff's Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC; ☐ 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 _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendant's Motion to Reconsider is Respectfully denied.

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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

Circuit Court Judge

NB

Judge Code 2161

Date *5-11-12*
04/30/2012

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of May, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of May, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DEMETRIUS MACK,

Plaintiff,

v.

**LEON LOTT, in his official capacity as
SHERIFF OF RICHLAND COUNTY,**

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2010-CP-40-5214

ORDER

RICHLAND COUNTY
FILED
2017 JUL 19 AM 9:48
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

This matter came before the Court for rehearing on May 4, 2017 at the Richland County Judicial Center. The sole issue on rehearing was the issue of probable cause. Present at the hearing were counsel for Defendant, Robert D. Garfield, Esq. and for Plaintiff, Joshua S. Kendrick, Esq. for the reasons discussed below, the Court finds that probable cause for arrest did not exist, and accordingly, finds in favor of the Plaintiff.

PROCEDURAL BACKGROUND

On August 4, 2010, this action was brought in this Court by Plaintiff against Defendant for the causes of action of false imprisonment, negligence, gross negligence, negligent training, assault, and battery. The bench trial in this case commenced on April 4, 2012 where the central issue was whether the Defendant had probable cause to arrest the Plaintiff on the day and time in question.¹ This Court heard arguments and testimony for two days before entering judgment, by order dated April 6, 2012, in favor of Plaintiff in the amount of \$7500.00. The Defendant timely filed a Motion to Alter or Amend Judgment and/or Motion for Reconsideration on April 2, 2016.

¹ All of the causes of action, except for the false arrest/imprisonment, were voluntarily dismissed prior to trial.

The motion specifically requested the Court to reconsider and address various issues not specifically discussed in the Order. This Court denied said motion by Form 4 Order and Defendant timely filed a Notice of Appeal on June 19, 2012.

The South Carolina Court of Appeals, in its opinion filed July 22, 2014, found that this Court's findings of fact were insufficient under Rule 52(a) and remanded this case for more detailed findings as to whether the Plaintiff met his burden of proving that Deputy Gore did not have probable cause to arrest him. In its Opinion, the Court of Appeals discussed the applicable law governing the Plaintiff's false arrest claim given the specific factual scenario presented. The Court also addressed what the evidence is required to show in order to support a conclusion that Deputy Gore lacked probable cause to arrest the Plaintiff. The Defendant petitioned the Court of Appeals for rehearing, on grounds that the remand was unnecessary and the Court of Appeals appeared to apply a subjective test on the issue of probable cause, which was ultimately denied on September 8, 2014.

The Defendant thereafter petitioned the South Carolina Supreme Court for a Writ of Certiorari which was granted by Order filed February 5, 2015. This Writ was granted solely for the determination of whether the Court of Appeals erred in directing that a subjective test for the determination of probable cause be applied by this Court on remand. The Supreme Court, *per curium*, ordered that the opinion of the Court of Appeals be depublished due to its, arguably, unclear language on the issue of the proper standard for determining probable cause.² The Court, however, was clear to reiterate that the proper standard for determining probable cause is an

² By Opinion and Remittitur, both filed on December 9, 2015.

objective standard and that whether the historical facts viewed from the perspective of an objectively reasonable police officer, amount to probable cause.

In light of the appellate courts' clarification regarding the proper standard for determining probable cause, this Court considers the historical facts in view of an objective standard and makes the following conclusions in this matter.

APPLICABLE STANDARD

The proper standard for determining probable cause is an objective one. "Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." *State v. Cope*, 385 S.C. 274, 290, 684 S.E.2d 177, 185 (Ct. App. 2009); *State v. Frazier*, 394 S.C. 213, 220, 715 S.E.2d 650, 653 (Ct. App. 2011) (internal citations omitted).

This requirement of an objective test is mandated by United States Supreme Court and South Carolina case law. In *Ornelas v. United States*, 517 U.S. 690 (1996), the Supreme Court explained that "[t]he principal components of a determination of ... probable cause will be the events which occurred leading up to the ... search [or seizure], and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount ... to probable cause." 517 U.S. at 696. (Emphasis added). An almost identical recitation of the law is included in the Court of Appeals' opinion in *State v. Morris*, 395 S.C. 600, 720 S.E.2d 468 (Ct. App. 2011), where that Court wrote: "The principal components of the determination of probable cause will be whether the events which occurred leading up to the search [or seizure], viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." 720 S.E.2d

at 472. In *State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000), this Court rejected the *de novo* standard of review from *Ornelas*, but this Court did cite favorably to the "*two-step process*" for determining probable cause as articulated in that decision. This Court explained the "*two-step process*" as follows: "First, a court must determine the events which occurred leading up to the stop or search. Second, the court must decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." 528 S.E.2d at 664. (Emphasis added). This very test was recently reiterated by our State's Supreme Court in *State v. Morris*, 2015 WL 340805 (S.C. 2015), where the Court affirmed the Court of Appeals' decision which is discussed above. In doing so and citing *Ornelas*, the Court explained that probable cause is based on the facts leading up to the stop, search or seizure, followed by a "decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." 2015 WL 34080, *4.

The use of an objective standard has likewise been proffered by Justice Kittredge when he wrote in a dissenting opinion as follows:

Concerning probable cause, we are guided by Fourth Amendment jurisprudence. In this regard, an officer's "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." The proper inquiry is an objective one, based on what would a reasonable police officer believe under the same circumstances.

State v. Brannon, 379 S.C. 487, 666 S.E.2d 272, 292 (Ct. App. 2008) (Kittredge, J., dissenting), citing *Whren v. United States*, 517 U.S. 806, 813 (1996). See also, *United States v. Porter*, 71 Fed.Appx. 277, 278 (4th Cir. 2003) ("the Supreme Court has emphasized that the analysis of whether probable cause exists is an objective one, that is unaffected by the officer's subjective beliefs or state of mind"). See also, *State v. Banda*, 371 S.C. 245, 639 S.E.2d 36, 40, n.3 (2006)

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citing *Whren v. United States*, 517 U.S. 806, 814 (1996) ("subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis").

In its decision in the instant matter, the South Carolina Supreme Court followed the prevailing authority defining probable cause: "[T]he proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." See, *Mack v. Lott*, 415 S.C. 22 (2015).

The Court, having heard testimony in this case for two days and having reviewed the exhibits and testimony in evidence, finds the following:

FINDINGS OF FACT

1. On December 6, 2008, Plaintiff Demetrius Mack was working for DTH Protective Services. (Tr. 132, ll.22-24). That night he was assigned to work security at Club Essence, a nightclub on Two Notch Road in Columbia, South Carolina. (Tr. 132, l.25-p.133, l.6). Club Essence was a hip-hop club frequented by young people. (Tr. 134, ll.12-14). Mack testified the club was a dangerous place, frequented by hostile gang members who drank cheap liquor. (Tr. 134, ll.15-21).
2. On the night of the incident, Mack encountered McKenzie Williamson, who would cause trouble at Club Essence throughout the night. Mack's first run-in with Williamson took place in the foyer of Club Essence, where Williamson was trying to get into the club without paying the required entrance fee. (Tr. 135, ll.1-4). When he arrived in the foyer, Mack saw Williamson try to walk past the lady collecting entrance fees without paying. (Tr. 135, l.15-p.136, l.2). Mack told Williamson to leave if he was not going to pay the entrance fee, and he left. (Tr. 135., l.24-p.136, l.2).

3. Williamson tried to enter the club for free again. (Tr. 136, ll.3-8). He was caught once again and Mack escorted him off the premises. (Tr. 136, ll.8-13). Williamson tried to sneak into the club for free a third time. (Tr. 136, ll.17-20). This time, a different security guard caught him and escorted him out of the club. (Tr. 136, ll.18-20).
4. Williamson became belligerent. (Tr. 136, l.22). He stood in the middle of Weir Avenue, a street next to Club Essence, and started throwing gang signs at the security guards. (Tr. 136, ll.22-25). Mack was standing at the door to the club with the owner and watched Williamson. (Tr. 137, ll.1-3). In addition to gang signs, Williamson made threatening gestures about shooting at the club. (Tr. 137, ll.4-11).
5. Williamson made another attempt to sneak into Club Essence. As the night went on, the crowd became increasingly unruly. Eventually, a fight broke out in the club. (Tr. 137, ll.13-16). As the security guards, including Mack, tried to assist the club bouncers in breaking up the fight, another employee of the club told Mack that Williamson was back on the property. (Tr. 137, ll.18-25). Mack had warned Williamson earlier that he would arrest him if he came back to Club Essence. (Tr. 138, ll.1-3).
6. Williamson took off running down Weir Avenue. (Tr. 138, ll.4-8) Mack saw him change direction when he realized sheriff's deputies were at the end of Weir Avenue. (Tr. 138, ll.14-18). As he changed direction, he hit a car, slipped, and fell under the car. (Tr. 138, ll.19-25). Williamson fell on the property located at 109 Weir Avenue, which was also under his jurisdiction as a security guard that night. (Tr. 138, ll.22-24).
7. After catching Williamson and handcuffing him, one of the bouncers from Club Essence flagged down Deputy Parish, who was responding as backup to an unrelated scene at the end of Weir Avenue. (Tr. 140, ll.11-13).

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8. Mack informed Parrish that Williamson had been attempting to sneak into Club Essence, throwing gang signs, and making threatening gestures about shooting up the club. (Tr. 140, ll.13-25). He told Parrish he wanted Williamson put on trespass notice so he could be arrested if he insisted on returning to the club. (Tr. 140, ll.14-18).
9. Deputy Gore then arrived on the scene and asked what was happening. (Tr. 141, ll.7-13). Gore immediately told Mack that he and the sheriff's department were tired of private security guards not showing up for court hearings. (Tr. 141, ll.14-18). Mack was confused about Gore's attitude and told Gore he was just trying to let them know what happened with Williamson. (Tr. 141). Mack described Williamson's earlier behavior to Gore. (Tr. 142, ll.19-24). Mack told Gore he did not want Williamson arrested, but did want him placed on trespass notice so that he could be arrested immediately if he returned to the property. (Tr. 142, ll.7-9).
10. As the scene calmed down, Gore walked off to talk privately with Parrish. (Tr. 142, ll.16-17). He returned and told Mack it was Mack who was going to be arrested. (Tr. 142, ll.17-19). Gore claimed Mack was out of his jurisdiction and had committed a simple assault when he handcuffed Williamson. (Tr. 142, ll.20-25).
11. Mack had detained Williamson on property over which he had jurisdiction as a private security guard. (Tr. 143, ll.6-8). Mack attempted to have Gore talk with someone from his company, but Gore refused. (Tr. 143, ll.9-16). Mack called his supervisor, who wanted Gore to wait until he arrived before arresting Mack and taking him to jail. (Tr. 143, ll.17-144, .12). After talking to Williamson, Gore handcuffed Mack and placed him in the back of a patrol car. (Tr. 145, ll.13-16)

Mack was taken to jail, where he remained for the night and most of the rest of the day.
(Tr. 146-148).

12. The Court heard Deputy Gore testify about this incident. He was in the area on a narcotics arrest the night of the incident. (Tr. 58, ll.15-18). Gore testified he saw Plaintiff Mack tackle Williamson in the middle of the street. (Tr. 58, ll.21-25). This testimony was different from an earlier statement Gore made, where he did not mention seeing Mack tackle Williamson. (Tr. 66, ll.4-7). The first time Gore told the story about Mack tackling Williamson in the middle of the street was at his deposition. (Tr.66, ll.13-21). Gore specifically testified the reason he arrested Plaintiff was because Plaintiff chased Williamson into the road and tackled him in the middle of the road. (Tr.69, ll.11-20).

13. Deputy Parish also testified about the incident. She arrived after Williamson was placed in handcuffs. Parish testified Williamson was in front of a car in handcuffs and the car was parked primarily in the road. (Tr. 200, ll.7-17). She did not see Plaintiff tackle Williamson. (Tr. 207, ll.16-21).

14. The Court also watched a dashcam video from Deputy Parish's patrol car. At the remand hearing, Defendant referred to two exhibits related to that video. There is a still photograph from the video and another picture showing the border between the road and the grass in the daylight. While the pictures are not entirely clear, the car appears to be primarily parked in the grass, contrary to Deputy Parish's testimony. Comparing both pictures, and using the light pole in the background as a reference point, the preponderance of the evidence suggests Williamson was not tackled or arrested in the roadway.

15. This Court has had the opportunity to watch the demeanor of the witnesses and assess their credibility in light of the evidence presented. Deputy Gore's testimony is not credible. The Court finds that his story about seeing Plaintiff tackle Williamson in the roadway is not consistent with any of the other evidence presented in the trial. The Court finds by a preponderance of evidence Deputy Gore did not see the arrest of Williamson.
16. Deputy Parish concedes she did not see the arrest of Williamson and cannot testify as to where it took place. Williamson was not called to testify about where he fell.
17. Plaintiff's testimony is credible and consistent with the other evidence presented. The Court is acting as the fact finder in this bench trial. In that role, this Court has carefully observed the witnesses and weighed the credibility of their testimony. The Court finds Plaintiff was a private security guard at the time of this incident. The Court further finds the acts leading up to the arrest of Williamson, as well as the arrest of Williamson, all took place on private property. This private property was properly under the jurisdiction of Plaintiff in his capacity as a security guard. The Court does not believe Plaintiff tackled Williamson in the middle of the road or otherwise arrested him outside of property over which Plaintiff had jurisdiction.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter.
2. The central issue in this case is whether the Defendant had probable cause to arrest the Plaintiff.
3. Probable cause is a reasonable ground for belief of guilt particularized with respect to the person to be arrested. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). To determine

-9- 

whether an officer had probable cause to arrest an individual, the Court examines the events leading up to the arrest. The Court then decides if those historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. *Id.*

4. In this case, Plaintiff had the authority to detain and arrest Williamson on property which he had been hired to provide security. He did not have that authority off that property. *See* Section 40-18-110.
5. Probable cause to arrest Plaintiff in this case turns on whether Plaintiff arrested Williamson on private property.
6. Based on the exhibits and testimony before this Court, Defendant did not have probable cause to arrest the Plaintiff for simple assault on December 8, 2008. Plaintiff did not arrest Williamson off private property. More importantly, the arresting officer had no information to the contrary at the time of the arrest.
7. Specifically, the arresting officer did not see Plaintiff tackle Williamson in the middle of the street. This testimony is not believable and the Court finds it not credible. The only objective information the officer possessed was the statement from Plaintiff about the events leading up to Mr. Williamson's arrest. Plaintiff's statements did not support probable cause for Defendant to place him under arrest.
8. The dashcam video of the incident is not determinative of whether the incident took place on private property or in the road. This is consistent with the opinions from the Court of Appeals and the Supreme Court. Defendant asked both of those courts to find the video indisputable and rule there was probable cause as a matter of law. Both courts declined to make that finding.

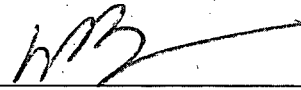
Based on these Findings of Fact and Conclusions of Law, this Court enters the following



order:

This Court rules that the Defendant did not have probable cause to arrest Plaintiff. Defendant falsely arrested Plaintiff and is liable for damages to the Plaintiff. This Court does not disturb its prior ruling awarding damages in favor of Plaintiff. This Court heard arguments and testimony for two days before entering judgment, by order dated April 6, 2012 in favor of Plaintiff in the amount of 7,500 dollars.

IT IS SO ORDERED.



DeAndrea Benjamin
Presiding Judge

July 16, 2017

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010-CP-40-05214

Demetrius MackRichland County Sheriffs Dept., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), 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 _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

Judgment in the amount of \$7500.00 for Plaintiff.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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

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

Circuit Court Judge H/BJudge Code 2161Date 4-5-12

For Clerk of Court Office Use Only

This judgment was entered on the 5 day of April, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Neal M. Lourie

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert David Garfield

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	C/A No.:
Demetrius Mack,	)	
	)	
	)	COMPLAINT
Plaintiff,	)	(Jury Trial Requested)
	)	
Versus	)	
	)	
Richland County Sheriff's Department,	)	
	)	
	)	
Defendant.	)	

FILED
 2010 AUG -4 PM 2:50
 JANE L. H. BRIDE
 C.C.P. & G.S.

Plaintiff Demetrius Mack (hereinafter styled "Officer Mack") brings this action against Defendant Richland County Sheriff's Department (hereinafter styled "Defendant RCSD"), based on the following allegations:

PARTIES, JURISDICTION, VENUE

1. Demetrius Mack is a resident of South Carolina.
2. Defendant RCSD is an agency and/or subdivision of the County of Richland, State of South Carolina.
4. At all times relevant to this action, persons acting on behalf of Defendant RCSD were acting individually and as agents, servants, and/or employees of Defendant RCSD.
5. At all times relevant to this action, Defendant RCSD is liable for the acts and/or omissions of its agents, servants, and/or employees, acting within the scope of their agency and/or employment with Defendant RCSD, under the doctrine of respondeat superior.
6. This action is brought pursuant to the South Carolina Tort Claims Act, §15-78-10, et. Seq.

7. Venue and jurisdiction are proper in this Court, as the most substantial act and/or omission giving rise to this action occurred in Richland County.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

8. That on or about December 6, 2008, Officer Mack was working for DTH Protective Services at Club Essence.

9. Club Essence is located in Richland County.

10. On or about December 6, 2008, Club Essence patron, McKenzie Williamson, had to be escorted away from Club Essence on multiple occasions by members of DTH Protective Services.

11. Even after being escorted away from Club Essence on multiple occasions, Mr. Williamson returned to the property and was identified visually by Officer Mack.

12. When Officer Mack approached Mr. Williamson to again inform Mr. Williamson that he was trespassing, Mr. Williamson began to flee.

13. Officer Mack pursued the trespasser.

14. During the course of the pursuit, Mr. Williamson tripped and fell in front of the property located at 109 Weir Avenue in Richland County.

15. Mr. Wallace Hall owns both Club Essence and the property located at 109 Weir Avenue.

16. At all times relevant to this Complaint, 109 Weir Avenue was within DTH Protective Services' jurisdiction, as Mr. Hall had given DTH and its employees/agents authority to protect the property located at 109 Weir Avenue in addition to Club Essence.

17. Officer Mack handcuffed and detained Mr. Williamson at 109 Weir Avenue.

18. After Officers Gore and Parish arrived at 109 Weir Avenue they wrongfully and arbitrarily concluded Officer Mack was outside his jurisdiction.

19. Officers Gore and Parish incorrectly informed Mr. Williamson that Officer Mack could be arrested for detaining Mr. Williamson outside DTH Protective Services' jurisdiction.

20. Officers Gore and Parish incorrectly informed Mr. Williamson that Officer Mack could be charged with Simple Assault and asked the trespasser if he wanted to prosecute Officer Mack on this criminal charge.

21. Defendant RCSD, through its agents, servants and/or employees, then unlawfully arrested and handcuffed Officer Mack.

22. Defendant RCSD, through its agents, servants and/or employees, unlawfully charged Mr. Mack with the criminal offense of Simple Assault.

23. Officer Mack was transported to, then processed and imprisoned at the Richland County Detention Center for Simple Assault.

24. Officer Mack went on trial for Simple Assault on January 8, 2009.

25. Officer Mack was found not guilty in a bench trial on this same date.

26. By reason and in consequence of the aforesaid acts and/or omissions of Defendant RCSD, through its agents, servants and/or employees, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

FOR A FIRST CAUSE OF ACTION
(False Imprisonment)

27. The allegations of the foregoing paragraphs are incorporated as if repeated verbatim.

28. Officer Mack was deprived of his liberty by Defendant RCSD, acting through its agents, servants and/or employees, without lawful justification.

29. Defendant RCSD, acting through its agents, servants and/or employees, restrained Officer Mack.

30. Officer Mack was intentionally restrained.

31. Officer Mack's restraint was unlawful.

32. As a direct and proximate result of the tortuous acts of Defendant RCSD, acting through its agents, servants and/or employees, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

33. Mr. Mack is informed and believes he is entitled to judgment against Defendant for actual damages.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

34. The allegations of the foregoing paragraphs are incorporated as if repeated verbatim.

35. Defendant RCSD, acting through its agents, servants and/or employees failed to exercise the care necessary under the circumstances on or about December 6, 2008, causing injury to Officer Mack.

36. Defendant RCSD, acting through its agents, servants and/or employees failed to exercise slight care on or about December 6, 2008, causing injury to Officer Mack.

37. The acts of Defendant RCSD, acting through its agents, servants and/or employees, were careless, reckless, grossly negligent and willful. Furthermore, they exhibit a

clear, conscious disregard for the consequences of such acts and the safety of others, including Officer Mack.

38. As a direct and proximate result of the negligence, negligence per se, wrongful acts, omissions, gross negligence, and other tortuous acts of Defendant RCSD, acting through its agents, servants and/or employees, as described above, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

39. Officer Mack is informed and believes he is entitled to judgment against Defendant for actual damages.

FOR A THIRD CAUSE OF ACTION
(Negligence)

40. The allegations of the foregoing paragraphs are incorporated as if repeated verbatim.

41. Defendant RCSD, acting through its agents, servants and/or employees had a duty under South Carolina law to exercise due care and reasonable judgment, and to act as a reasonable person would in like or similar circumstances.

42. Defendant RCSD, acting through its agents, servants and/or employees breached that duty to Officer Mack when responding to the incident at 109 Weir Avenue.

43. As a direct and proximate result of the negligence, negligence per se, wrongful acts, omissions, gross negligence, and other tortuous acts of Defendant RCSD, acting through its agents, servants and/or employees, as described above, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

44. Officer Mack is informed and believes he is entitled to judgment against Defendant for actual damages.

FOR A FOURTH CAUSE OF ACTION
(Negligent Training)

45. The allegations of the foregoing paragraphs are incorporated as if repeated verbatim.

46. Defendant RCSD owed statutory and common law duties to the Plaintiff not to negligently train employees.

47. Defendant RCSD negligently trained agents, servants and/or employees who were unfit to perform services of employment.

48. Defendant RCSD knew or should have known that Defendant's employees were unsuitably trained and unfit to perform services of employment

49. On or about December 6, 2008, Defendant RCSD was negligent in allowing its agents, servants and/or employees to handle Officer Mack in a manner which resulted in injury.

50. The acts of Defendant RCSD were careless, reckless, and grossly negligent. Furthermore, they exhibit a clear, conscious disregard for the consequences of such acts and the safety of others, including Officer Mack.

51. As a direct and proximate result of the negligence, negligence per se, wrongful acts, omissions, gross negligence, and other tortuous acts of Defendant RCSD, through its agents, servants and/or employees, as described above, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

52. Officer Mack is informed and believes he is entitled to judgment against Defendant for actual damages.

FOR A FIFTH CAUSE OF ACTION
(Assault)

53. The allegations of the foregoing paragraphs are incorporated as if repeated verbatim.

54. On or about December 6, 2008, Defendant RCSD, through its agents, servants and/or employees, put Officer Mack in reasonable apprehension of a harmful or offensive touching as well as bodily harm.

55. Officer Mack's reasonable apprehension of a harmful or offensive touching as well as bodily harm was based upon the conduct of Defendant RCSD, through its agents, servants and/or employees.

56. Officer Mack did not consent to any harmful or offensive touching by Defendant RCSD, through its agents, servants and/or employees.

57. As a direct and proximate result of the assault committed by Defendant RCSD, through its agents, servants and/or employees, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

58. Officer Mack is informed and believes that he is entitled to judgment against Defendant for actual damages.

FOR A SIXTH CAUSE OF ACTION
(Battery)

59. The allegations of the foregoing paragraphs are incorporated as if repeated verbatim.

60. On or about December 6, 2008, Defendant RCSD, through its agents, servants and/or employees, committed a harmful and offensive touching of Mr. Mack without his consent.

61. Defendant RCSD, through its agents, servants and/or employees, inflicted forcible contact on Officer Mack's person.

62. As a direct and proximate result of the battery committed by Defendant RCSD, through its agents, servants and/or employees, Officer Mack has suffered and in the future will suffer: past and future lost wages; loss of prospective employment; pain and suffering; mental anguish; embarrassment; shock; humiliation; and emotional distress.

63. Officer Mack is informed and believes that he is entitled to judgment against Defendants for actual damages.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant for all actual damages, special damages and consequential damages, the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

LOURIE LAW FIRM, LLC

By: _____

Neal M. Lourie
1224 Pickens Street
Post Office Box 12089
Columbia, South Carolina 29211
(803) 799-9805
(803) 799-9571 facsimile

Attorney for Plaintiff

Columbia, South Carolina
8/3, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Demetrius Mack,

Plaintiff,

v.

Richland County Sheriff's Department,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 10-CP-40-5214

ANSWER

(Jury Trial Demanded)

FILED
2010 SEP 24 AM 9:01
JANELLE H. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

The Defendant Richland County Sheriff's Department (hereinafter, "RCSD") answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. The Defendant is immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically, § 15-78-60 (4), (5), and (6).

FOR A THIRD DEFENSE

3. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
4. That as to Paragraph One (1), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, denies this paragraph and demands strict proof thereof.

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5. That as to Paragraph Two (2), Four (4), Five (5), and Six (6), the Defendant denies that the RCSD is a legal entity of the State, but asserts that the proper entity is the Sheriff of Richland County in his official capacity and that it is subject to jurisdiction under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* Further answering, the Defendant alleges that Richland County Sheriff's deputies were acting within the course and scope of their official duties as deputies with the Richland County Sheriff's Department ("RCSD"). Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

6. The Defendant submits that the Plaintiff's Complaint does not contain a Paragraph Three (3) and therefore no response is warranted.

7. Paragraph Seven (7) is jurisdictional in nature, can neither be admitted nor denied, and the Defendant craves reference thereto.

8. That as to Paragraphs Eight (8), Ten (10), Eleven (11), and Twelve (12), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, denies these paragraphs and demands strict proof thereof.

9. That as to Paragraph Nine (9), the Defendant admits same upon information and belief.

10. That as to Paragraphs Fifteen (15) and Sixteen (16), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, denies these paragraphs and demands strict proof thereof. Further answering, the Defendant craves reference to any and all real property title documentation and contracts and/or agreements with DTH Protective Services as the best evidence of what is contained therein.

11. That as to Paragraphs Thirteen (13), Fourteen (14), Seventeen (17), the Defendant only admits upon information and belief that during the relevant times, the Plaintiff chased the male

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subject, tackled and/or fell on top of the male subject, and then proceeded to handcuff the male subject. Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

12. That as to Paragraphs Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), the Defendant categorically denies same and demands strict proof thereof.

13. That as to Paragraph Twenty-three (23), the Defendant only admits upon information and belief that the Plaintiff was arrested for Simple Assault and he was thereafter transported to Alvin S. Glenn Detention Center in which he was detained for a period of time. Except as stated herein, the Defendant denies this paragraph as stated and demands strict proof thereof.

14. That as to Paragraphs Twenty-four (24) and Twenty-five (25), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, denies these paragraphs and demands strict proof thereof. Further answering, the Defendant craves reference to any and all official records of the Magistrate Court, trial transcripts, and disposition record as the best evidence of what is contained therein.

15. That as to Paragraph Twenty-six (26), the Defendant denies same and demands strict proof thereof.

16. That as to Paragraphs Twenty-seven (27), Thirty-four (34), Forty (40), Forty-five (45), Fifty-three (53), and Fifty-nine (59), the Defendant reasserts and realleges all previous allegations and defenses.

17. That as to Paragraphs Twenty-eight (28), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38), Thirty-nine (39), Forty-two (42), Forty-three (43), Forty-four (44), Forty-seven (47), Forty-eight (48), Forty-nine

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(49), Fifty (50), Fifty-one (51), Fifty-two (52), Fifty-four (54), Fifty-five (55), Fifty-six (56), Fifty-seven (57), Fifty-eight (58), Sixty (60), Sixty-one (61), Sixty-two (62), and Sixty-three (63), the Defendant denies these paragraphs in their entirety and demands strict proof thereof.

18. That as to Paragraphs Twenty-nine (29) and Thirty (30), the Defendant only admits that the Plaintiff was arrested by one or more Defendant deputies during the relevant times. Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

19. That as to Paragraphs Forty-one (41) and Forty-six (46), the Defendant alleges upon information and belief that the Plaintiff has set forth legal conclusions which can neither be admitted nor denied and, therefore, the Defendant crave reference thereto. To the extent that these paragraphs contain factual allegations against the Defendant, the Defendant denies same and demands strict proof thereof.

20. Any and all allegations inconsistent with the foregoing are denied. Further, the Defendant asserts that the Plaintiff is not entitled to the relief requested in the Complaint, or any other relief against the Defendant.

FOR A FOURTH DEFENSE

21. The Defendant Richland County Sheriff's Department (RCSD) is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case.

FOR A FIFTH DEFENSE

22. The Defendant alleges that the RCSD is immune from suit and liability under the doctrine of sovereign immunity.

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FOR A SIXTH DEFENSE

23. The Defendant alleges upon information and belief that at all times herein the RCSD deputies were acting within the course and scope of their employment in a discretionary manner, in good faith, without bad faith or malicious motives in the performance of their official duties, and therefore, the Defendant is immune from suit.

FOR A SEVENTH DEFENSE

24. That as to the Plaintiff's cause of action for negligence, the Defendant, upon information and belief, alleges that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, were due to and caused entirely by the negligence of the Plaintiff or the Plaintiff's negligence which is more than the Defendant's negligence, and that such is a complete bar to the Plaintiff's recovery herein. Further, the Defendant, upon information and belief, alleges that if the Plaintiff's negligence was less than the Defendant's negligence, that such negligence should be compared to that negligence of the Defendant, so as to apportion the relative fault as to each party.

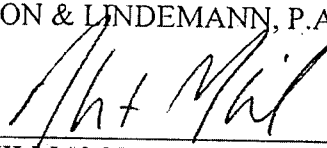
WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant Richland County Sheriff's Department (RCSD) prays that same be dismissed with prejudice and for such other and further relief as the Court deems just and presented to the Court at the time of the hearing.

[Signature block on following page]

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DAVIDSON & LINDEMANN, P.A.

BY:


WILLIAM H. DAVIDSON, II
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendant.
Richland County Sheriff's Department*

Columbia, South Carolina

September 21, 2010

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1. The order fails to address whether Defendant should be afforded absolute sovereign immunity from suit based upon the South Carolina Tort Claims Act.

S.C. Code Ann. § 15-78-60(5) provides that: "The governmental entity is not liable for a loss resulting from the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee."

Plaintiff's theory at trial primarily centered on the Defendant deputies having exercised poor judgment by arresting him. Testimony was presented during the Plaintiff's case-in-chief that during the relevant times: (1) Corporal Ryan Gore was on duty and conducting official business on behalf of the Defendant; (2) the Defendant deputies' presence in the area were in response to neighborhood complaints; (3) in the process of making arrests, Gore observed Plaintiff and the complainant/victim physically engaged with one another in such a manner that was perceived by Gore as an assault; (4) Gore believed that Plaintiff should be arrested and thereby directed Deputy Parish to effectuate the arrest and process the necessary paperwork; (5) since this arrest was not mandatory Gore could have alternatively issued a uniform traffic ticket to Plaintiff or otherwise take no action; (6) based upon Gore's professional judgment, an assault occurred; (7) that in the performance of his duties, Gore typically makes an arrest when he believes that a crime occurred and a victim expresses a preference to press charges.

In light of the above sworn testimony elicited during the trial and uncontroverted within the record, the Defendant should enjoy absolute sovereign immunity from suit in this matter. Quite simply, Gore exercised his professional discretion as a law enforcement officer when the decision was made to arrest Plaintiff. Accordingly, whether Gore or any of the Defendant deputies were making sound decisions or poor judgments, they were nevertheless performing

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acts that are uniquely related to their official duties as sheriff's deputies (i.e., effectuating a warrantless arrest). In this instance, Gore exercised his discretion -- just as he would by alternatively issuing a ticket and releasing him.²

As the Defendant argued at trial, the applicable exception to the waiver of sovereign immunity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(5) addresses this directly.³ Consequently and in light of the plain and ordinary meaning of the statute's construction, Gore's actions constitute an immune function. As a result, the Defendant

² The discretionary immunity defense does not require a showing that discretion was exercised without error or that a correct decision was made. If that were what is required, there would obviously be no need for an immunity defense. See, *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002) ("[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something"). For, the governmental entity does not need immunity where it acted reasonably or made a correct decision. In those instances, there would be no liability regardless of immunity. Instead, a governmental entity is entitled to discretionary immunity particularly in those instances where errors were allegedly made in the exercise of discretion or where an incorrect decision was allegedly made.

This important distinction was recognized by the South Carolina Supreme Court in the seminal case of *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In abolishing the common law defense of sovereign immunity, the Court nonetheless recognized the importance of maintaining discretionary immunity. The Court held:

[T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. *The exercise of discretion includes the right to be wrong.*

329 S.E.2d at 742. (Emphasis added). Thus, as the highlighted language from *McCall* states, the Defendant deputies in the instant matter had the right to be wrong in their exercise of discretion. A court at the appropriate stage must only determine whether discretion was indeed exercised, and if so, the governmental entity is then entitled to immunity as a matter of law.

³ The South Carolina Supreme Court recently held the following: "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. In doing so, we must give the words found in the statute their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Thus if the words are unambiguous, we must apply their literal meaning." See, *CFRE, LLC v. Greenville County Assessor* 395 S.C. 67, 74 716 S.E.2d 877, 881 (2011) (internal citations omitted)

Sheriff, as the governmental entity and sued in his official capacity, should be afforded immunity from suit for money damages. The Court is respectfully asked to reconsider and, specifically, address this sovereign immunity defense.

2. The Order's findings of fact fail to address the specific facts and circumstances that were in existence at the officer's disposal at the time Plaintiff was arrested.

The Court's Order appropriately acknowledges "that the central issue in this case is whether the Defendant had probable cause to arrest Plaintiff on the day and time in question." Since it was incumbent upon Plaintiff in this trial to establish by a preponderance or greater weight of the evidence that probable cause was lacking, he was required to demonstrate that the facts and circumstances known to the officer would **not have warranted the conclusion** that an assault had been committed. The Order's findings of fact omit any such factual determinations.

The Order further provides "[t]hat probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinary, prudent, and cautious man under the circumstances to believe likewise."⁴ While this is a valid legal definition, the Order overlooks applicable federal and state court holdings as it concerns a law enforcement's evaluation of probable cause in the context of a warrantless arrest.

For over a half century, the United States Supreme Court has held that probable cause "exists if the **facts and circumstances known to the officer** warrant a prudent man in believing that the offense has been committed." See, *Henry v US*, 361 U.S. 98,102, 80 S.Ct. 168, 171 (1959)(bolded for emphasis). This definition has been similarly reflected within state law decisions: "Probable cause for a warrantless arrest exists when the **circumstances within the**

⁴ Although not expressly cited in the Court's Order, this definition has been referenced within *Gathers v. Harris Teeter Supermarket*, 282 S.C. 220, 317 S.E.2d 748 (Ct.App.1984), and *Jones v City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990).

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arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." *State v. Cope*, 385 S.C. 274, 290, 684 S.E.2d 177, 185 (Ct. App. 2009); *State v. Frazier*, 394 S.C. 213, 220, 715 S.E.2d 650, 653 (Ct. App. 2011) (internal citations omitted)(bolded for emphasis).

To this extent, the Order's findings of fact contain a determination solely with respect to damages. It critically fails to specially address the liability portion of the case, and in particular, taking into account those facts and circumstances known to the officer that he could have considered at the time of Plaintiff's arrest.

At trial, Plaintiff in addition to the Defendant deputies testified as to their respective versions of the facts and circumstances leading up to Plaintiff's arrest. With respect to Plaintiff, Plaintiff conceded in sworn testimony that the complainant was being actively pursued on foot by Plaintiff; that Plaintiff was located under a parked car; that the car had been partially situated in the roadway; that Plaintiff then proceeded to physically "grab" and "pull" complainant out from under the car; and that Plaintiff restrained the complainant by handcuffing him. In contrasting testimony, both Gore and Deputy Proffitt asserted that they personally observed Plaintiff "tackle" complainant in the middle of the street. Gore further testified that he saw Plaintiff "mount and handcuff" the complainant.

Whichever version this Court sought to give credence to and adopt in this matter -- whether it be accepting the facts purely in a light favorable to Plaintiff, or otherwise the deputies' respective testimony, or perhaps a mixture of the witnesses' accounts -- the facts and totality of the circumstances surrounding the information within Gore's knowledge clearly yield only one reasonable conclusion, that is, the belief that probable cause existed that Plaintiff committed a

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simple assault. Notwithstanding such an analysis, the Order's findings of fact are devoid of any references concerning the perceived events taking place in the presence of the officers.

Consequently, the Defendant respectfully moves that the Court reconsider its findings in this regard or, in the alternative, specifically address the facts and circumstances within Gore's sphere of knowledge and at his disposal during the relevant times.

3. The Order's legal conclusions fail to address the Court's rationale that Gore's assessment of the situation was unrealistic.

The Order concludes, "[t]hat a realistic assessment of the evidence in this case doesn't show that a crime had been committed by the Plaintiff on December 8, 2008 at the time of his arrest." This "realistic assessment" standard was argued by the Defendant during the trial and is addressed in *State v. Moultrie*, 316 S.C. 547, 451 S.E.2d 34, 37, n.3 (Ct. App. 1994) wherein the Court of Appeals held that "a probable cause analysis includes a realistic assessment of the situation from the law enforcement officer's perspective." Thus, in concluding that probable cause did not exist, the Order fails to specifically articulate the Court's rationale for which Gore's assessment of the situation -- from his own perspective -- would have been unrealistic.

Upon information and belief, the undisputed evidence at trial was that the complainant had: (1) received physical injuries that had been committed in Gore's presence; (2) sustained visible and freshly committed wounds, the degree of which that required treatment by on-the-scene paramedics followed by transport via E.M.S. for further treatment at the emergency room; and that (3) demonstrated the non-consensual nature of the physical contact by openly communicating to Gore that he wished to pursue criminal charges against Plaintiff.

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As a result, the Defendant respectfully moves that the Court reconsider its judgment or otherwise specially provide its reasons, based upon the facts in the record, that it was unrealistic from Gore's perspective to conclude that an assault had been committed.

4. The Order ostensibly reaches its conclusions of law based upon the presence of actual facts, rather than those facts which Gore honestly believed to have existed.

During the course of the trial, the Defendant advanced the following legal principles: "Probable cause is a flexible, common-sense standard. The very term itself does not import absolute certainty." *See, Care and Treatment of Valentine v. State*, 377 S.C. 244, 250, 659 S.E.2d 227, 230 (Ct. App. 2008). Additionally, "[i]n determining the existence of probable cause, the facts must be regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what the police officer honestly believed them to be." *See, Eaves v. Broad River Electric Cooperative*, 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982).

Plaintiff argued at trial that probable cause was lacking, because despite the existence of an offensive physical touching and the existence of an injury, all relevant events purportedly transpired on the property Plaintiff was being paid to protect. Accordingly, in concluding that probable cause did not exist, the Order seemingly adopts Plaintiff's argument and conducts its analysis with respect to the actual facts (i.e., that all actions in reality occurred on private property). Assuming *arguendo* that this is true, it is nonetheless in direct contravention with the *Eaves* holding and further fails to specifically convey which facts Gore honestly believed to have existed at the time of the arrest.

In the trial, Gore and Proffitt both clearly and unambiguously testified that they personally observed and without visual obstruction Plaintiff tackle complainant in the roadway. In their respective testimony, both Gore and Sheriff Leon Lott relied upon statutory authority and

well-settled Supreme Court law that a police officer may, without a warrant, arrest a person who commits a misdemeanor in the officer's presence.⁵ See, S.C. Code Ann. § 17-13-30 (1985) and *State v. Mims*, 263 S.C. 45, 208 S.E.2d 288 (1974). (See, also, *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may lawfully arrest the offender.").

Furthermore, the trial exhibit of Deputy Parish's dashboard videotape clearly depicts the span of Plaintiff's body partially or completely in the roadway. Given these facts regarded from the police's perspective -- compounded by Parish's testimony that there was a sizable amount of blood as well as the presumption that these objective injuries were caused by concrete rather than soft grass -- the Court's analysis should not be whether the men were actually in the roadway. Instead, a proper application of the *Eaves* rule should exclusively center on whether Gore's conclusions that they were within the public right-of-way were reasonable at the time he decided to arrest Plaintiff.

The Defendant finally submits that an evaluation of actual facts would have evidentiary significance in a criminal trial in which the finder of fact makes a determination of guilt. This

⁵ Another significant aspect of the record was the expertise of witnesses who testified as to the existence of probable cause. As the United States Supreme Court has recognized, "Because probable cause is a fluid concept -- turning on the assessment of probabilities in particular factual contexts -- not readily, or even usefully, reduced to a neat set of legal rules, we give due weight to inferences drawn from [the] facts by ... local law enforcement officers," See, *Illinois v. Gates*, 462 U.S. 213, 232, 103 S.Ct. 2317 (1983); See also, *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657 (1996)(internal citations omitted)("Under this pragmatic, common sense approach, we defer to the expertise and experience of law enforcement officers at the scene." See, *United States v. Dickey-Bey*, 393 F.3d 449, 453 (4th Cir. 2004)).

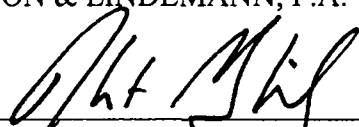
Gore, in addition to having made hundreds of warrantless arrests as a Sheriff's deputy and then corporal with the Sheriff's Department, and who enjoyed previous work experience with the Richland County School District, Columbia Fire Department, 911 telecommunications, and as a first responder for over a decade unequivocally testified as to the existence of probable cause in this instance. In like manner, Sheriff Lott, whose law enforcement career spans 37 years and has been the duly elected Sheriff for the previous 15 years, provided explicit testimony that he personally reviewed the entire incident at the time of these events and that there was clear probable cause and a proper arrest.

obviously is not the case here. (See, *Lapp v S.C. Department of Motor Vehicles*, 387 S.C. 500, 692 S.E.2d 565 (Ct. App. 2010) "Evidence required to establish guilt is not necessary to authorize a warrantless arrest."). For these reasons, the Defendant respectfully asks that the Court revisit this issue in light of the appropriate standard and make an assessment as to which facts would have been reasonably received by Gore, rather than evaluating his actions in light of the purported actual facts.

The Defendant Sheriff's motion is based upon the pleadings and record filed in Civil Action Number 2010-CP-40-5214; the Form Order dated and filed April 6, 2012; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY:


ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for the Defendant

Columbia, South Carolina

April 26, 2012

Oral Argument Requested

NOV
#9

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2010-CP-40-05214

3
4 Demetrius Mack,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 Richland County Sheriff Leon)
8 Lott, in his Official)
Capacity,)

9 Defendant.)

10 April 4-5, 2012
11 Columbia, South Carolina

12
13
14 B E F O R E:

15 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
16
17

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

19 NEAL M. LOURIE, ESQ.
Attorney for the Plaintiff

20 ROBERT D. GARFIELD, ESQ.
21 SCOTT HAYES, ESQ.
Attorneys for the Defendant
22
23
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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1 THE COURT: Can I see the lawyers?

2 MR. LOURIE: Do you want us in chambers?

3 THE COURT: Yes. Is he out of the country?

4 MR. LOURIE: Yes, he is in Canada.

5 (WHEREUPON, the following hearing was

6 held in chambers with Solicitor Dan

7 Johnson on the telephone.)

8 MR. JOHNSON: Hello.

9 THE COURT: It is us again.

10 MR. JOHNSON: Hey, Judge.

11 THE COURT: All right. At this time we're

12 going to put it on the record, is that okay?

13 MR. JOHNSON: Yes, Your Honor.

14 THE COURT: Okay. All right. And our court
15 reporter of course can't get you to raise your
16 right hand, but do you swear to tell the truth, so
17 help you God?

18 MR. JOHNSON: I do.

19 THE COURT: All right. And so Mr. Lourie has
20 listed you as a witness, so I'll let him ask first.
21 Can you hear? And then we'll let Mr. Garfield
22 cross-examine.

23 DANIEL E. JOHNSON,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LOURIE:

2 Q Go ahead and state your full name for the record,
3 please.

4 A Daniel Johnson, J-O-H-N-S-O-N.

5 Q All right. And back in 2008 and 2009, the
6 beginning of 2009, where were you employed?

7 A Richland County Sheriff's Department.

8 Q And as of -- in January of 2009, what was your
9 position?

10 A I was the Chief Deputy of the Richland County
11 Sheriff's Department.

12 Q And pursuant to those duties, did you have the
13 opportunity to get involved in a complaint that
14 Demetrius Mack made against certain deputies?

15 A I did.

16 Q All right. And what was your role during that time
17 in reference to this complaint?

18 A I was the Chief Deputy of the Richland County
19 Sheriff's Department. And at that time one of my
20 duties was to ensure that we maintained quality
21 assurance, peer review over our deputies. And at
22 that time I did that on a regular basis. Among
23 other things, I also was responsible for the
24 budget. And I had several other day-to-day duties.

25 Q When you were reviewing this complaint, do you have

1 available to you statements and incident reports
2 regarding the incident?

3 A I would get -- I would get -- at that time we did
4 it two ways. I think it came on paper in the form
5 of a file, and also I think we did it over the
6 computer. And then one of my responsibilities was
7 recommend discipline, although the sheriff
8 ultimately made those decisions.

9 Q And in this --

10 A Discipline, if any. Sometimes it wasn't necessary.

11 Q Right. And did you conduct a review of the Mack
12 incident?

13 A I did.

14 Q All right. And did you write a memo back during
15 January of 2009 regarding your opinion of the
16 incident?

17 A I don't know the year, but I did write a memo.

18 Q Okay. All right. And there is only one memo, is
19 that correct?

20 A Yes.

21 Q Okay. And do you have an opinion as to whether
22 Mr. Mack should have been arrested or not?

23 A Do I have an opinion about whether he should have
24 been arrested or not arrested?

25 Q Yes?

1 A I do.

2 Q All right. And what is that opinion?

3 A Um, my opinion -- well, actually I think it
4 depends, but my opinion is that he shouldn't have
5 been arrested.

6 Q Okay. And --

7 A Not based on the law, though, I just want to be
8 clear. You know, it would depend. If this guy was
9 on his jurisdiction when he took action, then he
10 shouldn't have been arrested. If he was off, he
11 could have been arrested based on the law, but my
12 advice to the sheriff was that though -- if he was
13 off, it wasn't the kind of -- it wasn't the way we
14 wanted to do business. And that was the advice I
15 gave at that time.

16 Q So, correct me if I'm wrong. What you are saying,
17 if he was on property that he had jurisdiction
18 over, then legally he shouldn't have been arrested,
19 is that correct?

20 A Yes.

21 Q And if he was off property that he did have
22 jurisdiction over, that he could be arrested
23 legally, but you don't believe he should have
24 because that is not the way y'all at that time
25 wanted to conduct business?

1 A And I also didn't think that it was -- I didn't
2 think that was the remedy, the proper remedy.

3 Q Okay. Tell me what you mean by that.

4 A I mean -- I mean, you know, if he was off asking
5 the bad guy if, you know, if he felt assaulted, you
6 know, it didn't make much sense to me just from a
7 legal perspective, it didn't seem that would be the
8 way we would handle it. I thought we could handle
9 it a different way. My job was to, you know, give
10 my opinion, and that is all it was. It was up to
11 the sheriff.

12 Q Okay. That's all I have.

13 THE COURT: All right. Mr. Garfield?

14 CROSS-EXAMINATION

15 BY MR. GARFIELD:

16 Q Solicitor Johnson, this is Robby Garfield. Can you
17 hear me okay?

18 A Hey, Robby. How are you?

19 Q I'm fine, thank you. And we'll try to keep this
20 short. How are you?

21 A I'm well.

22 Q Okay. I understand that certain -- Hello?

23 THE COURT: He's still there. I think
24 somebody is calling me.

25 A I'm here.

1 Q I'm going to -- I'll just ask you just sort of a
2 basic question. You had an opportunity at this
3 time to review the contents of the file, including
4 the documents generated as a result of the internal
5 affairs investigation headed up by Harry Polis?

6 A Do I have them right now or --

7 Q No.

8 A -- did I have access to them then?

9 Q Thank you for the clarification. Certainly not
10 right now, but at the time you made your opinion,
11 did you have all the documents that had been
12 generated by internal affairs?

13 A I believe I did, Robby. I believe I did.

14 Q Okay. You fashioned an opinion in this case, is
15 that correct?

16 A I did.

17 Q Okay. And Harry Polis was part of the internal
18 affairs review of this particular case, I
19 understand, is that right?

20 A Uh, I believe so.

21 Q Okay. It is not unusual in these kind of cases
22 when you are chief deputy with the Sheriff's
23 Department that when you form a subjective opinion
24 that that could be -- others along the chain of
25 command could have different subjective opinions,

1 is that correct?

2 A No question.

3 Q Okay. Harry Polis, for example, Howard Hughes or
4 anybody in charge of internal affairs or conducting
5 investigation --

6 A Right.

7 Q -- may agree with you, may disagree with you, is
8 that right?

9 A Right. And what happens is those cases would come
10 up the chain and ultimately come to me and I would
11 give an opinion as well.

12 Q And certainly the individual that you answered to
13 during the time of these events, Sheriff Leon Lott,
14 he also is not only the ultimate authority or
15 decision maker, but he could agree or disagree with
16 your subjective opinions, is that right?

17 A No question about it.

18 Q Okay. And you would defer to the opinion or
19 subjective opinion or the authority to the sheriff
20 during these times, is that correct?

21 A Well, ultimately at all times. I mean, you know,
22 ultimately my role always with the sheriff was to
23 tell them what I thought. That doesn't mean that
24 he would always do it.

25 Q Okay. Let me ask you this. Based on the documents

1 you reviewed, including any incident reports,
2 witness statements, or anything you reviewed in
3 this particular case from reference to Demetrius
4 Mack, did you at any time formulate the opinion
5 that Deputy Ryan Gore effectuated an unlawful
6 arrest of Demetrius Mack?

7 A To be honest with you, Robby, I didn't formulate an
8 opinion either way in that regard because, quite
9 frankly, you know, I wasn't sure where it actually
10 happened. I felt like that didn't matter because
11 it wasn't the way we wanted to do business.

12 Q So --

13 A In terms of arresting a security guard. That, to
14 be honest with you, that is kind of the position I
15 took.

16 Q Okay.

17 A And reflected that in the memo.

18 Q All right. And you weren't at the scene, correct?

19 A No. No, I was not.

20 Q Okay. And you would find it an important
21 distinction in your role the fact that you were not
22 at the scene that you would allow the people at the
23 scene to kind of speak for themselves?

24 A Yes. No question. I mean, my issue was not
25 whether or not, you know, it was on or off the

1 property, my issue was whether or not that was the
2 way we wanted to do business, ergo arresting
3 security guards.

4 Q Okay.

5 A And I took issue with it.

6 Q Because frankly --

7 A On this issue. Not just generally arresting
8 security guards, but on this issue whether or not
9 that was the way we wanted to handle it.

10 Q And thank you, and I'm sorry for interrupting.
11 But, frankly, the sheriff's protocol or practices
12 at these times was to have a good relationship or a
13 good working professional relationship with these
14 security companies, is that correct?

15 A Yes, that's correct. Oftentimes we rely on them to
16 help us, so, you know, we felt -- I felt like that
17 wasn't the way we wanted to handle it.

18 Q Okay. So -- and I'm just trying to understand. So
19 in coming up with your subjective opinions in this
20 case, and I'm looking at a memo here, it looked
21 like an entry was sometime in January of 2009. Did
22 you ever formulate the opinion or intend to
23 formulate an opinion that this was a lawful or an
24 unlawful arrest by Deputy Gore?

25 A I would have to look at my memo and see what my

1 exact words were. But I do recall saying something
2 like I didn't think he should be disciplined. And
3 if he was wrong, I would have said that. I didn't
4 think he should be disciplined. But I didn't think
5 it was the way we needed to do business. And I
6 thought he should be advised of that. I said
7 something like that.

8 Q Okay. Do you agree that a law enforcement officer
9 that sees a misdemeanor committed in his or her
10 presence is authorized to make a warrantless
11 arrest?

12 A Yes.

13 Q Okay. In this particular case, given the fact that
14 you were not at the scene, your focus in this
15 particular sense was your relationship or the
16 Sheriff's Department relationship with security
17 companies and the way Deputy Gore handled himself,
18 is that right?

19 A Among other things. I mean, the whole -- the
20 whole, you know, the whole issue with it in my mind
21 is untenable in that, one, recognizing that could
22 have been some dispute about where it happened or
23 what happened, and we were asking at that time a
24 great deal of security guards because we were
25 having some problems with the clubs.

1 Q Okay.

2 A We were having problems with clubs and, you know,
3 some dangerous situations out there. And we were
4 asking security guards to take a more active,
5 stepped-up role. And it just didn't seem like the
6 way we wanted to handle it.

7 Q All right. And so for completeness purposes, it is
8 not really fair, we're asking you questions without
9 your memo being in front of you.

10 A Right.

11 Q Since this is a proffer, and if the judge would
12 allow me, I'm just going to go ahead and read this
13 short statement.

14 THE COURT: I can have Aaron scan it to him if
15 he has his Blackberry. Well, I guess he is on the
16 phone. If he has some way of looking at it, Aaron
17 can scan it or e-mail it to him.

18 Q The judge made a good point. Is there a way for
19 you to receive a Word or a PDF document on your --

20 A Yes, I have got an Iphone.

21 Q Okay.

22 A The only issue I worry about is my plane coming in
23 between that time. I mean --

24 Q Well, that is my issue too, quite frankly. That
25 could actually kind of dictate where we are going

1 this week a little bit. I am going to just go
2 ahead and read this to you.

3 A Okay.

4 Q Because time is a factor.

5 Sheriff, I do not agree with this exoneration.

6 Mr. Lourie is reading along with me, so I will
7 be corrected if I'm not reading this correctly.

8 A Sure. Sure.

9 Q It says:

10 Sheriff, I do not agree with this
11 exoneration. There is absolutely no way
12 we would ever treat one of our people
13 the way that we treated the security
14 guard.

15 We ask these clubs to get security and
16 he was doing his job just like our guys
17 are out there doing their jobs. SLED
18 should have been notified, but this guy
19 should not have been arrested.

20 A Right.

21 Q And:

22 It is absolutely ridiculous that there
23 is a consensus that this is okay. The
24 fact that the security guard was found
25 not guilty when the quote/unquote victim

1 did not show up does not make it all
2 better. It simply makes us look worse
3 than the guy that this security guard
4 was chasing. Moreover, I am not sure
5 the proper remedy for making arrest when
6 outside of one's jurisdiction is that
7 the arresting party could be charged
8 with assault.

9 The next sentence is formed as a question.

10 A Okay.

11 Q Would that be the proper remedy for a deputy
12 That makes a false arrest?

13 A Right.

14 Q In my opinion, this is a NO-GO.
15 NO-GO is in all caps.

16 A Right.

17 Q The last portion says:

18 I do not think that Corporal Gore should
19 be disciplined. I think he should be
20 told that it could have been handled a
21 better way.

22 A Right.

23 Q And that is the end of it. So having --

24 A Right.

25 Q -- having read that to you, was any part of your

1 opinion or putting pen to paper or documenting or
2 memorializing your opinions in these events, was
3 that an attempt for you to try to say whether this
4 was a lawful or an unlawful arrest?

5 A No. My position on that issue was that, you know,
6 oftentimes recognizing that, you know, I am not --
7 I was not there, but we were asking a lot of the
8 clubs at that time and, you know, these things
9 don't happen in a vacuum. We had had a similar
10 situation in Lexington with a deputy, and so I
11 just -- I felt like that wasn't the way we would
12 treat our own people. And we have a general policy
13 that we try to, you know, treat people how we want
14 to be treated. So I gave the sheriff that advice.
15 I have written a lot of things to the sheriff over
16 the years, and that was just my personal opinion.

17 Q Aside your personal opinion, I'm just trying to get
18 an understanding of it, did you --

19 A Right.

20 Q -- did you formulate the opinion that this was a
21 lawful arrest or formulate the opinion that this
22 was an unlawful arrest?

23 A It would depend on where it happened.

24 THE COURT: One second. One second. The
25 court reporter said can you repeat that.

1 A It would depend on where it happened. If it was on
2 the property it would be an unlawful arrest. If it
3 was off the property it would be a lawful arrest.
4 I didn't analyze that, to be honest with you. I
5 just took the position that I don't think he should
6 have got arrested, regardless of where it was.

7 Q Thank you, Solicitor.

8 A And, you know --

9 Q Thank you, Solicitor. I don't have anything else.

10 A Sure.

11 THE COURT: Anything else, Mr. Lourie?

12 MR. LOURIE: Yes.

13 REDIRECT EXAMINATION

14 BY MR. LOURIE:

15 Q So let me ask. One thing you did mention is that
16 you didn't think -- you weren't sure that the
17 proper remedy would be charging someone for simple
18 assault, is that correct?

19 A Right.

20 Q Okay. I don't have anything further.

21 THE COURT: Anything else?

22 RECROSS-EXAMINATION

23 BY MR. GARFIELD:

24 Q Simple assault is a misdemeanor, isn't it?

25 A Simple assault is a misdemeanor, that's correct.

1 Q And if a misdemeanor is committed in plain view or
2 freshly committed in the presence of a police
3 officer, they can make a warrantless arrest, right?

4 A Of course. That is the law.

5 Q That's it. Thank you.

6 THE COURT: All right. Thank you, Solicitor.

7 MR. JOHNSON: All right. Thank y'all.

8 THE COURT: Hopefully your plane will show up
9 at some point.

10 MR. JOHNSON: I hope so.

11 THE COURT: And I don't think we'll need to
12 call you back.

13 MR. JOHNSON: All right. I'll see y'all.

14 THE COURT: All right. Have a safe trip. All
15 right.

16 THE WITNESS: Thanks, Judge.

17 (Telephone conference concluded.)

18 MR. LOURIE: Judge, I mean, I think the jury
19 has to make a determination who they believe
20 because they are trying to say it happened off the
21 property and his testimony is, is going to be, if
22 that is the case it was lawful. We are saying it
23 happened on the property where he had jurisdiction
24 and his testimony is it would be unlawful. So the
25 jury ultimately has to make a determination of who

1 they believe. And so I still think it goes in and
2 it comes to the weight of the evidence.

3 MR. GARFIELD: We would stipulate that the
4 security officer statute provides them the ability
5 to make arrest, just like a deputy would. If it
6 happens on the property they are paid to protect
7 jurisdictionally it says that black letter. He's
8 not saying anything that we asked and already in
9 Requests to Charge that we have turned in.

10 THE COURT: Well, where did it happen?

11 MR. GARFIELD: Well, that is the issue.

12 MR. LOURIE: Yes.

13 MR. GARFIELD: He wasn't there. This goes
14 back to my original issue. Number Two, though, is
15 the law we agreed to. He is right. If it happened
16 on the property, he shouldn't have been arrested.
17 If it happened off the property, he is saying it is
18 an unlawful arrest.

19 So, you know, we could -- he is going to be a
20 hundred miles away by the time we get the
21 testimony. I mean, we could use this. We could
22 play it in a bench trial, put it on the record. We
23 could go ahead and play it to the jury, but he is
24 not going to help the trier of fact because, (a),
25 he wasn't there; (b), we stipulate to what the law

1 is.

2 THE COURT: But your objection is to his
3 testimony and the memo coming in, or you don't have
4 an objection to that anymore, or do you need to
5 talk to your client?

6 MR. GARFIELD: I like the third option the
7 best. I do. And I'm not trying to delay.

8 THE COURT: And what we may need to do is pick
9 because they are sitting downstairs, we may just
10 need to go on and pick our jury and let the rest of
11 them go and let everybody go to lunch and start at
12 2:00 o'clock.

13 MR. GARFIELD: We could do that, but I would
14 still like to have the conversation with my clients
15 about the potential for a bench trial, if nothing
16 else to speed this up just to whatever degree.

17 MR. LOURIE: That way -- yes, that's fine.

18 MR. GARFIELD: I mean, I'd just like to -- I
19 don't want to waive that opportunity.

20 THE COURT: All right. Well, I mean, I guess
21 that --

22 MR. GARFIELD: I understand. I just didn't
23 want to hold you up any more.

24 THE COURT: All right. All right. Y'all want
25 me to do a bench trial on it? Okay.

1 MR. LOURIE: Yes, that would be quicker.

2 (WHEREUPON, the hearing in chambers was
3 adjourned. The following was held in
4 open court.)

5 THE COURT: All right. Are you ready to go
6 forward? Do you have an objection to --

7 MR. GARFIELD: My thinking, Judge, is the Dan
8 Johnson being a potential fact expert witness,
9 our position is sort of a moot issue. But to the
10 extent it is not, we would go ahead and
11 relinquish -- I mean, I guess we would go ahead and
12 withdraw a motion in limine because -- for his
13 testimony.

14 THE COURT: He wasn't qualified as an expert.

15 MR. GARFIELD: Well, he was named as an
16 expert. He wasn't qualified.

17 THE COURT: I thought because somebody asked
18 him about being a fact witness, I believe. His
19 testimony that we heard was him as a fact witness.

20 MR. GARFIELD: Absolutely, yes, ma'am. I
21 guess just to -- for housekeeping, just to
22 understand, he wasn't subpoenaed by either side to
23 be here, therefore he is not present in court. We
24 did have that on-the-record conversation with him,
25 but he was called as a proffer witness by

1 Mr. Lourie as a fact witness, yes, ma'am.

2 THE COURT: Okay.

3 MR. GARFIELD: So we would withdraw our motion
4 in limine to the extent that it is --

5 THE COURT: Moot.

6 MR. GARFIELD: He is viewed as a witness that
7 would testify.

8 MR. LOURIE: Right. We just rely on his
9 testimony back on the record since you are hearing
10 the case.

11 MR. GARFIELD: I think that is right. There
12 was one other issue before we start.

13 MR. LOURIE: We are stipulating the
14 introduction of the memo since he identified it in
15 the testimony.

16 MR. GARFIELD: I still think the memo is
17 hearsay. I don't know --

18 MR. LOURIE: I mean, clearly a statement by a
19 party-opponent comes in. It is a statement by a
20 party-opponent.

21 MR. GARFIELD: But it is not an admission by a
22 party-opponent, it is his -- it memorialized an
23 opinion that he had that he has already testified
24 to and clarified. I think it is an out-of-court
25 document used to prove the truth of what is

1 contained in it. It is purely a hearsay document.
2 It would be the same thing about putting an
3 investigator's follow-up into evidence.

4 MR. LOURIE: No, because this is actually a
5 statement by a party-opponent. As Robby said, he
6 was an employee of the Sheriff's Department. He
7 worked there. He did this within his duties there.
8 And we view it under Rule 801(2).

9 I mean, I think it is almost irrelevant
10 because the testimony was read, the memo was read,
11 so Your Honor heard it. So I don't understand what
12 is prejudicial now about it coming in because it
13 was heard. And I'm relying on 801(d)(2) and it is
14 considered not hearsay.

15 MR. GARFIELD: Your Honor, I think Mr. Lourie
16 just said it was not relevant, so if it is not
17 relevant, I don't know why we need to have to go to
18 a hearsay analysis.

19 MR. LOURIE: I don't understand why you are
20 objecting.

21 THE COURT: You are saying it is an admission
22 of a party-opponent?

23 MR. LOURIE: Yes. My understanding is they
24 said he worked for them. He did it as the chief at
25 the Sheriff's Department. And that surely could be

1 read as a statement by a party-opponent.

2 And the Rule 801 said that is not considered
3 hearsay. And it was given in representative
4 capacity. He said he did it as his duties, on the
5 record, as his duties as chief.

6 THE COURT: Any response?

7 MR. GARFIELD: It is just -- I understand what
8 Mr. Lourie is stating. And to the extent it is --
9 Your Honor has heard it. It wouldn't unring the
10 bell.

11 My problem with it is, it is not an admission.
12 It is not like it is on there to say Deputy Gore
13 acted with unlawful authority and it was in black
14 and white. It wasn't an admission. It was,
15 whatever it was, it was an opinion and he clarified
16 it. So I don't think it gives rise to the level of
17 an admission. That is our objection to it.

18 THE COURT: I think based on the fact that it
19 is opinion testimony, in looking at 801(d)(2),
20 admissions and opinions form, based on any fact
21 opinion to make it admissible under, I guess, under
22 hearsay rules.

23 MR. GARFIELD: Yes, ma'am. Thank you. There
24 was that one other point I wanted to say. This is
25 what we were going to discuss, or hopefully have

1 before the Court before we pick the jury, since we
2 are now only talking about a false arrest case.

3 THE COURT: Yes, sir.

4 MR. GARFIELD: Mr. Lourie has not made the
5 claim of malicious prosecution on behalf of his
6 client. Therefore, what would normally come out in
7 the case in chief of the Plaintiff alleging
8 malicious prosecution such as all the factors under
9 case law, which is I believe the institution or
10 continuation of a prosecution, inferred or actual
11 malice, the lack of probable cause and termination
12 in his favor is not an issue before this Court.

13 We have done this before in recent trials,
14 Your Honor, and I think we, Your Honor, we may have
15 plowed the same rows in last year's trial, if it is
16 a false arrest kind of case, surely he can discuss
17 damages, how he was damaged by his arrest, and
18 these were, for instance, spend time in jail,
19 incurred criminal defense representation, that it
20 will be cost, those kind of things. But the actual
21 ultimate decision or disposition of the criminal
22 case is not relevant to the issue of whether the
23 arrest itself was lawful or unlawful, so therefore
24 whether it was no-billed by a grand jury or
25 dismissed by a magistrate or what happened in that

1 criminal trial, it is just simply not -- it is not
2 relevant.

3 And as Your Honor is going to become the
4 fact-finder here, I think to go in that direction
5 also takes us in a direction that is really a waste
6 of time and confusing the issues as well.

7 MR. LOURIE: I mean, I won't ask for that.

8 THE COURT: And I think he is correct. If it
9 is not a malicious prosecution, it doesn't really
10 matter.

11 MR. LOURIE: Yes. So I am not going to
12 introduce it.

13 MR. GARFIELD: Okay. That can shorten it
14 considerably as well because that went
15 into discovery, so --

16 THE COURT: I think that is how I ruled the
17 last time.

18 MR. GARFIELD: Yes, ma'am. Thank you. Yes,
19 that is consistent. Yes, Your Honor.

20 MR. LOURIE: Yes. No, I understand. It is
21 not relevant of the offense.

22 THE COURT: All right. Are you all ready?

23 MR. LOURIE: Yes, ready to call the first
24 witness.

25 THE COURT: Do you want to do opening

1 statements?

2 MR. LOURIE: I'll waive it.

3 MR. GARFIELD: Just one moment, Your Honor.

4 (Pause.)

5 MR. GARFIELD: Your Honor, the whole concept
6 going forward on non-jury, we certainly waive
7 openings, but could I just have three or four
8 minutes to just arrange witnesses?

9 THE COURT: That's fine. I mean, the only
10 reason I came back -- I mean, we can probably take
11 a break and then come back after lunch, if that
12 works for you all.

13 MR. GARFIELD: Yes, ma'am.

14 THE COURT: Kind of to regroup.

15 MR. LOURIE: Can I get this marked so we don't
16 have to do it, the memo?

17 MR. GARFIELD: That's fine. Subject to our
18 objection.

19 (WHEREUPON, Plaintiff's Exhibit No. 1
20 was marked for identification only.)

21 THE COURT: We can take a lunch break and come
22 back at 1:30 or so, 1:45 if that gives you time.

23 MR. GARFIELD: Yes, ma'am, I would appreciate
24 that.

25 THE COURT: So everyone can just kind of

1 regroup.

2 (Lunch recess.)

3 THE COURT: Call your first witness.

4 MR. LOURIE: May it please the Court? The
5 Plaintiff calls James Gore as a hostile witness
6 under Rule 611(c).

7 THE COURT: Any objection to him being called
8 as a hostile witness? If there is an objection I
9 guess I have to declare him as a hostile witness
10 and allow --

11 MR. LOURIE: Judge, I thought that was the old
12 rule. I think under the new rule --

13 THE COURT: Something changed. I told them
14 that yesterday.

15 MR. LOURIE: Yes. I think it changed where we
16 can just -- we don't have to do that anymore. I
17 think we can just call them under Rule 611(c).

18 MR. GARFIELD: I think he is right about that.
19 Just if he anticipates the testimony will be
20 adverse to his position at trial he can ask him
21 leading questions. I believe that is the --

22 THE COURT: We were talking about that
23 yesterday, but you have to --

24 MR. GARFIELD: Otherwise you are
25 establishing --

1 THE COURT: All right.

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you are about to give in this case will
7 be the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Have a seat in the witness box.
11 State your name for the record. And spell it,
12 please.

13 THE WITNESS: James Gore, J-A-M-E-S G-O-R-E.
14 Richland County Sheriff's Department.

15 JAMES GORE,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LOURIE:

19 Q Mr. Gore, back on December 6, 2008, you were an
20 employee of the Richland County Sheriff's
21 Department?

22 A I was.

23 Q And you were working for the sheriff, Leon Lott, at
24 that time?

25 A Yes.

1 Q And the events leading up to this case, were you
2 working for the sheriff at that time, during the
3 events on the case we're here today?

4 A Yes.

5 Q All right. Now, this incident that we're here
6 today about, it occurred at Club Essence, isn't
7 that correct?

8 A Yes.

9 Q And the location of -- off Two Notch Road and Weir
10 Road, I believe, Weir Avenue?

11 A Weir Drive.

12 Q Weir Drive. Okay, thank you. And that's in
13 Richland County?

14 A It is.

15 Q And I believe December 6, 2008, you were up on Weir
16 Avenue in the 100 block working a narcotics
17 violation, is that correct?

18 A I was.

19 Q And then your attention was drawn to down at the
20 club, which was a couple of hundred feet away, is
21 that correct?

22 A Yes.

23 Q You heard some commotion, correct?

24 A Yes.

25 Q Let me --

1 MR. LOURIE: Judge, if we can have the
2 deposition opened.

3 THE COURT: The deposition?

4 MR. LOURIE: I just want to use it to ask him
5 questions about prior testimony.

6 THE COURT: I think you have got to lay the
7 foundation. Do you want to try to impeach him on
8 it?

9 MR. LOURIE: Yes. But, I mean -- yes. I
10 mean, it is --

11 MR. GARFIELD: I'm sorry to interrupt, but, I
12 mean, I don't know if Mr. Lourie has established
13 that he is giving inconsistent testimony.

14 MR. LOURIE: Well, I wanted to get some
15 testimony out of his deposition. That's fine. I
16 can just ask him this.

17 THE COURT: Yes. I think you have got to lay
18 the foundation to establish that he --

19 MR. LOURIE: Okay, that's fine.

20 BY MR. LOURIE:

21 Q Is it your contention that you saw my client tackle
22 McKenzie Williamson in the middle of the road?

23 A Yes.

24 Q And you testified to that in your deposition?

25 A I did.

1 Q Okay. That's all I needed. I don't have to do it
2 at this point.

3 THE COURT: All right.

4 MR. LOURIE: I guess we need to get this
5 marked for ID purposes. It is two boards.

6 (WHEREUPON, Plaintiff's Exhibit No. 2
7 was marked for identification only.)

8 Q I'm showing you what has been marked as Plaintiff's
9 Exhibit Number 2. Do you recognize this?

10 A It is an incident report for Club Essence.

11 Q Okay. And this is the incident report surrounding
12 the events that occurred back on December 6, 2008,
13 is that correct?

14 A Yes.

15 Q And Officer Parish completed this report, is that
16 correct?

17 A Yes.

18 Q And you and Officer Parish were at the scene
19 together that evening, correct?

20 A No.

21 Q After -- at some point were y'all not there
22 together? Did you speak to her?

23 A Yes, I did speak to her.

24 Q Okay. And where was that?

25 A In the middle of Weir Drive.

1 Q Okay. So y'all were together at the scene at some
2 point?

3 A After.

4 Q Right?

5 A After.

6 Q After the incident. I understand. And correct me
7 if I'm wrong, the purpose of an incident report is
8 to lay out the events as to why someone is being
9 arrested?

10 A Yes.

11 Q Okay. And can you point to me in this report where
12 it is indicated that you saw my client tackle
13 McKenzie Williamson?

14 A It wouldn't be indicated in the report that I saw
15 him tackle her, because I didn't write the report.

16 Again, you already pulled my deposition, and
17 I'm just going to recite back to you. We were
18 dealing with this narcotics case up the road and we
19 were involved in that. And I had Master Deputy
20 Parish write the report.

21 Q All right. But clearly you were a witness to what
22 you are claiming to the incident, correct?

23 A Yes, I saw it happen.

24 Q All right. And you would agree with me that --
25 let's -- for the record, if you will read the

1 report out loud.

2 A Mack stated that --

3 MR. GARFIELD: Hold on. Hold on. Objection.
4 I understand that Mr. Lourie is trying to use this
5 board, Plaintiff's Exhibit Number 1 for ID
6 purposes, as demonstrative evidence. Otherwise, it
7 would be inadmissible hearsay because it was
8 generated by another police officer, not him.

9 And I'm just confused about the nature of the
10 questioning him about something that is already
11 hearsay, because he wouldn't be able to introduce
12 the exhibit --

13 MR. LOURIE: Yes, but he said he was familiar
14 with it.

15 MR. GARFIELD: Just because he was familiar
16 with it. The end gain here is that Mr. Lourie is
17 trying to introduce this as an exhibit.

18 MR. LOURIE: Well, I will reword the question.

19 THE COURT: Is Parish --

20 MR. LOURIE: I know, is she going to testify?

21 MR. GARFIELD: I don't know. It is
22 Mr. Lourie's case.

23 THE COURT: I didn't know. She was listed as
24 a witness.

25 MR. LOURIE: That's fine. All right.

1 BY MR. LOURIE:

2 Q So it doesn't say anywhere on here that my client
3 tackled -- and take your time in reading it.

4 (Pause.)

5 A No, it doesn't say that.

6 Q Okay. And, in fact, doesn't it say -- well, let me
7 ask you this. The property next to the club is 109
8 Weir Avenue, is that correct?

9 A Yes.

10 Q All right. And would you agree with me that this
11 report indicates that Mr. Mack was arrested, he was
12 explained that he was arrested because he didn't
13 have powers -- did not extend to any other
14 adjoining property?

15 A Again, Parish wrote the report. And when she is
16 meaning -- I guess -- and I am going to have to
17 estimate what she meant by that is --

18 Q Not -- I'm asking you what it says.

19 A -- to include the roadway.

20 Q Well, I am not asking you that.

21 MR. LOURIE: And I object to the -- he is
22 testifying to what she thought. I didn't ask him
23 that. I said what it says.

24 THE COURT: All right, sir, please answer the
25 question.

1 A Okay. It does not extend to any other adjoining
2 property.

3 Q Okay. And it doesn't say anything about not
4 extending to the roadway, does it?

5 A No.

6 MR. LOURIE: All right. For ID.
7 (WHEREUPON, Plaintiff's Exhibit No. 3
8 was marked for identification only.)

9 BY MR. LOURIE:

10 Q I'm showing you --

11 MR. GARFIELD: Your Honor, I would also object
12 to this too. I think what Mr. Lourie has is
13 purportedly a written statement by Corporal Gore.
14 It was provided after these events in which he is
15 going to question him about it.

16 I think that is going back to what Your Honor
17 was suggesting is improper impeachment. If he
18 states something that is inconsistent with a
19 previous sworn statement under oath, maybe then he
20 can go impeach him proper impeachment, but just to
21 go take all these as ID purposes and ask him
22 questions --

23 MR. LOURIE: I was getting ready to ask him a
24 question about something he just testified in this
25 courtroom and I'm allowed to.

1 MR. GARFIELD: Okay. Well, then if he is
2 going to be laying a foundation for proper
3 impeachment, then I don't have an objection to it,
4 but he just said for ID purposes and he has it --

5 THE COURT: Well, let's let him ask the
6 question first.

7 MR. LOURIE: Right, but I am not going to
8 introduce the statement unless you want it
9 introduced.

10 THE COURT: Go ahead and ask the question.

11 BY MR. LOURIE:

12 Q You've testified here today that you saw my client
13 tackle Williamson, correct?

14 A Yes.

15 Q And this is a statement, correct, that you gave
16 back on January 2nd, 2009, regarding these events,
17 correct?

18 A It appears to look like the statement.

19 Q Okay. I want to make sure.

20 A Yes.

21 Q Has it been altered or changed in any way?

22 A Enlarged.

23 Q Okay. Besides that, the substance of it?

24 A Give me -- I'll have to read it.

25 Q Okay. I just want to make sure. Just let me know,

1 because if it has I need to know.

2 (Pause.)

3 A Yes, that is the statement.

4 Q Okay. And you would agree with me there is nothing
5 in the statement where you said that my client
6 tackled the suspect?

7 A Using that exact word, no.

8 Q Okay.

9 A I tried to explain a little more in depth when I
10 said that the guy ended up on the ground face-down.

11 Q The very first page?

12 A Yes.

13 Q But you didn't say he was tackled, did you?

14 A I didn't use the exact word tackled.

15 Q In fact, the first time you used the word tackled
16 was in the deposition of this case, isn't that
17 correct? In your deposition?

18 A Yes.

19 Q And that was some two and a half years after this
20 incident?

21 A I don't know the exact date.

22 Q Okay. Does August 17th, 2011, sound familiar?

23 A If that was the date. I don't --

24 MR. LOURIE: Well, Judge, at this point I
25 would like to open it up.

1 MR. GARFIELD: I am just trying to understand
2 what the question on the table is that he is trying
3 to impeach him with. The date of the deposition?

4 THE COURT: Hand him the deposition so he can
5 answer the question. I think you can answer the
6 question.

7 BY MR. LOURIE:

8 Q Go ahead. Does that appear to be your deposition?
9 And I'll show you -- if I can -- it should say on
10 the front whose deposition it is.

11 A Okay. According to this book it is August 17th,
12 2011.

13 Q Okay. And you would agree with me that was the
14 first time the word tackle was used, correct?

15 MR. GARFIELD: Your Honor, he is asking --

16 THE COURT: Overruled. Go ahead and answer.

17 A That exact word, tackled, in the deposition was the
18 first time. I tried to break it down in the
19 statement a little bit better.

20 MR. LOURIE: Let me get this marked for ID.

21 (WHEREUPON, Plaintiff's Exhibit No. 4
22 was marked for identification only.)

23 Q Showing you Plaintiff's Exhibit 4, what does that
24 appear to be?

25 A An arrest report for Demetrius Alonzo Mack for

1 simple assault.

2 Q And does that say it is a booking report?

3 A Yes. This is what you use to put somebody in jail
4 with.

5 Q Okay.

6 A Or one of the forms.

7 Q All right. And you would agree with me that this
8 report has a spot where the location of the arrest
9 is supposed to be entered into?

10 A It is -- that can be based on proximity.

11 Q I'm asking -- just answer my question. My question
12 was, does it have a space where you can put the
13 location of the arrest? Yes or no? Does it?

14 A It is -- Your Honor, it is not a yes or no answer.

15 THE COURT: It has to be a yes or no. Answer
16 it yes or no, and then you can explain.

17 A Yes, it does have a box there.

18 Q And if you need to explain, that is --

19 A The -- if we are two blocks down from 8605 Two
20 Notch and the address is not posted anywhere near
21 where we are, we are going to use 8605 Two Notch,
22 which is, for example, the location for Club
23 Essence.

24 If we're directly in front of 109 Weir Avenue,
25 even though we're not on that property, we are

1 going to use that numbered address for our
2 records-keeping so they have a physical address to
3 associate it with.

4 Q And 109 is the adjoining property?

5 A Yes, that would -- where we are closest to.

6 Q Okay. And, again, the incident report explains
7 that he was arrested because he made an arrest on
8 the adjoining property, correct? That is what the
9 incident report says?

10 A The incident -- I'm not --

11 Q Doesn't it say, Mack was explained that he only has
12 arrest powers on the property of which he is
13 employed and does not extend to any other adjoining
14 property?

15 A Well, the reason he was arrested was because he
16 chased the guy into the road and tackled him. Or,
17 excuse me, got on top of him inside -- on the road.
18 And as a result of that caused significant injury
19 to him where he had to be transported by an
20 ambulance.

21 Q But my question is, that is not what the report
22 says the reason he was arrested? The report says,
23 he was explained that the -- he only has arrest
24 powers of the property on which he is employed and
25 does not extend to any other adjoining property,

1 isn't that correct?

2 MR. GARFIELD: Objection, Your Honor. He's
3 impeaching him with the report. It is improper
4 impeachment. Improper question.

5 THE COURT: All right. Sustained. Please
6 refrain.

7 MR. LOURIE: Okay.

8 BY MR. LOURIE:

9 Q The report doesn't indicate anything about you
10 seeing him tackle my client, does it?

11 MR. GARFIELD: Objection. Asked --

12 MR. LOURIE: He has read --

13 MR. GARFIELD: Go ahead.

14 MR. LOURIE: If he is familiar with the
15 report, it doesn't have to be a report he has
16 filled out. I mean, if he is familiar with it and
17 seen it and looked at it. And I know, you know, he
18 has.

19 MR. GARFIELD: I just want to put my ground,
20 Your Honor, asked and answered.

21 THE COURT: All right. Yes, what is it?

22 MR. GARFIELD: Asked and answered, Your Honor,
23 about three or four times.

24 THE COURT: All right.

25 MR. LOURIE: I'll move it on, Judge.

1 THE COURT: All right, yes, sir.

2 BY MR. LOURIE:

3 Q Do you remember my client trying to explain to you
4 that the property located at 109 Weir Avenue was
5 under his jurisdiction?

6 A Yes, I do.

7 Q And he actually asked you if you would speak to his
8 boss from the security company, didn't he?

9 A Yes.

10 Q And you refused to do that?

11 A Can I elaborate on that a little bit?

12 Q Yes, sure.

13 A If the incident would have occurred at 109 Weir
14 Avenue, I would have spoke to any boss that he
15 wanted me to. But I knew for a fact that he had no
16 jurisdiction in that roadway being a private
17 security guard.

18 Q All right.

19 A And that is where this incident occurred.

20 Q All right. Now, it was dark that night, correct?

21 A Yes.

22 Q You were dealing with narcotics violations at least
23 a couple of hundred feet away, correct?

24 A Yes.

25 Q There are cars lined up on both sides of the road,

1 correct?

2 A Yes.

3 Q Did you ever investigate as to why my client was
4 chasing the individual?

5 A Yes.

6 Q And what did you -- how did you determine that?

7 A I spoke with Mr. Mack and he told me that the
8 subject was on the property and wouldn't leave.

9 Q Did he also tell that you he had been on it
10 multiple times and asked to leave?

11 A Yes.

12 Q Did he tell you that the suspect threw up gang
13 signs indicating he was going to shoot the club up?

14 A I don't recall that.

15 Q But you don't have any reason to doubt that?

16 A No. Again, I asked Mr. Mack if he wanted to press
17 charges against Mr. Williamson.

18 Q And what did he tell you?

19 A No.

20 Q And, in fact, isn't it true that you didn't have to
21 take Mr. Mack to jail that night? You could have
22 just issued him a summons, couldn't you have?

23 A That's an option. I could have. And I gave -- I
24 gave Mr. Williamson the option if he wanted to
25 press charges. And he told me yes. And that was

1 the only reason I took him.

2 Q Right. But just because he wants to press charges
3 doesn't necessarily mean you have to take him to
4 jail. You can press charges without taking someone
5 to jail, can't you?

6 A You do have the option of a courtesy summons.

7 Q And don't you have the option also of discussing
8 the facts of the case with an Assistant Solicitor
9 to determine if it is a proper arrest?

10 A You can.

11 Q And you have the option to discuss it with your
12 supervisors to determine if the arrest should be
13 made at a later date?

14 A That was -- again, that crime was freshly
15 committed. I saw it happen.

16 Q But my question is, you don't -- just because you
17 see it happen, you could have issued him a summons,
18 correct?

19 A He would have still been arrested at that point.

20 Q He wouldn't have spent a night in jail, correct?

21 A He might not have spent the night in jail, but he
22 still would have been arrested at that point.

23 Q Now, the suspect had been drinking, correct?

24 A Yes.

25 Q And the first time you asked him the question as to

1 whether he wanted to press charges, he himself was
2 sort of confused and shocked, wasn't he?

3 A He was hesitant to answer.

4 Q Are you aware that in South Carolina there is a
5 citizens arrest law?

6 A I am not. I do know you have the right to protect
7 your own personal property, though.

8 Q And I think you testified in your deposition, if
9 Mr. Mack was off the property, he would have been
10 acting as a individual citizen, is that correct?

11 A Yes.

12 Q Were you not aware in South Carolina there is a
13 citizens arrest statute that indicates if someone
14 threatens to commit a felony at night that a
15 citizen can arrest them?

16 A Not -- not that I'm aware of. Again, I do know
17 that there is one that you can protect your own
18 personal property, but as far as protecting
19 somebody else's, I'm not aware of that.

20 Q And you would agree with me, threatening to shoot
21 up a night club would be a felony?

22 A Yes. Or the actual shooting of the club would be a
23 felony.

24 Q Right, the actual shooting. And your deposition
25 asked you if you had to do this all over again

1 would you do the same thing. Do you remember what
2 your answer was?

3 A Probably not. It was very time-consuming.

4 Q Time-consuming for you. And that is the reason you
5 would not do it all over again?

6 A You asked me for my opinion.

7 Q I asked you if you would do it all over again.

8 A Well, I would have to, because the victim would
9 want to press charges, and I would -- if presented
10 with the same facts again, I would do it all over
11 again. But my personal opinion to do it all over
12 again? No, I wouldn't do it.

13 Q Because it is time-consuming to you?

14 A Yes.

15 Q Did you ever consider about the amount of time that
16 my client stayed in jail over this?

17 A No.

18 Q Did you ever consider about the amount of time that
19 he didn't have a job because of this?

20 A No.

21 Q Did you ever consider about the amount of time that
22 he had trouble providing for his family because of
23 this?

24 A No.

25 Q You would agree that it has been more than

1 time-consuming for him as well?

2 A Is that a yes or no answer, Your Honor?

3 Q Yes.

4 A Yes, I would agree that it has been very
5 time-consuming for him also.

6 Q During your deposition I asked you if a deputy had
7 done a similarly situated thing as Mr. Mack had
8 done, should the deputy be charged with simple
9 assault.

10 MR. GARFIELD: Objection. Improper question.
11 Improper impeachment.

12 MR. LOURIE: It is a hypothetical question.
13 We offer wide latitude in impeachment. I think it
14 is very important.

15 THE COURT: What is the objection?

16 MR. GARFIELD: He is -- Mr. Lourie is either
17 intentionally or inadvertently asking a question
18 and answer -- a quiz on his deposition. He starts
19 a question saying, in your deposition you said such
20 and such. If there is a question on the table that
21 he has already been committed to an answer and he
22 is going to impeach him on a prior inconsistent
23 statement, such as the deposition, he needs to go
24 ahead and nail down the question first, and then
25 impeach him and tell us line by line and tell Your

1 Honor line by line where he is questioning from.

2 But just to say abstract, didn't you -- in
3 your deposition did you say this. Well, that is a
4 quiz on what he testified to.

5 MR. LOURIE: If he can remember it, I don't
6 have to impeach him on it.

7 THE COURT: Well, I think what you need to do
8 is ask him a question and if he says something
9 contrary to what he said in the deposition, then
10 you --

11 MR. LOURIE: I understand.

12 THE COURT: -- take the deposition and impeach
13 him on it.

14 MR. GARFIELD: Thank you, Your Honor.

15 THE COURT: Objection sustained.

16 MR. LOURIE: I understand.

17 BY MR. LOURIE:

18 Q If a deputy was presented with the same situation
19 that Mr. Mack was that evening, the same scenario,
20 do you believe a deputy should also be charged with
21 simple assault?

22 A No.

23 Q So if you chased a suspect into Charleston County
24 via a vehicle and you handcuffed that person, and
25 during the chase they were injured, it is your

1 testimony that that deputy or you should not be
2 charged with simple assault?

3 A You are changing what I said. You just threw in
4 the fact of Charleston County.

5 Q Right. Well, let's assume. I will give you a
6 different hypothetical. I wasn't trying to --

7 A Well, and I'll answer your question.

8 Q Right.

9 A If I am a Richland County deputy and go into
10 Charleston County and cause injury, and I'm not a
11 member of the specialized task force, such as the
12 DEA, the federal marshals, I am just a regular
13 deputy, no other affiliation with any type of
14 federal agency that would give me jurisdiction, I
15 would then expect to be charged for simple assault
16 because Charleston County does not touch Richland
17 County. And I can chase, depending on the reason
18 for the chase or the law that was broken, into a
19 county that touches Richland County all the way to
20 the next county line.

21 Q If you would turn to Page 40 of your deposition,
22 Line 3.

23 Question: So would you agree with me
24 that if I was able to determine that a
25 deputy such as you had gone over to

1 non-adjacent counties, make an arrest,
2 hurt somebody while making arrest, that
3 they should be charged with simple
4 assault?

5 Answer, Line 10: I would not agree with
6 you.

7 A I don't believe that is the way you presented this
8 question, though. You said if. Not that if I
9 would agree with you. If somebody had -- if a
10 deputy such as me had gone into Charleston County
11 and made an arrest.

12 Q And that is what the question says. To a
13 non-adjacent county, made an arrest and hurt
14 somebody while making an arrest, should they be
15 charged with simple assault?

16 Answer: I wouldn't agree with you.

17 You testified to that in your deposition,
18 didn't you?

19 A Yes.

20 Q Today you testified to something different?

21 A What did I testify to differently?

22 Q That they should be arrested, correct? I'll just
23 move on.

24 A I'd like to answer your question.

25 Q Okay.

1 A If you'll turn back to Page 38 of that deposition.

2 Q Right.

3 A Line 10, where you said:

4 All right, let me ask you this question.

5 If you go in high pursuit of someone in
6 Charleston County, non-adjacent to here,
7 Charleston County?

8 My answer was: We can't.

9 Q Right.

10 A And you said:

11 Okay, just listen. If you arrest that
12 person, handcuffed him, do you believe
13 that you can be charged with simple
14 assault?

15 My answer was: If I were to cause
16 injury to them.

17 Q And you said yes at that point?

18 A Yes.

19 Q Okay. And you said yes today, but on Page 40 you
20 said no? So you have given different answers?

21 A You asked me if I would agree with you on Page 40.

22 Q Right.

23 A You said if, which would be the question that you
24 asked on Page 38.

25 Q Right.

1 A Which is my same answer.

2 Q Right. Okay. Did you see any abrasions on Officer
3 Mack?

4 A On Officer Mack? No, I did not.

5 Q Did you see any cuts on Officer Mack?

6 A I did not.

7 Q Did you see his clothes torn in any way?

8 A I did not.

9 MR. LOURIE: Beg the Court's indulgence.

10 (Pause.)

11 MR. LOURIE: That's all I have, Your Honor.

12 THE COURT: Yes, sir?

13 MR. GARFIELD: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. GARFIELD:

16 Q Good afternoon, Corporal Gore. How are you?

17 A Doing well, thank you.

18 Q Would you like a drink of water?

19 A No, thanks.

20 Q I'd like to back up a little bit and talk about
21 your background if I could. Where are you from
22 originally?

23 A Charleston, South Carolina. I was born there.

24 Q And you went to high school here in Columbia?

25 A I did.

1 Q Where did you go to high school?

2 A Spring Valley High School.

3 Q And did you graduate?

4 A I did.

5 Q What year was this?

6 A 1993.

7 Q And had you been a law enforcement officer the
8 entire time since 1993?

9 A No.

10 Q Had you had an occasion to work with the Richland
11 County School District?

12 A I did.

13 Q Richland County School District 2?

14 A Yes.

15 Q And what did you do for the Richland County School
16 District 2?

17 A I was a school bus driver.

18 Q And after you completed a stint being a school bus
19 driver -- how long did you do that, by the way?

20 A It is approximately two, three years. I'm not
21 exactly sure on that.

22 Q Did you have the opportunity or did you have the
23 occasion to work for a business or a corporation
24 called Burns International Security?

25 A I did.

1 Q What is that?

2 A Burns International Security is a private security
3 company that provides on-site security to places
4 that hire them.

5 Q And what was your title and role working for Burns
6 International?

7 A I was a security guard.

8 Q A security officer, in other words?

9 A Yes. Same.

10 Q Would you have considered yourself, or back then,
11 to be a SLED certified security officer or security
12 guard?

13 A I was SLED certified to do that job.

14 Q And in order to become SLED certified, you had to
15 go through the application process for the State
16 Law Enforcement Division?

17 A I did.

18 Q And did you -- were you -- did you apply with SLED
19 before becoming a security guard for Burns
20 International?

21 A You have to be approved by SLED in order to obtain
22 that position.

23 Q And you successfully were able to do that?

24 A Yes, sir.

25 Q Before coming on board. And could you tell the

1 Court what type of security details you were
2 assigned to during this time?

3 A I worked at various details, one of them being at
4 Kennecott Ridgeway Gold Mine; hotels and motels
5 along Two Notch Road; and various businesses that
6 would hire private security guards.

7 Q I also understand you worked at Wal-Mart for some
8 time?

9 A Yes. I watched their plants for a couple of weeks.

10 Q As a security officer?

11 A Yes, it was -- yes.

12 Q Did anybody steal their plants?

13 A No.

14 Q And after you worked security details as a SLED
15 certified security officer, did you have an
16 occasion to work as a dispatcher with 9-1-1?

17 A I did.

18 Q And how long was that?

19 A From 1996 until 2000, 2001, somewhere in that area.

20 Q So as a 9-1-1 dispatcher, it was -- would you agree
21 with me that it was routine for you to receive all
22 sorts of calls?

23 A Yes.

24 Q For misdemeanors, felonies?

25 A Emergencies.

1 Q Emergencies?

2 A Yes. All sorts.

3 Q I understand that not only being a security guard
4 or security officer, being a school bus driver,
5 9-1-1 dispatcher, you were also a first responder,
6 is that correct?

7 A Yes.

8 Q When were you first employed or when did you first
9 become a first responder? In your best estimate is
10 fine.

11 A I was a volunteer firefighter, and that was part of
12 the curriculum for it. Best guess, 1994. And then
13 it expired in 2004 or 5.

14 Q So for ten years or more you had engaged routinely
15 in being a first responder?

16 A Yes.

17 Q Could you tell me what -- or tell the Court
18 generally what a first responder -- what the job
19 entails, what are some of the things you do in
20 being a first responder.

21 A First responders are initially the first people to
22 arrive on the scene, emergency. We provide basic
23 life support, sometimes lifesaving remedies. For
24 example, if you are going into cardiac arrest and
25 there was no ambulance on the scene, we are trained

1 to provide CPR. We're also trained with automated
2 external defibrillators so we can provide you some
3 basic care until a more advanced person can come
4 along and provide more advanced care.

5 Q In being a first responder, including with some of
6 the experience or practical or hands-on experience
7 that you may have had, would you have come upon, as
8 a first responder, a scene for say someone who is a
9 victim of an assault?

10 A Yes. I have many times.

11 Q Could you estimate in your best estimate how many
12 times you would have come up to the scene where
13 someone was complaining of freshly committed
14 injuries, for instance?

15 A Every time I responded if they were conscious.

16 Q Okay. And victims of an assault, would it be
17 unusual for them to have physical manifestations of
18 injury requiring further medical treatment?

19 A No.

20 Q Okay. Tell me about victims of an assault. For
21 instance, if they had lacerations or abrasions or
22 bleeding, and that sort of thing, what would you do
23 as a first responder?

24 A As a first responder, you can control their
25 bleeding. If it was bad enough, you would notify

1 more advanced people, such as an ambulance crew.
2 You could refer them to a hospital if they wanted
3 to go by themselves.

4 Q While you were being a first responder, I
5 understand you also worked for the Columbia Fire
6 Department?

7 A I did.

8 Q And what did you do for CFD?

9 A I was a hydrant technician, fire flow technician.

10 Q Did you also work as a first responder during that
11 time?

12 A I was certified as a first responder at that time.

13 Q Did you continue being a volunteer firefighter
14 during that time?

15 A For part of it, yes.

16 Q I understand you were also a reserve deputy with
17 the Richland County Sheriff's Department?

18 A I was.

19 Q Okay. Is that before going to the Criminal Justice
20 Academy?

21 A It was. For what I am now, it was before my Class
22 I certification.

23 Q Okay. And when did you graduate from the South
24 Carolina Criminal Justice Academy?

25 A In February of 2005.

1 Q And upon graduation you became a certified Class I
2 law enforcement officer?

3 A Yes.

4 Q And presently what is your rank?

5 A I'm a --

6 Q With the Richland Sheriff's Department?

7 A My rank is a senior corporal. My classification is
8 assistant shift manager.

9 Q Back in December of 2008, what was your rank and
10 your assigned duties?

11 A I was a corporal then. And my duties were, you
12 know, to respond to calls, help the guys out if
13 they needed it, pass out information during
14 briefings. Just to make sure that they got all the
15 information they needed.

16 Q Understanding your rank structure in December of
17 2008 as a corporal, did that also entail you being
18 a supervisor?

19 A Yes.

20 Q How many people would have been considered working
21 under you at a given shift, for instance, back on
22 December 6, 2008?

23 A I really couldn't tell you the number because I
24 don't remember that far back.

25 Q Okay. And that is fair enough. Would it be

1 typical for, say, you have other deputies on the
2 shift that would be working under you, for you
3 being in a supervisory role?

4 A Absolutely.

5 Q Now, you were working -- let's bring you to
6 December 6 of 2008, the date giving rise to this
7 particular action.

8 A Okay.

9 Q What region were you working in?

10 A Region 2, which is Dentsville.

11 Q The Dentsville area of Richland County?

12 A Yes.

13 Q Could you just briefly, briefly describe what
14 Region 2 is geographically?

15 A The geographics have changed now. When I worked
16 it, it went from West Beltline Boulevard all the
17 way out Two Notch to Clemson Road, and everything
18 in between Percival and Farrow, that whole
19 corridor.

20 Q And on this particular evening, early morning
21 hours, I understand you were working the third
22 shift or the night shift?

23 A Yes.

24 Q And that is 7:00 p.m. to 7:00 a.m.?

25 A Yes.

1 Q Now, you were asked questions by Mr. Lourie about
2 Weir Drive in this particular case. Were you
3 familiar with Weir Drive or Weir Avenue?

4 A I am.

5 Q Were you back in December of 2008 familiar with
6 that area?

7 A Yes.

8 Q Could you just describe your familiarity with the
9 area, how you would have had an occasion to notice
10 the immediate vicinity?

11 A We routinely patrol it due to the number of
12 complaints, incidents that have happened out there:
13 Shootings, drug complaints, vehicles being broken
14 into, fights. It was a problem area.

15 Q Some of these -- it is a problem area.

16 MR. GARFIELD: May we approach, Your Honor?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was
19 held.)

20 THE COURT: All right, anyone that is listed
21 as a potential witness that will be testifying will
22 need to leave the courtroom.

23 (Witnesses exit courtroom.)

24 BY MR. GARFIELD:

25 Q Now, Corporal Gore, you talked about your

1 familiarity with this area. And I think you have
2 testified already that there had been instances of
3 complaints?

4 A Yes.

5 Q Would this include complaints from business owners?

6 A Oh, absolutely.

7 Q Would this be complaints from residents as well?

8 MR. LOURIE: Judge, I am going to object to
9 leading. The rule allows me if I'm calling him as
10 a hostile witness to lead, but the rule does not
11 say that when his own counsel puts him on the stand
12 that he can lead.

13 And I sat here and allowed it to go on for
14 some of the preliminary matters, but in essence
15 Mr. Garfield has testified pretty good thus far. I
16 am going to have to object to leading questions.

17 He can ask him what were the complaints, but
18 he is, you know, every single time he is leading
19 him to the answer.

20 MR. GARFIELD: I am leading, Your Honor. And
21 it is cross-examination. It is his witness that he
22 decided tactically to put up.

23 THE COURT: But I think under the rules you --

24 MR. LOURIE: And, Judge, I put him up as a --
25 it is almost like a cross-examination hostile

1 witness. It just makes common sense that when you
2 have your own witness up there the Court doesn't
3 want you to put the testimony on the record, and
4 that is what is happening.

5 THE COURT: Are you going to recall him? This
6 is -- because usually I will give you latitude to
7 ask him questions -- probably you are going to ask
8 questions in response to these questions. But
9 unless you are going to put him up. If you are
10 going to go ahead and ask the questions on direct,
11 then we probably need to --

12 MR. GARFIELD: I'm really not sure where we
13 will be going with this, Judge, and I would -- I
14 don't really know how to answer that, but I would
15 just state what Mr. Lourie stated as far as
16 Rule 611(c), and it states, and I just read:

17 When a party calls a hostile witness, an
18 adverse party or a witness identified
19 with an adverse party, interrogation may
20 be by leading questions.

21 And so that is all I'm doing under
22 cross-examination. Even if he is calling as a
23 hostile witness, under Rule 611(c) I am asking him
24 questions that may include leading questions.

25 MR. LOURIE: I think the way I was reading

1 that rule -- and I don't have it in front of me --
2 was that I may do it as leading questions.

3 MR. GARFIELD: That may be true, Your Honor.

4 THE COURT: I think that is the way it reads.
5 But I think the rule is that you -- because if not
6 you are going to have to stay within his -- if you
7 wanted to cross-examine him you would have to ask
8 questions I guess within the realm of his questions
9 that he asked, or if you would like to ask him
10 questions on direct. I can give you latitude to do
11 that because he would be your witness. I think
12 that is the way the rule --

13 MR. GARFIELD: Yes, ma'am. And I don't have a
14 problem at all with asking direct questions now and
15 just see how it goes for later on.

16 THE COURT: All right.

17 MR. GARFIELD: Okay, thank you.

18 BY MR. GARFIELD:

19 Q Could you describe when you say the -- testify the
20 business owners --

21 A Yes.

22 Q -- and nearby residents --

23 A Yes.

24 Q -- making complaints?

25 A (Nods affirmatively.)

1 Q Could you just describe these?

2 A Describe the complaints?

3 Q The nature of the complaints, yes.

4 A The complaints range from parking, drugs, fights in
5 the road, trash, bullet holes being in their
6 businesses and houses, roofs, cars getting broken
7 into. There is a number of complaints for this
8 business.

9 Q Okay. I'm going to bring you to 2:50 in the
10 morning, or sometime between 2:00 and 3:00 o'clock
11 in the morning on December 6 of 2008. Where were
12 you patrolling at that time?

13 A I was on -- in Region 2 in Dentsville on Weir
14 Avenue.

15 Q And who, if anybody, were you with or accompanied
16 with?

17 A I was with Deputy Proffitt. We were making a -- at
18 that particular time, making a narcotics arrest on
19 Weir Avenue.

20 Q And what block of Weir Avenue is this?

21 A The 100 block of Weir Avenue.

22 Q Was there a nearby club sometime -- somewhere on
23 that street?

24 A Yes, Club Essence, approximately 40 yards down from
25 where we were.

1 Q And you said that already that you observed some
2 sort of commotion stemming from Club Essence?

3 A While we were making the arrest for the narcotics,
4 I observed one subject running out of the parking
5 lot, another subject chasing them into the road.

6 Q Okay. Let's talk about that. The first subject
7 running -- you said one subject chasing another
8 subject?

9 A Yes. One subject was running out of the parking
10 lot into the road, with another subject chasing
11 them out of the parking lot into the road.

12 Q The individual chasing the other subject, do we now
13 know who this individual is?

14 A We do now. When I saw him, I didn't.

15 Q Okay. Did you recognize him?

16 A No, I just saw two people.

17 Q Okay. This was -- what was his gender? What was
18 the gender?

19 A I could tell they were males.

20 Q Could you tell if they were Caucasian,
21 African-American?

22 A No.

23 Q Okay. He is chasing the other person. Could you
24 notice anything about the other person? Could you
25 describe them?

1 A He was running, and he was slender, trying to get
2 away from him, run out into the road.

3 Q Okay. He was being chased by the other individual
4 from what you said, and you said you were about how
5 far from the scene?

6 A I was about 40 yards away.

7 Q Okay. There was -- you went back and forth a
8 little bit with Mr. Lourie trying to understand the
9 nature of the actual contact between the two
10 people. Just in your own words, just I'd like for
11 you to say what you saw.

12 A I saw one guy running out of the parking lot with
13 another guy chasing him. The second guy caught up
14 to him, tackled him in the road by the waste and
15 landed in the road in front of a car.

16 And then after that I could see what appeared
17 to be motions of somebody being handcuffed. I
18 actually didn't see the metal bracelets go on, but
19 I know the motions associated with placing somebody
20 in handcuffs.

21 Q Okay. What, if anything, did you do at this point?

22 A I told Deputy Proffitt to call for back-up units
23 because I didn't know what was going on over there.
24 And I stood by with the narcotics case.

25 Q Now, this may be a good point to ask you this. I'm

1 going to show you a picture. Can you identify what
2 we see in this picture?

3 A That is me standing over the spot where the tackle
4 occurred.

5 Q Okay. Which street are you standing on?

6 A On Weir Drive.

7 Q Okay. Now, the picture you see, is this -- what
8 time is this, daylight hours or evening hours?

9 A Yes, this is daylight hours. Probably 3:30,
10 4:00 o'clock.

11 Q Okay. Certainly what you saw on this particular --
12 in this incident, it was not during daylight hours,
13 correct?

14 A No.

15 Q But the picture itself, the significance of where
16 you are standing, to be very clear, is you are
17 standing on the exact spot of what now?

18 A Of where the initial tackle was made.

19 MR. GARFIELD: Your Honor, I'd like to go
20 ahead and move and to ask that that be introduced
21 as an exhibit.

22 MR. LOURIE: I don't have any objection.

23 THE COURT: Okay, that will be entered as
24 Defense Exhibit 1.

25

1 (WHEREUPON, Defendant's Exhibit No. 1
2 was marked for identification and
3 received into evidence.)

4 BY MR. GARFIELD:

5 Q Now, while Deputy Proffitt was calling for back-up
6 units and you were dealing with their narcotics
7 violators, did any other deputies have the
8 occasion to respond at that time?

9 A Master Deputy Parish responded at that point.

10 Q And what was your position as far as range in
11 relation to Deputy Parish?

12 A I was her senior. I was a corporal.

13 Q And when she responded, she responded on foot or in
14 a car or --

15 A In a patrol car.

16 Q Patrol car. And describe the nature of her
17 response as far as --

18 A Due to the -- where we were, the nature of the club
19 and the endless problems that we have there, when
20 another officer calls for help, even if it is just
21 a simple, send me another car, we run emergency
22 because it could go really bad really fast.

23 Q And she had her emergency equipment engaged?

24 A Yes.

25 Q And at the time she responded, were you -- what was

1 the situation with the apprehension of the drug
2 detainees?

3 A They were either in or being placed in handcuffs.

4 Q And did you have an occasion to walk down to the
5 location of where the assault occurred?

6 A I did.

7 Q Okay. And what happened at that point? Did you
8 have an occasion to speak with Mr. Mack?

9 A Yes. I asked -- I did.

10 Q Okay. Did you speak to him in connection with the,
11 lack of better word, investigation you were doing
12 at this point?

13 A I did. I asked him what was going on and why, once
14 I found out he was a security officer, why did he
15 chase him off the property. And --

16 Q And what, if anything, was indicated to you?

17 A He told me that he -- the subject wouldn't leave
18 the property. He had been told to leave several
19 times.

20 And I said -- and I asked him -- I informed
21 him, I said, you do know that once he is off your
22 property you don't have a reason to pursue him. I
23 said, because he is gone. He is only -- he only
24 has powers on the property in which he is paid to
25 protect.

1 And he just kind of looked at me.

2 Q Okay. Once -- scratch that. Besides just looking
3 at you, did he indicate anything else to you at
4 this time? Did he mention anything about trespass
5 notice?

6 A He had mentioned the -- when I asked him if he
7 wanted to arrest him, I believe he said, no, that
8 he only wanted to place him on trespass notice,
9 because I actually saw the first guy that was
10 running off the property on the property, and if he
11 told him he wouldn't leave, I was going to arrest
12 him for refusal to leave upon request. So I had
13 two separate offenses that I observed clearly and
14 freshly.

15 Q Okay. And did you -- and I think you testified
16 already, did you already ask Mr. Mack if he wanted
17 to press charges for any reason?

18 A Yes.

19 Q And what, if anything, did he indicate?

20 A He told me no.

21 Q All right. And you -- I think you have already
22 testified to explaining to Mr. Mack sort of the
23 parameters or just generally the security officer
24 requirements?

25 A Yes.

1 Q Was this a law or statute that you were familiar
2 with at this time?

3 A Yeah. It was --

4 Q And I'm not asking you to quote numbers or
5 statutes. Is this just something you were familiar
6 with at this particular time?

7 A From my previous experience being a security
8 officer, I was -- we were taught that.

9 Q And were you able -- did you have an occasion to
10 explain to him the extent of the arrest powers of
11 the security officer?

12 A At the time of -- when we were arresting him, I
13 told him, even before, I said, you know, I said,
14 you shouldn't have done this. You -- once he -- I
15 told him he didn't have any arrest powers once he
16 left that property.

17 Q Okay. What is your understanding, the way you
18 explained to him that when a security officer is on
19 the property he is paid to protect, what, if
20 anything -- what authority of powers does that
21 individual have?

22 A When he is on the property in which he is paid to
23 protect, he has the same powers of arrest as a
24 deputy sheriff.

25 Q And when this individual, SLED certified security

1 guard or officer, is off the property or away from
2 the property he is paid or she is paid to protect,
3 did you have an occasion to explain that to
4 Mr. Mack?

5 A He is a civilian.

6 Q And did you tell him that?

7 A Yes.

8 Q Would this citizen, an ordinary citizen, would they
9 have any powers of arrest?

10 A Not that I'm aware of.

11 Q Did you have any understanding from anything with
12 your investigation or from talking to Mr. Mack that
13 this individual, the victim in this case, the
14 person that was tackled, had not threatened, but
15 had committed a felony?

16 A No.

17 Q Did you understand whether he had stolen anything
18 or committed any kind of larceny?

19 A No.

20 Q Do you know, as far as the security officer law, do
21 you know if there is any kind of exception, like a
22 pursuit exception such as law enforcement would
23 have?

24 A There are no exceptions to the security officer
25 law. It is very specific. And I want to say the

1 statute is 40-18-110.

2 Q Okay.

3 A And it is very specific. It says a security
4 officer only has powers on the property in which he
5 is paid to protect.

6 Q Okay. And where you are standing, in Defense
7 Exhibit Number 1, you are standing in the near or
8 at the middle of the roadway?

9 A Yes.

10 Q Okay. And is that your understanding of -- what is
11 your understanding of where you are standing? Is
12 that on any kind of private property?

13 A That is the public roadway.

14 Q Now, after speaking with Mr. Mack, did you have an
15 occasion to speak with the victim in this case?

16 A I did.

17 Q And I would present to you or represent to you that
18 this individual's name is McKenzie Williamson, is
19 that correct?

20 A Yes.

21 Q Okay. What, if anything, did you learn from
22 interacting with Mr. Williamson?

23 A I visually saw his injuries, for one. He was
24 profusely bleeding from the face, hands, had blood
25 all over his shirt. I was trying to see exactly

1 where he was bleeding from. That is why I called
2 the ambulance.

3 Q Okay. You said you called an ambulance. Did an
4 ambulance ultimately arrive?

5 A Yes.

6 Q What, if anything, did the EMS officials or
7 paramedics do to treat Mr. Williamson?

8 A The ambulance crew actually transported him to the
9 hospital due to his injuries.

10 Q And what, if anything, did Mr. Williamson indicate
11 to you as far as what his preference was as far as
12 pressing charges against Mr. Mack?

13 A He told me that he would like to. Or, yes, that he
14 wanted to. I presented him with the option and he
15 said yes.

16 Q Mr. Lourie asked you earlier about whether
17 Mr. Williamson -- that you understood whether he
18 had been drinking any alcohol that night.

19 A Yes.

20 Q Was it your understanding that he had been drinking
21 alcohol that night?

22 A Yes.

23 Q Okay. Could you describe in your best way from
24 what you gleaned on the scene his level of
25 intoxication?

1 A I didn't perform any field sobriety tests on him,
2 which I am trained to do for drivers. I could tell
3 that he has been drinking, but he was not grossly
4 intoxicated from my experience in dealing with
5 people that have been drinking.

6 Q Because he was not grossly intoxicated, did you
7 believe or have probable cause to believe that Mr.
8 Williamson had been breaking any laws?

9 A Only from what Mr. Mack told me, that he was on the
10 property and refusing to leave.

11 Q Did at any point you or any law enforcement officer
12 or any deputies at the scene ever get flagged down
13 or approached by Mr. Mack?

14 A No.

15 Q That you know of, before chasing him off the
16 property?

17 A No. Actually, I believe I told him, you should
18 have just flagged us down, because we were right
19 there and we could have caught him.

20 Q Speaking of things that Mr. Mack indicated to you
21 at the scene, did he say anything about law
22 enforcement and security guards working together?

23 A He made the statement of when I actually told him
24 that he was going to jail for simple assault, he
25 says -- he made a statement, he says, come on, man,

1 we are supposed to be on the same team here, or the
2 same side.

3 Q And did you again have an opportunity to tell
4 Mr. Mack why he was going to jail?

5 A Again, I informed him about the security guard
6 statute and only having the powers of arrest on the
7 property in which he is paid to protect, which he
8 was clearly not on.

9 MR. GARFIELD: Sorry. That's my phone. I
10 apologize.

11 Q Can you describe your own demeanor during your
12 interaction with Mr. Mack, how you presented
13 yourself to him?

14 A I actually tried to help him, teach him what he did
15 wrong. I don't know what his experience level was
16 as far as being a security guard, but the reason
17 for me telling him that is because so he wouldn't
18 make that same mistake again.

19 Q Do you believe you were trying to be kind to him?

20 A Oh, overly.

21 (Pause.)

22 THE COURT: We are going to take a break. I
23 think the witness and the court reporter need to
24 use the restroom, so we will take about a ten
25 minute break.

1 MR. GARFIELD: Thank you, Your Honor.

2 (WHEREUPON, a break was taken.)

3 MR. GARFIELD: That is all the questions I
4 have for Corporal Gore.

5 THE COURT: All right. Yes, sir, Mr. Lourie?

6 MR. LOURIE: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LOURIE:

9 Q Corporal Gore, I think you testified that the
10 suspect that my client was chasing was slender, is
11 that correct?

12 A I call him slender. Compared to me most people
13 are.

14 Q And I understand that. On the incident report, can
15 you tell the judge the description that is listed
16 of McKenzie Williamson?

17 A 5'9", 170, black male, age 22.

18 Q All right. All right. And on the booking report,
19 can you describe what the booking report lists my
20 client's description?

21 A Your client is 5'6", 210.

22 Q And how old?

23 A Thirty-eight years of age.

24 Q Back in 2008?

25 A Yes.

1 Q Okay.

2 MR. LOURIE: That's all I have.

3 THE COURT: All right. You may step down,
4 sir.

5 (Witness steps down.)

6 MR. LOURIE: Judge, I am going to call my next
7 witness out of order so he can testify today.

8 THE COURT: All right.

9 MR. LOURIE: I call Shawn Hale.

10 (Pause.)

11 MR. LOURIE: Beg the Court's indulgence. I
12 think he might have stepped away, but he is here.

13 (Pause.)

14 MR. LOURIE: He must have just gone to the
15 restroom during the break.

16 THE COURT: Okay. We'll wait.

17 MR. LOURIE: And I have already got the memo
18 introduced into evidence. I think I did it before
19 we left.

20 THE COURT: And that is Plaintiff's Number
21 what?

22 MR. LOURIE: Exhibit Number 1, was stipulated.

23 MR. GARFIELD: Well, I don't know if we
24 actually stipulated to anything, Judge, on behalf
25 of -- as an exhibit. I just didn't want Mr. Lourie

1 to -- I don't know really what he was indicating.
2 We're not agreeing that it is supposed to be an
3 exhibit. I just wanted --

4 MR. LOURIE: Without having called him, I
5 meant stipulating --

6 MR. GARFIELD: I mean, as far as the memo
7 itself. We just had our hearsay exception. He
8 said we stipulated. I didn't want --

9 MR. LOURIE: I meant without getting Solicitor
10 Johnson in here to have to identify it.

11 THE COURT: All right.

12 MR. GARFIELD: And that we agreed to, Your
13 Honor.

14 MR. LOURIE: Judge, he went to put quarters in
15 the meter and he is on a walking device, so it may
16 be about five more minutes. I apologize.

17 THE COURT: That's okay.

18 THE COURT REPORTER: Number 1, the memo, is it
19 in evidence?

20 THE COURT: It is entered with objection. He
21 said he had a hearsay objection and I overruled.

22 (WHEREUPON, Plaintiff's Exhibit No. 1
23 was admitted into evidence.)

24 (Pause.)

25 MR. LOURIE: I would call Shawn Hale. Shawn,

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

5 THE CLERK: Do you swear or affirm the
6 testimony you are about to give in this case will
7 be the truth, the whole truth, and nothing but the
8 truth, so help you God?

10 THE CLERK: Have a seat in the witness box.
11 State your name for the record. And spell it,
12 please.

15 S-H-A-W-N H-A-L-E.

17 SHAWN HALE.

19 DIRECT EXAMINATION

21 Q Mr. Hale, are you currently employed?

23 Q All right. And do you currently own your own
24 business?

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1 Q And you are employed with your own business, is
2 that correct?

3 A Yes, sir.

4 Q What is the name of your company?

5 A It is DTH Protective Service.

6 Q And what does DTH stand for?

7 A I named it after my brother, David Taheem(phonetic)
8 Hale.

9 Q And what happened to David?

10 A About six years ago he was killed at a night club
11 in Orangeburg, South Carolina, Club Dazzler's, so
12 the whole purpose of starting a security company
13 and getting the company out there and dealing with
14 clubs is to prevent things like that to happen to
15 my -- to somebody else. So we mostly are like the
16 first responder, so our main goal and our objective
17 is to prevent any accidents or shootings or
18 anything like that to happen or occur to any clubs
19 again.

20 Q And what type of different security jobs does your
21 company perform besides clubs?

22 A We do -- we had the college campus, Denmark Tech.
23 We do different high school events. We did the
24 health department in Orangeburg. Well, this
25 week -- next week we are doing the security for the

1 March of Dimes overnight security for the walkers
2 that is walking overnight for the breast cancer.
3 We do all kind of different charities and different
4 events as they come up. We adopted a family last
5 Christmas.

6 Q Okay. And what year did you start the company?

7 A 2007.

8 Q 2007?

9 A 2007. 2007.

10 Q Okay. And before you started this company, did you
11 have the opportunity to work as a security officer?

12 A Yes, sir.

13 Q All right. And when did that take place?

14 A 2003. When I was going to school at Clemson I
15 started as a security officer.

16 Q And you were trained and licensed, is that correct?

17 A Yes, sir, that's correct.

18 Q And currently are you a licensed trainer of
19 security officers?

20 A Yes, sir, licensed Level 1, 2 and 3.

21 Q What does that mean, Level 1, 2 and 3?

22 A Level 1 is teaching the unknown security and arrest
23 powers and the abilities of powers of arrest.

24 Level 2 is revolver training. And Level 3 is
25 automatic pistols.

1 Q And what type of training do you require your
2 officers to go through at DTH?

3 A We go through the minimum course of the training
4 that SLED requires, plus we do monthly training.
5 So we do the shooting training, CPR is what we
6 added to the list -- shooting, CPR, ASP baton, OC
7 Spray, and tasers.

8 Q All right. Did Demetrius Mack work for you back in
9 December of 2008?

10 A Yes, sir.

11 Q And was he employed for you back on December 6,
12 2008?

13 A Yes, sir.

14 Q And did your company back on December 6, 2008, have
15 a contract to provide security for Club Essence?

16 A Yes, sir.

17 Q Under that same contract, did your club -- I mean,
18 did your security company have a contract to
19 provide security for 109 Weir Avenue?

20 A Yes.

21 MR. LOURIE: And I am going to get this
22 marked, Your Honor.

23 THE COURT: That is?

24 MR. LOURIE: Five.

25 THE COURT: For ID?

1 MR. LOURIE: Yes. I am going to introduce it.

2 THE COURT: Well, you have got to lay the
3 foundation.

4 MR. LOURIE: Once I lay the foundation I will.

5 (WHEREUPON, Plaintiff's Exhibit No. 5
6 was marked for identification only.)

7 BY MR. LOURIE:

8 Q I am showing you Exhibit Number 5. Do you
9 recognize this?

10 A Yes, sir, the contract.

11 Q All right. And is this the contract that your
12 company had for the location at Club Essence at 109
13 Weir Avenue?

14 A Yes, sir.

15 Q And you also have for 110 and 113 Weir Avenue, is
16 that correct?

17 A That is correct, yes, sir.

18 Q And has this contract been altered or changed in
19 any way?

20 A No, sir.

21 Q And is it a true and accurate reflection of the
22 contract as it existed back in 2008?

23 A Yes, sir.

24 Q And this contract was good -- was this the contract
25 that was in existence on December 6, 2008?

1 A Yes, sir. It doesn't expire until the 31st of
2 December of 2008.

3 Q Okay.

4 MR. LOURIE: I'd like to move this as an
5 exhibit into evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. GARFIELD: No, ma'am. Thank you.

8 THE COURT: All right. That will be
9 Plaintiff's Number 5, without objection.

10 (WHEREUPON, Plaintiff's Exhibit No. 5
11 was admitted into evidence.)

12 BY MR. LOURIE:

13 Q And 109 Weir Avenue, that is the property located
14 next to the club, is that correct?

15 A That is correct, yes, sir.

16 Q Did you have the opportunity to see Mr. Mack in the
17 afternoon of December 6 of 2008?

18 A Yes, sir.

19 Q Okay. And what brought you in contact with him?

20 A I was going to pick him up from jail the next day.

21 Q And, roughly, do you remember what time it was?

22 A We got him that morning, but, you know, after they
23 do all the paperwork and everything, I would say
24 somewhere after 6:00 or maybe 5:40, somewhere
25 around that time, when they released him.

1 Q And can you describe Mr. Mack's condition for the
2 Court?

3 A His eyes was a little swollen. And the first thing
4 he told me, he just wanted to go get his medicine,
5 he never had his medicine the night before while he
6 was in jail.

7 Q And you knew that he was referring to his diabetes
8 medication?

9 MR. GARFIELD: Objection.

10 A Diabetes, yes, sir.

11 MR. GARFIELD: Objection.

12 MR. LOURIE: All right, I'll reword it.

13 THE COURT: Rephrase the question.

14 MR. LOURIE: Yes.

15 BY MR. LOURIE:

16 Q What was he referring to?

17 A He is a diabetic. He was referring to his diabetic
18 medicine.

19 Q Okay. And is that what you did?

20 A That is when we took him home to get his medicine,
21 yes, sir, his diabetic medicine.

22 Q Was Mr. Mack a good employee?

23 A Yes, sir. I haven't had any complaints or any
24 problems from him from any type or source or
25 anything.

1 Q And is this first time that you have had an officer
2 arrested for something like this in this scenario?

3 A Yes, sir.

4 MR. LOURIE: Beg the Court's indulgence.

5 (Pause.)

6 BY MR. LOURIE:

7 Q I see that you walked in today on a walker. I
8 meant to ask this to you earlier. And why are you
9 on a walker?

10 A December 3rd of last year, 2011, I was shot while
11 on duty at a local pub in Orangeburg, South
12 Carolina. I was just trying to get a guy to leave
13 the parking lot, and he decided to shoot before
14 leaving. So I got my kneecap blown off and going
15 through rehabilitation, a new kneecap, still no
16 feeling in my ankles or my feet, but I was in a
17 gunshot accident on the December 3rd.

18 Q Okay. I just wanted to explain that.

19 MR. LOURIE: That's all I have, Your Honor.

20 THE COURT: All right. Please answer any
21 questions Mr. Garfield may have.

22 CROSS-EXAMINATION

23 BY MR. GARFIELD:

24 Q Mr. Hale, I'm Robby Garfield. Good afternoon. I
25 have some questions to follow up with what

1 Mr. Lourie asked you.

2 First of all, I'm sorry what happened to you
3 as a result of that accident. That happened in
4 Orangeburg County?

5 A Orangeburg County, that's correct. Well, actually
6 in the city, but that is Orangeburg --

7 Q I understand. But in Orangeburg?

8 A Yes, sir.

9 Q Let me ask you this, Mr. Hale. Let me show you
10 Plaintiff's Exhibit Number 5. This DTH Protective
11 Services contract --

12 A Yes, sir.

13 Q The way this is presented, this is essentially
14 y'all's routine or typical contract?

15 A Yes, sir.

16 Q Okay. So when you enter into understanding with
17 businesses or entities, this would be the contract
18 that would be generally used?

19 A Yes, sir.

20 Q Okay. To get employment to where you or your
21 company would provide security guards and security
22 officers, is that right?

23 A Right.

24 Q And I notice here where it says -- if I may lean
25 in, sir -- where it says, license, DTHPS is

1 licensed to perform the agreed upon services
2 enumerated herein?

3 Did I read that correctly? Is licensed to
4 perform the agreed upon services enumerated herein?

5 A There might be a little typo. Are you talking
6 about -- where are you at, right here?

7 Q Yes, sir.

8 A Yes, that's right.

9 Q And covenants that it maintains, all valid
10 licenses, permits and registrations to perform
11 same.

12 Did I read that correctly?

13 A Yes, sir.

14 Q And you would agree with me that what essentially
15 that means is that when you assign a security
16 officer to a particular detail, you, as a company,
17 are licensed, right?

18 A Yes, sir.

19 Q And you certify to that entity that the individual
20 that you put on the detail is also licensed?

21 A That is correct.

22 Q And when we say licensed, you would agree with me
23 that licensing for a particular security officer
24 would be through the State Law Enforcement
25 Division?

1 A That is correct.

2 Q SLED certified security officers who you typically
3 hire for these details, is that right?

4 A Yes, sir.

5 Q And you understand and you would agree with me that
6 in order to become a SLED certified security guard,
7 someone has to go through the SLED application
8 process?

9 A The security officer -- guard is --

10 Q Then if the lingo is wrong, that is my fault.

11 A No problem.

12 Q I wasn't suggesting. So I will definitely say it
13 the way so we can be clear.

14 A Okay.

15 Q For somebody to become a SLED certified security
16 officer --

17 A Yes, sir.

18 Q -- they have to go through the SLED application
19 process?

20 A Yes, sir.

21 Q All right. A denial by SLED to certify someone as
22 a security officer would make it such that they
23 would not be able to, at a minimum, be employed
24 with your agency? Right?

25 A Right.

1 Q Okay. And on December 6 of 2008, you felt very
2 confident and comfortable having Mr. Mack to this
3 particular detail because he was a SLED certified
4 security officer?

5 A That is correct.

6 Q Have you -- are you a -- at any time have you ever
7 been a SLED certified security officer?

8 A Yes, sir.

9 Q Okay. And you understand that the application
10 process, SLED asks certain applications -- or
11 questions about your background, is that right?

12 A That is correct.

13 Q And they will ask you questions about your previous
14 arrest history, right?

15 A (Nods affirmatively.) Yes, sir.

16 Q Okay. They'll ask you questions about any kind of
17 driving infractions or violations you had in the
18 past, is that right?

19 A Yes. Well, they don't say anything about speeding
20 tickets because it asks you about your history and
21 it gives you four lines to put down your history.
22 They don't go into detail about whether if it is a
23 parking ticket or a speeding ticket.

24 MR. GARFIELD: I beg the Court's indulgence.

25 (Pause.)

1 MR. LOURIE: Judge, I object. I'm not exactly
2 sure whether this is relevant to what he testified
3 to.

4 THE COURT: I'm not sure what you are
5 objecting to. The document?

6 MR. LOURIE: Yes. I'm not so sure what -- why
7 he is -- what is the purpose of going down this
8 road based on his testimony.

9 MR. GARFIELD: He said that -- if you are
10 ready for me, Your Honor -- he said that he was Mr.
11 Mack's employer at the time, that he was a
12 certified security officer. He is purporting to
13 say that he assigned him in this particular detail
14 at this time.

15 Quite frankly, I'm not sure why he is even
16 offered as a witness. To the extent he is and he
17 has knowledge as far as licensure, I'm asking
18 questions about it.

19 THE COURT: Did he ask that on direct?

20 MR. GARFIELD: Well, I mean, it is
21 cross-examination. Well, I mean, it is wide open
22 cross, Your Honor, and he is tendering him as his
23 employer at the time, employee SLED certified.

24 THE COURT: And I don't know what it is that
25 you have there, so I guess --

1 MR. GARFIELD: Oh, and I didn't know what he
2 was -- what I have here --

3 THE COURT: I'm not sure what --

4 MR. GARFIELD: Yes, Your Honor. And I
5 apologize. This is an application for SLED about
6 what a potential security officer or a would-be
7 security officer would have to fill out.

8 He has already stated that -- I don't want to
9 suggest anything, but I was questioning him on this
10 document.

11 THE COURT: All right. The objection is
12 overruled. Go ahead.

13 MR. GARFIELD: Okay. This is Exhibit Number 4
14 to Mr. Mack's deposition. We are not using this
15 for ID purposes.

16 BY MR. GARFIELD:

17 Q Does this appear to you to be a typical State Law
18 Enforcement Division application to become a
19 security officer?

20 A Yes, sir.

21 Q And in here you would agree that they do ask for a
22 criminal record background?

23 A Yes, basically a criminal record background. And
24 you just state what happened, what you were
25 charged, you know, what it is, yes, sir.

1 Q Could you just read everything that is in this box
2 right here?

3 A It says, have you ever been charged or arrested for
4 any violation. So I guess any violation or any
5 charges. Then it says, yes or no.

6 Then it says, list such matters, even if not
7 formally charged or charged with, appear to be
8 found guilty of a matter. Then it says, payment.
9 So they basically want you to name --

10 Q I don't want you to -- I didn't want you to expound
11 upon it, I just wanted you to read what is in this
12 box, sir, if you don't mind.

13 A Okay. Yes, that is what it is.

14 And then it says, list any traffic -- any
15 traffic violations.

16 Q Citations?

17 A Citations. But do not include parking tickets.

18 Q Okay. Thank you. If somebody is dishonest on this
19 particular application or doesn't fully disclose,
20 you could be subject to being denied a license, is
21 that correct?

22 A If you leave anything out, then they would send you
23 back and ask you to -- what happens, if you fill
24 that out and you forget to add anything or leave
25 anything out, then SLED then will send you a letter

1 notifying you and also the company saying that you
2 need to explain such and such or what such and such
3 happened, yes, sir.

4 Q You believe that when you hired Mr. Mack and he had
5 already put an application to SLED that he was
6 honest and truthful what he put in this
7 application, is that correct?

8 A Yes, sir.

9 MR. GARFIELD: Beg the Court's indulgence.

10 (Pause.)

11 MR. GARFIELD: That's all I have. Thank you.

12 MR. LOURIE: I don't have any further
13 questions.

14 THE COURT: All right, sir, you may step down.

15 (Witness steps down.)

16 THE COURT: Any objection to this witness
17 being excused?

18 MR. LOURIE: No, Your Honor.

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MR. LOURIE: Demetrius Mack.

22 THE BAILIFF: Place your left hand on the
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Have a seat in the witness box.
6 State your name for the record, please.

7 THE WITNESS: Demetrius Alonzo Mack.

8 DEMETRIUS ALONZO MACK,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LOURIE:

12 Q Demetrius, how old are you?

13 A I'm 41 years old.

14 Q When was your date of birth?

15 A 10/26/1970.

16 Q And are you married?

17 A Yes, I am.

18 Q And who is your wife?

19 A My wife is Caroline Mack sitting behind you.

20 (Witness indicating.)

21 MR. LOURIE: For the record, pointing to his
22 wife, who is in the courtroom.

23 Q And how long have you and her been married?

24 A We have been married well over 13 years.

25 Q Do y'all have any children?

- 1 A Yes, we do.
- 2 Q How many?
- 3 A Three.
- 4 Q What ages?
- 5 A Twelve, 11 and 8.
- 6 Q And where do y'all live?
- 7 A We live in the Summit.
- 8 Q How tall are you?
- 9 A About 5'6".
- 10 Q How much do you weigh?
- 11 A About 236.
- 12 Q And back in December of 2008, specifically
- 13 December 6, 2008, how much did you weigh?
- 14 A About the same.
- 15 Q Do you have your driver's license on you today?
- 16 A Yes, sir.
- 17 Q Can you pull it out?
- 18 A Sure.
- 19 (Witness complies.)
- 20 Q All right. And for the Court, what day was this
- 21 driver's license issued?
- 22 A It was issued on January 3rd, 2006.
- 23 Q What is your weight listed on that driver's
- 24 license?
- 25 A 236 pounds.

1 Q Are you currently employed?

2 A Yes, sir.

3 Q With who?

4 A Elite Protection Agency.

5 Q And are you a security officer?

6 A Yes, sir.

7 Q And do you have a license to carry a gun as a
8 security officer?

9 A Yes, sir.

10 Q And what type of security and job does Elite
11 handle?

12 A We handle all types, from night clubs to USC,
13 banks, hotels, apartment complexes, et cetera.

14 Q All right. Now, when you applied -- when was the
15 first time you originally applied to be a security
16 officer?

17 A Back in -- it was December 2007 when I applied for
18 it, but I started working security in September
19 '07.

20 Q And were you granted your application?

21 A Yes, sir.

22 Q And how long was that license for?

23 A For one year.

24 MR. LOURIE: Let me get this marked.
25

1 (WHEREUPON, Plaintiff's Exhibit No. 6
2 was marked for identification only.)

3 Q I show you what is marked as Plaintiff's Exhibit
4 Number 6. What is this?

5 A This is my first application for a unarmed officer.

6 Q And that was done in what year?

7 A In 2007.

8 MR. GARFIELD: May I just take a moment to
9 look at that, Your Honor?

10 MR. LOURIE: Yes.

11 MR. GARFIELD: I don't want to mess up Mr.
12 Lourie's flow.

13 MR. LOURIE: Yes. I'm sorry.

14 (Pause.)

15 MR. GARFIELD: Thank you.

16 BY MR. LOURIE:

17 Q And is this a true and accurate reflection of that
18 application as you presented it back in 2007?

19 A Yes, sir.

20 Q Has it been altered or changed in any way?

21 A No, sir.

22 Q Okay.

23 MR. LOURIE: Judge, I would offer Exhibit
24 Number 6 into evidence.

25 THE COURT: Any objection?

1 MR. GARFIELD: No, Your Honor. Thank you.

2 THE COURT: All right, it will be entered
3 without objection as Plaintiff's 6.

4 (WHEREUPON, Plaintiff's Exhibit No. 6
5 was admitted into evidence.)

6 Q In Section Number 5 it asks you to list your
7 criminal record, is that correct?

8 A Yes, sir.

9 Q And did you do that?

10 A Yes, sir.

11 Q And what did you list as your criminal record at
12 that point?

13 A I listed assault and battery of a high and
14 aggravated nature charge, which was reduced to
15 simple assault, which ended up being a misdemeanor,
16 and I paid a fine.

17 And the second charge was a weapon charge,
18 what happened to be brass knuckles, and I paid a
19 fine. It was a misdemeanor.

20 Q And you have some driving under suspensions,
21 correct?

22 A Yes, sir.

23 Q Several of them?

24 A Yes, sir.

25 Q Multiple times?

1 A Yes, sir.

2 Q Did you list those?

3 A No, sir.

4 Q And why did you not?

5 A During the time when I was asking them about my
6 criminal record and so -- and how I needed to go
7 about this, next I asked them what these charges
8 that I was charged with back then, whether felony
9 charges, whether these charges will stop me from
10 getting a license. And they told me no, as long as
11 they wasn't felonies that was good.

12 I said, what about traffic. The lady at the
13 time told me, no, you don't have to worry about the
14 traffic because they were looking for felonies.
15 She said it is not necessary to put on.

16 Q When you say *they*, you are referring to SLED?

17 A Yes, the lady I spoke with from regulatory.

18 Q Were you trying to deceive anybody or lie when you
19 submitted that application without your driving
20 record?

21 A No, sir. Not at all.

22 Q In fact, did you believe that SLED would look into
23 it since they were the top law enforcement agency
24 in the state?

25 A Yes, sir.

1 Q And after that application was submitted, you
2 actually received a license, correct?

3 A Correct.

4 Q Eventually you received a license to carry a gun,
5 is that correct?

6 A That was the next following year.

7 Q Okay.

8 A Yes, sir.

9 Q All right. And that application was with what
10 company at that point?

11 A For the unarmed or the armed?

12 Q The one in your hand, Exhibit --

13 A United Event Services.

14 Q Okay. And when you were working on December 6 of
15 2008, what type of license did you have?

16 A I had an armed license and an unarmed license.

17 Q So you had received two licenses based on that
18 application?

19 A Yes.

20 Q Or another similar one?

21 A Right.

22 Q All right. Back on December 6 of 2008, who were
23 you working for?

24 A DTH Protective Services.

25 Q And on that particular evening, where were you

1 assigned to work?

2 A At Club Essence.

3 Q And where is that located?

4 A It is located off Two Notch Road.

5 Q Is that in Richland County?

6 A Yes, sir.

7 (Pause.)

8 MR. LOURIE: Okay.

9 MR. GARFIELD: Thank you.

10 MR. LOURIE: If you will mark this as an
11 exhibit.

12 (WHEREUPON, Plaintiff's Exhibit No. 7
13 was marked for identification only.)

14 MR. LOURIE: I will move this closer to him.

15 That's good. I think he can see.

16 BY MR. LOURIE:

17 Q All right. I'm showing you Exhibit Number 7. And
18 if you will for the judge show where Two Notch Road
19 is on this map.

20 THE COURT: Do you have a smaller copy?

21 MR. LOURIE: Yes, we do.

22 A Two Notch Road is located right here, Your Honor.

23 Q Okay. And where is Weir Road located?

24 A It is right here between the Floor America Company
25 and Club Essence, where it used to be, now Icon.

1 Q Okay. So where it says Icon Ultra Lounge, that was
2 Club Essence, is that correct?

3 A Correct.

4 Q Now, where is 109 Weir Avenue on here?

5 A It is right here, sir.

6 Q And that would be the property next-door, is that
7 correct?

8 A Yes, sir. This is the parking lot right here.

9 Q Okay. All right. What shift were you working that
10 evening?

11 A Third shift.

12 Q What type of club is Club Essence?

13 A It is actually a hip hop club where a lot of young
14 people come and some middle.

15 Q How would you describe it in terms of whether it is
16 a safe place, dangerous place?

17 A It is very hostile because any time you are serving
18 drinks for \$3 all night, it becomes very hostile
19 real fast.

20 Q Is it frequented by gang members?

21 A Yes.

22 Q On that particular evening, did you have a chance
23 to come in contact with McKenzie Williamson?

24 A Yes, sir.

25 Q Okay. And tell the Judge how that happened.

1 A Well, when I first observed Mr. McKenzie, he was
2 inside of the foyer of the club. He was trying to
3 get inside the club without paying his \$20 to get
4 in.

5 Q All right. And can you see that sort of on this?

6 A No, you actually can't. The only thing you can see
7 is --

8 Q What area was that located?

9 A Right up in this area right here.

10 Q Okay. Okay. All right. And that is up towards
11 the front it looks like?

12 A This is the back of the restaurant here. This
13 actually is the club right here. And this is the
14 entrance you go in here.

15 Q All right. And where was he when you first saw
16 him?

17 A I was inside standing in the foyer when he came in.

18 Q All right. And what happened?

19 A And he was trying to get in. The lady at the
20 window said, he did not pay, get him.

21 I grabbed him. I said, sir, did you pay your
22 money, did you pay to go in?

23 He said, ah -- he kept like that.

24 I said, no, you are going to have to pay your
25 money, so if you can't pay your money, you have to

1 leave.

2 So he decided to go ahead and leave.

3 Q Okay. Did you have a chance to have an opportunity
4 to deal with him again?

5 A Yes, sir, I did.

6 Q What happened?

7 A He came back on the property still trying to get in
8 for free again. So this time I escort him off the
9 premises.

10 Q And which way did you escort him off?

11 A I escorted him this direction over here, right here
12 where the restaurant is at, where the car wash is
13 at. And I stopped right here.

14 Q Okay. Did that stop your involvement with McKenzie
15 Williamson?

16 A Yes, sir, it did.

17 Q All right. What happened later on in the evening?

18 A The third time he came back around the other
19 officer that was working with me, he escorted him
20 out.

21 Q All right.

22 A This is where he got belligerent then. He start
23 throwing up the gang signs in the middle of the
24 road on Weir Avenue right about here. Right there.
25 (Witness indicating.)

1 Q All right. And did you see him on Weir Road?

2 A Yes. I was standing right there, right on the
3 outside, right beside my owner.

4 Q All right. And tell the judge what you observed
5 him do.

6 A I observed him standing out in the road doing like
7 this, bla-bla-bla, like he was going to shoot the
8 club up. That is a gang sign for saying he was
9 going to shoot your club up.

10 Q Did you hear that as a threat to shoot the club up?

11 A Yes.

12 Q What happened then?

13 A Then, I think the fourth time he came, that is when
14 he was trying to get into the bottom of the club.
15 By this time a fight had done broke out in the
16 club.

17 Q I'm sorry to keep getting you up.

18 A No problem. We had double doors right here at the
19 bottom of the club here. And this is where me and
20 other officers on this end here, when the fight
21 broke out we went to go assist the bouncers with
22 this problem.

23 By this time one of the pat-down dudes
24 indicates, he said, he is back on the property, he
25 is back on the property.

1 I had done warned him the previous time before
2 that if I caught him back on the property I was
3 going to arrest him.

4 When I went to approach him, he took off from
5 me.

6 Q He took off?

7 A Yes, ran straight through here and cut through
8 here.

9 Q All right.

10 A And as he was cutting through here, he had a good
11 jump on me. By the time I got to him, he was right
12 here between this part right here between Weir
13 Avenue and 109 Weir Avenue here between two cars.

14 A Richland County deputy, Corporal Gore, was
15 on top up here. By this time, when he realized
16 what he was running toward, he saw the police cars
17 up there, that is where he cut between the two cars
18 and he fell.

19 Q All right. And when he fell, did he fall in the
20 street or did he fall on the property at 109 Weir
21 Avenue?

22 A He fell on the property, but he fell under that
23 car. He hit his face against that car and fell
24 right under that car.

25 Q Okay.

1 A And we pulled him out from under the car.

2 Q All right. And that is when you handcuffed him?

3 A That is when the bouncers who came behind me to
4 assist me said, go ahead and put the cuffs on him.
5 And I cuffed him and pulled him out -- after they
6 pulled him out from under the car, I put the cuffs
7 on him and we held him right there until one of
8 deputies came down Weir Avenue, which was Deputy
9 Parish. And one of the guys flagged her down where
10 I held him right here.

11 Q Okay.

12 A Uh-huh.

13 Q You didn't move him after he came out from under
14 the car, did you?

15 A No.

16 Q After you put handcuffs on him?

17 A No. We were sitting right there. She came to help
18 assist us to get him up.

19 Q And the property of 109 Weir Avenue, that was under
20 your jurisdiction that night?

21 A Yes, sir.

22 Q Were you able to catch up with him and tackle him?

23 A No. He was too fast for me. I couldn't even catch
24 him when he took off. The only way I caught him
25 because he fell. Only way I could catch him.

1 Q And how old are you?

2 A I'm 41 now. I was 38 then.

3 Q And he was 22?

4 A Right.

5 Q About? And you weighed how much then?

6 A 236.

7 Q When Officer Parish came up on the scene, did she
8 accuse you of doing anything wrong?

9 A No.

10 Q Tell me what happened.

11 A When she came up on the scene, the guys had flagged
12 her down, and she asked what was going on. And I
13 explained -- well, I told her what happened.

14 And I told her, I said, we got this guy here,
15 he kept tres -- coming back on the property and I
16 want to put trespass notice on him so if he came
17 back again just go ahead and arrest him and send
18 him on his way. The only reason why I put the
19 cuffs on to detain him since he kept on coming back
20 on the property, so --

21 Q Did you let her know about his behavior in the
22 street?

23 A Yes, I let her know that he was throwing up gang
24 signs and threatening like he was going to shoot
25 the club up.

1 And when he was down, when we had him down
2 there, we already had done pat him down and we
3 didn't find no weapons on him at the time, so that
4 was good. We were thankful for that.

5 Q Then what happened?

6 A Then she went ahead and she got him up and she
7 talked to him. And then that is when Corporal Gore
8 came down.

9 Q And then what happened when Corporal Gore came
10 down?

11 A Corporal Gore came and he intervened and he
12 questioned, asked me what was going on. Then I
13 explained the situation to him.

14 And he told me, said, well -- how he said it
15 to me was that, well, you guys don't like to go to
16 court and do paperwork and stuff, and we are tired
17 of going to court behind you guys that don't want
18 to come to court.

19 And I was like, where is all this coming from?
20 Because I didn't know he was feeling like that. So
21 I was like, wait a minute. I said, I ain't got
22 nothing to do with what you feeling like. I'm just
23 letting you know what took place and this is what
24 needs to be done.

25 Q Did you tell him about his behavior on the street?

1 A Yes. I told him how he acted and everything. He
2 knew all of that.

3 So when he looked at his hands, he asked me
4 what I wanted to do. He said, do you want to press
5 charges on him or do you want go have him locked
6 up?

7 I said no, let's go ahead and just put
8 trespass notice on him so if he came back then you
9 can go ahead and come and take him.

10 So by this time here he was getting ready to
11 take the cuffs off of him, but he saw some blood on
12 his hands, so he didn't want to touch him because
13 he didn't have no gloves to put on to take the
14 cuffs off of him. So I had to went ahead and take
15 the cuffs back off for him.

16 So by this time him and Deputy Parish had a
17 little convo and they went to the side. And then
18 the next thing I know, he came back and told me
19 that I am the one that is going to be charged.

20 I said, how is that? I said, we are both
21 supposed to be on the same side. You are going to
22 charge me?

23 He said, first of all, you are out of your
24 jurisdiction, for one. And, two, when you put
25 cuffs on him, you simple assaulted him.

1 Q And were you shocked about that?

2 A Yes, very shocked. I said, how in the world am I
3 going to get a simple assault charge for putting
4 the cuffs on him when I have the right to detain
5 him? So what are you saying?

6 Q And did you detain him on the property that you had
7 jurisdiction on?

8 A Yes.

9 Q Did you try to get him to talk to someone from the
10 company?

11 A Yes.

12 Q And what happened?

13 A He didn't want to hear it. He was like, listen, I
14 don't want to talk to nobody. This is third.
15 Right now I'm going to read your rights and you are
16 getting ready to go.

17 And I said, wait, hold up, let me call my
18 boss.

19 By this time I had done called my boss. He
20 had done took my two SLED licenses off of me, my
21 .38 off of me, and my handcuffs. I had my
22 cellphone still left, so I called D.T., one of his
23 supervisors, which was D.T. And I told him what
24 was going on.

25 And he said, tell him to hold on, hold on, we

1 are on our way. He didn't want to hold up. He say
2 no way he is going to hold up.

3 Q So what you are saying is you called one of the
4 supervisors for DTH?

5 A Right.

6 Q You are talking real fast.

7 A Yes.

8 Q Slow it down. I know you are nervous. Okay?

9 A All right.

10 Q So you called one of the supervisors for DTH and he
11 said he was on the way?

12 A Right, uh-huh.

13 Q When were you handcuffed?

14 A I was handcuffed after he talked to McKenzie and
15 asked McKenzie do he want to press charges against
16 he.

17 And I said, how are you going to give this guy
18 here the right to have me locked up when he is the
19 one that is the cause of the problem?

20 Q Who handcuffed you?

21 A Corporal Gore did.

22 Q And where were you put?

23 A I was put in the back of the squad car of Deputy
24 Parish.

25 Q And were you wearing your uniform?

1 A Yes, sir.

2 Q Were there any other suspects in the car?

3 A There were two other guys back there.

4 Q And who were they?

5 A They are the guys busted from his narcotic bust on
6 top of the hill.

7 Q Were they going to jail too?

8 A Yes, sir.

9 Q Did you and Deputy Parish engage in a conversation
10 about you wanted to use the restroom?

11 A Yes, I told her that I just been diagnosed with
12 diabetes the day before from my doctor, and I said
13 I really need to go use the restroom. I didn't
14 have a chance to have any medicine and I need to
15 use the restroom.

16 She told me no.

17 I said, ma'am, I said, I really have to go.
18 If I don't go, I might end up urinating in your
19 car, and that is not what I want to do.

20 She said, well, if you urinate in my car, that
21 is going to be another charge.

22 Q Did you get to use the restroom at the scene?

23 A No, sir.

24 Q And eventually did she drive you down to the
25 Detention Center?

1 A Yes. She left -- she left Weir Avenue and she went
2 to the next street over where the post office is
3 located at by Burger King on that road and went
4 over there and parked to the side and did more
5 paperwork.

6 Q So how long were you in the car handcuffed before
7 she left to go to the jail?

8 A We probably sit probably about -- probably about 15
9 minutes on Weir for a minute and then we went to
10 the next street over probably about another 20 or
11 so.

12 Q And then the trip to the jail?

13 A Then the trip to the jail all the way down from Two
14 Notch Road to Bluff Road to Alvin S. Glenn.

15 Q Were you allowed to go to the bathroom on the way
16 to the jail?

17 A No, sir.

18 Q What happened when you arrived at the jail?

19 A When I got to the jailhouse, they brought me in to
20 be booked and all. And I think once she had got me
21 booked, then she took the cuffs off me and allowed
22 me to go to the restroom.

23 Q Okay. And that was after you were booked?

24 A Right.

25 Q And when you were booked, were you fingerprinted?

1 A Yes.

2 Q Did you have your mug shot taken?

3 A Yes.

4 Q What was the response of the officers at the jail
5 when they saw you?

6 A Well, they had the city police there and then you
7 had the Richland County jailhouse folks who worked
8 inside. There were a few county folks who actually
9 bring people in all night.

10 And everybody was asking me, said, what in the
11 world did security do to get locked up?

12 Q How did that make you feel?

13 A It made me felt embarrassed, humiliated, because
14 I'm in uniform just like they are in their uniform,
15 and I'm on the opposite side of the fence.

16 Q Did you eventually have to see medical staff at the
17 jail?

18 A Yes, sir, I did.

19 Q And tell the judge about that.

20 A Well, what happened is that I kept going to the
21 bathroom so much and I kept feeling bad, so I let
22 the jail nurse know that I'm a diabetic, so she
23 started taking my blood, blood work. And my blood
24 work was coming back showing that my blood sugars
25 was up to about three -- to almost 500.

1 Q Did the nurse at the jail continue to monitor your
2 blood sugar throughout the evening and into the
3 next day?

4 A Yes, sir.

5 Q And did you have a bond hearing the next morning, I
6 mean, that morning sometime?

7 A Yes, sir.

8 Q Do you remember what time that was?

9 A I think it was approximately about 10:00 o'clock,
10 if I'm not mistaken.

11 Q And do you remember what time it was about that you
12 got released?

13 A I think I got released around about between 4:00
14 and 5:00 o'clock.

15 Q Was your security officer license taken away from
16 you that night?

17 A Yes, sir, it was.

18 Q Who came to pick you up that late afternoon?

19 A My boss, Shawn Hale.

20 Q And how were you feeling?

21 A I was feeling real rough because I hardly had no
22 sleep and then my eyes were puffy and I wasn't
23 feeling too well, and I just kept going back and
24 forth to the bathroom, because all I could do is
25 just drink water.

1 Q And where did you go? Where did he take you?

2 A He took me back to my car, and after I got in my
3 car, that is where my medicine was it, and I start
4 popping my pills, and I came on home.

5 Q So the medicine was in your car?

6 A Right.

7 Q And where was your car?

8 A Parked in Club Essence parking lot.

9 Q Now, we talked earlier about your license. And the
10 one that is in evidence --

11 A Uh-huh.

12 Q -- was going to expire sometime in December of
13 2008, is that right?

14 A Yes, sir.

15 Q And did you reapply for renewal in November of
16 2008?

17 A Yes, I did.

18 Q Okay.

19 MR. LOURIE: Let me get this marked. It is
20 the November 7, 2008. Do you want to see it? Are
21 you good?

22 (WHEREUPON, Plaintiff's Exhibit No. 8
23 was marked for identification only.)

24 BY MR. LOURIE:

25 Q Do you recognize that?

1 A Yes, sir.

2 Q And what is that?

3 A That is a re-registration form to get recertified.

4 Q And has it been altered in any way?

5 A No, sir.

6 Q And is it a true and accurate reflection?

7 A Yes, sir.

8 MR. LOURIE: We would move that into evidence,
9 Exhibit Number 8.

10 THE COURT: Any objection?

11 MR. GARFIELD: No, Your Honor. Thank you.

12 THE COURT: All right, without objection.

13 (WHEREUPON, Plaintiff's Exhibit No. 8
14 was admitted into evidence.)

15 BY MR. LOURIE:

16 Q Now, you completed this and submitted it it appears
17 November 7, 2008?

18 A Yes, sir.

19 Q So the incident that we're here about today, that
20 had not occurred yet, is that correct?

21 A Correct.

22 Q So where it asks you to list your criminal record,
23 you couldn't put that because that hadn't happened?

24 A Right.

25 Q Now --

1 A Only the two that I had prior.

2 Q Right. So you listed the two prior criminal
3 records?

4 A Right.

5 Q And is this pretty much the same application you
6 submitted before?

7 A Yes, sir.

8 Q That was -- then that one was granted, correct?

9 A Yes, sir.

10 MR. LOURIE: November 20th, Robby.

11 (WHEREUPON, Plaintiff's Exhibit No. 9
12 was marked for identification only.)

13 Q You can't talk to me. If you have something to say
14 on the record you can do it, okay?

15 A Okay.

16 Q All right. Showing you Exhibit Number 9.

17 A Uh-huh.

18 Q What is that?

19 A That is my re-registration with United Event
20 Service for an armed guard.

21 Q And when was that submitted?

22 A That was submitted November 20th, 2008.

23 Q And has that been altered in any way?

24 A No, sir.

25 Q True and accurate reflection?

1 A Yes, sir.

2 MR. LOURIE: Your Honor, we would move Exhibit
3 9 into evidence.

4 THE COURT: Any objection?

5 MR. GARFIELD: No, Your Honor. Thank you.

6 THE COURT: Entered without objection.
7 (WHEREUPON, Plaintiff's Exhibit No. 9
8 was admitted into evidence.)

9 Q So the two that you submitted in 2008,
10 November 2008?

11 A Uh-huh.

12 Q Was there any difference between those applications
13 and the one that you submitted in 2007?

14 A No, sir. No different.

15 Q So the one in 2007 you didn't list any traffic
16 citations?

17 A No, sir.

18 Q And the two that you submitted in 2008 you didn't
19 list any traffic citations?

20 A No, huh-uh.

21 Q What happened with these applications?

22 A The other application eventually got denied after I
23 had got the simple assault put against me on
24 December 6 of 2008.

25 THE COURT: What was the date of the denial?

1 MR. LOURIE: Give me one second, Your Honor.
2 And I'll do this for -- get this marked. This is a
3 letter, February 6, 2009.

4 (WHEREUPON, Plaintiff's Exhibit No. 10
5 was marked for identification only.)

6 Q Marked Exhibit Number 10, is that the denial that
7 you received?

8 A Yes, this was one of them.

9 Q And that was what date?

10 A February 6th.

11 Q Okay. 2009?

12 A Yes, sir.

13 Q And it listed -- the reasons it is listed was why?

14 A The reasons listed was because it had my old
15 record, an old record from 1990, assault and
16 battery of high and aggravated nature charge;
17 unlawful weapon from back in 1991; and it listed as
18 1999, which was inaccurate; and my driving offenses
19 and my habitual offender offense was DUS. And then
20 at the end it added the simple assault on
21 December 6th, 2008.

22 Q All right. Now, the assault and battery of a high
23 and aggravated nature, that is what you were
24 arrested on, but you were not convicted of that,
25 were you?

1 A No, sir.

2 Q You were convicted of what?

3 A Simple assault.

4 Q And you had put that on your 2007 application?

5 A Correct.

6 Q And the two renewals, correct?

7 A Correct.

8 Q What was the only thing different that had happened
9 from 2007 until 2008?

10 A The only difference is the simple assault charge.

11 Q Thank you. How long were you without your license?

12 A I was out of my license for a whole year and a half
13 almost.

14 Q And that would have been?

15 A All of 2009, all the way up to June 2010.

16 Q At some point you were able to find a job, is that
17 correct?

18 A Yes, sir.

19 Q Prior to you receiving your license back in 2010?

20 A Yes.

21 Q How long were you unemployed until you found that
22 job?

23 A I was unemployed for seven months.

24 Q And tell the judge what it was like being
25 unemployed, the effect that it had on your family.

1 A It had a major effect on my family, Your Honor. I
2 mean, I couldn't provide for my children, my wife,
3 pay bills, like go out to eat and do things we
4 normally do as a family. And there just wasn't
5 income coming in the home. It was a big strain.

6 Q And y'all were living off just your wife's income?

7 A Yes, sir.

8 Q And who does she work for?

9 A Department of Mental Health.

10 Q And when you got the job after seven months, where
11 were you working?

12 A Piggly Wiggly.

13 (Pause.)

14 (WHEREUPON, Plaintiff's Exhibit No. 11
15 was marked for identification only.)

16 BY MR. LOURIE:

17 Q Showing you Plaintiff's Exhibit 11, is that a true
18 and accurate reflection?

19 A Yes, sir.

20 Q Is that a true and accurate reflection of the lost
21 wages that you sustained in 2009 as a result of
22 security?

23 A Yes, sir.

24 Q All right. And those numbers were based on what
25 you made in those companies in 2008?

1 A Right.

2 Q All right.

3 MR. LOURIE: And, Judge, at this time I would
4 move Exhibit 11 into evidence.

5 THE COURT: Any objection?

6 MR. GARFIELD: No, Your Honor.

7 THE COURT: It will be entered without
8 objection.

9 (WHEREUPON, Plaintiff's Exhibit No. 11
10 was admitted into evidence.)

11 BY MR. LOURIE:

12 Q And back in 2008 working for United Security, how
13 much did you make in that year?

14 A \$5,265.

15 Q And for Palmetto Protection in 2008, how much did
16 you make?

17 A \$4,558.50.

18 Q And for Maximum Security?

19 A \$14,446.91.

20 Q And the total amount?

21 A \$24,270.41.

22 Q And are you seeking lost wages in that amount in
23 this lawsuit?

24 A Yes, sir, I am.

25 Q And do you believe that those lost wages were as a

1 result of this arrest?

2 A Yes, sir, it is.

3 Q So you obviously were working for other night
4 clubs, I mean, other security agencies during 2008
5 as well, is that correct?

6 A Yes. Yes.

7 Q Do you believe there was probable cause for your
8 arrest?

9 A No, sir.

10 Q Did you do anything wrong December 6, 2008?

11 A No, sir.

12 Q And I want you to tell the judge, did you tackle
13 that man in that road?

14 A No, ma'am, never tackled him. He fell on his own.

15 Q And when you handcuffed him, was he on the property
16 at 109 Weir Avenue?

17 A Yes, sir, he was.

18 Q And that was under your jurisdiction?

19 A Yes, sir.

20 MR. LOURIE: I don't have any further
21 questions.

22 THE COURT: All right. Please answer any
23 questions Mr. Garfield may have.

24 MR. GARFIELD: Beg the Court's indulgence.

25 (Pause.)

CROSS-EXAMINATION

BY MR. GARFIELD:

Q Mr. Mack, good afternoon.

A Good afternoon.

Q I'd like to first ask you about this time period in which you were unemployed.

A Uh-huh.

Q Due to your December 6, 2008, arrest, you were unemployed for several months, is that your testimony?

A Yes, sir.

Q You were unemployed from December 6th of 2008 until June 14th of 2009, is that right?

A Yes, sir.

Q And so your testimony is that as an armed officer, an armed security officer, you could no longer do the job that you were paid to perform, is that correct?

A Correct.

MR. LOURIE: I think -- Judge, I think he misstated the facts. I think you said June of 2009 that he was unemployed. And I don't think that is what the testimony was. I think he testified he was unemployed until sometime in 2010. So I would make an objection.

1 THE COURT: Please rephrase the question.

2 MR. GARFIELD: Thank you, Your Honor.

3 BY MR. GARFIELD:

4 Q Mr. Mack, do you agree with me that you remained
5 unemployed from December 6th of 2008 until
6 June 14th of 2009?

7 A Yes, sir.

8 Q And in June 14th, 2009, you regained employment
9 when you got a job with Piggly Wiggly, is that
10 true?

11 A Yes, sir.

12 Q If I mischaracterized it earlier I apologize. As
13 an armed officer, as far as the money you were
14 getting paid to do a certain job, you could no
15 longer perform that job, is that right?

16 A Without having a license, no, sir.

17 Q And the reason is because Richland County took the
18 card from you, is that what your testimony is?

19 A Yes, sir.

20 Q And you are alleging here is that had Richland
21 County not taken your armed SLED card, you would
22 have still been able to perform that job, is that
23 right?

24 A Correct.

25 Q When I say job, I mean really any security job of

1 your choosing?

2 A Yes, sir.

3 Q So to be real clear here, it is the fault, you
4 allege, it is the fault of the Richland County
5 Sheriff's Department why you could not have been an
6 armed guard?

7 A Officer.

8 Q An armed officer?

9 A Yes, sir.

10 Q And if I misstated that, I apologize. An armed
11 officer, is that right?

12 A Correct.

13 Q It is no one else's fault, just the Richland County
14 Sheriff's Department, is that your testimony?

15 A My testimony clearly states if I wasn't arrested
16 for simple assault I would still have a SLED card.

17 Q And you also contend that you lost a great deal of
18 money as far as potential or prospective wages due
19 to this event, right?

20 A Yes, sir.

21 Q And you itemized this on Exhibit Number 11, is that
22 true?

23 A Yes, sir.

24 Q Exhibit Number 11, you contend -- and I am reading
25 Demetrius Mack's 2009 lost wages. Did I read that

1 correctly?

2 A Yes, sir.

3 Q And you are saying that as a result of your arrest
4 on December 6th of 2008 you claim lost prospective
5 or potential wages totalling over \$24,000?

6 A Yes, sir.

7 Q And you get this because you had been working or
8 could be working with three different security
9 companies, is that true?

10 A Yes, sir.

11 Q Let's talk about these SLED applications your
12 lawyer has asked you about.

13 A Uh-huh.

14 Q I will first ask you about Plaintiff's Exhibit
15 Number 6, okay?

16 A Uh-huh.

17 Q This SLED application that I'm asking you about,
18 this is one that you filled out sometime in the
19 year 2007, is that right?

20 A Yes, sir.

21 Q And SLED would have to approve this application in
22 order for you to be a certified security officer?

23 A Correct.

24 Q Without their approval you would not have been able
25 to land a job as a security officer, is that right?

- 1 A Right.
- 2 Q Now, Mr. Lourie asked you a certain question about
- 3 this portion of your application, which says
- 4 criminal record.
- 5 A Uh-huh.
- 6 Q Do you remember that?
- 7 A Yes, sir.
- 8 Q You list two arrests. You list one in 1990.
- 9 A Uh-huh.
- 10 Q Is that right?
- 11 A Yes, sir.
- 12 Q And you list one in 1991?
- 13 A Yes, sir.
- 14 Q Okay. This was filled out in 2007. Those were
- 15 fairly old arrests, is that true?
- 16 A Yes, sir.
- 17 Q Fairly old convictions?
- 18 A Yes, sir.
- 19 Q Is that right?
- 20 A Yes, sir.
- 21 Q But, in truth, we discover, but I would like to be
- 22 clear about this, you had been arrested more
- 23 recently, right, than 1991?
- 24 A For driving under suspension.
- 25 Q You had been arrested more recently for driving

1 under suspension, is that right?

2 A Yes, sir.

3 Q In fact, you were arrested four different times for
4 driving under suspension?

5 A Uh-huh.

6 Q 1999, correct?

7 A Yes, sir.

8 Q 2000?

9 A Uh-huh.

10 Q Is that yes?

11 A Yes, sir.

12 Q 2003?

13 A Yes, sir.

14 Q And in 2005?

15 A Yes, sir.

16 Q In fact, these four different times that you were
17 arrested separately for driving under suspension,
18 these were with four different police agencies, is
19 that right?

20 A Yes, sir.

21 Q One was the Richland County Sheriff's Department?

22 A Uh-huh.

23 Q Is that yes?

24 A Yes, sir.

25 Q The Greenwood County Sheriff's Office?

- 1 A Yes, sir.
- 2 Q The City of Columbia Police Department?
- 3 A Yes, sir.
- 4 Q And the South Carolina Highway Patrol?
- 5 A Yes, sir.
- 6 Q And despite having been asked about them in this
- 7 application, you specifically failed to disclose
- 8 any of those arrests, is that true?
- 9 A No, sir.
- 10 Q You disclosed those on Exhibit Number 6?
- 11 A I spoke to someone from regulatory about those --
- 12 about my traffic violations, and she said I did not
- 13 have to list those.
- 14 Q Okay. We'll get to that in a moment.
- 15 A Uh-huh.
- 16 Q Even though this application asked you to disclose
- 17 them, you didn't disclose them, did you?
- 18 A I didn't disclose them because I was told not to,
- 19 didn't have to.
- 20 Q It also asked you to list all traffic citations, is
- 21 that right?
- 22 A Yes, sir.
- 23 Q And that would include your driving record, is that
- 24 true?
- 25 A Yes, sir.

1 Q Do you remember at your deposition I was asking you
2 questions about your ten year driving record?

3 A Yes.

4 Q Your license, driver's license, your ability to
5 drive a car in South Carolina was suspended from
6 1999 to 2004, is that true?

7 A Yes, sir.

8 Q You didn't disclose that on your application, did
9 you?

10 A No, sir.

11 Q In fact, you surrendered your driver's license all
12 together in the calendar year, sometime in the
13 calendar year 2005, is that right?

14 A Yes, sir.

15 Q And you did not disclose that on your application,
16 did you?

17 A No, sir.

18 Q Not only did you not disclose anything that I'm
19 saying with your traffic citations, your driving
20 under suspensions, even the fact that they revoked
21 your actual driver's license, that you turned it in
22 and it was suspended for five years, did you
23 disclose any of that on any of these three SLED
24 applications?

25 A No, sir.

1 Q On Exhibit 6, 8 and 9, didn't disclose on any of
2 them, is that correct?

3 A Correct.

4 Q Now, you talked about -- well, let me ask you this.
5 As a result of turning in the applications,
6 Mr. Mack --

7 A Uh-huh.

8 Q -- and that is Exhibit Number 8 and Exhibit Number
9 9 --

10 A Yes, sir.

11 Q -- these were applications that you put in sometime
12 in November of 2008, is that right?

13 A Yes, sir.

14 Q That is around about a month before these events
15 occurred, the events giving rise to your lawsuit,
16 is that true?

17 A Yes, sir.

18 Q Okay. And it was on the strength or it was --
19 excuse me, as a result of these applications,
20 Exhibits Number 8 and 9, that you were able -- that
21 you wanted to put in that you would be certified as
22 a SLED security officer in 2009?

23 A Yes.

24 Q And Exhibit Number 6, it is what you put down here,
25 SLED relied upon that, and that gave you the

1 ability to work on December 6th of 2008, is that
2 true?

3 A Yes, sir.

4 Q Now, let's talk about your situation when you
5 talked to SLED.

6 A Uh-huh.

7 Q You made contact with SLED?

8 A Yes, sir.

9 Q Right? This is sometime in December of 2007, is
10 that right?

11 A Yes, sir.

12 Q Now, you didn't go there in person, did you?

13 A I talked to them over the phone.

14 Q Okay. You talked to them over the phone. This was
15 a female official, right?

16 A Yes, sir.

17 Q And she was with regulatory services?

18 A Yes, sir.

19 Q This female official that you talked to over the
20 phone in December 2007 from regulatory discussed
21 with you this security officer application, right?

22 A Discussed with me about the criminal side of it.

23 Q Okay. And you told her, you represent to the Court
24 that you told her in this conversation that you
25 were arrested multiple times for driving under

1 suspension, is that right?

2 A No, sir, the only thing I told her that it was
3 my -- I asked about my criminal record as far as
4 the unlawful weapon and the simple assault. I
5 asked her would that be held against me.

6 And she said, no, as long as they are not
7 felonies. And they was not felonies. And I told
8 her what the charges were. And she said, no, they
9 are not felonies, they are misdemeanors. That will
10 not stop you from getting your license.

11 Q Okay.

12 A I said, what about my traffic, do I need to list
13 those.

14 She said, no, but said, they are actually
15 looking for felonies, they are not looking for
16 traffic.

17 I said, okay, that's fine. Then --

18 Q I understand your explanation, and I'm sorry for
19 interrupting, but my question with all due respect
20 asked a yes or no, but I just want to get back to
21 my question. We understand.

22 A Okay.

23 Q And I will give you a chance to explain all of it
24 afterwards.

25 A Okay.

1 Q Did you tell her, the female official from SLED,
2 over the phone that you had been arrested multiple
3 times for driving under suspension?

4 A No, sir.

5 Q Okay. Do you recall giving your deposition in this
6 particular case?

7 A Pretty much.

8 Q In other words, coming to your lawyer's office on
9 July 11th of 2011?

10 A Uh-huh.

11 Q And I asked you a series of questions. Do you
12 remember giving your deposition?

13 A Yes, sir.

14 MR. GARFIELD: And I'll give you the page and
15 line in just a moment, I'm just making a record.

16 Q And at your deposition you were represented by
17 Mr. Lourie?

18 A Yes, sir.

19 Q And before you started testifying at your
20 deposition you swore to tell the truth?

21 A Yes, sir.

22 Q Okay. So everything you said was a sworn
23 statement?

24 A Pretty much.

25 Q Okay. And you remember me telling you that if you

1 said something different in the court of law than
2 what you said at your deposition that I might ask
3 you questions about it?

4 A Yes, sir.

5 Q Okay. I would like for you to turn to Page 49.

6 A All right.

7 Q Line 13. Actually go to 49, Line 2.

8 MR. GARFIELD: And I'd like to make a
9 foundation, Your Honor.

10 Q Line 2, Question: And do you know who you spoke
11 with?

12 The answer is that: I can't remember what the
13 lady's name were.

14 A Right.

15 Q Question: So it was a lady?

16 Answer: Yes, sir.

17 Do you remember me asking you that?

18 A I remember that.

19 Q Okay. And she told you, the lady over the
20 telephone, that you did not have to put all the
21 traffic citations down?

22 A Right.

23 Q Do you remember me asking you that?

24 A Yes, sir.

25 Q What did you tell me at the time? At Line 12.

1 A Okay. That's what she said.

2 Q Okay. And my question starting at 13 at your
3 deposition:

4 Question: Did you tell her that you had
5 been arrested previously for driving
6 under suspension?

7 What was your answer?

8 A Yes.

9 Q Yes what?

10 A Yes, I told her I was driving under suspension.
11 She know that.

12 Q All right. And she told you you did not have to --
13 you did not have to put that down?

14 A Yes.

15 Q What was your answer there?

16 A She said no.

17 Q And what else did she say?

18 A She said I didn't need it. What she wanted was
19 this right here.

20 Q Okay. But my next question is this. I'm just
21 laying a foundation, sir.

22 A Uh-huh.

23 Q Did you tell her -- this is my next question --
24 that you had been arrested multiple times for
25 driving under suspension?

1 How did you respond at your deposition?

2 A Yes.

3 Q Okay.

4 A Which is true. But you said -- you said driving
5 under suspension. You didn't say was I arrested
6 all those different times. I don't think I
7 remember that being said. The only thing I
8 remember, I remember being stopped for speeding and
9 DUS's, I remember all of that, yes. That's true.

10 Q You told her you were arrested multiple times for
11 driving under suspension, is that correct?

12 A Yes. She knows that. Yes.

13 Q Okay. That was my original question.

14 A Yes. Yes. She knows that. Uh-huh.

15 Q Okay. You can shut the deposition. I may get back
16 to that in a moment.

17 A Okay.

18 Q Thank you.

19 A Okay.

20 Q You asked if this would be held against you, didn't
21 you?

22 A Yes.

23 Q And she said no?

24 A Right.

25 Q And then you claim that you asked her if you had to

1 disclose this on your application, right?

2 A Yes, I asked her that.

3 Q And she said no, you didn't have to, right?

4 A Right.

5 Q And she said the only thing SLED was concerned with
6 was potential felony charges, correct?

7 A Correct.

8 Q And so the only reason, Mr. Mack, quite frankly,
9 the only reason you did not list them was solely
10 based on what this female employee from SLED
11 apparently told you, right?

12 A Yes, sir. It never stopped me from getting my
13 card. My card was sent on.

14 Q I understand that. That is the only reason why you
15 didn't list them is that you relied on what this
16 female official told you --

17 A Yes, sir.

18 Q -- over the telephone?

19 A Correct.

20 Q And because she told you this --

21 A Uh-huh.

22 Q -- you failed to list all of this pertinent
23 information, your multiple arrests and your
24 suspended licenses, on all three of these
25 applications?

1 A Right. Because I went off of what we had talked
2 about the first time, I didn't know I had to relist
3 them over and over at the time.

4 Q Your lawyer was asking you about Plaintiff's
5 Exhibit Number 10?

6 A Right.

7 Q And this is a letter that SLED sent you on or about
8 February 6th of 2009, is that right?

9 A Yes, sir.

10 Q That is a letter written to you from an individual
11 named Lieutenant Ben Moore with the State Law
12 Enforcement Division, is that true?

13 A Yes, sir.

14 Q In fact, he didn't just write you one letter in
15 February of 2009, you would agree with me that he
16 wrote you a letter a month earlier on or about
17 January 6th of 2009?

18 A Correct.

19 Q He wrote you two letters, didn't he?

20 A Yes, sir.

21 Q And in each letter he told you, and put in here
22 that an investigation of your application revealed
23 your arrests by all these agencies, is that right?

24 A Uh-huh.

25 Q Is that yes?

1 A Yes, sir.

2 Q And then he said, SLED policy requires denial of an
3 application -- am I reading that correctly?

4 A Uh-huh.

5 Q Is that yes?

6 A Yes, sir.

7 Q -- when false information is furnished on an
8 application form. Is that true?

9 A Yes, that's what he said.

10 Q And he told you this, in fact, not once, Mr. Mack,
11 but he told you once in January 6th and you got
12 that again in the letter of February 6th?

13 A Right.

14 Q 2009. But you knew in the back of your mind the
15 reason why you never disclosed them is that you had
16 express permission from this female employee back
17 in 2007?

18 A Correct. That is the only reason why it was never
19 listed on the application, the ones that was done
20 in 2008. So after I had got my charge against
21 simple assault and I went to court for it in
22 January, during that period of time when I got that
23 letter, I got that letter on January 6th, I went to
24 court on the 8th, so that is when I found out
25 everything what went on, and then that is when I

1 started doing my appeals and everything.

2 Q Okay. Well, let's talk about your appeals for a
3 moment.

4 A Okay.

5 Q You wrote two letters to SLED appealing this. You
6 wrote one in February 17th of 2009?

7 A Yes, sir.

8 Q Is that true?

9 A Yes, sir.

10 Q You wrote another letter in February 23rd of 2009?

11 A Yes, sir.

12 Q Is that right? And both were addressed to
13 Lieutenant Moore?

14 A Yes, sir.

15 Q The same person who wrote you at least one letter
16 as in Plaintiff's Exhibit Number 10?

17 A Yes, sir.

18 Q Is that true?

19 MR. GARFIELD: I'd like to go ahead and mark
20 as exhibits these two letters.

21 MR. LOURIE: May I see those, please?

22 MR. GARFIELD: Sure.

23 (Pause.)

24 MR. GARFIELD: Your Honor, we would ask to
25 move into evidence these letters from Mr. Mack.

1 They are both notarized. One from February 17th of
2 2009 written to Ben Moore of SLED, the second being
3 February 23rd of 2009 to Lieutenant Moore.

4 MR. LOURIE: No objection.

5 THE COURT: All right. They will be entered.

6 What is that, Defendant's --

7 THE COURT REPORTER: 2 and 3.

8 (WHEREUPON, Defendant's Exhibit Nos. 2

9 AND 3 were marked for identification and
10 received into evidence.)

11 BY MR. GARFIELD:

12 Q Now, in these two letters you wrote to SLED, this
13 is part of your appeal process, right?

14 A Right. The one that had the 17th on it, that was
15 is in response to the January 6th. And the one
16 from the 6th was response to -- the one I wrote for
17 the 23rd was in response to February 6th.

18 Q Mr. Mack, you took your license very seriously,
19 didn't you?

20 A Pretty much.

21 Q Absolutely. And you wrote these letters to the
22 exact person that was denying your application,
23 right?

24 A Yes, sir.

25 Q Okay. You wanted your security officer license

1 back, didn't you?

2 A Correct.

3 Q And you wanted to provide SLED, Lieutenant Moore,
4 over regulatory services, provide him with all the
5 information that he could have so he could
6 understand what your situation was?

7 A Right.

8 Q You wouldn't have a reason to hold anything back
9 from Lieutenant Moore?

10 A No, sir.

11 Q All right. Then I would like for you to go ahead
12 and share with us where on any part of those appeal
13 letters in February of 2009 in which you informed
14 Lieutenant Moore that one of his subordinates or
15 someone from SLED told you you did not have to list
16 any of your arrests for driving suspensions.

17 A Well, it is not on either one of those. And that
18 was an oversight on my part.

19 Q So you never addressed in either of these letters
20 the reason why you failed to list these arrests in
21 your revocation of your license, is that right?

22 A Well, I listed all my arrests and everything in all
23 the appeals process. The only thing I didn't talk
24 about was what you just said, about one of his
25 employees telling me what not to do.

1 Q But you said originally you would agree with me, so
2 I could understand, your reason why you didn't do
3 it was because you relied on what she was telling
4 you?

5 A Right. That's true.

6 Q Okay. So this department employee that reassured
7 you of this, you never shared that with Lieutenant
8 Moore in your appeal process, did you?

9 A No, sir.

10 Q Now, it was your intent whoever would have seen
11 these applications you wanted it to be an
12 expression of the truth, right?

13 A Pretty much.

14 Q Yes or pretty much?

15 A Yes, sir.

16 Q Okay. You understood at the time that your license
17 would be issued on a character and fitness basis,
18 didn't you?

19 A Yes, sir.

20 Q And you agreed, and I think it is written in this
21 application, that willfully withholding information
22 or making false statements on any of those
23 applications will be the basis for revocation or
24 suspension by SLED, is that true?

25 A Well, just to get your license.

1 Q To get your license?

2 A Right.

3 Q And you further represented that the information on
4 all three of those applications was true and
5 complete, didn't you?

6 A I went by, like I said, from what was told to me
7 from the first application process. That is what I
8 went by. All of this here came about after the
9 fact of my arrest of getting simple assault. And
10 that's when I had to go back into everything, list
11 everything.

12 Q Sir, you agree with me that you signed these
13 applications, didn't you?

14 A Yes, I signed them.

15 Q Did anybody force you to sign those?

16 A No, sir.

17 Q Is that your handwriting, signature?

18 A Yes, it is.

19 Q And you would agree with me that by signing this
20 that you say that you believe that the statements
21 made by me on this application are true and
22 complete to the best of my knowledge, didn't you?

23 A Yes, sir.

24 Q Now, let's talk about the event on December 6th of
25 2008.

1 A All right.

2 Q So, try to understand this. You left the club
3 parking lot chasing Mr. Williamson towards the
4 street, is that right?

5 A Yes, sir.

6 Q Okay. And as you left the club parking lot chasing
7 him towards the street, you didn't flag down any of
8 the deputies, did you?

9 A There wasn't no deputy that was present at the
10 time. When we noticed-- when we noticed that there
11 was a deputy in the area, they was on top of the
12 hill. There was only one up there.

13 Q You later flagged down a deputy, didn't you?

14 A That is when Deputy Parish was coming down Weir
15 Avenue, turned off Two Notch Road, and one of the
16 guys flagged her -- I told him to flag her down for
17 me.

18 Q Now, when your lawyer asked you to look at the
19 judge and say that you never tackled him, you said
20 you never tackled him, right?

21 A Correct. Correct.

22 Q And he asked you to say whether or not he fell on
23 his own, and you said he fell on his own?

24 A Yes, sir, he did.

25 Q And it was after that that you handcuffed him,

1 right?

2 A After I pulled him from under the car and
3 handcuffed him.

4 Q You would agree with me that the car itself was at
5 least half in the roadway?

6 A It was on the side of the road, but he fell in the
7 people yard under the car.

8 Q Sir, I don't -- did you understand my question?

9 A I understand what you are saying.

10 Q Okay. Now, let me ask it this way. Same way.

11 A Uh-huh.

12 Q Would you agree with me that the car that we're
13 discussing here --

14 A Uh-huh.

15 Q -- was at least half in the roadway?

16 A Half in the road, half on the property.

17 Q Okay. So it was --

18 A Actually, not even half in the road. It is on the
19 side of the road.

20 Q Okay.

21 A Yes.

22 Q Tell me about that.

23 A Because the car was -- all cars were parked on the
24 side of the road on both sides of each property.

25 And he chose to run between the two cars on 109

1 Weir Avenue where I have jurisdiction at. And that
2 is where he fell at.

3 Q The car in question in which he -- you say he fell
4 under the car?

5 A Yes. His face -- when I noticed him looking back
6 at me to see if I was still coming at him, he
7 looked up top and saw the county car up there.
8 That is when he tried to cut -- wanted to cut
9 between the two cars and go through the yard. But
10 the gravel hit his feet and his shoe went one way
11 and he went the other way and went face-first into
12 that car.

13 Q All right. My question was this, though. You said
14 he fell under the car?

15 A Yes, he was under the car, halfway under it. Yes.

16 Q And you -- I don't know if you were changing or
17 modifying what you said when I asked you before.

18 A What's that?

19 Q You originally said the car was half in the
20 people's yard and half on the street.

21 A I said half on the side of the road because that is
22 where it was at.

23 Q Half in the road, half in the yard, correct?

24 A No, half side of the road, because all the cars was
25 parked on the side of the road.

1 Q Would you agree or disagree with me --

2 MR. GARFIELD: And I'm just laying a
3 foundation, Your Honor.

4 Q -- that it was in the people's yard, half in the
5 road, half in the yard?

6 A No, I don't agree with you.

7 Q Okay. I'd like for you to go to deposition. If
8 you could go ahead and take a look at Page 108.

9 A All right.

10 Q And I'd like to direct you to Line 16.

11 (Pause.)

12 Q And I asked you on Line 16, sir: Was this a law
13 enforcement car or a regular car?

14 Did I ask you that?

15 A Yes, sir.

16 Q And your answer was: This was a patron car, people
17 that come from the club. The club was packed.

18 Is that right?

19 A Yes, sir.

20 Q My question is: Just a car that was parked in the
21 street?

22 You said: Yes, parked on the side of the
23 people's yard. It was in the people's yard, half
24 in the road, half in the yard.

25 A Which would still mean it was on the side of the

- 1 road because all the cars that are parked are
2 parked halfway from the road, which is on the side
3 of the road. They are not -- them cars was not in
4 the road where all the cars come through at. If
5 that was the case, then Richland County would have
6 been put tags on them cars or did something to them
7 cars. You can't block the road. And you know
8 that. So what I'm telling you is that where he
9 fell at, he fell between those two cars and he fell
10 face-first under that car, in the people's yard.
11 Because he has got dirt, grass, everything on him.
12 And I wasn't dirty at all. So there is no way
13 possible I could tackle him and not get hurt too.
- 14 Q He was situated under the car, right? He was under
15 the car?
- 16 A He fell under the car.
- 17 Q Fell under the car?
- 18 A Yes, sir.
- 19 Q So he was under the car, right?
- 20 A Yes, sir.
- 21 Q And you decided to physically grab him, right?
- 22 A I was told by one of the bouncers, go ahead and put
23 the cuffs on him.
- 24 Q Sir, I need for you to answer my question, then you
25 can explain. You would agree with me that you

1 physically grabbed him while he was under the car,
2 correct?

3 A I grabbed him from up under the car.

4 Q Okay. You grabbed him and pulled him and dragged
5 him out from under the car, is that right?

6 A I didn't drag him, I pulled him out.

7 Q Okay, you pulled him out from under the car, and
8 then you handcuffed him?

9 A Right.

10 Q And it is at that point that you flagged down the
11 deputy because you saw the deputies up there?

12 A No, we saw the deputy coming from -- Deputy Parish
13 was coming down Weir Avenue coming off of Two
14 Notch. She was the first officer that we seen on
15 the scene that we actually talked to. She was the
16 first one I talked to.

17 Q You pulled him out from under the car?

18 A Uh-huh.

19 Q Okay. He was bleeding?

20 A At that point I couldn't see he was bleeding
21 because it was dark in the area. I couldn't tell
22 that.

23 Q You learned later that he was bleeding, right?

24 A Right. I learned later on that his hands was
25 bleeding because of lacerations from falling. You

1 got to understand, he fell and he skinned hisself
2 up.

3 Q I guess I'm kind of curious of this.

4 A Uh-huh.

5 Q So your testimony here in the court is that he
6 sustained an injury to the front palms of his hand?

7 A Right.

8 Q Right? Do I have this right? That were bleeding?

9 A They were bleeding right up in this area right
10 here.

11 Q And you are pointing to the inside kind of your
12 palm area, upper wrists?

13 A Right up in here.

14 Q Okay.

15 A Right up near here.

16 Q Kind of like where your hand, body and hand meets
17 his wrists?

18 A Right.

19 Q That part was bleeding?

20 A Uh-huh.

21 Q Is that yes?

22 A Yes.

23 Q Where he fell under the car?

24 A You got to understand he fell face-first into that
25 car. When I got to him he was halfway under the

1 car. I'm telling you that is what happened to him.
2 Nobody jumped on that boy.

3 Q No weapons were ever located on Mr. Williamson?

4 A No, sir.

5 MR. GARFIELD: Just one moment, Your Honor.

6 (Pause.)

7 MR. GARFIELD: Beg the Court's indulgence,
8 Your Honor, if I may?

9 (Pause.)

10 BY MR. GARFIELD:

11 Q Sometime earlier when you were at the club and you
12 told Mr. Williamson, if you come back on this
13 property I am going to arrest you? Is that right?

14 A Yes, sir.

15 Q And he did come back?

16 A Uh-huh.

17 Q Is that yes?

18 A Yes.

19 Q And he was never arrested that night, was he?

20 A He got put on -- he was handcuffed and restrained.

21 Q By you?

22 A Yes, sir.

23 Q Charges were never pressed against him that night,
24 were they?

25 A No, sir. I tried to get them pressed against him,

1 I was trying to get a trespass put on him, but that
2 is when it went the opposite way on me. That is
3 what I was trying to get done, get the paperwork
4 done and get trespass on him. That never took
5 place.

6 Q After you went and had handcuffs put on Mr.
7 Williamson and he was situated in the road and you
8 flagged the officers down, he wasn't moved from
9 that time to when the deputies came, was he?

10 A He was in the road.

11 Q I know. But he just wasn't -- you didn't move him,
12 did you?

13 A What you mean?

14 Q He wasn't moved, or did he move at the time? You
15 get handcuffs on him, you are waving the police
16 down.

17 A Yes.

18 Q The police come.

19 A Yes. He was down, he was down, face-down in the
20 grass right there, in the grass right there, and I
21 stood right beside him, kneeled right beside him,
22 and that is when the other guy flagged Parish down.
23 She came over there and she helped me get him up.

24 Q He was completely in the grass?

25 A Yes, sir.

1 Q Okay. Not in the road, completely in the grass?

2 A He was in the grass.

3 Q You did not -- one note about the jail, you spent
4 12 to 14 hours in the Alvin S. Glenn Detention
5 Center?

6 A Yes, sir.

7 Q And when you got released and you went back to your
8 car, you got your diabetic medications?

9 A Yes, sir.

10 Q You were diagnosed the day before with diabetes?

11 A Yes, sir.

12 Q You were diagnosed with Type 2 diabetes the day
13 before?

14 A Yes, sir.

15 Q And what doctor diagnosed you?

16 A It was, let's see, Dr. Daniels or Dr.
17 Ndiaye(phonetic). It was one of those doctors. I
18 think it was Dr. Daniels, though.

19 Q And those were medications that you had gotten in
20 the last 24 hours?

21 A Yes.

22 Q Are you sure about that?

23 A You said the medicine I got in the last 24 hours?

24 Well, yes, I had to get them the day before, yes.

25 Q And as a result of getting out of the Alvin S.

1 Glenn Detention Center, okay?

2 A Yes, sir.

3 Q And whatever issues you had, you never had to seek
4 medical attention because of that troubled 14
5 hours, did you?

6 A Not particularly. The nurse took my blood work and
7 everything to check on me, but she couldn't
8 authorize no medicine to me.

9 Q And after you got released from jail, you did not
10 have to go to a doctor or anything because of
11 anything that happened in jail?

12 A I didn't go to the doctor right away when I got out
13 of jail. I went and took my medicine and I went
14 home. I was actually going to make an appointment
15 to see a doctor about it.

16 Q And you didn't go to the emergency room or
17 something like that?

18 A No, I didn't.

19 Q In fact, you didn't go for weeks or at least a
20 month after this, is that true?

21 A I will say probably about the end of -- probably
22 the middle part of December I went back again.

23 Q Mr. Mack, I don't have anything. Thank you.

24 MR. LOURIE: Real quick.

25 THE COURT: Yes.

1 MR. LOURIE: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Yes.

4 REDIRECT EXAMINATION

5 BY MR. LOURIE:

6 Q Real quick. Mr. Garfield was asking you about the
7 medications and about the doctor. Do you recognize
8 these?

9 A Yes, sir.

10 Q What are they?

11 A This is my Metformin medicine here, which I take
12 500 milligrams twice a day.

13 Q All right. And what is the name on the
14 prescription?

15 A Demetrius Mack.

16 Q All right. Is that your medication?

17 A Yes, sir.

18 Q And what is that?

19 A This is my seizure medication, which is Keppra.
20 And this is just the other name for it.

21 Q Okay.

22 A The generic form.

23 Q And which medication were you taking back in 2008?

24 A Actually, I was taking both of those.

25 Q Okay. And the Metformin is one?

1 A Yes, sir. And I just starting taking that one.

2 Q That was the one --

3 A Right. And I just got diagnosed, so I still had a
4 brand new bottle.

5 MR. LOURIE: Judge, I am not going to
6 introduce it, but if you want to look at them.

7 MR. GARFIELD: We would stipulate to it, Your
8 Honor, that he is taking diabetic medications.

9 BY MR. LOURIE:

10 Q Now, regarding these applications, the one you
11 submitted in 2007, you didn't list any traffic
12 violations or DUS's, is that right?

13 A Correct.

14 Q And that application got approved, didn't it?

15 A Yes, sir.

16 Q So what did you think when you submitted the 2008
17 one, you were going to do the same thing?

18 A Yes, sir.

19 Q And that didn't get approved?

20 A Right.

21 Q The only thing that happened was?

22 A I was arrested for simple assault.

23 Q Now, when you were giving these applications to
24 SLED, surely you knew that they had access to your
25 rap sheet?

1 A Exactly.

2 Q Did you try to mislead them?

3 A No, sir, because I knew they had a copy of
4 everything about me in their system.

5 Q And does having driving under suspension
6 convictions prevent you from being a security
7 officer?

8 A No, sir, it hasn't.

9 Q And today, even with those convictions, are you a
10 licensed security officer?

11 A Yes, I am, sir.

12 Q And are you a licensed security officer to carry a
13 gun?

14 A Yes. I have a license on me right now.

15 Q And that is your license?

16 A Yes, sir.

17 Q Let me hold that for a second.

18 (Pause.)

19 MR. LOURIE: I don't have anything else.

20 THE COURT: All right. Anything else?

21 MR. GARFIELD: No, Your Honor.

22 THE COURT: All right. Sir, you may step
23 down.

24 (Witness steps down.)

25 THE COURT: All right, it is 5:20.

1 MR. LOURIE: Yes. We have subpoenaed this
2 afternoon, which I don't know if she was going to
3 be here or not, Officer Parish. We had a subpoena
4 dropped off this afternoon at the Sheriff's
5 Department, and we would like her to be here
6 tomorrow morning to testify. That was given this
7 afternoon and served upon her.

8 THE COURT: All right.

9 MR. LOURIE: I don't know if it was served on
10 her personally, it was taken to the Sheriff's
11 Department.

12 THE COURT: Okay. How many --

13 MR. LOURIE: That's my last witness. It won't
14 be long.

15 THE COURT: Can you get her here in the
16 morning?

17 MR. GARFIELD: We will be glad to accept
18 service. She is either working nights -- she is
19 not working day shift right now. We could get her
20 here. Your Honor, what time are you thinking about
21 starting in the morning?

22 THE COURT: I was thinking about 9:30, but I
23 think it is going to be a little bit later. I was
24 thinking 9:30 or 10:00.

25 MR. LOURIE: How about 10:00? I mean, I don't

1 want her to --

2 MR. GARFIELD: Earlier may be better. That is
3 kind of what I was trying to -- this is the first
4 we heard of it, so I was trying to -- we will get
5 her here in time.

6 THE COURT: Can you make a call before we
7 leave today?

8 MR. LOURIE: Whatever time.

9 MR. GARFIELD: We will --

10 THE COURT: Why don't you just make a call to
11 see if she can be here in the morning and what
12 time.

13 MR. GARFIELD: Okay.

14 (Pause.)

15 MR. GARFIELD: I should be able to get her
16 here. If there is a problem I will let y'all know.
17 What time?

18 THE COURT: At 9:30.

19 MR. LOURIE: Back on the record real quick. I
20 can't remember if this got introduced into
21 evidence. The court reporter said it didn't.

22 THE COURT: Any objection?

23 MR. GARFIELD: No objection.

24 THE COURT: What number?

25 MR. LOURIE: Number 7.

1 (WHEREUPON, Plaintiff's Exhibit No. 7
2 was admitted into evidence.)

3 THE COURT REPORTER: And Number 10 also.

4 MR. LOURIE: Oh, I didn't put that in. Robby,
5 do y'all want Number 10 in too?

6 MR. GARFIELD: Yes, that's fine.

7 MR. LOURIE: You asked him about it too.

8 Let's move it in evidence.

9 (WHEREUPON, Plaintiff's Exhibit No. 10
10 was admitted into evidence.)

11 (WHEREUPON, the trial adjourned for the day.)

12 APRIL 5, 2012

13 THE COURT: Are you ready?

14 MR. LOURIE: Ready, Your Honor. The Plaintiff
15 would call Deputy Parish to the stand.

16 THE BAILIFF: Place your left hand on the
17 Bible, and raise your right hand, please.

18 (Witness complies.)

19 THE CLERK: Do you swear or affirm the
20 testimony you are about to give in this case will
21 be the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Have a seat in the witness box.
25 State your name for the record. And spell it,

1 A Yes, sir.

2 Q And how did you get involved? How was it that you
3 were told that you needed to respond?

4 A There were deputies further down the street on Weir
5 that were requesting additional units for
6 assistance that was up the street.

7 Q And did you come down Two Notch and turn onto Weir?

8 A Weir, yes, sir.

9 Q Okay. And did you make a left onto Weir or a
10 right, do you remember?

11 A I made a left.

12 Q And, in fact, it was dark, correct?

13 A Yes, sir.

14 Q And, in fact, you had your headlights on, correct?

15 A Yes, sir.

16 Q Your blue lights?

17 A Yes, sir.

18 Q And you almost passed the incident location where
19 the people were located, is that right? With your
20 car you in fact passed it by and had to stop
21 according to your statement, is that right?

22 A What people, at the incident?

23 Q Involving the incident with Mr. Mack and
24 Mr. Williamson?

25 A Yes, sir.

1 Q So you did -- you actually passed it by at first,
2 correct?

3 A Yes, sir.

4 Q And as you approached, they would have been on your
5 left, is that correct?

6 A Yes.

7 Q And there were cars lined up on both sides of the
8 road. And on that side -- correct me if I'm
9 wrong -- Mr. Williamson was right up close to the
10 front of a white vehicle, is that correct?

11 A He was in front of a white vehicle, yes.

12 Q And that white vehicle was half on the side of the
13 road and a half on the property of 109 Weir Avenue?

14 A I wouldn't say half. The majority of the vehicle
15 was in the road.

16 Q In the road?

17 A Yes, sir.

18 Q Did you have an opportunity to speak to Corporal
19 Gore that evening?

20 A Yes, sir.

21 Q And did you have an opportunity to discuss with him
22 why Mr. Mack was being arrested?

23 A Yes, sir.

24 Q And did you complete an incident report in this
25 case?

1 A Yes, sir.

2 Q Let me --

3 MR. LOURIE: Can you help me?

4 (Pause.)

5 BY MR. LOURIE:

6 Q And the purpose of the incident report is to state
7 the facts, generally the facts of the case and why
8 Mr. Mack was being arrested, is that correct?

9 A An incident report was done based upon the facts
10 that have occurred that night.

11 Q Right. And but when you do an incident report
12 pursuant to arrest, you are writing the facts as to
13 why the person was being arrested?

14 A Generally, yes.

15 Q Would not that be the case in all arrests that you
16 are writing as to why the person was being
17 arrested?

18 A Yes.

19 Q Okay. And in this report, you indicated that it
20 was a simple assault, is that correct?

21 A Yes.

22 Q And where it says premise type, that indicates
23 where the incident occurred, correct?

24 A No.

25 Q What does that mean, premise type?

1 A There, we have -- like the simple assault, we have
2 on our report system certain incident types that we
3 are allowed to select.

4 Q Uh-huh.

5 A That would be the closest to the where the incident
6 occurred.

7 Q So in the roadway is not one of those?

8 A It is.

9 Q Okay. But you selected premise type,
10 residence/home, isn't that correct?

11 A 109 --

12 Q Weir Avenue.

13 A -- Weir Avenue is a residence.

14 Q And you selected that as a premise type for this
15 assault?

16 A Yes, 109 is a residence.

17 Q This report -- correct me if I'm wrong -- doesn't
18 mention anything about Mr. Mack tackling Williamson
19 in the roadway, does it?

20 Take your time and tell me when you are ready
21 for me to move it.

22 (Pause.)

23 A Okay.

24 (Mr. Lourie complies.)

25 A Okay. Can you repeat your question again?

1 Q The report doesn't contain any information about
2 Mr. Mack tackling Mr. Williamson in the roadway?
3 It doesn't mention that, does it?

4 A No, sir.

5 Q And that would be an important fact if you are
6 writing a report for an assault, is that correct?

7 A It could be.

8 Q In fact, you wrote that Mack was explained that he
9 only has arrest powers on the property of which he
10 is employed and does not extend to any other
11 adjoining property, is that correct?

12 A That's what is written, yes, sir.

13 Q And 109 Weir Avenue was adjoining to Club Essence,
14 correct?

15 A Yes.

16 Q And when you arrived on the scene, Mr. Williamson
17 was half on the grass of 109 Weir Avenue and half
18 on the roadway, is that correct?

19 A No, sir, that is not. The majority of his limbs,
20 his -- were in the roadway. The only thing that
21 was in the grass is his -- was his upper torso.

22 Q Okay.

23 MR. LOURIE: Let me get this marked as an
24 exhibit.

25

1 (WHEREUPON, Plaintiff's Exhibit No. 12
2 was marked for identification only.)

3 MR. LOURIE: Your Honor, for ID purposes only,
4 Exhibit Number 12.

5 BY MR. LOURIE:

6 Q Do you recognize this?

7 A Yes.

8 Q Okay. And there is another page to this as well.
9 Let me grab that real quick. There is two more
10 pages. I believe that is the first page of your
11 statement of three?

12 MR. GARFIELD: Your Honor, if I may, for
13 housekeeping purposes, may I inquire if Mr. Lourie
14 is attempting to impeach her with a prior statement
15 or just to identify that she gave a statement? If
16 it is the --

17 MR. LOURIE: I am getting ready to go that
18 direction. I have to get her to identify her
19 statement first.

20 MR. GARFIELD: I just didn't know if this was
21 part of the impeachment process or the fact that
22 she gave a statement.

23 MR. LOURIE: You'll find out.

24 MR. GARFIELD: Okay.

25 BY MR. LOURIE:

1 Q Page 2 of your statement and Page 3 of your
2 statement.

3 A Uh-huh.

4 Q Okay. And you gave this statement back on
5 January 7th of 2009 it appears.

6 A Yes.

7 Q And read to the Court what you said in terms of
8 where Mr. Williamson was, starting where it says, I
9 observe.

10 MR. GARFIELD: Objection, Your Honor. I guess
11 we have found out now. He is -- it is improper
12 impeachment. I don't know what the question on the
13 table is. This is inadmissible hearsay for him to
14 take a previous statement and give her --

15 MR. LOURIE: You asked my client to read his
16 former testimony.

17 THE COURT: Hold on one second.

18 MR. GARFIELD: I would just like to finish,
19 Your Honor. Thank you.

20 It is inadmissible hearsay. You can't put a
21 former statement to have this read into the record.
22 If she is saying something today that is
23 inconsistent with a prior statement, he can attempt
24 to impeach her according to the rules. He can't
25 just have a statement that she provided at whatever

1 time and have all of that read into the record. It
2 can only be used to impeach on prior inconsistent
3 testimony.

4 THE COURT: Well, she just said that most of
5 his body was in the street. And the statement says
6 that half of it is in the grass.

7 MR. GARFIELD: But that is --

8 THE COURT: Is that inconsistent?

9 MR. GARFIELD: No, ma'am. I'm just trying to
10 understand what the question is on the table that
11 he is --

12 THE COURT: Well, you need to let him ask the
13 question and then we will make the objection. But
14 you need to lay the foundation.

15 MR. LOURIE: Right, I will. But, Judge, even
16 if that -- it is clearly an exception, not even
17 hearsay, a prior statement by a party-opponent, it
18 comes in that way. So I don't understand. It is
19 not hearsay if that is what he is trying to argue.
20 This is clearly --

21 THE COURT: He is saying that you didn't lay
22 the proper foundation to impeach her.

23 MR. LOURIE: Right. But even if I wanted to
24 admit the statement I could. He said the objection
25 was hearsay, if I'm not mistaken. But, anyway.

1 BY MR. LOURIE:

2 Q You just testified earlier today that half -- I
3 asked you if half was in the roadway and half was
4 in the grass, and you said no.

5 Isn't it true that when you gave this
6 statement back in January of '09 you said: I
7 observed a black male on the ground in front of a
8 white vehicle, half in grass with legs in roadway?

9 A Yes.

10 Q And that is different what you have testified to
11 today, isn't it?

12 A His legs were in the roadway. His lower
13 extremities were in the roadway.

14 Q But you said half here, isn't that correct?

15 A I did say half.

16 Q I just want to make sure. And is there anything in
17 this statement that indicates that my client
18 tackled Mr. Williamson in the roadway?

19 A Sir, I wouldn't have seen that, so I wouldn't be a
20 witness to the actual tackle that you are referring
21 to. I was -- I responded after the fact.

22 Q Right. But didn't you in your statement mention
23 what some witnesses have told you about what
24 happened, correct?

25 Mack stated that the club had been...

1 A Yes.

2 Q Okay. But you didn't mention anything with respect
3 to somebody telling you that my client was tackled
4 in the roadway, did you?

5 A I didn't.

6 Q Okay.

7 MR. LOURIE: I don't have any further
8 questions.

9 THE COURT: Yes, sir?

10 MR. GARFIELD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GARFIELD:

13 Q Good morning.

14 A Good morning.

15 Q I'd like to back up a little bit, Deputy Parish.
16 And if you would just tell the Court a little bit
17 about yourself. Where are you from originally?

18 A I was born in Indiana, raised in Florida.

19 Q And you have lived in South Carolina for how long
20 or since what year?

21 A Approximately '94 I moved here.

22 Q And when did you attend -- or have you had an
23 occasion to attend the South Carolina Criminal
24 Justice Academy?

25 A Yes, sir.

1 Q And when was that?

2 A In approximately 2000.

3 Q And you graduated in 2000?

4 A I do believe so.

5 Q And you have been with the Richland County
6 Sheriff's Department for how long?

7 A Since February 2003.

8 Q And you testified that you are presently a K-9
9 specialist?

10 A Yes, sir.

11 Q That means you are assigned to have a K-9 -- a
12 partner for a K-9?

13 A Yes, sir.

14 Q And how long have you been a K-9 specialist?

15 A Just over two and a half years now.

16 Q I'd like to bring you to December 6th of 2008.
17 What was your rank at that particular time?

18 A Master deputy.

19 Q And could you just briefly describe what your
20 duties were as a master deputy at that time?

21 A A lot of the corporal's roles. Basically we still
22 respond to calls for service. We write incident
23 reports. We do line-ups.

24 Q Did you have a supervisory role as a K-9
25 specialist?

1 A Do I currently?

2 Q No, excuse me, as a -- excuse me, scratch that. I
3 apologize. As a master deputy at that time, did
4 you have a supervisory role?

5 A Yes, sir.

6 Q Did you have people that you worked with that you
7 had, like road deputies?

8 A Yes, sir.

9 Q That you would be, for lack of a better term, their
10 supervisor?

11 A When the corporal wasn't present.

12 Q Okay. Very good. It depends on the chain of
13 command?

14 A Yes, sir.

15 Q Now, let me bring you to this particular day. You
16 have had -- you've been questioned as to what you
17 saw and what you did not see. You were not present
18 during the physical interaction between Mr. Mack
19 and Mr. Williamson, is that correct?

20 A That's correct.

21 Q Tell me when you first got word that -- or describe
22 the situation when you first got word that you
23 would have to respond to this particular location?

24 A I was on just normal patrol when I heard the call
25 go over dispatch of requesting additional units

1 down on Weir Avenue. And since I was close, I went
2 ahead and responded to that location.

3 Q Were you familiar with Weir Avenue?

4 A Yes, sir.

5 Q Were you familiar with Club Essence?

6 A Yes, sir.

7 Q And upon your arrival -- and Mr. Lourie asked you
8 this, that you believe to some degree you almost
9 passed it, I believe was your testimony, that you
10 observed a situation or you observed a series of
11 individuals. Just if you could just please explain
12 to the Court what you saw?

13 A I did almost pass it because I thought that the
14 corporal and another deputy were requesting
15 assistance where they were located, which was
16 further down on Weir, which is why I almost passed
17 the incident location that they were asking for
18 additional units to respond for.

19 And then once I responded and I had almost
20 passed it is when I realized that there was an
21 altercation of some sort.

22 Q Did you have an occasion to come in contact with
23 McKenzie Williamson?

24 A Yes, sir.

25 Q And you described a little bit, but just tell me

1 about the conversation or the interaction you had
2 with Mr. Williamson.

3 A Once I got on the scene, Mr. McKenzie was on the
4 ground.

5 Q And you said Mr. McKenzie. It is McKenzie
6 Williamson just so we will both be on the same
7 page?

8 A Yes.

9 Q Okay. Sorry for the interruption. Go ahead.

10 A He was on the ground. And I was trying to find out
11 the events that had taken place. And Corporal Gore
12 had advised that he had witnessed Mr. Mack go
13 hands-on with Mr. Williamson. And so I got the
14 corporal's side of the story, and then I spoke with
15 Mr. Williamson as well.

16 Q You spoke with Mr. Mack, is that right?

17 A Yes, sir.

18 Q Okay. And he was identified as Mr. Mack out there
19 at the scene?

20 A Yes, sir.

21 Q And he identified himself being in what type of
22 employment?

23 A Security officer. He was an armed security
24 officer.

25 Q And what, if anything, did Mr. Mack tell you about

1 the situation with Mr. Williamson being in the club
2 that night?

3 A That he was asked several times to leave the club
4 and he kept -- Mr. Williamson didn't want to obey
5 the request to leave and kept returning to the
6 club.

7 Q And what, if anything, did Mr. Mack tell you about
8 Mr. Williamson's ultimate removal from the club?
9 In other words, what happened with Mr. Mack and
10 Mr. Williamson?

11 A Mr. Williamson came back onto the club property
12 again and was pursued off, chased off the property
13 by security.

14 Q And security being who, was your understanding at
15 this time?

16 A There are several security officers, so I don't
17 know which ones in particular chased him off the
18 property.

19 Q But did this include Mr. Mack, to your knowledge?

20 A I believed to be so, yes.

21 Q Did Mr. Mack tell you that he was the one that put
22 handcuffs on Mr. Williamson?

23 A He did.

24 Q Did he tell you that he is the one that put
25 handcuffs on Mr. Williamson in what set of

1 circumstances?

2 A To detain him until Richland County got there.

3 Q Okay. Did you also have an occasion to interact
4 and see Mr. Williamson?

5 A Yes, sir.

6 Q Corporal Parish, if you could tell the Court what
7 Mr. Williamson --

8 A I'm not a corporal, sir.

9 Q Deputy Parish. I already promoted you on the
10 record. Deputy Parish, could you tell the Court
11 what Mr. Williamson was wearing?

12 A He had on a white shirt and denim pants.

13 Q Okay. Did you notice if he was injured in any way?

14 A Yes, sir.

15 Q Could you describe for the Court his injuries?

16 A (Witness grimaces.) Bloody. His hands were all --
17 it had like scratches and like little pebbles like
18 in his hands and blood was all over his face and
19 his shirt.

20 Q Did you have an occasion or feel the need to
21 summons EMS?

22 A Yes, sir. Due to the amount of blood that was
23 coming from where -- I wasn't really sure where,
24 other than his hands and his face, I requested EMS
25 to treat him on the scene.

1 Q Did Mr. Mack express any kind of preference to you
2 or in your presence as to whether he wished to
3 prosecute the charges or press charges against
4 Mr. Williamson?

5 A The only thing that Mr. Mack said that he wanted to
6 put him on was a trespass notice.

7 Q Did he say he wanted to press charges for anything
8 other than that?

9 A No, sir.

10 Q Or press charges for any crime?

11 A No, sir.

12 Q Other than Mr. Mack saying that Mr. Williamson kept
13 re-entering the club, was there any mention by
14 Mr. Mack that Mr. Williamson was dangerous? Any
15 mention by Mr. Mack that Mr. Williamson was violent
16 in any way?

17 A No, sir.

18 Q Or that he was carrying a weapon?

19 A No, sir.

20 Q Or that he had committed a felony?

21 A No, sir.

22 Q Or he committed a burglary or larceny or anything
23 that was criminal in nature?

24 A No, sir.

25 Q So EMS was summoned. Did you have any sort of

1 inclination as far as the handcuffs being on
2 Mr. Williamson?

3 A Well, I inquired who put the handcuffs on him. And
4 Mr. Mack said that he did. And because of the
5 large amount of blood that was on Mr. Williamson, I
6 didn't have gloves, latex gloves on, and I didn't
7 want to contaminate myself. And due to the fact
8 that Mr. Mack did not want to prosecute for any
9 charges, I asked Mr. Mack to remove his handcuffs.

10 Q You spoke with Mr. Williamson. Were you ever able
11 to explain to him the situation with being on the
12 property and security, and things like that?

13 A I did. I asked him if, you know, if he was asked
14 to leave, and he said yes. But I think the
15 majority, if memory served me correct, a lot of the
16 conversation between Mr. Mack and Mr. Williamson
17 occurred with corporal. I did have some
18 interaction with Mr. Williamson, though.

19 Q Did Mr. Williamson seem to understand your
20 questions?

21 A Yes.

22 Q Did he seem to answer where you could understand
23 what he was saying to you?

24 A Yes, sir.

25 Q Okay. I understand he had a little bit or he was

1 under the influence of alcohol that evening?

2 A Yes, sir, he was.

3 Q Did he appear grossly intoxicated to you?

4 A No, sir, he wasn't grossly intoxicated or slurred
5 speech or anything. He had just -- I could smell
6 alcohol coming from his person.

7 Q And what, if anything, did Mr. Williamson tell you
8 as to what he wanted or what did he say in your
9 presence as to what he wanted as far as pressing
10 charges on Mr. Mack?

11 A He did. He was explained the circumstances of
12 Mr. Mack. And his roles. And Mr. McKenzie under
13 that -- excuse me, Mr. Williamson understood that.
14 And he said that he did wish to prosecute for
15 assault.

16 Q And the decision was made to place Mr. Mack under
17 arrest?

18 A Yes, sir.

19 Q Do you have to, based on your qualifications,
20 Deputy, and your training and your experience,
21 almost ten years now law enforcement, do you have
22 to actually tackle somebody to be charged with
23 simple assault?

24 A No, sir.

25 Q If you have an unwanted contact of an aggressor of

1 a violent nature, could that be enough?

2 A Yes, sir.

3 Q We're talking about simple assault and battery,
4 right?

5 A Yes, sir.

6 Q Aggravated assault may be other circumstances?

7 A Totally different.

8 Q Based on your qualifications and your training and
9 your experience in law enforcement, Officer, I'll
10 ask you the same thing. Have you had an occasion
11 to come on the scene where somebody had injuries of
12 the type that you saw of Mr. Williamson, bleeding,
13 that kind of thing?

14 A Yes, sir.

15 Q Did you formulate any kind of opinion out there as
16 to the nature for the cause of his injuries?

17 A They -- they were -- were pretty bad. I couldn't
18 tell how severe that his injuries were.

19 Q Uh-huh.

20 A But I could tell that they were from a hard surface
21 fall of some sort.

22 Q Did it appear to be from any kind of contact with
23 the grass to you?

24 A No, sir.

25 MR. GARFIELD: Beg the Court's indulgence.

1 (Pause.)

2 BY MR. GARFIELD:

3 Q I do have a very short video of the patrol car you
4 were driving. Was this a Richland County patrol
5 car that you were driving?

6 A Yes, sir.

7 Q Did it have a video capacity?

8 A Yes, sir, we have car cams.

9 Q You have the car cams on the dashboard or from a
10 dashboard point of view of your car?

11 A Yes, sir.

12 Q And are those dashboards, excuse me, dashboard
13 cams -- explain to the Court how it typically is
14 engaged or how does it come on?

15 A It is connected to our siren box and then when we
16 power on our siren box we also have to physically
17 manually turn on the camera. But when you activate
18 your lights and siren the camera automatically
19 picks up footage.

20 MR. GARFIELD: I'm just pausing what I have
21 here. And this has been previously produced to
22 Mr. Lourie and I would just identify this or I
23 would just go ahead and describe this for
24 identification purposes.

25 Q I see right here where it says 12-06-208?

- 1 A Yes, sir.
- 2 Q You don't have to stand up. I think we are all
3 kind of looking at the same thing. Is that better?
4 Can you just describe for the Court what we see
5 here as far as numbers and words?
- 6 A This is the date. This is my name and how it is
7 programmed into the database.
- 8 Q Let's be specific. I'm sorry. I see M.D. Parish?
- 9 A Yes, sir.
- 10 Q Master Deputy Parish?
- 11 A Yes, sir.
- 12 Q And then would be the time. And the time, could
13 you just read out the time?
- 14 A 024516.
- 15 Q So the best of your knowledge -- I'm not asking if
16 it is perfectly the exact time, but was that
17 roughly the correct time?
- 18 A It should have been, yes, sir.
- 19 Q All right. And what does M1 stand for?
- 20 A That is mic. The in-car microphone is on.
- 21 Q All right. Now, I'm just going to go ahead and
22 play this. And this is -- this is, I will tell
23 you, an adaptation or condensed view, but I want
24 you to see if you can identify it.
- 25 (Video played.)

1 Q What have we seen so far?

2 A Me traveling out on Two Notch. I just made a left
3 onto Weir. I don't know if you heard in there,
4 unit responding to Weir. Come down towards my
5 lights, which is why I almost passed it, because
6 when I'm coming down Weir you can see those patrol
7 car lights further up. Cars are all parked on the
8 side of the street.

9 Q You said cars are parked on the side of the street?

10 A On both sides of the street.

11 Q Now, cars are parked on both sides of the street.
12 Was that something that was a common or uncommon
13 occurrence in that area?

14 A It is common. Because they do. The other parking
15 lot that is limited for Essence, that is where all
16 the club members parked at.

17 Q Sort of overflow parking?

18 A I guess.

19 Q I don't want you to guess. Is it lawful to park on
20 the road?

21 A No.

22 Q Okay.

23 A But this is -- this is the white car.

24 Q We'll get to that in just a moment. And now I'm
25 going to tell you that this is going back to the

1 same few seconds.

2 Now, what do we see here? And I have paused
3 it. What do we see here with the circle and the
4 arrow?

5 A That is Mr. Williamson.

6 Q And that is Mr. Williamson situated where?

7 A That is his lower extremities. This is the road.
8 You can't see it, but this is the road right here
9 and his lower extremities in the road.

10 Q And he is in front from what you represent of what
11 what do we see here?

12 A A white car.

13 Q Okay.

14 MR. GARFIELD: Your Honor, I would like to
15 move to introduce the video into evidence at this
16 particular time.

17 THE COURT: Any objection?

18 MR. LOURIE: No objection.

19 (WHEREUPON, Defendant's Exhibit No. 4
20 was marked for identification and
21 received into evidence.)

22 BY MR. GARFIELD:

23 Q I'd like to show you a picture.

24 MR. GARFIELD: And this is, I represent to the
25 Court, a copy of Defendant's Exhibit Number 1

1 introduced as an exhibit.

2 Q Can you identify, Deputy Parish, what we see here
3 in this picture?

4 A This is Weir. And then this is Club Essence. And
5 this would be 109, property 109 Weir Avenue.

6 Q Okay. When you say this is Weir, I'd like to just
7 go ahead and describe for the record what we are
8 talking about. Would this be the road? Can we
9 identify this man in this picture?

10 THE COURT: Excuse me one second. Are you a
11 witness? The witnesses have been sequestered and
12 have to be outside.

13 MR. LOURIE: If I call Deputy Gore back on the
14 stand too in this case, I have concern about that.

15 MR. GARFIELD: Just the possibility I might,
16 in abundance of precaution I'll have both -- I
17 don't plan on it, Your Honor.

18 THE COURT: Gore sat in here the whole time?

19 MR. GARFIELD: Well, let's just -- we don't
20 anticipate calling Deputy Gore.

21 THE COURT: Thank you.

22 MR. GARFIELD: Thank you.

23 (Witnesses step out of courtroom.)

24 BY MR. GARFIELD:

25 Q Okay. My question is, can you identify the man in

1 this picture?

2 A Yes, sir, Corporal Gore.

3 Q Okay. Can you just describe what the street is
4 that Corporal Gore is standing on?

5 A He's in the middle of the road.

6 Q Middle of the road. Now, which street that is --
7 or which road that is?

8 A That is Weir.

9 Q And then you pointed to a grassy area?

10 A Yes, sir.

11 Q And then how did you identify that?

12 A That is the property of 109 Weir.

13 Q And 109 Weir was the information you included on
14 your incident report?

15 A Yes, sir.

16 Q Is that correct? 109 Weir to your knowledge was
17 either a residence or a home as premise type, is
18 that correct?

19 A Yes, sir.

20 Q Did you -- why would you put residence/home for 109
21 Weir Avenue? Were you putting that that is exactly
22 where any sort of purported crime was committed or
23 was this an incident location?

24 A That it is an incident location type.

25 Q And why would it be important to put an incident

1 location in an incident report?

2 A It is a required field.

3 Q Have you ever put in the roadway or in some sort of
4 road as a premise type?

5 A Usually with like accidents, like traffic
6 collisions.

7 Q Anything other than motor vehicles accidents and
8 collisions?

9 A Sometimes we do.

10 Q Okay. In this particular point the fact you put
11 109 Weir Avenue as a premise type, did you mean to
12 indicate that that is where any sort of purported
13 crime was committed?

14 A No, sir. That is just advising for our records
15 that at 109 is indeed a residence or a home of some
16 sort.

17 Q Now, in this particular picture does this appear to
18 capture or depict the area that you were just
19 pointing out on your video?

20 A Yes, sir.

21 Q Okay. Does this appear to depict the white car
22 that was parked or situated that was in that video?

23 A Yes, sir.

24 Q I thought I saw a Sharpie around here. I'm going
25 to just hand you a pen, Deputy Parish. To the best

1 of your ability, could you just sort of draw in
2 where this white car was?

3 A (Witness complies.)

4 Q You have just -- you drew a rectangular of sorts,
5 is that correct?

6 A Yes, sir.

7 Q Is that your best estimate of where the white car
8 was situated?

9 A Yes.

10 MR. GARFIELD: I'd like to move to introduce
11 this as the next exhibit.

12 (WHEREUPON, Defendant's Exhibit No. 5
13 was marked for identification and
14 received into evidence.)

15 MR. GARFIELD: Beg the Court's indulgence.

16 (Pause.)

17 MR. GARFIELD: Just one more moment. I think
18 I'm trying to shortcut some time too.

19 (Pause.)

20 BY MR. GARFIELD:

21 Q Did you have any reason to disbelieve your
22 supervisor, Corporal Gore, at this particular time
23 when he represented anything to you at the scene?

24 A No, sir. He witnessed the incident take place.

25 Q Is it unusual for one individual to witness an

1 incident take place and someone else help out with
2 the paperwork?

3 A That is very common for us to do.

4 Q Is that what was done in this particular incidence?

5 A Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. LOURIE:

8 Q Officer Parish, I believe in your testimony with me
9 you said that the white vehicle was all the way in
10 the road. Would you agree with me that that video
11 depicts it half on the grass and a half on the side
12 of the road?

13 A I mean, we can -- I don't know if you -- I mean --

14 Q Well, let me ask you this. You testified when I
15 was asking you earlier that the white car was all
16 the way in the road.

17 My question is, would you agree with me that
18 the video does not depict the white vehicle all the
19 way on the road?

20 A I don't recall saying it was all the way in the
21 road. I just remember saying it was in the
22 roadway.

23 Q I think I wrote down -- and we can go back because
24 I asked you if it was half and half. Remember
25 that? You said no, it was all the way in the road?

1 MR. GARFIELD: Objection. Argumentative.

2 Asked and answered.

3 THE COURT: Overruled.

4 Q Do you remember that?

5 A I'm sorry.

6 Q I asked you if it was half on the road -- on the
7 side of the road -- half on the side of the road
8 and a half on the grass. You said no, it was all
9 in the road. Do you remember that?

10 A I don't remember that, I'm sorry.

11 Q All right. But you would agree with me the video
12 would depict how it was?

13 A The video was accurate, yes, sir.

14 Q That's all I have.

15 MR. LOURIE: Thank you, Your Honor.

16 MR. GARFIELD: I just have one follow-up on
17 that, Your Honor, based on Mr. Lourie's question.

18 RE CROSS-EXAMINATION

19 BY MR. GARFIELD:

20 Q The video, when you are coming in and we see --
21 this side right here by the Defendant's Exhibit
22 Number 5 sticker.

23 A Yes, sir.

24 Q Does the video depict all the way that we see on
25 the property of 109 Weir Avenue?

1 A No, sir.

2 Q Does it depict the entire width of the front grill
3 of the car?

4 A No, sir.

5 Q I don't have anything else. Thank you.

6 THE COURT: All right, ma'am, you may step
7 down.

8 (Witness steps down.)

9 THE COURT: Any objection to this witness
10 being excused?

11 MR. LOURIE: None, Your Honor.

12 MR. GARFIELD: None, Your Honor.

13 THE COURT: Ma'am, you are free to leave.
14 (Witness excused.)

15 MR. LOURIE: We rest, Your Honor.

16 THE COURT: All right. Any motions?

17 MR. GARFIELD: Yes, Your Honor.

18 At this time the Defendant would move for a
19 directed verdict as a matter of law.

20 Your Honor, the Defendant does make this
21 motion, and I believe the applicable standard is
22 taking the facts in a light most favorably to the
23 Plaintiff and all inferences drawn therefrom, we
24 would submit that the finder of facts in this
25 particular case, which is of course the Court in

1 this instance, can only reach one reasonable
2 conclusion. And that conclusion is that on
3 December 6th of 2008, the Sheriff's Department
4 arrest of Mr. Mack was a lawful arrest.

5 The first ground that we would raise is based
6 on the South Carolina Tort Claims Act. As Your
7 Honor is aware, the Tort Claims Act governs all
8 actions brought against governmental entities. It
9 is the exclusive remedy for money damages against a
10 governmental entity for alleged acts or omissions
11 by governmental employees who are acting within the
12 course and scope of their official duties.

13 The evidence in this particular case, and most
14 of the evidence that I would ask the Court to
15 respectfully take note of is through Corporal Gore
16 himself, who was a witness for the Plaintiff in
17 this case.

18 Plaintiff's counsel called Mr. Gore as a
19 witness. And his testimony indicated that he was
20 on duty as a master deputy or corporal with the
21 Richland County Sheriff's Department. He was
22 conducting official business on behalf of the
23 Richland County Sheriff. And his presence, as well
24 as the entire Sheriff's Department, in this context
25 in the area was in response to certain complaints,

1 neighborhood complaints, potentially business
2 complaints.

3 Corporal Gore was in the process of making an
4 arrest when he saw the series and chain of events
5 concerning the Plaintiff and Mr. Williamson, the
6 victim in this case. He saw -- or the complainant
7 at least in this case. He saw two men physically
8 engaged, physically interacting with one another.
9 I'd like to get to more of that later. But what he
10 did in this case is that he used his discretion
11 that the Plaintiff should be arrested in this case.

12 He directed Deputy Parish at this particular
13 time, which the Court just heard from as another
14 one of the Plaintiff's witnesses, he directed that
15 she effectuate the arrest and process the
16 paperwork.

17 Upon specific examination by the Plaintiff's
18 counsel when Mr. Lourie asked Corporal Gore
19 pointblank whether this arrest on December 6th of
20 2008 was mandatory, Corporal Gore said that it was
21 not, that he could have done other things
22 alternatively other than to make this particular
23 arrest.

24 But Corporal Gore, I believe, stated that
25 because the victim or the complainant in this case,

1 Mr. Williamson, sought and asked to press charges,
2 that in Corporal Gore's professional judgment that
3 an assault occurred, he exercised his discretion,
4 Your Honor, as a law enforcement officer to go
5 ahead and pursue an arrest against the Plaintiff.

6 And one other note about the Tort Claims Act.
7 And this is more for the record because I know,
8 again, this is ground that Your Honor and I have
9 already plowed before, but in 1986 when the South
10 Carolina General Assembly enacted the South
11 Carolina Tort Claims Act, what it essentially did
12 was it abolished absolute sovereign immunity in
13 that it permitted in certain circumstances
14 individuals to seek redress against the government
15 because before they couldn't do that. But what the
16 legislature did is that they carved out 37
17 exceptions. They called these the exceptions to
18 the waiver of sovereign immunity.

19 And what that means is that if a certain
20 situation, if facts and circumstances fell into any
21 one of those 37 exceptions, then the entity itself,
22 the governmental entity, should enjoy absolute
23 sovereign immunity from suit.

24 Now, I'd like to direct Your Honor's attention
25 to 15-78-60, Subsection 5. And I just hand up my

1 Tort Claims Act book, Your Honor. And I don't have
2 a copy of that. But it is fairly straightforward.
3 It is just one subsection.

4 It says that: The exercise -- or a
5 governmental entity is not liable for a loss
6 resulting from the exercise of discretion or
7 judgment by the governmental entity or employee,
8 but for the performance or the failure to perform
9 any act or service which is in the discretion or
10 judgment of the entity, the governmental entity or
11 the employee.

12 Now, Your Honor, in this particular case, the
13 Plaintiff's theory really centers on two aspects,
14 which we learned early on. The first is that the
15 deputies, Corporal Gore, the other deputy, was
16 using bad judgment, that Corporal Gore exercised
17 poor judgment in arresting the Plaintiff.

18 And in the arrest of the Plaintiff, it is a
19 performance of an act obviously by a law
20 enforcement officer. And in performing this act
21 the Plaintiff has brought suit claiming liability
22 and incurring damages.

23 Subsection 5 addresses this correctly.
24 Whether Corporal Gore, or any deputies, for that
25 matter, what they were doing. And, quite

1 frankly -- here is where I'm going with this --
2 whether the governmental employee, who is Corporal
3 Gore, was using good judgment, sound judgment or
4 poor judgment, he definitely was in the performance
5 of an act that is uniquely related to his official
6 duties as a sheriff's deputy.

7 And in this incidence he exercised his
8 discretion. He had other alternatives, just as he
9 would be alternatively asking or making sure this
10 individual was ticketed rather than arresting him.
11 He exercised his discretion in having him placed
12 under arrest.

13 The Courts have held that statutory law should
14 be given its plain and ordinary meaning. The
15 Supreme Court has held that two or three different
16 times. And I do bring that to the Court's
17 attention because I look at this as black letter
18 law to say that in this particular case what
19 happened was that in the acts or even the omissions
20 by the deputies that could be alleged in this case,
21 taking all the facts in the light most favorable to
22 the Plaintiff, their acts constitute an immune
23 function and the entity, that being the sheriff in
24 official capacity, should enjoy absolute sovereign
25 immunity in this particular case, Your Honor.

1 Your Honor, the second ground concerns the
2 failure of proof in this matter. I used sort of as
3 a template a United States Supreme Court case, well
4 before the time of all people in this room, it is
5 from 1959. It is Henry versus United States. And
6 I have marked this up somewhat, Your Honor, but I
7 do hand it up. And I'll go ahead and put -- the
8 cite is 361 U.S. 98, decided in 1959.

9 And the language I think is pertinent here
10 that says -- and I'm reading from Page 102 and at
11 Page 5 of my copy, says:

12 Evidence required to establish guilt is
13 not necessary. On the other hand, good
14 faith on the part of the arresting
15 officers is not enough. Probable cause
16 exists if the facts and circumstances
17 known to the officer warrant a prudent
18 man in believing that the offense has
19 been committed.

20 We also have a Subsection Number 7 to our
21 Request to Charge in this matter. And I'd like
22 to -- I know Your Honor has enough paper up there.
23 I would like to hand up our request, if I may. I
24 have another copy for your clerk.

25 THE COURT: He has it.

1 MR. GARFIELD: Subsection 7. It is a 2009
2 Court of Appeals case, State versus Cope, 648
3 S.E.2d 177 at Page 185, that says:

4 In assessing probable cause for a
5 warrantless arrest, the question is
6 whether the facts and circumstances are
7 sufficient for a reasonable person to
8 believe that a crime has been committed
9 by the person to be arrested.

10 Now, the undisputed facts in this case, the
11 circumstances that was prevailing within the
12 knowledge of Corporal Gore in this matter, I'd like
13 to discuss those.

14 Let's take all the facts in the light most
15 favorably to the Plaintiff, because obviously that
16 is a standard for this particular motion, and let's
17 say that the perception of Corporal Gore was
18 incorrect, that it was -- that Mr. Mack never
19 tackled Mr. Williamson. Let's take the tackling
20 issue aside.

21 The Plaintiff does make some key concessions
22 in this case. And he did this under oath. Quite
23 emphatically and clearly he admits to physically
24 grabbing Mr. Williamson, pulling him from under a
25 car, this car that was halfway in the roadway, or

1 at least halfway in the roadway, and handcuffed
2 him.

3 Subsection -- excuse me, I didn't mean
4 subsection. I'd like to direct Your Honor's
5 attention to Charge Number 9 in this case. And
6 this is from State versus Moultrie, 451 S.E.2d 34.
7 And on Page 37 of this case, the Court talks about
8 what a probable cause analysis would include. And
9 it includes a realistic assessment of the situation
10 from the law enforcement officer's perspective.

11 Now, it is undisputed in this case from the
12 law enforcement officer's perspective
13 Mr. Williamson had freshly committed objective
14 manifestations of physical injury that were
15 visible. The victim wanted to pursue charges
16 against the Plaintiff. And we have heard a lot
17 about this. And I think the significance of that
18 is this, because it demonstrates to a reasonably --
19 the realistic assessment that is being demonstrated
20 to the officer is that if the individual wanted to
21 press charges, then an officer could easily and
22 reasonably conclude that it shows an unwanted
23 touching. It is the unwanted touching aspect of
24 this.

25 There is also one more thing of this.

1 Corporal Gore's testimony is that in the
2 performance of his duties; his professional
3 judgment was to arrest these kind of cases when the
4 victim tells him that he wants to press charges.

5 And I think that is important because that
6 goes back to Subsection 5, because he acted in his
7 own judgment and he acted with his own discretion.

8 So from Corporal Gore's perspective, it was
9 clearly -- his assessment is clear that it was
10 realistic to make the arrest based on the injuries
11 and the facts and circumstances.

12 Now, in this case -- and I would assume, this
13 is what we have heard, this is what has been
14 argued, or at least that the evidence and what I
15 assume Mr. Lourie will come back with -- is to say
16 that there was no probable cause because although
17 there was an offensive touching, an offensive
18 contact, which I think is undisputed, and there was
19 an existence of an injury, which is undisputed,
20 that all the events happened on a property that he
21 was paid to protect.

22 Now, this argument, this fact may be not only
23 relevant, but extremely critical in a case
24 involving Mr. Mack's guilt.

25 If this were a criminal trial, the fact that

1 he could then testify or place evidence in the
2 record that he was a SLED certified security guard
3 that should be able to invoke or afford the
4 privilege that is given to him under the statute
5 that has already been put in the record in this
6 case, I call it the security officer statute, that
7 may be a key factor in the defense of his guilt in
8 a case brought by the State in attempting to prove
9 his guilt beyond a reasonable doubt.

10 The other case I would like to show, and I
11 think I may have just one copy of this, and I would
12 like to read it out for the Court, and I am going
13 to make a cite to it. It is Lapp versus South
14 Carolina Department of Motor Vehicles. It is a
15 2010 Court of Appeals case, South Carolina Court of
16 Appeals. The cite is 692 S.E.2d 565 and at
17 Page 506. This involves a DUI charge.

18 The Court states that the pertinent question
19 here was not whether Lapp was guilty of DUI, but
20 merely whether probable cause existed to arrest her
21 for that offense. A finding of probable cause may
22 be based upon less evidence than would be necessary
23 to support a conviction.

24 The Court states in internal citations in
25 parentheses that evidence required to establish

1 guilt is not necessary to authorize a warrantless
2 arrest.

3 And obviously this is consistent with our
4 charges that probable cause may be found somewhere
5 between suspicion and sufficient evidence to
6 convict.

7 Now, I know that the Court is aware of those
8 legal principles. However, it is important in this
9 particular case because the Plaintiff is arguing
10 actual facts, actual facts that would be
11 determinative as to his guilt. He is alleging that
12 he was on private property. He is alleging that he
13 was on his own statutorily designated jurisdiction.
14 I understand that. But that has nothing to do with
15 the probable cause analysis based on what the
16 Courts have stated. Because the probable cause
17 analysis does not deal with actual facts. It
18 centers on -- and I think we have this in Request
19 to Charge Number 8, Eaves versus Broad River
20 Electric Cooperative. It is 289 S.E.2d 414. It is
21 a South Carolina Supreme Court case from 1982 that
22 states that in determining the existence of
23 probable cause, the facts must be regarded from the
24 point of view of the party prosecuting.

25 And here is what is key, Your Honor. The

1 Supreme Court stated the question is not what the
2 actual facts were, but what the police officer
3 honestly believed them to be. So in this context
4 he is arguing actual facts.

5 Now, I would submit that this would be a
6 different situation if there was these kind of
7 things, if the Plaintiff got up there and said he
8 never touched Mr. Williamson or made any contact
9 with him or he just touched him lightly or in a
10 passive sort of way. But the Plaintiff's testimony
11 coming from the stand is that he agreed that he
12 made physical contact with him in an aggressive
13 manner.

14 Taking the facts in a light most favorably to
15 the Plaintiff, he agreed that he chased him. He
16 grabbed him. He pulled him. He handcuffed him.
17 Mr. Williamson -- this may be a different situation
18 if the police got to him and evaluated him and
19 determined and saw that he never sustained any kind
20 of injuries. I could see where that would go to
21 probable cause as well, because a realistic
22 assessment would conclude this doesn't add up.

23 That is not what the case is here. Deputy
24 Gore -- Corporal Gore, excuse me -- stated that
25 this man had a profuse amount of bleeding. He

1 had -- the nature of it was lacerations and
2 abrasions. He had scraping.

3 Clearly the Court can deduce, and clearly a
4 reasonable officer at the scene who is trying to in
5 good faith decide what is going on as a probable
6 cause analysis could be consistent with road rash.

7 So normally in a case we have to take the
8 facts in the light most favorably to the Plaintiff,
9 but in order -- and a little bit of a legal
10 anomaly -- because in order to properly assess
11 probable cause, you also have to look at what the
12 officers had before him or her.

13 The law enforcement perspective at the scene
14 given the Supreme Court language, Corporal Gore was
15 very specific. He unambiguously testified very
16 clearly that the testimony -- his testimony was
17 that he witnessed an assault. He witnessed an
18 assault.

19 Our first Request to Charge is directly lifted
20 from South Carolina Code Annotated, Section
21 17-13-30. And it has also been adopted or
22 referenced with case law from State versus Mims --
23 and this is all in our Request to Charge, Your
24 Honor -- that a police officer may, without a
25 warrant, arrest a person who commits a misdemeanor

1 in the officer's presence.

2 Again, it would be unequivocally testified
3 that what he saw was an assault in his presence.

4 Request to Charge Number 5 is a United States
5 Supreme Court case from 2001, Atwater versus City
6 of Lago Vista, 532 U.S. 318, in which the Court
7 states -- and this is -- my charge, Your Honor, I'm
8 pretty sure I cut and paste from the actual case
9 that says that an officer has probable cause to
10 believe -- if an officer has probable cause to
11 believe that an individual has committed even a
12 very minor criminal offense in his presence, he may
13 lawfully arrest the offender.

14 So the fact that Deputy Gore felt so -- he was
15 so emphatic that this is what happened in his
16 presence, the honest belief of an officer in his
17 realistic assessment is very relevant to the legal
18 analysis of the existence of probable cause.

19 It is not significant in this case that the
20 Plaintiff says he was not in the road. And I will
21 say that just to make sure I'm saying this right.
22 It is not of significance in this case that the
23 Plaintiff makes -- takes the position that he was
24 not in the road because, again, that goes to the
25 actual facts, arguing facts. It is whether

1 Corporal Gore could conclude that he was in the
2 road. It is whether Corporal Gore can conclude
3 that what he saw, the unwanted contact in the
4 aggressive way that he saw that Mr. Mack states
5 incidents happened, whether he could believe that
6 it was in the road, whether it be Exhibit Number 1
7 where Corporal Gore stands as he remembers where
8 the tackle or the interaction or the contact took
9 place or if it took place all the way by the grass.
10 The question is, could he conclude it.

11 And I think based on the injuries, which was
12 road contact-related injuries, cannot be
13 overlooked.

14 And I think going back -- and I'll close with
15 this, Your Honor, is that based on the -- it is a
16 failure of proof argument that we're making. He
17 has to be able to prove the lack of probable cause.
18 I do not see how he has done anything other than
19 fail to prove that the facts and circumstances
20 known to Corporal Gore at this particular time
21 would not warrant a prudent or reasonable man to
22 believe that an assault had been committed, that
23 there is nothing in the record that would show
24 otherwise.

25 And whether this would be a reasonable man, a

1 prudent man, or the corporal who has had four to
2 five different kinds of law enforcement-related
3 jobs in his career that made a professional
4 judgment out here that probable cause existed, that
5 the restraint -- that because of that the restraint
6 would be lawful, that it was a lawful arrest.

7 And based on those reasons, Your Honor, we
8 would ask for a verdict on behalf of the sheriff as
9 a matter of law.

10 And I know that was long. I thank you.

11 MR. LOURIE: Thank you, Your Honor. May it
12 please the Court?

13 THE COURT: Yes, sir.

14 MR. LOURIE: Judge, our jurisdiction is one
15 where the issue of probable cause is for the fact
16 finder. Very clear in our case law. And it is not
17 based on what the officer saw.

18 Under his theory, the officer can just come up
19 here and say, well, I believe I saw this and that,
20 and then nobody could ever pursue an unlawful
21 arrest case.

22 And our Court has said -- and I am going to
23 cite Thompson v. Smith, 289 S.C. 334. And it does
24 not say based on what the officer saw, but it does
25 base it on facts.

1 It says:

2 Probable cause is defined as a good
3 faith belief that a person is guilty of
4 a crime when the belief rests on such
5 grounds as would induce an ordinary
6 prudent and cautious person.

7 It doesn't say based on what the officer saw
8 because that would be unfair because they would
9 always attempt to come in and say, well, I thought
10 there was probable cause, and then, boom, there
11 would never be a case.

12 And so -- and the law is very clear, it also
13 is not a question of law, it is a question of fact.
14 And there are disputes in this case and it is
15 important as to whether it happened on the property
16 or off the property because this whole thing about
17 it happening in the middle of the road, Your Honor,
18 honestly, that doesn't even start coming up until
19 after my client made a complaint and an
20 investigation started. The complaint was that if
21 he would have looked and stayed and listened he
22 would have found out that they had jurisdiction
23 over there. The police report doesn't mention
24 anything about middle of the road tackle. None of
25 that comes up until later.

1 So there is an issue of fact that this Court
2 has to decide where this crime occurred, just like
3 Solicitor Johnson said. So it is important as to
4 the facts as they are.

5 And we would say this. And we have it in our
6 jury instructions. And with all due respect to Mr.
7 Garfield, the way he makes it sound is the
8 Plaintiff could never pursue a case of unlawful
9 arrest against a police when the case law makes it
10 very clear that it is a question of fact and it is
11 a question based on what an ordinary prudent and
12 cautious person and the way that they believe a
13 person is guilty of a crime.

14 And that is what the law is. And I am getting
15 this straight out of Hubbard's book which is citing
16 Thompson v. Smith and a lot of other cases.

17 And the other thing, Your Honor. Of course it
18 comes down to this. If he had lawful authority, if
19 Mack had lawful authority, then there is no
20 probable cause to make the arrest. If Mack had
21 lawful authority, then there was no probable cause
22 to arrest him.

23 And in our state, and I have got some Requests
24 to Charge I am going to hand up, the first is, is
25 that the Attorney General has said, and I think

1 everybody agrees, is let's assume that this
2 incident started as we know in the road and the
3 suspect trips and he sort of lands part in the
4 grass and part on the road. And that is what the
5 testimony is, is that he was part and part. But
6 let's just assume that it was all in the road.

7 The Attorney General has said away from the
8 property guarded by a private security guard he has
9 the powers of arrest as to that of a private
10 citizen. All right. And I have that for you.

11 And so then we go to Statute 17-13-20(e). And
12 this is just giving -- and I make this argument,
13 but really this is giving them the most favorable
14 light, which is not the standard, but I am just
15 giving them the benefit of the doubt and say --
16 because we challenge and I think based on the
17 evidence and the cross-examination and the
18 impeachment and based on my client's testimony we
19 believe that it happened right there on the edge
20 and so it was partly on the road and partly on the
21 grass. He slid right up in there and by the time
22 my client handcuffed him he was on both.

23 But the statute says a citizen may arrest a
24 person in the nighttime by efficient means as the
25 darkness and the probability of escape render

1 necessary, even if the life of a person should be
2 taken, when the person is under circumstances which
3 would raise just suspicion of his design to commit
4 some felony.

5 And you heard the testimony from Demetrius
6 Mack that when the suspect threw up the gang signs
7 and the shooting signs, he took that as a threat to
8 shoot the night club up.

9 And so even if you believe it happened in the
10 middle of the road, we believe there was probable
11 cause since he had the right as a citizen at that
12 point to make the arrest.

13 And, Your Honor, with respect to the Tort
14 Claims Act, every time there is an arrest an
15 officer has to make a decision or discretion. And
16 that was not the intent of the statute. Under that
17 theory, again, nobody would ever be able to sue.
18 And I don't think that was the intent of the
19 legislature, especially when our court has said it
20 is a factual determination.

21 And I will go back to that. And it is not
22 based on what the officer, so to speak, saw that
23 night. According to the case law, it is what an
24 ordinary, prudent and cautious person would and
25 whether they have a good faith belief the person is

1 guilty -- guilty of a crime.

2 And I have got the citizens arrest statute too
3 for Your Honor. There are facts in dispute in this
4 case. There is really a drastic measure. It is
5 supposed to be in the light most favorable to us.

6 Given Chief Johnson's memo, his testimony, my
7 client's testimony, the issue of this happening in
8 the road not coming up until later after my client
9 makes the complaint, we ask that this case go
10 forward to the fact finder as the law states for
11 probable cause and unlawful arrest.

12 Thank you, Your Honor.

13 THE COURT: All right, thank you.

14 MR. GARFIELD: Your Honor, really just one
15 very brief point on the issue.

16 The facts in the case that we have heard from
17 the witness stand says that the only thing that he
18 communicated, that being Mr. Mack, communicated to
19 the officers was that he wanted to place Mr.
20 Williamson on trespass notice. He was very
21 emphatic about that at the scene. He felt like
22 that he was a troublemaker in the club. The fact
23 that he takes the position afterwards to say that
24 things go to a citizens arrest, he was thinking
25 that he was acting on behalf of the club and he had

1 reasonable belief, or whatever, that he had
2 committed a felony, again, that is what the actual
3 facts analysis would center on. That would be
4 centering on his guilt or his legal defenses in a
5 criminal action against him.

6 Once again, that has nothing to do with the
7 analysis for probable cause for the arrest.

8 And I just wanted to make that one point
9 clear.

10 Thank you.

11 THE COURT: Based on the testimony I have
12 heard, there are genuine issues of fact. In the
13 light most favorable to the non-moving party, the
14 motion for directed verdict is denied.

15 MR. GARFIELD: Thank you, Your Honor.

16 THE COURT: All right, we'll take a break.

17 MR. LOURIE: Thank you, Your Honor.

18 MR. GARFIELD: Thank you.

19 MR. LOURIE: Judge, ten minutes? Do we have
20 time to get something to drink downstairs?

21 THE COURT: Yes.

22 (WHEREUPON, a break was taken.)

23 THE COURT: All right.

24 MR. GARFIELD: Yes, ma'am, thank you, Your
25 Honor. The Sheriff would call Ken Proffitt.

1 THE BAILIFF: Place your left hand on the
2 Bible, and raise your right hand, please.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 testimony you are about to give in this case will
6 be the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Have a seat in the witness box.
10 State your name for the record.

11 THE WITNESS: Corporal Kenneth Proffitt,
12 Richland County Sheriff's Department.

13 KENNETH PROFFITT,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GARFIELD:

17 Q I've gotten titles wrong today. What is your rank,
18 I'm sorry?

19 A Corporal.

20 Q Corporal Proffitt. Thank you for coming this
21 morning. I'd like to ask you a little bit about
22 your background. Where are you from originally?

23 A I was born and raised in Salisbury, North Carolina.

24 Q And could you just briefly describe your
25 educational background?

1 A High school diploma. I have a bachelor's degree in
2 bible and youth ministry from Columbia
3 International University and a master of arts in
4 theology from Liberty Baptist Seminary.

5 MR. LOURIE: Judge, if you could ask counsel
6 to move so I can see the witness testify. I can't
7 see. If he can just a little bit move. I can't
8 see.

9 MR. GARFIELD: I think that is a comment on my
10 weight.

11 MR. LOURIE: I can't comment on anybody's
12 weight, Robby. Thank you.

13 BY MR. GARFIELD:

14 Q And if I could ask you to talk just a little bit
15 slower.

16 THE COURT: Yes.

17 Q To take care of everybody. Are you a little
18 nervous?

19 A No, not really.

20 Q Not really? Just when you are talking, just so the
21 court reporter can take it down.

22 A Okay.

23 Q Your educational background?

24 A I have a bachelor's of science in bible and youth
25 ministry from CIU, and then a master of arts in

1 theological studies from Liberty Baptist
2 Theological Seminary.

3 Q Anything beyond your college hours?

4 A Other than law enforcement certifications, no..

5 Q Going for your certification?

6 A Other than my law enforcement certifications, no.

7 Q Okay. And do you have any military experience?

8 A Yes, I did four years in the United States Marines.

9 Q Okay. And you were discharged when?

10 A 1999.

11 Q And you presently work for Whitlief(phonetic)
12 Agency?

13 A Richland County Sheriff's Department.

14 Q And when did you start with the Richland County
15 Sheriff's Department?

16 A April of 2004.

17 Q Corporal Proffitt, when you started in 2004, where
18 were you initially assigned?

19 A I was initially assigned to Region 5 at 2020
20 Hampton Street with a guy named Minstrel(phonetic)
21 Smith.

22 Q Did you -- any other assignments you had along the
23 way?

24 A From there I was briefly assigned to Region 2
25 before going to the School Resource Officer

1 Division.

2 Q Okay. And what school were you assigned to?

3 A Creighton Middle School.

4 Q And how long were you assigned to Creighton Middle?

5 A About four school years.

6 Q And you had an occasion to work with one of the

7 actual regions as a road deputy?

8 A Yes, I was Region 2.

9 Q And I would like to bring you to December of 2008.

10 What region were you assigned to?

11 A I was assigned to Region 2.

12 Q Specifically now I'll bring you to December 6th of

13 2008, sometime about 2:30 in the morning. Were you

14 on duty?

15 A Yes, I was.

16 Q Okay. Can you please tell the Court what the

17 circumstances were about 2:30 in the morning, where

18 you were and what your role was.

19 A We were conducting direct patrol around the area of

20 Club Essence, specifically Weir Drive. A lot of

21 drug activity tended to take place on Weir Drive

22 adjacent to the club.

23 I had occasion to come upon a vehicle who had

24 occupants who were smoking marijuana and actually

25 found one to be in possession of marijuana and was

1 effecting an arrest.

2 Q And at the time you were effecting an arrest, who,
3 if anybody, were you accompanied with at that point
4 as far as law enforcement?

5 A Corporal Gore.

6 Q And at this particular time did you have an
7 occasion to have your attention directed or
8 diverted from what you were doing?

9 A Yes, I was. I was carrying my prisoner in my
10 vehicle. I heard a disturbance behind me. My
11 vehicle was actually facing away from Two Notch
12 Road on Weir Drive.

13 When I turned around I observed a fight
14 between two individuals followed by a large crowd
15 coming from the club parking lot into the street,
16 which is Weir Drive.

17 Q And you say club parking lot. What club is this?

18 A Club Essence.

19 Q All right. So you see this occurring.
20 Approximately how far were you from the --
21 approximately how far were you from the
22 disturbance?

23 A Two hundred feet.

24 Q Okay. Did you move at all or what to extent did
25 you move, if anything, from your car?

1 A I didn't leave too far from my vehicle due to
2 having the prisoner secured inside, but I did move
3 far enough to observe the disturbance and call for
4 assistance.

5 Q Okay. Around this time, what, if anything, did you
6 see in this area?

7 A Like I said, I observed a large crowd following two
8 individuals fighting in the street. And I saw the
9 two individuals -- one individual tackle the other
10 into the street.

11 Q And you had a -- not a clear view, but an
12 unobstructed view of this?

13 A Yes, I did.

14 Q And what, if anything, happened at this point?

15 A About that time Deputy Parish arrived on the scene.
16 I was able to observe the individual on top, it was
17 a watch cap or a knit stocking cap with the word
18 security on it. And he put handcuffs on the other
19 individual that had been tackled.

20 Q Okay. Did you -- at any point did you hear any
21 verbal commands or anything from the security guard
22 or other officer?

23 A No, I did not. Not the officers that arrived on
24 the scene, no.

25 Q So you didn't hear anything then, but what, if

1 anything, after the cuffs were on did the security
2 officer say to the police or yell out?

3 A As I observed Deputy Parish's vehicle pull up on
4 the scene and her exit her vehicle, I heard him
5 yelling, trespass after notice, trespass after
6 notice!

7 Q Did you later learn who this security officer was?

8 A Yes, I did.

9 Q And how is that?

10 A The Defendant. Or, my apologies, the Plaintiff.

11 Q The Plaintiff in this case?

12 A Yes.

13 MR. GARFIELD: Just one moment, Your Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. GARFIELD:

17 Q Other than basically your testimony here today as
18 to what you saw and observed, did you really
19 conduct any kind of investigation or anything
20 further into what all was going on with respect to
21 the Plaintiff and the man in the street?

22 A No, I did not.

23 Q Okay. Were you aware that other officers were
24 doing that?

25 A Yes, I was.

1 Q I don't have anything else. Please answer
2 questions Mr. Lourie has for you.

3 MR. LOURIE: I just have a few. Thank you,
4 Your Honor. May it please the Court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. LOURIE:

8 Q Officer Proffitt, now, did you ever give a
9 statement in the criminal case against Demetrius
10 Mack?

11 A No, I did not.

12 Q Okay. And so the first statement that you gave was
13 after Mr. Mack made a complaint against the
14 Sheriff's Department, is that correct?

15 A Yes, it is.

16 Q And that was -- and do you remember the date of
17 your statement?

18 A Around about a month or so later.

19 Q Okay. And that statement was January 16, 2009?

20 A Correct.

21 Q And on that particular evening it was dark, wasn't
22 it?

23 A Yes, it was.

24 Q And you were 200 feet away?

25 A Approximately.

1 Q And at first your back was turned?

2 A Yes.

3 Q And you had to use your radio?

4 A Yes, I did.

5 Q No further questions.

6 THE COURT: Anything else?

7 REDIRECT EXAMINATION

8 BY MR. GARFIELD:

9 Q You saw the man tackle the man in the street?

10 A Yes, I did.

11 Q In the roadway?

12 A Yes, I did.

13 Q In the right-of-way, public right-of-way?

14 A Yes, it was.

15 Q On Weir Avenue?

16 A Yes, it was.

17 Q I have nothing else. Thank you.

18 MR. LOURIE: I have nothing further.

19 THE COURT: Sir, you may step down.

20 (Witness steps down.)

21 THE COURT: Any objection to this witness
22 being excused?

23 MR. LOURIE: No.

24 MR. GARFIELD: No, Your Honor. Thank you.

25 THE COURT: You are free to leave.

1 (Witness excused.)

2 MR. GARFIELD: My other witness is outside.

3 Just one moment, Your Honor.

4 THE COURT: All right.

5 (Pause.)

6 (Witness enters courtroom.)

7 MR. GARFIELD: The Sheriff's next witness, we
8 would call Ben Moore.

9 MR. LOURIE: Judge, I do have a matter I guess
10 I can just take up real quickly. Correct me if I'm
11 wrong, he needs to be outside.

12 MR. GARFIELD: I'm sorry, there is a matter of
13 law.

14 (Witness exits courtroom.)

15 MR. LOURIE: I don't -- Robby, correct me if
16 I'm wrong -- I don't believe this witness was
17 listed as a witness in their answers to
18 interrogatories. And I have checked all my
19 answers, and I may be missing it, but according to
20 the rules they have to list their witnesses in the
21 answers to interrogatories. And I could be wrong.
22 So if he is not listed, then we are going to object
23 to his testimony.

24 MR. GARFIELD: I understand, Your Honor. Just
25 one moment, please.

1 THE COURT: All right.

2 MR. LOURIE: And I might be wrong about it.

3 And if I am, I apologize.

4 THE COURT: If you are I'm sure he will tell
5 you.

6 (Pause.)

7 MR. GARFIELD: No, Your Honor, I do not see
8 where we specifically named him as a witness.
9 However, Mr. Lourie deposed Lieutenant Moore in our
10 office on August 19th, 2011. A transcript
11 followed. We have all received copies of the
12 transcript. We have had that for several months.
13 We would like to call him as a witness at this
14 time.

15 MR. LOURIE: And, Judge, with all due respect,
16 that's true, but the rules require, and
17 specifically my question, who do you intend to call
18 as a witness in this case, and he did not list him.
19 And the rule says they have got to list them. And
20 I understand I did take his testimony, his
21 deposition, but I also have a right to know who
22 they are going to call as a witness.

23 THE COURT: And how are you prejudiced by --
24 because I guess you knew, I guess he is out there,
25 what he was going to testify to.

1 MR. LOURIE: Right. He knew he existed, but I
2 didn't know he was going to testify in this trial.
3 I had no knowledge of that.

4 MR. GARFIELD: I'd like to be heard on that
5 very briefly. This is not a surprise witness, Your
6 Honor. This is an individual that wrote the
7 Plaintiff the two letters from the State Law
8 Enforcement Division that are already exhibits in
9 evidence that Mr. Lourie introduced. So that
10 entire issue has been brought up in this trial.

11 Lieutenant Moore further is somebody that we
12 had presented as far as possible witnesses in voir
13 dire.

14 And thirdly, like Your Honor has alluded to,
15 there is absolutely no prejudice to Mr. Lourie. He
16 has had a full and fair opportunity to understand
17 what his testimony would be through his own
18 deposition that he is doing.

19 So it is certainly, to even the degree that it
20 is a surprise to him as any defense witness might
21 be, it is certainly an issue that is involved in
22 the case, we would like an opportunity to address
23 particularly the exhibits that he has introduced
24 into evidence.

25 THE COURT: All right. I am going to --

although he was not listed, you had an opportunity to depose him, he is listed on the witness list, you got a transcript. I am going to allow him to testify.

MR. LOURIE: And I understand, Your Honor.
Thank you.

MR. GARFIELD: Thank you, Your Honor.

(Witness enters courtroom.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Have a seat in the witness box.
State your name for the record.

THE WITNESS: Ben Moore.

THE CLERK: How do you spell your last name?

THE WITNESS: M-O-O-R-E.

THE CLERK: Thank you.

BEN MOORE,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

1 BY MR. GARFIELD:

2 Q Where are you currently employed?

3 A South Carolina Law Enforcement Division.

4 Q Affectionately known as SLED?

5 A Yes, sir.

6 Q How long have you been employed at SLED?

7 A Twenty-three and a half years.

8 Q And if you could just tell us a little bit about
9 your background. Where did you attend high school?

10 A Patrick Henry Academy in Hampton County, South
11 Carolina.

12 Q And just could you tell us about your educational
13 background.

14 A I have a BA from USC in criminal justice.

15 Q And your law enforcement background is exclusively
16 limited to SLED, or have you worked for any other
17 police agencies?

18 A Only SLED.

19 Q Okay. And you said 23 years?

20 A Yes, sir.

21 Q And what is your title now at SLED?

22 A Lieutenant.

23 Q And what division do you work with at SLED
24 currently?

25 A Regulatory.

1 Q Regulatory at SLED for how many years?

2 A Seven.

3 Q So that the Court can gain an understanding of your
4 chain of command in this particular case, are you
5 considered the head over regulatory services at
6 SLED?

7 A Actually, no. Cliff Weir is captain and I'm the
8 lieutenant inspector.

9 Q Okay. And so we could also further understand as
10 far as how the organizational chart works at the
11 regulatory division, do you have folks or full-time
12 SLED employees working under you?

13 A I do.

14 Q And how many of those?

15 A Eleven.

16 Q Do you have data entry levels or data entry
17 individuals that work under you in the regulatory
18 services?

19 A I do.

20 Q Okay. What are the roles of the data entry
21 representative or officials?

22 A They take applications, enter them into the system,
23 and then they also run background checks and look
24 at people's records.

25 Q Okay. And how long have you -- you have been over

1 regulatory services or lieutenant for regulatory?

2 A Seven years.

3 Q And this would begin what year?

4 A 2005.

5 Q So any type of licenses or any activities for the
6 regulatory agency say in the years, calendar years
7 2007, 2008, 2009, that would include your tenure as
8 a lieutenant?

9 A Yes, sir.

10 Q Are you familiar with the SLED application process
11 for which security officers apply to try to seek
12 employment?

13 A Yes, sir.

14 Q Can you just briefly explain for the Court why that
15 is, why SLED has -- requires applications or takes
16 applications, and that sort of thing, for this type
17 of purchase.

18 A There are several requirements under the law that
19 state you have to be a certain age. You have to
20 work for a company at the time. You have got to be
21 of good moral character. Those are just a few of
22 the things that are required by law that are not
23 listed on the application.

24 Q Are you saying that it is required by statutory
25 law?

1 A Yes, sir.

2 Q And you are saying that it is required by statutory
3 law that someone be of good moral character?

4 A Yes, sir.

5 Q In order to obtain and be issued a security officer
6 license with SLED?

7 A Yes, sir.

8 Q And that was the law at the time in 2007?

9 A Yes, sir.

10 Q And that is the law today as far as you know?

11 A Yes, sir.

12 Q Now, this process itself, I'd like to direct your
13 testimony towards this particular case, and I am
14 going to represent to you an individual named
15 Demetrius Mack.

16 Are you familiar generally with his
17 application process?

18 A Yes, sir.

19 Q I'm going to show you Plaintiff's Exhibit Number 6.
20 And I have -- I would just represent to you that
21 this application was submitted for your
22 consideration or your agency's consideration in
23 2007.

24 Do you have any reason to disagree with that?

25 A No, sir.

1 Q I am now going to show you Plaintiff's Exhibits
2 Number 8 and 9. And I would similarly represent to
3 you that these were applications submitted by
4 Demetrius Mack to your agency for consideration
5 both in November of 2008. Do you have any reason
6 to disagree with that?

7 A No, sir.

8 Q Already in evidence in this case is Plaintiff's
9 Exhibit Number 10. I would like to just have you
10 take a moment and look at this and see if you can
11 identify that.

12 (Pause.)

13 A Yes, sir.

14 Q What is that, Lieutenant Moore?

15 A This is a letter generated by my staff to Mr. Mack
16 denying his application for registration as a
17 security officer in 2009.

18 Q Okay. When you -- was there -- this one letter in
19 February 6 of 2009, from what you said, was there
20 also another letter issued in January of 2009?

21 A Yes, sir.

22 Q Okay. Does it state pretty much the same thing?

23 A Yes, sir.

24 Q And why would there be two letters generated as a
25 result for the same individual?

1 A Because the individual sent in a computer letter to
2 the first denial, and then we would take a look at
3 it and decide whether we agreed or not.

4 Q Okay. And this is a letter that you signed?

5 A Actually it is done by the computer, but my staff
6 generates the letter and then sends it back.

7 Q So you approved the contents of this letter being
8 mailed to Demetrius Mack?

9 A Yes, sir.

10 Q And can you just read into the record the last
11 sentence of the second full paragraph?

12 A SLED policy requires denial of an application when
13 false information is furnished on an application
14 form.

15 Q Okay. And is that -- why is that?

16 A Due to the statute which regulates -- the South
17 Carolina statute which regulates security officers,
18 40-18-130(2), if someone puts on false information
19 on an application or a renewal of application, it
20 is grounds for denial or revocation.

21 Q On the application itself I see that there is a lot
22 of questions being asked of the applicant or
23 questions specifically asked. I direct you to
24 Section 5. Excuse me. Is this portion of the
25 application similar with all Exhibit 6, 8 and 9 as

1 far as what is being asked?

2 A Yes, sir.

3 Q Okay. And if you could just read into the record
4 this 5 where it says criminal record, and if you
5 could just read in everything that is in that first
6 box, and slowly for the court reporter, please.

7 A Have you ever been arrested or charged with any
8 violation. And then it has got a place for yes or
9 no. In parentheses, list all such matters, even if
10 not formally charged, no court appearances, found
11 not guilty, or matter settled by paying a fine or
12 forfeiture of collateral. List all traffic
13 citations, but do not include parking tickets.

14 Q In processing Mr. Mack's application, in looking at
15 the application, did he list anything in his
16 criminal record?

17 A Yes, sir, he did.

18 Q And what did he list?

19 A A assault and battery high and aggravated nature in
20 1990, and a unlawful weapons charge in 1991.

21 Q Okay. Did he list anything else?

22 A No, sir.

23 Q Did he list anything of a traffic nature?

24 A No, sir.

25 Q Did he list anything about having his license

1 revoked or anything like that?

2 A No, sir.

3 Q Did you have an opportunity or did some of your
4 staff have an opportunity after receiving his
5 application to investigate the veracity of what was
6 contained in the application?

7 A Yes, sir.

8 Q Okay. And what did the investigation -- what did
9 the results of your investigation yield in this
10 circumstance?

11 A After a records check was done, it was determined
12 that not only was he charged with assault and
13 battery high and aggravated nature in 1990 and the
14 unlawful weapon in 1991, he also had a driving
15 under suspension fourth offense, habitual offender
16 second offense, and speeding; a 2001 for driving
17 under suspension fourth offense; and then a
18 Greenwood County Sheriff's Office 2003 charge for
19 DUS and speeding; and then in 2005 by the Richland
20 County Sheriff's Office for driving under
21 suspension; and then in December of 2008 a charge
22 for simple assault through the Richland County
23 Sheriff's Department.

24 Q And after your investigation yielded all of these
25 different instances, is it your information that

1 these driving under suspensions or was it based on
2 your experience that an individual is actually
3 arrested for those?

4 A Yes, sir.

5 Q Did you have any reason to disagree when you did do
6 a background search that those things were on his
7 record?

8 A No, sir.

9 Q And in generating this letter that we now see in
10 Plaintiff's Number 10, did you actually tell, in
11 other words, communicate to Mr. Mack that the
12 reason why he was being denied as a security
13 officer was due to what you just stated into the
14 record?

15 A Yes, sir.

16 Q What was his reason for being denied a State Law
17 Enforcement Division security guard or security
18 officer license in the calendar year 2009?

19 A He had in his letter, if I can remember correctly,
20 he had had some infractions and he didn't think
21 that he needed to list traffic violations.

22 Q Okay. Well, I know his -- we will get to his
23 letter in a minute. As far as SLED was concerned,
24 why was he denied a security officer license?

25 A Because he had falsified his application.

1 Q If I represent to you that Mr. Mack was arrested in
2 December of 2008, December 6th of 2008, to be
3 exact, okay, whether just hypothetically, if he was
4 arrested for simple assault, would that, in and of
5 itself, the arrest, preclude him being issued a
6 security officer license?

7 A No.

8 Q He was disclosing a 1990 that he had been convicted
9 of simple assault, did he not?

10 A That's correct.

11 Q Would that have blown -- did that deny him a
12 license?

13 A No.

14 Q Do simple assaults, even a conviction of a simple
15 assault, the conviction that you would see in an
16 NCIC or a SLED report, would that in and of itself
17 preclude somebody from obtaining such a license?

18 A No, sir.

19 Q And are there ever instances where you would look
20 behind the simple assault and battery type
21 conviction?

22 A Yes, sir.

23 Q And what types are those circumstances?

24 A If an individual is requesting to be armed, a
25 security officer, then we will probably ask for an

1 incident report to make sure that that assault and
2 battery was not domestic in -- domestic related,
3 due to the federal law which prohibits anybody
4 convicted of a simple assault which has domestic
5 related elements from possessing a firearm.

6 Q So generally if the individual after such an
7 investigation reveals that it is not domestic in
8 nature, would that normally preclude him from even
9 having, in and of itself, an armed license?

10 A No, sir.

11 Q Can you please tell me the names of the female
12 officials that work in your regulatory division?

13 A Vicky Henderson, Diane Connors, and Lynn Viela.

14 Q Those are the only three female officials?

15 A Yes.

16 Q Are they data entry individuals?

17 A Yes, sir.

18 Q Are these new employees?

19 A No, sir.

20 Q They are currently employed today?

21 A Yes, sir.

22 Q The entire seven years you have been a lieutenant
23 with the regulatory services, and in your capacity
24 now, have those three individuals worked under your
25 watch?

1 A Yes, sir.

2 Q Can you describe what kind of employees they are?

3 A Very good employees. Very hard working.

4 Q Are they reliable?

5 A Yes, sir.

6 Q Have any of them ever been disciplined in any way
7 or from a fact-finding standpoint with SLED that
8 they would have communicated to a potential
9 applicant that it is okay or it is permissible not
10 to list everything in the traffic citation and
11 criminal record history?

12 A No, sir.

13 Q Have you ever heard of any of these three
14 individuals doing that?

15 A No, sir.

16 Q Have you ever suspected these three individuals to
17 be doing anything like that?

18 A No, sir.

19 MR. GARFIELD: Just one moment, Your Honor.

20 (Pause.)

21 Q You take applications -- do you consider someone's
22 credentials or criteria on an application by
23 application basis?

24 A Yes, sir.

25 Q So if an application is submitted sometime

1 subsequent or after to the ones I asked you about
2 and different information was disclosed, do you
3 kind of look at that with a little bit of a fresh
4 pair of eyes?

5 A Yes, sir.

6 Q I don't have anything else. Thank you.

7 THE COURT: Yes, sir?

8 MR. LOURIE: Thank you, Your Honor. May it
9 please the Court?

10 CROSS-EXAMINATION

11 BY MR. LOURIE:

12 Q Lieutenant Moore, Exhibit Number 6, Plaintiff's
13 Exhibit Number 6, is it your understanding that
14 this was the original application that he submitted
15 in the year 2007?

16 A Yes.

17 Q It says new, correct?

18 A Yes, sir.

19 Q And in this application Mr. Mack did not list
20 driving under suspensions, did he?

21 A No, sir.

22 Q He did list that he was arrested for assault and
23 battery of a high and aggravated nature, right?

24 A Yes, sir.

25 Q And he did list that he was convicted of simple

1 assault, correct?

2 A Yes, sir.

3 Q And he obviously wasn't trying to hide that?

4 MR. GARFIELD: Objection. Calls for
5 speculation.

6 Q He listed it, correct?

7 A Yes, sir.

8 Q He listed the weapons charge, correct?

9 A That's correct.

10 Q But he didn't list the driving under suspensions
11 charge, correct?

12 A No, sir.

13 Q And this license was actually granted, wasn't it?

14 A I'd have to look at my sheet that I have.

15 Q Yes. Will you do that while we are here? Do you
16 have that?

17 (Witness complies.)

18 A That is correct, it was granted.

19 Q So the application where he refused or didn't list
20 driving under suspensions was actually granted the
21 first time, correct?

22 A That's correct.

23 Q Okay. Now, the renewal applications, Exhibit
24 Number 8 and Exhibit Number 9, those were submitted
25 when? For Exhibit Number 8?

1 A '08 and '09.

2 Q Let me look. Exhibit Number 8. Look at what year
3 it was submitted.

4 A '08.

5 Q Okay. November of '08?

6 A That's correct.

7 Q And Exhibit Number 9?

8 A November of '08.

9 Q And that would have been prior to him being
10 arrested for simple assault, is that correct?

11 A That's correct.

12 Q Okay. Do you have any -- and these are the
13 applications that were denied, correct?

14 A Yes, sir.

15 Q All right. Now, there is no difference in these
16 applications, Exhibits 8 and 9, and application
17 from Exhibit Number 6, is there? He put the same
18 information basically?

19 A On the arrests, yes, sir, that's correct.

20 Q And do you have any explanation as to why this one
21 was granted and these were not?

22 A I do not.

23 Q And isn't it true the only thing that changed
24 between this first one and the second ones was the
25 assault that he was charged with? The only thing

1 that had transpired between these and these was the
2 simple assault?

3 A That's correct.

4 Q And when you submitted your letters in January and
5 February of 2009 denying his application, isn't it
6 true that one of the reasons you denied it is
7 because he was arrested by the Sheriff's Department
8 for simple assault?

9 A It was denied because he didn't list it.

10 Q Right. That was one of the reasons?

11 A Yes, sir.

12 Q Okay. But he couldn't have listed it if he
13 submitted it, correct?

14 A That's correct.

15 Q That happened afterwards?

16 A That's correct.

17 Q And you could tell that based on his rap sheet,
18 couldn't you?

19 A That's correct.

20 Q Does having driving under suspension charges
21 prevent one from becoming an armed guard?

22 A It depends on the penalty.

23 Q Okay.

24 A I think habitual offender may be a felony.

25 Q Okay.

1 A And if it is, it is only -- and of course by the
2 statute you can't do it, issue it.

3 Q And, well, let me ask you this. Mr. Mack, as we
4 sit here today, is he a licensed armed guard by
5 SLED?

6 A He is.

7 Q Is he a licensed unarmed guard by SLED? Do you
8 know? Does that mean he can carry both?

9 A Right, he can be unarmed or armed.

10 Q Same thing?

11 A Yes.

12 Q Okay. So he at this stage has not been turned down
13 for lack of good moral character, has he?

14 A No, sir.

15 Q And, in fact, you mentioned an ABHAN. That had
16 actually been reduced to simple assault, is that
17 correct, to your knowledge?

18 A That's correct.

19 Q And correct me if I'm wrong, the habitual offender
20 was dismissed?

21 A That's correct.

22 Q I don't have any further questions. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. GARFIELD:

25 Q Just very briefly, for clarification. Mr. Mack did

1 not have SLED authorized certification to be a
2 security officer during portions of the calendar
3 year 2009, is that correct?

4 A That's correct.

5 Q In fact, if I direct your attention to January 2009
6 to say June or July of 2009, if he did not have a
7 SLED authorized or certification to be a SLED
8 security officer, okay, is that in any way due to
9 an arrest that would have taken place in December
10 of 2008?

11 A No, sir.

12 Q I don't have anything else. Thank you.

13 MR. LOURIE: I just have one question, Your
14 Honor?

15 RECROSS-EXAMINATION

16 BY MR. LOURIE:

17 Q But you did list that arrest on the letter you sent
18 him denying the application?

19 A It was listed.

20 Q Thank you.

21 THE COURT: All right. Sir, you may step
22 down.

23 (Witness steps down.)

24 THE COURT: Any objection to this witness
25 being excused?

1 MR. LOURIE: No objection.

2 THE COURT: Sir, you may be excused.

3 (Witness excused.)

4 MR. GARFIELD: Your Honor, that is all we have
5 for the moment. We were unsure on how to break
6 this for lunch or -- we have anywhere from one to
7 three witnesses. We are trying to keep it as
8 little as one or two. But I don't think that they
9 are available until 2:00 o'clock, or 1:30 to 2:00
10 o'clock. If that interferes with the schedule,
11 I --

12 THE COURT: So they won't be here until 1:30?

13 MR. GARFIELD: Until 1:30, yes, ma'am. And
14 maybe that was my wrong presumption thinking that
15 there would be a short lunch break.

16 THE COURT: I was hoping we could get done.

17 MR. GARFIELD: I understand. That was my
18 error. I could make some phone calls and see if we
19 could expedite it. I would be glad to do that.

20 THE COURT: We were going to break for lunch.
21 I was just hoping it would be over.

22 MR. GARFIELD: That is my fault.

23 THE COURT: I was hoping we would get all the
24 evidence in before lunch. But that is fine. We
25 will start back at 1:30.

1 MR. LOURIE: Thank you, Your Honor.

2 MR. GARFIELD: Again, I'm sorry.

3 (Lunch break.)

4 THE COURT: All right, call your next witness.

5 MR. GARFIELD: We would call Sheriff Leon Lott
6 to the stand, please.

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you swear or affirm the
11 testimony you are about to give in this case will
12 be the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Have a seat in the witness box.
16 State your name for the record, please.

17 THE WITNESS: Leon Lott.

18 LEON LOTT,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GARFIELD:

22 Q And what is your title, sir?

23 A Sheriff of Richland County.

24 Q And how long have you served as Sheriff of Richland
25 County?

1 A This is my 16th year.

2 Q The name Dan Johnson has come up in this courtroom.
3 Do you know Solicitor Dan Johnson?

4 A Yes, I do.

5 Q At one time was he employed with your agency?

6 A Yes, he was.

7 Q I would like to bring you to the calendar years
8 2008, 2009, if I could. Was Dan Johnson employed
9 at the Sheriff's Department at that time?

10 A That's correct.

11 Q And at that time, what was his professional title
12 with your agency?

13 A Probably a chief. He was my legal counsel and he
14 was called a chief.

15 Q So he was a chief deputy as far as the chain of
16 command?

17 A That's correct.

18 Q Now, he provided you legal counsel with respect to
19 your position as the sheriff, is that right?

20 A That's correct.

21 Q Did he also have a function at that time with
22 respect to professional standards with the
23 Sheriff's Department?

24 A That's correct. Whenever a complaint or issue
25 comes up, professional standards, which includes

1 internal affairs, would investigate it. And
2 through the chain it would go to Dan. And from Dan
3 it would go to myself, which I have the final
4 say-so in all disciplinary actions or anything.

5 Q In Dan Johnson's role regarding professional
6 standards, was he in a position to review internal
7 affairs findings generally?

8 A That's correct.

9 Q In that position, could he express agreement or
10 disagreement with certain conclusions drawn by IA?

11 A Yes, that is his position.

12 Q And in -- I have been calling him Dan Johnson, he
13 is now obviously Solicitor Johnson -- Solicitor
14 Johnson's role as your in-house legal counsel, was
15 he in a position to communicate his legal and
16 professional opinions to you?

17 A That's correct.

18 Q Could he do these in matters affecting the agency
19 itself?

20 A Yes.

21 Q And also including conduct with respect to certain
22 deputies?

23 A That's correct.

24 Q Now, I'm going to show you what has been marked and
25 introduced as exhibits, Plaintiff's Exhibit Number

1 1. What type of form is that? In other words,
2 what specifically are you looking at as far as
3 documentation within your agency?

4 A This would have probably been part of an internal
5 affairs report.

6 Q And in this report -- let's just take that one for
7 instance. Do you see where it is dated sometime
8 January of 2009?

9 A That's correct, yes, it is.

10 Q And according to that report, does it appear that
11 Solicitor Johnson, or then Chief Johnson,
12 formulated a legal opinion with respect to an
13 arrest?

14 A Legal opinion and advice and just his feelings on
15 this case that he would express to me, which I
16 would take into consideration in making the final
17 decision.

18 Q This was with respect to a December of 2008 arrest
19 concerning Corporal Ryan Gore with your agency, is
20 that right?

21 A That's correct.

22 Q And let's just talk about that memorandum or that
23 opinion that is memorialized in Plaintiff's Exhibit
24 Number 1.

25 For whom, to your knowledge, Sheriff, for whom

1 was that opinion intended? In other words, whose
2 eyes was supposed to -- was that written for?

3 A Mine only.

4 Q Okay. And that is as your in-house counsel?

5 A That's correct.

6 Q Who gives you legal and professional advice, is
7 that correct?

8 A That's correct.

9 Q I'd like to switch gears, if I can. I would like
10 to ask you about private security companies. As
11 Sheriff of Richland County, do you try to have a
12 positive or favorable working relationship with
13 private companies who oftentimes provide SLED
14 certified, licensed security officers?

15 A Yes, we do.

16 Q Okay. And why is that? Just from the general
17 sense?

18 A Well, they assist us. They are usually at
19 locations that we tend to have problems. Sometimes
20 they are locations that we don't have problems at.
21 You know, they are enforcement for that location
22 that they have been hired for. For just that
23 location they are the enforcement part, so we work
24 with them.

25 Q However, in your time as sheriff, have you ever

1 encountered situations in which private security
2 officers themselves overstep their bounds? And
3 before you answer that, I am going to lay a
4 foundation for this. But you understand that
5 security officers, based on South Carolina
6 statutory law, can do certain things on the actual
7 property that they are paid to protect?

8 A That's correct. I was actually a security guard
9 when I was in college.

10 Q Okay.

11 A I worked for Wackenhut Security.

12 Q Okay. And in that capacity, do you understand that
13 on their jurisdiction, their statutorily defined
14 jurisdiction, that they would have the same powers
15 of arrest as would a deputy?

16 A That's correct, on that jurisdiction, that area
17 that I am hired to patrol.

18 Q And then when they are off the area that they are
19 hired to patrol, what, if anything, happens to them
20 as far as having legal authority?

21 A They are a normal citizen at that point.

22 Q Is there any kind of pursuit clause or anything?

23 A No.

24 Q Now I will go back to my original question. Have
25 you ever seen situations or have you ever

1 encountered situations in your time as sheriff in
2 which some of these security officers overstep
3 their bounds?

4 A Yes, we have, quite often.

5 Q Okay. And could you just give an example or
6 examples of those.

7 A Involved in shootings off the property, involved in
8 carrying their weapons off the property, selling
9 drugs, impersonating the Sheriff's Department. It
10 is quite a long list. We have some very good
11 security companies and we have some that are not so
12 good.

13 Q Does the fact that in any of these situations in
14 which a security officer goes beyond their
15 statutorily defined jurisdiction that we talked
16 about, do you see any sort of unlawfulness in a
17 deputy making an arrest?

18 A None whatsoever.

19 Q Is it your understanding that a misdemeanor that is
20 committed in the presence, in other words, plain
21 view of a law enforcement officer, what, if
22 anything, can he or she do in those circumstances?

23 A Make an arrest at that point.

24 Q Can they make a warrantless arrest?

25 A That's correct.

1 Q Now, let's go back to this December 6th of 2008
2 arrest. Whatever opinion then Chief Johnson had in
3 this particular situation and whatever he
4 memorialized in that memorandum that you have
5 before you, that is something that is reviewed by
6 you, is that correct?

7 A That's correct.

8 Q And I guess the old expression, the buck stops
9 here, I would imagine the buck stops with you,
10 Sheriff?

11 A That's correct.

12 Q And since you are the ultimate decision maker of
13 your agency, as far as lawfulness, Sheriff, did you
14 have a chance to evaluate Corporal Gore in the
15 lawfulness of his actions on December 6 of 2008?

16 A That is correct. I reviewed a complete file along
17 with his memo from Dan Johnson and made my
18 decision.

19 Q Okay. Did you reach a decision as to whether, from
20 a lawfulness standpoint, whether he had probable --
21 whether Corporal Gore had probable cause to arrest
22 Mr. Mack on that particular evening, early morning
23 hours?

24 A I felt like he had probable cause to make a legal
25 arrest, and I made my decision based on that.

1 Q Did you have anything from what you reviewed to
2 suggest that Corporal Gore acted unlawfully?

3 A No, I did not. And that was my whole examination
4 and discussions with Dan Johnson and looking at the
5 file, was the arrest legal. And what happened to
6 Corporal Gore, if he was disciplined or not
7 disciplined, was based on that. And Corporal Gore
8 was not disciplined. And it is actually in this
9 memo from Dan also, that he said, I do not think
10 that Corporal Gore should be disciplined.

11 Q Please answer any questions Mr. Lourie has.

12 MR. LOURIE: Thank you, Your Honor. May it
13 please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. LOURIE:

17 Q Sheriff, you obviously respect Chief Johnson?

18 A That's correct.

19 Q And would you agree with me that you respect his
20 opinion very much?

21 A Yes, sir.

22 Q And he did, in fact, recommend that he not be
23 disciplined, but that he be told that he could have
24 done it -- handled it differently, so to speak?

25 A That is exactly what he wrote.

1 Q Yes. And that is what you did in this case, you
2 followed his recommendation and Corporal Gore was
3 given a letter of guidance, isn't that correct?

4 A That's correct.

5 Q That's all I have.

6 THE COURT: Thank you.

7 MR. GARFIELD: May this witness be excused?

8 THE WITNESS: Judge, can I take a personal
9 minute?

10 THE COURT: Yes, sir.

11 (Off the record.)

12 (Witness steps down and is excused.)

13 THE COURT: All right, call your next witness.

14 MR. GARFIELD: The Defendant would call Don
15 Whitley to the stand.

16 MR. LOURIE: Who is this?

17 MR. GARFIELD: This is EMS.

18 MR. LOURIE: Judge, I have got a matter for
19 you to take up.

20 MR. GARFIELD: He's not coming down just yet.

21 MR. LOURIE: Judge, this is a complete shock.
22 Until about 20 minutes ago I have never seen this
23 guy's name, never been given a report until about
24 20 minutes ago. And Mr. Garfield was saying when
25 he was listed in voir dire, the purpose for voir

1 dire is not to tell me who his witnesses are, the
2 purpose of voir dire is for the jury to see if they
3 have any conflict. And, Judge, this is trial by
4 ambush. I have never seen this witness's name in
5 any of the discovery whatsoever, have not had the
6 opportunity to depose this witness. My client is
7 substantially prejudiced by his testimony. The
8 first time I heard his name or saw a document
9 produced by this witness was when he came back from
10 lunch. He could have informed me before we left.
11 I mean, this is completely ambush. He is not in
12 any of the discovery responses whatsoever. And I
13 think under the rules to be fair he shouldn't be
14 allowed to testify.

15 THE COURT: All right. Well -- Yes, sir?

16 MR. GARFIELD: Thank you, Your Honor. Since
17 the standard, Your Honor, was set I guess by Mr.
18 Lourie, with all due respect, earlier is whether we
19 have named him in discovery responses or identified
20 their role.

21 He served -- the Plaintiff served us with
22 discovery requests sometime last year, and on May
23 12th of 2011 we provided him that we intend to call
24 potentially as a witness, we put Richland County
25 EMS personnel, we gave him an address, and we

1 wrote: Upon information and belief EMS personnel
2 responded to the scene, attended McKenzie
3 Williamson. These emergency personnel are expected
4 to testify consistent with their observations and
5 content in their run report. So no statements were
6 taken of any of these individuals. We also listed
7 Emergency Room personnel from Providence Hospital
8 Northeast.

9 As Your Honor is aware, anybody who responds
10 of any EMS personnel, it is not a fact witness,
11 these are people that tended to them at the scene.
12 This is not a surprise. He could have very well
13 served the EMS with any kind of discovery, subpoena
14 or anything. He has had this for almost a year, as
15 did I.

16 THE COURT: All right. Well, let me give you
17 the report back, because I think when you get the
18 report, under interrogatories don't you have to
19 turn that over?

20 MR. GARFIELD: Well, I guess we have to if it
21 is based on a subpoena, and I'm pretty sure we
22 subpoenaed it, and it was more recent than not. So
23 I am providing this to him. We are not trying to
24 introduce the run report. We had the run report,
25 we have given it to Mr. Lourie. Mr. Lourie has had

1 a chance to talk to Mr. Whitley about it. He very
2 well could have either subpoenaed or deposed or
3 done some sort of discovery. This is not a
4 surprise that this individual was tended to by the
5 EMS. It has come out in his case in chief. He has
6 a problem with the run report itself coming in. I
7 think I would probably say that that would be
8 hearsay for the same reason.

9 THE COURT: What about the EMS officer --

10 MR. GARFIELD: Well, he is relying on whatever
11 he does to refresh his recollection. I don't think
12 -- I wasn't trying to introduce the report as an
13 exhibit into evidence. I would like for him to
14 testify as to exactly to what we stated consistent
15 with the run report, not the run report.

16 I mean, I don't think from the fact that I am
17 getting him to run the report late, and I do
18 acknowledge that, we are not trying to introduce
19 that document. He has known for a year that these
20 EMS personnel would be subject to testify at the
21 trial of this particular case.

22 In fact, in my discovery, these same
23 responses, Judge, he asked us for our version of
24 events, and we put, quite clearly, Deputy Gore
25 observed Mr. Williamson and noted that he sustained

1 injuries to his hands and face, which required
2 ambulatory treatment and was subsequently taken to
3 Providence Hospital Northeast via Richland County
4 EMS.

5 Similarly, if we had gotten any kind of
6 medical records from the hospital, I wouldn't try
7 to put this record in, but anybody who treated him
8 that could actually speak to it, I think that that
9 could help the trier of fact understand what
10 happened.

11 MR. LOURIE: Judge, I asked specifically for
12 names. I did what I was supposed to do. I asked
13 for names. And not only did I ask for names, I
14 asked for reports with names. And I am just
15 getting this information.

16 Listen, they probably had the report before
17 lunch they could have given it to me, but they wait
18 until 20 minutes before we are beginning. I don't
19 know when they had it.

20 But the rule is very clear, and this is
21 exactly what the rules try to prevent is surprise
22 testimony. Of course I knew there were EMT's. My
23 client told me. But I don't know what their
24 testimony is going to be. I didn't have the
25 opportunity to cross-examine them and depose them

1 to figure out what they are going to come in and
2 testify.

3 And to allow them at this late moment in this
4 trial to come in here with a surprise witness does
5 prejudice us.

6 MR. GARFIELD: I'm not asking this witness to
7 testify as an expert in anything. He is somebody
8 that merely tended to someone at the scene. Mr.
9 Lourie has had a chance to talk to him.

10 MR. LOURIE: I have.

11 MR. GARFIELD: And depose this individual. He
12 can ask whatever questions he wants. It is not a
13 surprise or an ambush witness. It is really not
14 unusual for these things to be printed like they
15 are in the discovery responses.

16 I'm not quite sure, for instance, one of his
17 witnesses, and I don't want to kind of get into a
18 he said/he said thing, Shawn Hale, we never deposed
19 that individual.

20 MR. LOURIE: But I named that individual in my
21 answers to interrogatories. And that is the
22 difference. I gave them notice.

23 MR. GARFIELD: You didn't provide an address.
24 But my point is, Your Honor, and I am not going to
25 get -- I don't think it is a surprise. He is going

1 to just talk about exactly what we said that EMS
2 personnel would do, is talk about the actual method
3 of treatment of Mr. Williamson.

4 And I do understand that Mr. Lourie has had an
5 opportunity to speak with this individual outside.

6 MR. LOURIE: Judge, I mean, Judge, everybody
7 can come in five minutes before in every case and
8 have an opportunity to speak before. But the
9 purpose of the rule is to prevent that so we don't
10 have someone coming in five minutes before trial
11 that I have never known about their name or what
12 they are going to say. I asked for names.

13 MR. GARFIELD: Well, it is part of standard
14 interrogatories that they ask for names, that's
15 correct, Your Honor. And we have provided --

16 MR. LOURIE: Well, Judge, I just don't think
17 it is fair. I really don't.

18 (Pause.)

19 MR. GARFIELD: And I know Your Honor is
20 looking, and I apologize, I just wanted to at least
21 ask one thing. The Court is looking at the rule.
22 I just would respectfully inquire and ask for an
23 honest answer. How would Mr. Lourie on behalf of
24 his client be prejudiced in this case? I just
25 don't see it. He has had the opportunity to talk

1 to the paramedic. He treated him for superficial
2 injuries. And for him to just be able to testify
3 consistent with the mode of treatment, I just don't
4 see where there is any type of prejudice.

5 MR. LOURIE: And, Judge, under Rule -- first
6 of all, there is prejudice because I didn't have an
7 opportunity, like the other witness, to depose him.
8 And to come in here at the last minute and throw
9 him upon us. But in Rule 26 it talks about the
10 party has a duty to supplement their responses as
11 necessary. That was never done where they offered
12 him as a name once they found out the name.

13 MR. GARFIELD: He has already talked to him,
14 Your Honor. If he wants a few more minute recess,
15 I mean, I don't have --

16 THE COURT: I understand he has talked to him,
17 but he hasn't talked to him under oath.

18 My bigger concern is the fact that -- and I
19 know y'all probably didn't intentionally do it, but
20 to have the report and not turning it over to them
21 is, you know, clearly a violation of the rule. And
22 if he is going to come in here and use the report.
23 And I looked at the witness list because I was
24 thinking that you may have put on there Whitley and
25 described exactly who he possibly was on the

1 witness list, but it doesn't, it just says his
2 name.

3 In the interest of being -- and this is a lot
4 different than the other one -- in the interest of
5 being fair to both sides -- if it were the other
6 way around -- I am not going to allow him to
7 testify to what is listed in the report. This is a
8 2010 case. Y'all could have given it to them.

9 All right, call your next witness.

10 MR. GARFIELD: I'm sorry, I didn't understand.
11 You are excluding him as a witness?

12 THE COURT: Yes.

13 MR. GARFIELD: Okay. I would like a five
14 minute break if I can, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. GARFIELD: Your Honor, as far as witnesses
18 are concerned, before the Sheriff rests, I think
19 just more for housekeeping matters, I think
20 Defendant's Exhibit Numbers 2 and 3, I guess
21 technically they are just still marked for
22 identification purposes, and I don't know if from a
23 technicality standpoint this was ever moved into
24 evidence. We would like to go ahead and do it
25 before we rest.

1 MR. LOURIE: No objection.

2 THE COURT: Without objection. All right.

3 And what number?

4 MR. GARFIELD: Defendant's Exhibit Numbers 2
5 and 3. And we would like to move that into
6 evidence.

7 (Previously entered.)

8 MR. LOURIE: Judge, we would be willing to
9 waive closing arguments. I mean, I would be
10 willing to waive it for time because I believe Your
11 Honor is more capable to sift through the evidence,
12 but I don't know, if they want to do one, then of
13 course I want to do one.

14 THE COURT: All right. Mr. Garfield?

15 MR. GARFIELD: In fact, I would like to do
16 one, so he can too, so he can do the opening and
17 closing.

18 THE COURT: All right. And I have sat here
19 and listened to all of it. I will give y'all about
20 five to ten minutes.

21 Are you ready?

22 MR. GARFIELD: Well, Your Honor, I just -- the
23 other housekeeping point I did want to make is
24 after we had closed, just for the record, if I can,
25 I just would move for a directed verdict at this

1 time.

2 And we would ask the Court to note and
3 incorporate by reference all the arguments and
4 grounds we laid forth at the end of the Plaintiff's
5 case in chief.

6 THE COURT: All right. Yes, sir.

7 MR. GARFIELD: And I assume that is denied?

8 THE COURT: Yes, sir, it is.

9 MR. GARFIELD: I'm not telling you how to
10 rule, but --

11 THE COURT: You know, I was waiting on you to
12 rest.

13 MR. GARFIELD: We did. I'm sorry.

14 THE COURT: I was waiting for you to put it on
15 the record.

16 MR. GARFIELD: I thought I did, and if I
17 didn't, I'm sorry.

18 THE COURT: And I just may not have heard that
19 point. All right.

20 And the motions are denied.

21 MR. GARFIELD: Thank you, Your Honor. I
22 would, and I don't know, I think this is the normal
23 -- I haven't done a bench trial, I'm not sure ever,
24 I don't think I have done Family Court, so I'm
25 thinking, I still think that Mr. Lourie would have

1 the opportunity to go first. If he chooses, I
2 guess he can waive the opening part of the closing,
3 but he would have the opportunity to go first and
4 last. I just wanted to --

5 MR. LOURIE: I'll be brief, Judge.

6 THE COURT: All right.

7 MR. LOURIE: May it please the Court?

8 THE COURT: Yes, sir.

9 CLOSING STATEMENT

10 MR. LOURIE: Judge, you have had an
11 opportunity to listen to the testimony. And I just
12 want to point out a couple of things about the
13 testimony.

14 And one of the most important things I believe
15 that came across today and yesterday was that this
16 evidence of this happening happening in the roadway
17 doesn't come up until Mr. Mack made a complaint
18 against the Sheriff's Department for not
19 investigating further to find out that he had
20 jurisdiction at 109 Weir Avenue.

21 And if you look at the evidence, the incident
22 report, and you heard her testify, she had an
23 opportunity to speak to Corporal Gore and hear his
24 testimony and hear what he said after seeing him,
25 and that would be a key piece of information in

1 writing the report. There is nothing in the
2 incident report about his arrest about being
3 tackled in the roadway.

4 And the defense talked about the marks and the
5 scratches on his hands. And, Your Honor, I think
6 it is possible to believe that this case he slipped
7 and tripped and slid on the roadway and ended up in
8 the grass.

9 And according to the responding officer, when
10 she found him, he was half in the grass and half in
11 the roadway.

12 I think Chief Johnson's memo says a lot. It
13 is absolutely ridiculous that this wasn't okay. He
14 should not have been arrested. He mentions the
15 word false arrest.

16 I believe my client is entitled to monetary
17 damages what the fair market value is for what he
18 went through. No question he had diabetes.
19 Uncontroverted that he asked to go to the restroom
20 and was denied. Asked multiple times. He sought
21 his medication.

22 What is that worth? What is it worth for an
23 individual who is innocent to be handcuffed in
24 uniform, taken to jail, booked, photographed?

25 And make no mistake about it, Your Honor, he

1 submitted that first -- and this is real important
2 on the lost wages, and I am almost done. His first
3 application to become a security officer in 2007,
4 he did not list any driving under suspension
5 charges whatsoever. He then gets arrested in
6 December of 2008. And the applications that he
7 submitted in November of 2008 are denied. And they
8 are the same exact application. He doesn't list
9 them in these applications either. It would be
10 reasonable for him to expect if he submitted the
11 first application in 2007 without listing his
12 driving record and driving under suspension
13 charges, it would be reasonable to expect that he
14 wouldn't have to list them again if this one was
15 allowable.

16 And the only thing that changed between that
17 time and this time was their unlawful arrest of
18 him. That is the only thing that changed.

19 That's all I have, Your Honor.

20 We ask him to be fully compensated.

21 THE COURT: Yes, sir?

22 MR. GARFIELD: May it please the Court?

23 CLOSING STATEMENT

24 MR. GARFIELD: This would also be a recap, and
25 I appreciate Your Honor's attention because the

1 bench trial is a little unusual route for us, I'm
2 sure it is for the Court as well, so I appreciate
3 Your Honor's forbearance.

4 I would like to discuss the damages first,
5 Your Honor. The Plaintiff in this case,
6 Plaintiff's Exhibit Number 11, he is seeking
7 \$24,000 plus dollars in this case, and he labels it
8 Demetrius Mack, 2009 lost wages.

9 The entire point with SLED was this. He
10 alleges that he was out of work for six to seven
11 months. And he put up Shawn Hale as a witness.
12 Shawn Hale was the owner of the security company.
13 And Shawn Hale stated that, quite frankly, he does
14 require his security detail officers to be fully
15 licensed by SLED. Without that, they wouldn't be
16 able to work for him. I understand that.

17 Secondly, Ben Moore, the lieutenant with SLED,
18 did state that without the proper application
19 process and the approval then he wouldn't be able
20 to -- someone would not be able to avail themselves
21 of any kind of license that they could work.

22 But he did say, and I am not speaking to the
23 appropriateness of the SLED decision making
24 process, because that is not why he was offered as
25 a witness, the issue is, and Lieutenant Moore

1 stated, Your Honor, that this December 2008 arrest
2 did not impact the denial of his license
3 whatsoever, it was because of whatever SLED
4 perceived Mr. Mack to have been dishonest or not
5 fully forthright on his application. So, again, it
6 is not a SLED appropriateness kind of issue. It
7 simply cannot meet their burden of proving the
8 alleged damages to show that the fact that he was
9 out of work was causally related to this event at
10 all.

11 He is seeking \$24,000 in prospective wages,
12 lost wages, for that time. Having that, instead I
13 would like to work back a little bit. I know I am
14 working backwards. Since we would assert that any
15 lost wages, prospective wages, that he is not
16 entitled to, we are now talking about 12 to 14
17 hours in which he served at the Alvin S. Glenn
18 Detention Center.

19 Now, first of all, Mr. Mack did not bring a
20 suit against Richland County. Certainly Richland
21 County Sheriff's Department is not responsible or
22 have any control over the detention officers at the
23 Alvin S. Glenn Detention Center. So I can't speak
24 to that. But the fact that he was in jail for 12
25 to 14 hours for a simple assault is clearly, and I

1 don't want to say it wasn't inconvenient for him or
2 he did not wish not to be detained, but the fact
3 that whatever they did from the medical standpoint
4 is not at issue here.

5 He does bring up the fact that on the way to
6 the detention center he has to go to the bathroom,
7 and for whatever reason it was denied. Clearly
8 Your Honor can see that just because somebody is
9 asking to go to the bathroom in the back of a
10 police car once they are in custody, it is not the
11 general practice to let them just get out and then
12 relieve themselves on the side of a public
13 building. They have to get them to the detention
14 center in the appropriate manner so that they can
15 go ahead and have the detention center accept
16 custody.

17 There is nothing unreasonable about serving 12
18 to 14 hours as far as the length of time that
19 someone would have following an arrest.

20 So therefore the only question, and I go back
21 to the arguments that we had during directed
22 verdict stage, is the appropriateness as far as the
23 legality of the arrest.

24 Now, what I would like to address a little bit
25 differently is that now I am addressing Your Honor

1 as a fact finder as opposed to the law purely from
2 a legal basis, that to apply the law based on the
3 facts I would ask Your Honor to, just as I would a
4 jury, is to weigh the credibility of the witnesses
5 just as Your Honor would be a juror and as I would
6 explain to the jurors. And as Your Honor has
7 charged many times, that it is very key and it is
8 critical in these cases for all the things that a
9 fact finder must weigh, you must also weigh the
10 credibility of the witnesses.

11 And, frankly, I have been doing this a long
12 time, and I have put a lot of officers on the
13 stand, even back when I was a prosecutor, and I
14 have to say it is a little unusual given the level
15 of experience and qualifications and training that
16 Corporal Gore has had.

17 And I think based on his background it is very
18 unique. This individual was a first responder for
19 over ten years. He was a volunteer firefighter.
20 He was a reserve deputy before ever working up his
21 way up the ranks of the Richland County Sheriff's
22 Department. Then he went to the South Carolina
23 Criminal Justice Academy and then he had street
24 experience. And then he worked his way up to being
25 a supervisor. This man was also a 9-1-1

1 dispatcher.

2 I believe, Your Honor, and I would submit that
3 absolutely this individual would know an assault
4 when he sees one.

5 Now, I say that for this reason. I think
6 there is adequate case law out there that the Court
7 or a jury can consider a policeman's expertise when
8 deciding as to the appropriateness of his own
9 analysis at the scene. And his analysis at the
10 scene is also based on the fact he was also a
11 security officer in his former life who had worked
12 at a gold mine and worked and been assigned to
13 motels and hotels in this very area, in Two Notch.
14 So this is somebody who understands the law and he
15 understands the facts.

16 So given his qualifications and his training
17 and his experience, what Mr. Lourie -- this attack
18 he has, and I understand it, is to say, well, gosh,
19 he didn't use the word tackle until right now.

20 Well, quite frankly, Your Honor, he didn't
21 write the incident report. And he did write on his
22 statement, whether it is in evidence or not, I'm
23 not sure, but he did describe the manner in which
24 he was on top of him.

25 I guess if we are going to use the semantics

1 and get down to the actual semantics of it is not
2 only inappropriate, but it has nothing to do with
3 the consideration of this case. And I'll get to
4 that in just a moment.

5 But not only does Corporal Gore say that he
6 saw and explained to you unobstructed Mr. Mack
7 tackle Mr. Williamson in the roadway, but so did
8 Deputy Proffitt as well.

9 But your Honor should also, I would
10 respectfully submit, take that into the same
11 context of which we have all heard the testimony of
12 Mr. Mack.

13 And Mr. Mack, you know, and I say this with
14 all due respect to Mr. Mack, and I guess there is
15 an old saying that I kind of remembered when he
16 testified, that, you know, if you are telling the
17 truth you don't really have to remember what you
18 told anybody.

19 And, quite frankly, Mr. Mack's testimony did
20 appear that he was changing his story, Number One.
21 The first time he said that he was running -- Mr.
22 Williamson was running between cars. The second
23 time he said, I believe, that he fell on a car
24 causing his injuries. And then in that same vein
25 he said he fell under a car.

1 Now, I think the Court as a fact finder, using
2 your common sense, I'm not quite sure, I have never
3 seen someone fall underneath a car. And if you
4 want to weigh the credibility of the witnesses from
5 that standpoint, the fact that he changed his
6 story, it almost sounds like he was trying to
7 convince himself of whatever he was going to say.

8 Obviously that is a perspective, Your Honor,
9 but I would ask Your Honor to consider the
10 unequivocal, confident testimony that Deputy
11 Proffitt and Corporal Gore stated when they told
12 you under oath that this man tackled him in the
13 roadway as opposed to what Mr. Mack represented in
14 this case.

15 Now, on the second part is, we would submit,
16 Your Honor, is to rule for the Plaintiff would
17 essentially be able to say that Corporal Gore could
18 not have made a realistic assessment in this case
19 that the crime had been committed.

20 And I am not going to go over again from that
21 standpoint, but I guess I have to say this one more
22 time in this unique situation, which we have a
23 bench trial, Your Honor. The law is very clear
24 when it comes to an analysis of probable cause in a
25 warrantless arrest situation. You have to throw

1 out the actual facts.

2 The Supreme Court has stated pointblank, black
3 letter law that it does not matter where the actual
4 facts were, it is what the police officer at the
5 scene honestly believes at the time he or she
6 decides to make an arrest. The question,
7 therefore, is what the perception is of the officer
8 at the scene.

9 If you want to take everything our officers
10 said and just take it out of the picture, Mr. Mack
11 stated, he stated -- he used what they used to call
12 action words -- he said he chased him, grabbed him,
13 he pulled him, he handcuffed him. This is a
14 contact. It is an unwanted contact because the
15 victim told the police that he wanted to press
16 charges. We have an assertive or an aggressive
17 kind of injury, a touching, excuse me, a touching
18 or a contact.

19 So, you know, you physically grab this
20 individual. Let's just take exactly what Mr.
21 Williamson stated. He said he pulled him from
22 under a car by grabbing him and pulling him. The
23 car was at least half in the roadway.

24 Okay, Your Honor. If it happened all the way
25 over here as Deputy Gore remembers, or it happened

1 over here, as Mr. Mack is conceding because he was
2 under the car, or it happened way over here in the
3 grass, again, it doesn't make a difference of what
4 the actual facts were, the question is could an
5 officer reasonably conclude that there was an
6 unwanted contact, a violent injury or aggressive
7 injury causing -- excuse me, contact -- causing an
8 injury upon that person. And I'll get to that in
9 just one aspect in a little bit of a moment. So
10 the perceptions of the officers at the scene.

11 But I think what the most crucial part of all
12 this is, it would really be something, would really
13 be something, if this, once again, this man said --
14 it is like the old law school thing with battery.
15 He bumped up against me, he left, and he said that
16 is a battery but not an assault.

17 When you see somebody try to punch him but
18 make no contact, it is an assault without a
19 battery.

20 South Carolina law is very clear on simple
21 assault and battery. It has to be a contact. It
22 has to be unlawful. It has to be aggressive or
23 violent. And he has to get an injury. So that is
24 what we have.

25 This thing with the EMS, I would like to

1 address that for a minute. I would submit that all
2 -- everything the EMS paramedic would have said --

3 MR. LOURIE: Judge, if he is going to -- I
4 hate to object during a closing, but if he is
5 getting ready to repeat what he would have said,
6 this is not in evidence.

7 MR. GARFIELD: I am not going to say what he
8 was going to say.

9 MR. LOURIE: Okay. I'm sorry. I didn't mean
10 to interrupt you, but --

11 MR. GARFIELD: I would submit that it would be
12 corroborative of what Your Honor has already heard.

13 MR. LOURIE: And that is what he is saying.
14 He is saying his testimony would be corroborated.

15 THE COURT: All right, let's not talk about
16 anything that is not in. Now, you can talk about
17 what the officer testified.

18 MR. GARFIELD: Thank you, Your Honor. And I
19 appreciate that. And I thank Mr. Lourie for
20 pointing that out. But let's just talk about the
21 evidence. Exactly.

22 Corporal Gore stated on the record that Mr.
23 Williamson had lacerations, he had abrasions, he
24 was profusely bleeding.

25 Deputy Parish stated unhesitatingly that the

1 injuries -- and she pointed -- and we have it on
2 the record -- were right here on the inside of the
3 hand. And actually I had her point. She said
4 where the hand connects to the wrist. And it was a
5 profuse amount of bleeding. In fact, when she was
6 talking about it she was shuddering as far as
7 describing how much blood was involved.

8 To the extent that the Emergency Medical
9 Services had to be summoned, come in an emergent
10 fashion to the scene to treat him for either the
11 superficial, non-superficial type injuries and then
12 transport him in an emergency fashion to the
13 emergency room is, quite frankly, somewhat of a tie
14 breaker here if that is the way we want to go.

15 Because, Your Honor, if we are so hung up on
16 whether this happened on grass -- and if I may just
17 show you right here, Your Honor, even if this
18 happened right here on the grass, I would submit
19 that everyone in this room would agree that if you
20 fall down on grass you are not going to have a
21 profuse amount of blood that appears to be
22 consistent with road rash.

23 In fact, from what we have here is exactly
24 what Corporal Gore could have reasonably perceived
25 at the time, which was it happened anywhere from

1 where this car was and on the street.

2 And as Sheriff Lott stated, that it is just --
3 it is really something that sometimes we should and
4 sometimes we should not make arrests. But the
5 question here is whether this was lawful.

6 And if Your Honor decides that there was no
7 probable cause here, given something like these
8 particular facts, I'm not quite sure what an
9 officer needs to do at the scene, quite frankly,
10 other than his personal observation, relying on his
11 own training, his own experience, and in this case
12 obviously, once again, Corporal Gore is quite
13 experienced, in his professional judgment and
14 discretion as to what was transpiring in his plain
15 view.

16 You know, I just, you know, the only thing I
17 would tell the jury that I haven't said already,
18 Your Honor, is that I have a small child, and every
19 time she comes home at night and doesn't want to
20 get in the bathtub, I can look and she says she has
21 a boo-boo. And I can tell the difference between a
22 scrape and I can tell the difference between a
23 bruise. And if somebody has a scrape and somebody
24 has abrasions and a laceration and bleeding,
25 clearly the common sense would tell you that that

1 person made contact with rock, with gravel, with
2 pavement, with asphalt, with concrete, not on soft
3 grass. It just does not make sense.

4 Certainly from that amateur decision making
5 that I would have as a father of a 4-year-old,
6 certainly Corporal Gore, with all of his experience
7 as a first responder and beyond, could also
8 reasonably conclude that given the nature of the
9 injury and the degree of the injury, that, my gosh,
10 this person is injured, there was an assault.

11 And that is even if Your Honor is inclined to
12 give the Plaintiff the benefit of the doubt -- the
13 benefit of the doubt -- because he still admits to
14 an aggressive touching and handcuffing him.

15 Because even if you believe everything he says
16 is true, absolutely probable cause still exists.
17 It doesn't even make a difference what our people
18 say. Chasing, grabbing, pulling, handcuffing,
19 substantial injuries.

20 That's it, Your Honor. Thank you very much.

21 THE COURT: All right. Thank you.

22 MR. LOURIE: Judge, I'll be real brief. May
23 it please the Court?

24 THE COURT: Yes, sir.

25 CLOSING STATEMENT

1 MR. LOURIE: A couple of things. Mr. Garfield
2 said it is not their responsibility for how long my
3 client has been in jail. It absolutely is their
4 responsibility. They took him there, they put him
5 there unlawfully.

6 And, Judge, this doesn't have to be a case
7 where it is either the grass or the pavement -- and
8 I submit to you it is a situation just as Deputy
9 Parish said, he was half on the grass and half on
10 the pavement.

11 I don't doubt that those injuries happened
12 that way from the pavement, but it was right on the
13 edge. And when my client arrested him, he is on
14 the property. And that's why the report said the
15 residence. And they had an option to check
16 roadway. They had an option. But they didn't
17 check roadway, they said residence.

18 And that is why there is no mention of -- and
19 not only was there no mention of tackling, in his
20 own statement there is no mention of how the client
21 -- excuse me, how McKenzie Williamson ended up on
22 the ground. There is no mention of how McKenzie
23 Williamson ended up on the ground.

24 And I want to go to credibility. I'm not
25 going to tell you that these officers are lying,

1 but, Judge, they are 200 feet away. It is dark out
2 there. You can see for yourself on that video,
3 even with Officer Parish's headlights and the blue
4 lights going, you can't see. It is extremely dark.
5 And she was right there. And they are 200 feet
6 away.

7 And one other thing about this and I'll sit
8 down and be quiet, about this tackling. My client
9 at the time was 38 years of age, 238 pounds, with a
10 health condition. And there is no way in this
11 world that he was going to be able to catch up to,
12 tackle a 22-year-old that weighed 170 pounds.

13 And even to more support that there was no
14 tackling, I asked the question of the witnesses,
15 was there any evidence that Mr. Mack had ripped
16 clothes or torn clothes or abrasions. Nothing of
17 that.

18 If he would have tackled him on the pavement,
19 there is no question that he would have had that.
20 It is not reasonable to believe that a 240-pound
21 38-year-old man is going to be able to catch up to
22 a 22-year-old 170-pound year old man, or kid.

23 And on the issue of what the law says, and Mr.
24 Garfield keeps on saying it says based on what the
25 officers saw.

1 And, Judge, I would point you to Thompson v.
2 Smith I cited earlier. Probable cause is defined
3 as a good faith belief that a person is guilty of a
4 crime when the belief rests on such grounds as
5 would induce an ordinarily prudent and cautious,
6 not just ordinarily prudent, but and cautions.
7 Those were lacking.

8 We ask you to find for the Plaintiff.

9 THE COURT: All right. Well, I have not seen
10 all the exhibits. I am going to take about 30
11 minutes to take a look at it further. I may want
12 to see that video. I will take about 30 minutes,
13 if 30 minutes.

14 MR. LOURIE: Thank you, Your Honor.

15 (WHEREUPON, at 3:10 p.m. the Court
16 deliberated on the verdict.)

17 (WHEREUPON, at 4:00 p.m. the Court
18 reached its verdict.)

19 VERDICT

20 THE COURT: The find that the Plaintiff's
21 arrest was on December 8th, 2008.

22 In looking at Gathers v. Harris Teeter
23 Supermarket, cite 282 S.C. 220, 317 S.E.2d 748, and
24 Jones v. City of Columbia, 389 S.E.2d 662, probable
25 cause is defined as a good faith belief that a

1 person is guilty of the crime unless belief rests
2 on such grounds as would induce an ordinarily
3 prudent and cautious man -- and I say or woman --
4 under the circumstances to believe likewise.

5 FINDINGS OF FACT

6 I find that on December the 8th, 2008, the
7 Plaintiff was a licensed security officer pursuant
8 to Section 48-21-10 and also the South Carolina Law
9 Enforcement Division regulations.

10 I find that the Plaintiff was employed by DTH
11 Protective Services on December 8th, 2008.

12 That on December 8, 2008, that the Plaintiff
13 was arrested by Defendant at 109 Weir Avenue.

14 I find that the Plaintiff spent between 12 and
15 14 hours at the Alvin S. Glenn Detention Center.

16 I further find that the Plaintiff's license
17 was seized at the time of his arrest.

18 I further find that the Plaintiff's license
19 was suspended by SLED on January 6th, 2009, for
20 failing to disclose previous arrests.

21 I further find that the Plaintiff was out of
22 work for this arrest on December 8th, 2008, until
23 January 6th, 2009, at which time his license was
24 officially suspended by SLED.

25 I find based on Plaintiff's Exhibit Number 11,

1 the Plaintiff made approximately \$66.49 a day.

2 That January 6th, 2009 -- December 8th, 2008
3 until January 6th, 2009 is 29 days.

4 That upon review of Plaintiff's Exhibit Number
5 5, DTH Protective Services had complete
6 jurisdiction of 109 Weir Avenue.

7 Upon review of the testimony, the video, the
8 exhibits, I find that the Defendant did not have
9 probable cause to believe that the Plaintiff was
10 acting unlawfully.

11 The Court will enter a judgment in the amount
12 of \$7,500.00 against the Defendant -- \$7,500.00 for
13 the Plaintiff.

14 That will be the judgment of this Court.

15 All right, thank you.

16 MR. LOURIE: Thank you, Your Honor. If we can
17 just get court costs added on that for filing and
18 serving the lawsuit, \$200. We asked for it in the
19 pleadings. Not for depositions, just filing of the
20 lawsuit.

21 THE COURT: It is in the \$7,500.00.

22 MR. LOURIE: It is in? Okay. All right,
23 thanks, Judge. Thank you.

24 MR. GARFIELD: Your Honor, just to protect
25 ourselves, could we ask the Court for ten days to

1 file motions?

2 THE COURT: Yes, sir.

3 MR. GARFIELD: Thank you.

4 THE COURT: Thank you.

5 MR. LOURIE: Thank you. Y'all have a good
6 day.

7 (WHEREUPON, the proceedings were concluded.)

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**Richland County
Sheriff's Department
Internal Affairs**

Memo

To: Chief Berkheimer
From: Sergeant Major Polis
Date: 01/16/09
Re: IA 001 09


01/16/09 02:10:50 pm

On 01/02/09, IA received a complaint from Mr. Demetrius Mack on Cpl. James Gore. In his complaint, Mr. Mack said Cpl. Gore failed to do a thorough investigation, which resulted in him being arrested for simple assault stemming from an incident that occurred on 12/06/08. Mr. Mack was a SLED certified security guard working for Club Essence at 8605 Two Notch Road. Mr. Mack said he attempted to detain a subject for trespassing when the subject ran from him. Mr. Mack said he chased the subject off of Club Essence's property and onto the property at 109 Weir Avenue. The address on Weir Drive is also owned by the same person who owns Club Essence. 109 Weir Avenue is listed on the contract as a location Mr. Mack is authorized to protect. Mr. Mack felt he committed no crime by using force to detain the subject who ran from him. Mr. Shawn Hale, the owner of DTH Protective Services, said that a copy of the contract was available at Club Essence on the night Mr. Mack was arrested. Mr. Hale said Mr. Mack would not have been arrested if Cpl. Gore had reviewed the security contract.

On 01/07/09, IA interviewed Cpl. Gore. Cpl. Gore said he was just down the street arresting subjects for unrelated narcotics violations when he observed a commotion occurring at Club Essence. Cpl. Gore said he observed a male subject running from another male subject and into the street. Cpl. Gore said the first subject ended up on the ground with the second subject on top of him. Cpl. Gore said he walked down the street to find out what was going on and realized the security guard had chased a trespasser off of the property and out into the roadway. Cpl. Gore said the "trespasser", as a result of being tackled in the roadway, received significant injuries to his face and hands, which required treatment by EMS. Cpl. Gore said the subject wanted to press charges for simple assault. Cpl. Gore said Mr. Mack was arrested because he was outside of his jurisdiction when Mr. Mack "arrested" the subject. Cpl. Gore added that he was a SLED certified security guard for several years prior to becoming a law enforcement officer therefore he is very familiar with the rights and powers of security guards.

On 01/07/09, IA interviewed M. D. Parish, who responded to the scene with Cpl. Gore. M. D. Parish said when she arrived she almost drove past Mr. Mack and the subject he arrested. M. D. Parish said the subject was half in the grass with his legs in the roadway, seated in front of a white vehicle. M. D. Parish said she also felt Mr. Mack was outside of his jurisdiction because he chased the subject into the street.

On 01/16/09, IA received a statement from Dep. Proffitt. Dep. Proffitt's statement corroborated the statements provided by Cpl. Gore and M. D. Parish. Dep. Proffitt said he observed Mr. Mack tackle the other male subject "in the street."

M. D. Parish provided video of her response to the scene from her in-car video camera system. The video is somewhat blurry but it is clear that the male subject arrested by Mr. Mack was in the roadway and not on the grass of 109 Weir Avenue, therefore placing him outside of his jurisdiction at the time the arrested was effected. The video corroborates the statements provided by Cpl. Gore, M. D. Parish, and Dep. Proffitt.

There is no evidence to support the allegation Cpl. Gore failed to conduct a thorough investigation. Additionally there was no need on the part of Cpl. Gore to check the security contract to see if 109 Weir Avenue was listed because Mr. Mack was in the roadway at the time he effected his arrest. Cpl. Gore's actions were lawful and proper. **EXONERATED.**

Note: Mr. Mack was found 'not guilty' of the simple assault charge because the victim failed to appear in court.



D. T. H. PROTECTIVE SERVICES CONTRACT

This Contract Agreement hereafter known as the "Agreement" is entered into this date: 8/20/05 two watch Rd. between D.T.H. Protective Services and 109 110 113 W E R Ave Car Wash (sparkle) America Flowing, Detroit, MI hereafter known as the "Procuer". This agreement shall be upheld by the following terms and conditions agreed to and specified, as outlined below:

RECITALS

WHEREAS, the Procuer is in need of assistance in the area of security; and WHEREAS, D.T.H. Protective Services (D.T.H.P.S.) has agreed to perform on site security work for the Procuer in areas of performing security of all phases and will act as a security consultant on any and all issues that pertain to security. Perceived and recognition of any security problem will result in D.T.H.P.S. immediately addressing all concerns. The D.T.H.P.S. Officer(s) will make necessary judgments and recommendations and inform management of issues and will resolve or correct problems and/or concerns. D.T.H.P.S. Officers are licensed and bonded by S.L.E.D. and carry concealed weapons permits.

NOW, THEREFORE, the parties hereby agree as follows:

1. Services. D.T.H.P.S. shall be available and shall provide to the Procuer professional services in the area of security as needed and requested at the following address(es): (Also see contract specifications.)

2. Consideration.

A. RATE. In consideration of the Services to be performed by D.T.H.P.S. under this Agreement the Procuer will pay D.T.H.P.S. the flat rate of \$ per job or at the rate of 11.00 per hour for time spent utilizing D.T.H.P.S. (At a required minimum of four hours per officer per night). One half (50%) of agreed price is due at the time of the signing of the agreement. D.T.H.P.S. Officer(s) will submit written, signed reports of the time spent performing Security Services, itemizing in reasonable detail the dates on which services were performed, the number of hours spent on such dates and a brief description of the services rendered. The Procuer shall pay D.T.H.P.S. the amounts due pursuant to submitted reports. All time after 15 minutes, after the agreed contract time, constitutes an additional hour of pay by the Procuer. OR

B. RATE. In consideration of the Services to be performed by D.T.H.P.S. under this Agreement the Procuer will pay D.T.H.P.S. the flat rate of \$ per job or at the rate of \$ per hour for time spent utilizing D.T.H.P.S. (At a minimum of four hours per officer per night). D.T.H.P.S. Officers(s) will submit written, signed reports of the time spent performing Security Services, itemizing in reasonable detail the dates on which services were performed, the number of hours spent on such dates and a brief description of the services rendered. The Procuer shall pay D.T.H.P.S. one half down prior to services rendered and amounts due pursuant to submitted reports immediately after completion of services after such reports are received by the Procuer.

Holidays shall be at a rate of time and a half per hour (i.e. if the rate is 25.00 per hour the holiday rate would be 37.50 per hour). Holiday's that would be at holiday rate: **Christmas Eve, Christmas, New Years Eve, New Years and July 4.**

B. EXPENSES. Additionally, the Company will pay D.T.H.P.S. Officers for the following expenses (specify, such as: all travel expenses to and from all work sites; meal expenses; administrative expenses; lodging expenses if work demands overnight stays; and miscellaneous travel-related expenses including parking and tolls) incurred while this Agreement between Consultant and the Company exists.

IN THE EVENT AN ARREST IS MADE: THE PROCURER WILL BE RESPONSIBLE FOR THE ADDITIONAL COSTS INCURRED. COST OF HOTEL, FOOD, AND TIME SPENT IN BOND COURT, ETC.

D.T.H.P.S. shall submit written documentation and receipts where available itemizing the dates on which expenses are incurred. The Procurer shall pay D.T.H.P.S. the amounts due pursuant to submitted reports within 0 after a report is received by the Procurer.

3. Independent Contractor. Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee partnership or joint venture relationship between the Procurer and D.T.H.P.S. D.T.H.P.S. is an independent contractor and not an employee of the Procurer or any of its subsidiaries or affiliates. The consideration set forth in Section 2 shall be the sole consideration due D.T.H.P.S. for the services rendered hereunder. It is understood that the Procurer will not withhold any amounts for payment of taxes from the compensation of D.T.H.P.S. hereunder. D.T.H.P.S. will not represent to be or hold itself out as an employee of the Procurer and D.T.H.P.S. acknowledges that he/she shall not have the right or entitlement in or to any of the pension, retirement or other benefit programs now or hereafter available to the Procurer's regular employees. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or municipal laws or union or professional guild regulations shall be D.T.H.P.S. sole responsibility and D.T.H.P.S. shall indemnify and hold Procurer harmless from any and all damages, claims and expenses arising out of or resulting from any claims asserted by any taxing authority as a result of or in connection with said payments.

D.T.H.P.S. SPENDS A LOT OF HOURS SEEKING POTENTIAL APPLICANTS. HIRING AND TRAINING. AT NO TIME WILL A D.T.H.P.S. CONTRACTOR, SUB-CONTRACTOR, CLUB OWNER, OR PROMOTER AFFILIATED WITH D.T.H.P.S. GIVE OUT BUSINESS CARDS, MAKE SIDE MONETARY DEALS OR OTHER EMPLOYMENT DEALS OF ANY KIND, OUTSIDE OF D.T.H.P.S. KNOWLEDGE OR CONSENT WITH ANY CLUB, OWNER, PROMOTER, CONTRACT AFFILIATES OF D.T.H.P.S. THIS IS A BREACH OF TRUST ISSUE THAT CARRIES A CRIMINAL PENALTY! AT NO TIME SHALL ANY PROCURER OR ITS EMPLOYEES ASK ANY D.T.H.P.S. TO BREAK THE LAW OR DISREGARD ANYONE WHO IS BREAKING THE LAW. IF AN ARREST IS WARRANTED, THAT DETERMINATION WILL BE MADE AT THE AUTHORITY OF D.T.H.P.S.

4. Confidentiality. In the course of performing security services, the parties recognize that D.T.H.P.S. may come in contact or become familiar with information which the Procurer or its subsidiaries or affiliates may consider confidential. This information may include, but is not limited to, information pertaining to any job which information may be of value to a competitor. D.T.H.P.S. agrees to keep all such information confidential and not to discuss or divulge it to anyone other than appropriate Procurers personnel or their designees.

5. **Term.** This Agreement shall commence on 9/26/08 and shall terminate on 12/31/08, unless earlier terminated by either party hereto. Either party may terminate this Agreement upon Thirty (30) days prior written notice. The Procurer may, at its option, renew this Agreement for an additional term of 12/31/08 on the same terms and conditions as set forth herein by giving notice to D.T.H.P.S. of such intent to renew on or before 1/10/09.

CANCELLATION CLAUSE

IN THE EVENT OF A CANCELLATION WITHIN:

7 DAYS OF THE EVENT PROCURER AGREES TO PAY 50% OF THE FULL PRICE AGREED UPON AS A CANCELLATION FEE.

3 DAYS OF THE EVENT PROCURER AGREES TO PAY 75% OF THE FULL PRICE AGREED UPON AS A CANCELLATION FEE.

48 HOURS OR LESS OF EVENT PROCURER AGREES TO PAY 100% OF THE FULL PRICE AGREED UPON AS A CANCELLATION FEE.

IT IS UNDERSTOOD AND AGREED UPON BY ALL PARTIES THAT THE SPECIFIC NATURE OF ANY CLAM BREACH OF THIS AGREEMENT MUST BE ADVISED TO OFFENDED PARTY IN WRITING.

6. License. D.T.H.P.S. is licensed to perform the agreed upon services enumerated herein and covenants that it maintains all valid licenses, permits and registrations to perform same.

7. Insurance. D.T.H.P.S. will carry general liability, automobile liability, workers' compensation and employer's liability insurance. In the event the D.T.H.P.S. fails to carry such insurance it shall indemnify and hold harmless Procurer, its agents and employees from and against any damages, claims, and expenses arising out of or resulting from work conducted by D.T.H.P.S. and its agents or employees.

8. Competent Work. All work will be done in a competent fashion in accordance with applicable standards of the profession and all services are subject to final approval by a representative of the Procurer prior to payment.

9. Representations and Warranties. D.T.H.P.S. will make no representations, warranties, or commitments binding the Procurer without the Procurer's prior consent.

10. Legal Right. D.T.H.P.S. covenants and warrants that he/she has the unlimited legal right to enter into this Agreement and to perform in accordance with its terms without violating the rights of others or any applicable law and that he/she has not and shall not become a party to any other agreement of any kind which conflicts with this Agreement. D.T.H.P.S. shall indemnify and hold harmless the Procurer from any and all damages, claims and expenses arising out of or resulting from any claim that this Agreement violates any such agreements. Breach of this warranty shall operate to terminate this Agreement automatically without notice as specified in Paragraph 5 and to terminate all obligations of the Procurer to pay any amounts which remain unpaid under this Agreement.

11. The Waiver. Failure to invoke any right, condition, or covenant in this Agreement by either party shall not be deemed to imply or constitute a waiver of any rights, condition, or covenant and neither party may rely on such failure.

12. Notice. Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly addressed to the appropriate party at the address set forth below:

1. Notices to D.T.H.P.S. PO Box 1967 Orangeburg, SC 29115

2. Notices to the Procurer: 8605 Two Notch Rd. Floerger Avenue
Spokane, WA 99208, P.O. Box 109, 110, 113 WEIR Ave

13. Enforceability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be impaired

14. Miscellaneous.

a. Entire Agreement and Amendments. This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of this Agreement shall be binding unless in writing and signed by both parties.

b. Binding Effect, Assignment. This Agreement shall be binding upon and shall inure to the benefit of Consultant and the Company and to the Company's successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by D.T.H.P.S. of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the Procurer.

c. Governing Law, Severability. This Agreement shall be governed by the laws of the State of South Carolina. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

After reading this contract _____ would like to add the following article.

** Stop Loitering in parking lot, monitor property listed above on
docket, patch down customers for contraband and weapons, check ID's, Seat
individuals off property after being borrowed from Club*
WHEREFORE, the parties have executed this Agreement as of the date written above.

Reginald Deneal
Name (please Print)

9/26/08
Date

Shawn Heide
Name (please Print)

9/26/08
Date

APPLICATION FOR SECURITY/PRIVATE INVESTIGATIVE REGISTRATION

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Post Office Box 21398
Columbia, SC 29221-1398

ATTN: REGULATORY SERVICES

FILE # R 175137

NOTICE: Application must be typed or clearly printed in ink. All questions must be answered, if applicable. If not, indicate N/A (not applicable). Applications which are not complete and legible will be returned. If space provided is not sufficient for complete answers or you wish to furnish additional information, attach sheets of the same size as the application, and number answers to correspond with the questions.

THIS APPLICATION IS FOR EMPLOYEE REGISTRATION AS:

SECURITY/PRIVATE INV.

☒ NEW

☐ RE-REGISTERING

SECURITY ONLY

☐ ARMED

☒ UNARMED

AGENCY NAME:

United Event Services

CO. LICENSE #:

1227

ADDRESS:

139 Hampton Crest Trail
Columbia, SC 29209

PHONE #:

(803) 929-1144

I. PERSONAL HISTORY

Full Name (Last, First, Middle)

Mack Demetrius Allowz

Driver's License #

00773497

Date of Birth

10-26-70

Place of Birth (City & State)

Harlem New York

Social Security #

[REDACTED]

Race

Black

Sex

Male

Height

5-6

Weight

234

Eyes

Brown

Hair

Black

PLEASE NOTE: SOCIAL SECURITY NUMBER IS NECESSARY IN ORDER TO OBTAIN AN ACCURATE CRIMINAL HISTORY CHECK.

Are you a U.S. citizen?

☒ Yes

☐ No

NATURALIZATION NO:

PLACE:

COURT:

2. RESIDENCES

Present Residence Address (Street, City, State, Zip Code)

466 Oak Manor Drive Columbia South Carolina 29229

Home Phone #

803-419-3815

Cell Phone #

803-269-0569

PRIOR Resident Address(es) - Include the past 10 years (Street, City, State, Zip Code) - Use additional space on back, if required.

How Long?

1. 109 Royal Pine Lane McCormick South Carolina 29835

2 1/2 yrs

2. 1105 South Main McCormick South Carolina 29835

2 yrs

3. Essex Park Columbia South Carolina 29210

2 1/2 yrs

Have you previously applied for a Security License with the S. C. Law Enforcement Division?

☒ No

☐ Yes

Date:

Place:

Do you currently hold a State Constable's Commission?

☒ No

☐ Yes

Date:

3. EMPLOYMENT (New Applicant Only)

List chronologically all employments for the past 10 years, including summer and part-time employments while attending school. All time must be accounted for. If unemployed for a period indicate, setting forth dates of unemployment. (If space provided is insufficient, continue on a separate page.)

Name, Address and Phone # of Employer	From	To	Position and type of work	Name of Supervisor	Reason for Leaving
a. <u>31-10 3315-B Broad River Rd (803-772-2795)</u>	<u>4/14/05</u>	<u>7/19/05</u>	<u>Assist Mgr./Meat Cutter</u>	<u>Tony</u>	<u>Leave of Absence</u>
b. <u>Food Lion 2300 Taylor St (803-269-2777)</u>	<u>10/24/04</u>	<u>3/29/05</u>	<u>Market Mgr.</u>		<u>Found mother job</u>
c. <u>Bi-Lo 9003 Two Notch Rd. (803-419-0200)</u>	<u>6/25/04</u>	<u>10/22/04</u>	<u>Meat Cutter</u>	<u>Tony</u>	<u>Found mother job</u>
d. <u>Ingle's Elberton Ga (706-283-8445)</u>	<u>4/2/03</u>	<u>5/03</u>	<u>Market Mgr.</u>	<u>Shame Worthy</u>	<u>Found mother job</u>

Do you currently hold any other position where you have direct or indirect access to criminal history information?

☒ No ☐ Yes

4. MILITARY RECORDS (New Applicant Only)

Have you ever served on active duty in the Armed Forces of the United States?

☒ No

☐ Yes

Highest Rank Obtained:

Branch of Military Service

Type of Discharge

5. CRIMINAL RECORD

Have you ever been arrested or charged with any violations? () NO (✓) YES. (List all such matters, even if not formally charged, no court appearance, found not guilty, or matter settled by payment of fine or forfeiture of collateral) List all traffic citations, but do not include parking tickets.

Date	Place	Charge	Final Disposition	Details
6/30/90	West Columbia	Assault Battery w/ High Aggrav ^{Nature}	Simple Assault	Misdemeanor / Pay Fine \$75
8/31/91	Cayce	Weapon Charge	Have to pay a fine of \$130	Misdemeanor / Brass Knuckle

6. PHYSICAL DATA

Do you now have or have you had in the past any of the following? Nervous, mental, or emotional disorder of any sort, epilepsy or diabetes? () NO (✓) YES. If yes, identify, describe and give details below. If you are currently on medication for any of the above, or any other medical problems, please submit a statement from your physician.

I had a seizure in June 06 / Hospital, Keeno

I understand that any License or Registration Certificate issued me will be contingent upon the result of a complete character and fitness investigation, and I am aware that willfully withholding information or making false statements on this application will be basis for revocation or suspension by the South Carolina Law Enforcement Division. I agree to these conditions and I hereby certify that all statements made by me on this application are true and complete, to the best of my knowledge.

I do hereby authorize any military organization, doctors, insurance companies, educational institution, governmental agencies, banks and credit agencies, former and present employers and individuals to furnish to the South Carolina Law Enforcement Division any or all available information regarding me, whether or not it is on their records. I hereby release them from any civil or criminal liability whatsoever for issuing same.

Michael Kahaly
Notary Public Of South Carolina

My Commission Expires:

Feb 06 2014

Nestor Alongo Mack
Signature of Applicant (Do not use nickname)

Date:

PLEASE MARK BELOW THE TYPE OF LICENSE AND/OR REGISTRATION. PLEASE ENCLOSE APPROPRIATE FEE.

INDIVIDUAL REGISTRATION

Contract/Proprietary Security Officer Unarmed (SNF) \$65.00 ☒

Contract/Proprietary Security Officer Armed (SFA) \$110.00

Upgrade from Unarmed to Armed Officer (UGA) \$45.00

Temporary Officer (TEM) \$ 5.00

Private Investigator (DET) \$350.00

VPS

Revised 02/05

Plaintiff's Exhibit #7

**(Large Map -- To Be Transferred
from the Richland County
Court of Common Pleas)**

APPLICATION FOR SECURITY/PRIVATE INVESTIGATIVE REGISTRATION

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Post Office Box 21398

Columbia, SC 29221-1398

ATTN: PUBLIC DISSEMINATION

FILE # R 0145137

248 12-19-08

NOTICE: Application must be typed or clearly printed in ink. All questions must be answered, if applicable. If not, indicate N/A (not applicable). Applications which are not complete and legible will be returned. If space provided is not sufficient for complete answers or you wish to furnish additional information, attach sheets of the same size as the application, and number answers to correspond with the questions.

THIS APPLICATION IS FOR EMPLOYEE REGISTRATION AS:

SECURITY/PRIVATE INV.

SECURITY ONLY

() NEW

() RE-REGISTERING

() ARMED

() UNARMED

AGENCY NAME:

CO. LICENSE #:

MAILING ADDRESS:

CITY/STATE:

ZIP CODE:

PHONE #:

United Event Services, Inc.

139 Hampton Crest Trail

Columbia, SC 29209

803-929-1133

1. PERSONAL HISTORY

Full Name (Last, First, Middle)

Driver's License #

Mack, Demetrius Alonzo

007733497

Date of Birth

Place of Birth (City & State)

Social Security #

Race

Sex

Height

Weight

Eyes

Hair

10/26/70

Harlem, New York

[REDACTED]

B

M

5'6"

241

Brown

Black

PLEASE NOTE: SOCIAL SECURITY NUMBER IS NECESSARY IN ORDER TO OBTAIN AN ACCURATE CRIMINAL HISTORY CHECK.

Are you a U.S. citizen? () Yes () No

NATURALIZATION NO:

PLACE:

COURT:

2. RESIDENCES

Present Residence Address (Street, City, State, Zip Code)

513 Summit Terrace Ct. Columbia South Carolina 29229

Home Phone #

Cell Phone #

803 419-1121

803 667-0290

PRIOR Resident Address(es) - include the past 10 years (Street, City, State, Zip Code) - Use additional space on back, if required.

How Long?

1. 406 Oak Manor Dr. Columbia South Carolina 29229

2 1/2 yrs

2. 109 Royal Pine Lane McCormick South Carolina 29835

2 1/2 yrs

3. 1105 South Main Street McCormick South Carolina 29835

2 yrs

4. 1800 Long Creek Dr. Apt. 7V Columbia South Carolina 29210

2 yrs

Have you previously applied for a Security License with the S. C. Law Enforcement Division?

Do you currently hold a State Constable's Commission?

() No () Yes Date: 12/19/2007 Place United Event Services

() No () Yes Date:

3. EMPLOYMENT

List chronologically all employments for the past 10 years, including summer and part-time employments while attending school. (All time must be accounted for. If unemployed for a period indicate, setting forth dates of unemployment. (If space provided is insufficient, continue on a separate page.))

Name, Address and Phone # of Employer	Date From To	Position and type of work	Name of Supervisor	Reason for Leaving
a.				
b.				
c.				
d.				

Do you currently hold any other position where you have direct or indirect access to criminal history information? () No () Yes

4. MILITARY RECORDS

Have you ever served on active duty in the Armed Forces of the United States?

Branch of Military Service

Type of Discharge

() No () Yes Highest Rank Obtained?

5. CRIMINAL RECORD

Have you ever been arrested or charged with any violations? () NO (✓) YES. (List all such matters, even if not formally charged, no court appearance, found not guilty, or matter settled by payment of fine or forfeiture of collateral). List all traffic citations, but do not include parking tickets.

Date	Place	Charge	Final Disposition	Details
6/90	West Columbia SC	Assault + Battery High Aggravation	Simple Assault	Misdemeanor
6/91	Cayce SC	(Grass Knives) Unlawful Weapon	Fine	Misdemeanor

6. PHYSICAL DATA

Do you now have or have you had in the past any of the following? Nervous, mental, or emotional disorder of any sort, epilepsy or diabetes? () NO (✓) YES. If yes, identify, describe and give details below. If you are currently on medication for any of the above, or any other medical problems, please submit a statement from your physician.

- Epilepsy, medication is Kepra,

I understand that any License or Registration Certificate issued me will be contingent upon the result of a complete character and fitness investigation, and I am aware that willfully withholding information or making false statements on this application will be basis for revocation or suspension by the South Carolina Law Enforcement Division. I agree to these conditions and I hereby certify that all statements made by me on this application are true and complete, to the best of my knowledge.

I do hereby authorize any military organization, doctors, insurance companies, educational institution, governmental agencies, banks and credit agencies, former and present employers and individuals to furnish to the South Carolina Law Enforcement Division any or all available information regarding me, whether or not it is on their records. I hereby release them from any civil or criminal liability whatsoever for issuing same.

Michael Kahaly
Notary Public Of South Carolina

My Commission Expires: Feb. 06, 2014

Devotins Alonzo Mack
Signature of Applicant (Do not use nickname)

Date: 11/20/2008

PLEASE MARK BELOW THE TYPE OF LICENSE AND/OR REGISTRATION. PLEASE ENCLOSE APPROPRIATE FEE.

INDIVIDUAL REGISTRATION

Contract/Proprietary Security Officer Unarmed (SNF) \$65.00 ☒

Contract/Proprietary Security Officer Armed (SFA) \$110.00 ☐

Upgrade from Unarmed to Armed Officer (UGA) \$45.00 ☐

Temporary Officer (TEM) \$ 5.00 ☐

Private Investigator (DET) \$350.00 ☐

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

February 6, 2009

Mr. Demetrius Mack
[REDACTED]
Columbia, SC 29229

RE: RO175137

Dear Mr. Mack:

This will acknowledge receipt of your application for registration as a security officer, and to notify you that we are denying your registration.

Investigation of your application revealed your arrests by the West Columbia Police Department on June 28, 1990 for "Assault & Battery, High & Aggravated Nature"; Cayce Police Department on August 20, 1999 for "Unlawful Weapon"; Columbia Police Department on August 10, 1999 for "Driving Under Suspension - 4th Offense, Habitual Offender 2nd Offense, and Speeding"; SC Highway Department on May 12, 2000 for "Driving Under Suspension - 4th Offense"; Greenwood County Sheriff Office on October 29, 2003 for "DUS and Speeding"; Richland County Sheriff Office on December 30, 2005 for "Driving Under Suspension"; and Richland County Sheriff Office on December 6, 2008 for "Simple Assault". SLED policy requires denial of an application when false information is furnished on an application form.

If you wish to appeal, please provide an explanation and disposition of these arrests within thirty (30) days of receipt of this letter to Neal Dolan, Assistant Director, c/o Regulatory Services Unit, PO Box 21398, Columbia, South Carolina 29221-1398.

Sincerely,

Ben L. Moore
Lieutenant, SLED Regulatory Services

cc: DTH Protective SC

BLM:dlw



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041



Defendant's Trial Exhibit #1.

February 17, 2009

Demetrius Mack

Columbia, South Carolina 29229

Mr. Ben L. Moore
SLED
Regulatory Services Unit
Post Office Box 21398
Columbia, South Carolina 29221-1398

Dear Mr. Moore:

I am writing to you in response to your denial of my registration as a Security Officer through SLED. I am submitting this letter for reconsideration of my SLED registration card. You will find an explanation for each offense listed below:

1. The charge that occurred on 6/28/1990 was reduced to a simple assault. I was acting in self defense when the other guy hit me first.
2. The charge that occurred on 8/20/1991 not 1999 was reduced to a fine for having brass knuckles in my pocket.
3. Driving offenses on 8/10/1999, 5/12/2000, 10/29/2003, and 12/30/2005 occurred because I did not have any other means of transportation to get back and forth to work. Since then, I have completed all necessary steps to regain my driving privileges.
4. The charge that occurred on 12/6/08 has been dropped on 1/8/09 and is being expunged from my record.

Please reconsider in approving my registration card to work as a Security Officer. Please feel free to contact me at 803-667-0290 if you need any additional information.

Sincerely,

Demetrius Mack

Demetrius Mack

Sworn to and Subscribed Before Me,

This 17th Day of February, 2009

Signed: [Signature]

Notary Public of South Carolina

My Commission Expires: February 4, 2018

Defendant's Trial Exhibit #2

February 23, 2009

Mr. Ben L. Moore
South Carolina Law Enforcement Division
Regulatory Services Unit
P.O. Box 21398
Columbia, SC 29221-1398

Dear Mr. Moore:

This letter is in response to becoming a registered Security Officer with SLED. My past history shows some indiscretions where I did not exercise the best judgment. There were also times I took for granted that simple infractions were just that and would never show up again. Please excuse my ignorance in not dealing with these infractions. The initial simple assault charge was due to me defending myself. I did not follow up with the court system. I took for granted that since I was defending myself, this charge would automatically go away.

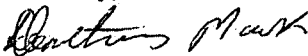
The second offense listed was reduced to possession of brass knuckles. This offense occurred on 08/20/1991 and not in 1999. My driving offenses occurred while my license was under suspension and I had no other means of getting back and forth to work. Since then, I have completed all the necessary steps to regain my driving privileges.

The last charge dated 12/06/08 occurred while on duty and it was dismissed by the court system; an unruly patron tried to bring illegal drugs into an establishment and was escorted out several times. On his last attempt to gain access into the establishment he ran from security and fell. The officers initially felt I was out of jurisdiction, but in fact, the place he fell was apart of the establishments property where we provided security.

Again, I apologize for the lack-luster manner in which I handled these infractions. Since I have been working with security and essentially growing up, I truly understand the purpose of the law. It is not something to take lightly. Everyday, officers around this country place their lives on the line to protect citizens. I would love the opportunity to provide those same services. The company in which I am employed was established for this very reason.

In reviewing these infractions, I am asking that you reconsider my application and approve my registration card in order to work as a security officer.

Sincerely,


Demetrius Mack

Sworn to and Subscribed Before Me

This 23 Day of February, 2009

Signed: 
Notary Public of South Carolina

My Commission Expires: 1/27/2019

Defendant's Trial Exhibit #3

Defendant's Exhibit #4

**(Video -- To Be Transferred
from the Richland County
Court of Common Pleas)**



State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2010-CP-40-5214

Demetrius Mack,

Plaintiff,

vs.

Richland County Sheriff
Leon Lott, in his Official
Capacity,

Defendant.

Transcript of Record

May 4, 2017
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

Joshua S. Kendrick, Esquire
Christopher S. Leonard, Esquire
Attorneys for the Plaintiff

Robert D. Garfield, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E XWitness/DescriptionPage No.

Certificate Page. 32

E X H I B I T SNo.DescriptionEv.

No exhibits introduced.

1 THE COURT: All right, I'll be glad to hear from --
2 we're on -- this is 2010-CP-40-5214.

3 MR. KENDRICK: You want me to go first, Your Honor?

4 THE COURT: That's fine.

5 MR. KENDRICK: So, just to briefly set out what's
6 happened, the Court of Appeals remanded the case under Rule
7 52(a) for a more detailed factual finding. The Supreme
8 Court didn't really do anything other than publish part of
9 that Court of Appeals opinion that discussed the probable
10 cause standard because they felt it was confusing.

11 It is our position that the only thing we need to do
12 at this point are take specific testimonial facts from the
13 record, add those to the order that Your Honor has already
14 written, and then it will cure the only problem the Court
15 of Appeals seemed to have had.

16 I think -- and since we have the benefit of having
17 discussed this, it sounds like the defense's position is
18 that there may still be an open question about whether you
19 looked at the case subjectively or objectively. I'll let
20 Mr. Garfield explain in more detail, but it's our position
21 your order states:

22 These facts existed and because of these facts,
23 he should not have been arrested and, therefore,
24 a false arrest claim lies.

25 Our position is that the only thing the Court of

1 Appeals has asked us to do is to -- is replace these facts
2 with the specific facts, that that will cure the problem
3 they found on appeal.

4 COURT REPORTER: Repeat that last, please.

5 MR. KENDRICK: That will cure the problem they found
6 on appeal. So, it is our position that we simply submit
7 proposed orders to Your Honor and let you review the facts
8 and, and sign the one that's appropriate or enter your own.
9 And I can answer any questions you have, but...

10 THE COURT: All right.

11 All right. Yes, sir.

12 MR. GARFIELD: Thank you, Your Honor. May it please
13 the court? In its opinion, the Court of Appeals provided
14 us with guidance in distilling the factual dispute into one
15 distinct issue. The Court of Appeals in this case -- and
16 if I may approach on these cases, Judge? If you go, Your
17 Honor takes a look at the second printed page, the last
18 four lines in the first column, and they boil the issue
19 down:

20 If Mack arrested Williamson on Club Essence
21 property, an assault Mack committed during the
22 arrest was lawful. However, if Williamson was in
23 the roadway when Mack arrested him, Mack acted
24 without legal authority to make the arrest and
25 would be guilty of assault. Therefore, Gore had

1 probable cause to arrest Mack if Gore reasonably
2 believed Mack arrested Williamson in the road,
3 not on Club essence property.

4 Your Honor, what the Court of Appeals did here is that
5 they put the issue back down for the trial court to render
6 detailed facts. I disagree with, with opposing counsel's
7 suggestion in this particular case that says what the Court
8 of Appeals wanted to do was remand the case for further
9 factual findings to support Your Honor's ruling that there
10 was no probable cause for the arrest because if Your Honor
11 would look down to the last paragraph before it says
12 remanded, it says:

13 Because the trial court's findings of fact are
14 insufficient under Rule 52(a), we remand for more
15 detailed findings as to whether, as to whether
16 Mack met his burden of proving Gore did not have
17 probable cause to arrest him.

18 Because what we're looking at here is that a -- more
19 detailed findings of fact in this particular case might
20 change Your Honor's ruling in light of an objective
21 standard, and I'd like to be -- that's the part I'd like to
22 be heard on because, Your Honor, in the Supreme Court case
23 that followed this, and this was decided December 9th,
24 2015, the Supreme Court stated:

25 Both parties and the trial court agreed that the

1 proper standard for determining probable cause is
2 an objective standard. That is whether the facts
3 known to the arresting officer at the time of the
4 arrest, viewed from the standpoint of an
5 objectively reasonable police officer, amount to
6 probable cause.

7 Your Honor, the appropriate probable cause analysis is
8 the two-step process articulated by the United States
9 Supreme Court. This is a Supreme Court case from 1996
10 entitled *Ornelas vs. The United States*. I'm not going --
11 I'm just going to hand this up, Your Honor, just for --
12 because I'm going to make references to this on the way --
13 I'm not going to actually reference a particular quote, but
14 this is *Ornelas*, O-r-n-e-l-a-s -- I may have mispronounced
15 that -- *vs. The United States*. It's 517 U.S. 690. It's a
16 1996 case. That analysis was reaffirmed in *Maryland vs.*
17 *Pringle*, where -- and that case is a more recent case from
18 2003, and that is 1 -- excuse me, 540 U.S. 366, 2003.

19 I would ask Your Honor to turn to page 5 of the
20 printed version, and this would be heading number 10,
21 two-thirds down on the first column, and what the United
22 States Supreme Court stated here was:

23 To determine whether an officer had probable
24 cause to arrest an individual, we examined the
25 evidence -- excuse me, examined the events

1 leading up to the arrest and then decide whether
2 these historical facts, viewed from the
3 standpoint of an objectively reasonable police
4 officer, amount to probable cause.

5 The Supreme Court referenced *Ornelas* in that case, the
6 2003 *Maryland vs. Pringle* Supreme Court decision.

7 So, I'd like to submit for the record -- and our
8 argument really centers on these two steps. The first test
9 of the objective test, according to *Ornelas* and according
10 to *Maryland vs. Pringle*, requires the trial court to
11 determine the historical facts, and in determining the
12 historical facts as part of this two-step process, a court
13 must look at the facts known to the officer. This was
14 echoed in our Supreme Court of South Carolina case from
15 2015 in the incident matter in which the Supreme Court
16 stated that it really centers on whether the facts known to
17 the arresting officer at the time of the arrest. Or put
18 another way, Your Honor, the facts available to an officer
19 at the time of the arrest.

20 Once those historical facts are determined by the
21 finder of fact, the fact finder must then process to the
22 second prong of the analysis, and I have referenced *Ornelas*
23 because that has been for over twenty years the clearly
24 established law from the United States Supreme Court, but
25 that's been followed by the South Carolina Supreme Court in

1 a case, *State vs. Morris*. This is 411 S.C. 571, a 2015
2 case. I'll just hand it up there. Excuse me. And in
3 *State vs. Morris*, the South Carolina Supreme Court stated,
4 and I'm reading from page 6 of the printed copy under
5 headings 14, 15, 16, 17, second column, referencing
6 *Ornelas*, of course, but the state Supreme Court held that:

7 The principal components of a determination of
8 probable cause will be the events which occurred
9 leading up to ---

10 In this case the stop or search.

11 --- and then the decision whether these historical
12 facts, viewed from the standpoint of an objectively
13 reasonable police officer, amount of probable cause.

14 Now, the historical facts in this, in this
15 circumstance, not only is it a critical fact here, but it's
16 a dispositive issue in this case as the, as the Court of
17 Appeals carved out, is the actual location of Mr.
18 Williamson. They've really boiled it down to one specific
19 issue. Where was Mr. Williamson, Mr. Williamson's location
20 at the point when the plaintiff, by his own testimony which
21 I'll get to in a little bit, admittedly grabbed him and
22 pulled Mr. Williamson from beneath a parked car, and this
23 location at the point that the plaintiff then restrained
24 him and handcuffed him. So, once again the Court of
25 Appeals has narrowed it down to one particular, almost one

1 particular fact: yes or no, did, did this historical fact
2 exist.

3 Now, what's instructive here in examining the
4 historical facts is we'd like to show or at least present
5 the historical facts in light of the videotape. It is
6 Deputy Stacy Parrish's videotape that was offered into
7 evidence and was used during the initial event. Now, if I
8 may have my IT manager Gary Trammel just approach, he's got
9 this on the laptop. It's a very short, obviously, video.

10 THE COURT: Yes.

11 MR. GARFIELD: We don't have the presenter or the, the
12 TV.

13 (A PAUSE.)

14 MR. GARFIELD: Now, before -- I'm sorry. I'll let
15 y'all get situated.

16 (A PAUSE.)

17 (WHEREUPON, VIDEO IS PLAYED FOR THE COURT. MR.
18 GARFIELD NARRATES.)

19 MR. GARFIELD: Okay, what we're seeing here is Deputy
20 Stacy Pringle -- this is her testimony -- was responding to
21 a call for backup at a Weir Avenue location, W-e-i-r
22 Avenue. It was on this avenue past the Club Essence
23 location where other deputies were working a narcotics
24 arrest.

25 Now this video, you will see Parrish activating her

1 dashboard video. She turns from Two Notch Road onto Weir
2 Avenue and then past this, the location of Mr. Williamson.
3 The video is on, she's turned on to Weir, and she passes
4 the location right here, and this is going to go through a
5 second -- just sort of loop. And then the third part here.

6 Stop, please.

7 We see in this video right here, we see that Mr.
8 Williamson -- I'm sorry -- right here was laying flat on
9 his back in front of this white vehicle. His legs are in
10 the roadway extending beyond the vehicle itself. It is
11 undisputed, based on the record, that at this point Mr.
12 Williamson had already been pulled from underneath the
13 vehicle and was handcuffed.

14 And if you could continue on for a moment?

15 You can actually see when Deputy Parrish ---

16 Just let it ride, Gary.

17 --- Deputy Parrish as she goes -- she gets flagged by
18 another security officer.

19 So, if you could go back to the circle part?

20 So, you did see one of the plaintiff's fellow security
21 guards flagging Deputy Parrish as she, as she drove by.

22 (END OF VIDEO PLAY.)

23 MR. GARFIELD: Here's why the video evidence is so
24 critical: because notwithstanding anyone's testimony, it
25 really shows three things. It shows the position of the

1 vehicles on the roadway. It shows the position of the
2 white vehicle, and it is this vehicle from underneath which
3 Mr. Williamson was grabbed and pulled by the plaintiff, and
4 it also shows Mr. Williamson at least partially in the
5 roadway when he was detained by the plaintiff, and he was
6 handcuffed.

7 Now, when Mr. Kendrick makes this statement that why
8 are we going back and looking at any other evidence again,
9 we respectfully disagree because without question this
10 video cannot be disregarded here. We would take the
11 position that would be an, that would be an error of law,
12 and here's why.

13 As the United States Supreme Court decided in *Scott*
14 *vs. Harris*, and they made clear, the existence of a police
15 video is typically dispositive of disputed factual issues,
16 particularly where there are inconsistencies in the witness
17 testimony. The Supreme Court in the 2007 case *Scott vs.*
18 *Harris*, 550 U.S. 372, case from ten years ago in which the
19 Supreme Court looked at the significance of a videotape
20 from a police officer, and I'm going to read from page 6,
21 Your Honor, the second column in which the Supreme Court
22 stated:

23 Respondent's version of events is so utterly
24 discredited by the record that no reasonable jury
25 could have believed him. The Court of Appeals

1 should not have relied on such visible fiction.
2 It should have viewed the facts in the light
3 depicted by the videotape.

4 Also when examining the video on this issue -- also in
5 evidence were daytime photographs of the location on Weir
6 Avenue. These may look familiar to Your Honor. This is
7 Deputy Parrish standing on Weir Avenue approximately where
8 she was -- where the white vehicle was. As Your Honor can
9 note from this particular street or this, what you see in
10 this picture, there really are key reference points. One
11 thing we see is that Weir Avenue is a two-lane road, yet
12 the parked vehicles lining the street on this particular
13 night, the parked vehicles basically reduce the street to a
14 one-lane roadway, and this is evidenced by, as Your Honor
15 will note, as Deputy Parrish pulled in to Weir Avenue that
16 she basically had a limited space for which she had to
17 maneuver her patrol vehicle. And what that demonstrates is
18 that the vehicles on the street, including the white
19 vehicle, were at least, at least parked partially in the
20 roadway.

21 So, on this particular, this particular video, what
22 we'd represent, what this clearly shows is the position of
23 the vehicles lining Weir Avenue, including the white
24 vehicle. It also shows, Your Honor, Ms. -- Mr. Williamson
25 is located in the roadway right here after he was detained

1 by the plaintiff. His feet clearly extends past the row of
2 vehicles. In fact, you could even note this white spot is
3 his shoes where he is laying in front. It actually extends
4 beyond where the car is. If the car's at least partially
5 in the roadway, he is in front of the car, his lower
6 extremities, his legs are protruding past the car, and you
7 can see easily his shoes going past that. Those facts show
8 indisputable evidence that Mr. Williamson was handcuffed
9 and detained for the police while he was lying at least
10 partially in the roadway.

11 We would submit, respectfully, that these facts would
12 lead an objectively reasonable officer on the scene to
13 believe that the plaintiff's actions -- detaining,
14 arresting, handcuffing, whatever he did -- at least in part
15 were done in a public roadway and, as a result, outside of
16 the plaintiff's statutorily defined jurisdiction and,
17 consequently, there was probable cause to arrest.

18 I am simply, Your Honor, making the argument within
19 the confines of what the Court of Appeals has stated is a
20 very straightforward issue in this particular case. This
21 is not a question at all of disbelieving Officer Gore. We
22 strongly dispute that that's the issue for the fact finder
23 in this case. The law on this point, again, in determining
24 whether probable cause exists, a court -- and Your Honor is
25 the fact finder -- must focus on what the facts were, and

1 in light of those facts whether a reasonable officer would
2 believe -- whether ---

3 You can leave that up there.

4 --- whether you would believe probable cause exists.

5 So, we're not talking about a situation if the court
6 believes or disbelieves that he was actually tackled in the
7 street, and we're not talking about a situation as to what
8 James Core -- James Gore, what he honestly believed, what
9 his subjective thoughts were, what his intents, what his
10 motivations were. Your Honor can plainly look at that
11 video before you -- it's part of the record -- and can make
12 a determination as to what the historical facts were in
13 light of *Maryland vs. Pringle* and *Ornelas*, and it's based
14 on those facts to determine if an officer may have
15 reasonably perceived the arrest occurred in the street.
16 This dashboard video makes it undisputed.

17 There is an additional point on this, and this
18 concerns the trial testimony regarding Mr. Williamson's
19 injuries. The trial testimony, and this was brought up on
20 the appellate record, I believe, in this case, and I'm
21 going to just reference to page 185 of the trial
22 transcript, and this is where I asked Mr. Mack in
23 cross-examination: So, he was under the car, right? He
24 said: Yes, sir. Going back to -- down to line 25: You
25 would agree with me that you physically grabbed him while

1 he was under the car, correct? Answer: I grabbed him from
2 up under the car. Answer: I didn't drag him; I pulled him
3 out. Question: You pulled him out from under the car, and
4 then you handcuffed him? Answer: Right.

5 Going down to line 23, Your Honor. Question: You
6 learned later that he was bleeding, right? Answer: Right;
7 I learned later on, I learned later on that his hands was
8 bleeding because of lacerations from falling.

9 Going to page 187, line 5. Question: So, your
10 testimony here in the court is that he sustained an injury
11 to the front palms of his hand, right? Answer: Right.
12 Question: That were bleeding? Answer: They were bleeding
13 right up in this area right here. Question: And you're
14 pointing to the inside, kind of your palm area, upper
15 wrists. Answer: Right, up in here. Question: Kind of like
16 where your hand, body and hand meets this wrist. Answer:
17 Right. That part was bleeding: question. Answer: Yes.

18 These injuries as observed by the officers appeared to
19 be consistent with road rash. Stacy Parrish, and I don't
20 have the actual sound bite from her transcript, but she
21 said under oath as part of describing Mr. Williamson's
22 injuries is that she said there was a, either a copious
23 amount of profuse bleeding or substantive bleeding to his
24 hands, and she was concerned because she did not have
25 gloves for which to handle him, and she described the

1 blood. It's consistent with Mr. Mack's testimony and it's
2 consistent, Your Honor, we'd submit, to what a reasonable
3 officer, an objectively reasonable officer at the scene for
4 which they could conclude that these injuries were
5 sustained in the public roadway, in a public roadway that
6 was outside of his jurisdiction rather than in the grassy
7 side of the road which was in his jurisdiction. At the
8 very least, the road rash would allow an objectively
9 reasonable officer when, in light of Mr. Mack's testimony
10 of grabbing someone, of pulling him on the pavement, that
11 that would have been located on the pavement of a public
12 roadway.

13 Even if these historical facts were drawn entirely
14 from the plaintiff's account, this court should find that
15 an objectively reasonable officer observing these events
16 would, would, would conclude that the injuries took place,
17 at least partially, on the roadway.

18 And, and I really -- Your Honor inquired off the
19 record as to just kind of -- with the -- counsel's position
20 is is we go forward, and be honest, I struggled with what
21 -- how, how we're presenting argument here. It's, it's
22 really interesting what the court's scope of examination is
23 because the court as a fact finder is assessing the
24 appropriateness of the officer's conduct not in terms of
25 whether the plaintiff was guilty of a crime, but whether

1 the rather low threshold of probable cause was satisfied,
2 and we're not even talking about in this civil bench trial
3 where we have a standard like beyond a reasonable doubt.
4 It is a preponderance of the evidence standard, as Your
5 Honor knows.

6 So, on the one hand, you know, the court is making a
7 ruling. Does not have to struggle with any type of complex
8 issues in making a detailed findings of fact based on the
9 facts available to the officers. And every words I'm --
10 all words I'm using is taken directly out of the authority
11 that I've already cited. Is it more likely than not or by
12 preponderance of the evidence for -- an objectively
13 reasonable officer in Gore's position could have perceived
14 and concluded that the plaintiff committed an unwanted
15 touching resulting in sustained injuries on a public
16 roadway?

17 So, I understand the court's inquiry, and I understand
18 Mr. Kendrick's point of view, but if you're going to look
19 at what an objectively reasonable officer in Gore's
20 position -- we are merely talking about probable cause.
21 Your Honor can simply look at that video and if the officer
22 saw what the court is examining or investigating with
23 counsel, clearly this man's feet and his legs were beyond
24 the car, which would have been in the roadway. So, it's
25 not a question as to whether he was actually in the roadway

1 but could just an objectively reasonable officer, based on
2 those historical facts, could they conclude? And it's
3 based on that.

4 Your Honor has been very indulgent with my argument,
5 but that's, that's our point here, and we would ask for
6 detailed findings of fact consistent with these officers
7 acting lawfully and arresting Mr. Mack with probable cause.

8 THE COURT: All right.

9 Yes, sir. Would you like to respond?

10 MR. KENDRICK: Just briefly, Your Honor. I think
11 there's a procedural issue here, number one, and then a
12 factual issue here.

13 Procedurally, this argument was presented to the Court
14 of Appeals and then it was also petitioned to the Supreme
15 Court. The Supreme Court did not accept this question,
16 Court of Appeals. At all times, this video was in front of
17 these courts. So, if the video is clear and undisputed,
18 then I don't think we would end up back here. But now the
19 problem we have is that you as the fact finder are
20 basically being confronted with a rule that says here's
21 what happened. You must do this.

22 There's two problems with that. First of all, I
23 disagree. I've watched that video a hundred times, like I
24 assume the appellate court judges have, and I disagree that
25 it's so clear that he's out in the road. I think that we

1 have -- the car's halfway in the roadway, that isn't true.
2 Again, I watched it over and over again because had that
3 been true, maybe I would have lost, lost my spirit for this
4 appellate fight, but it simply doesn't seem correct.

5 The second part of that that they use to support this
6 argument is that he has an injury to his hands. Your
7 Honor, road rash is not a -- I don't know that that's in
8 any kind of *Physician's Desk Manual*. It's when you scrape
9 your hands on the ground, but it's the loose gravel and
10 rocks that typically create that. It can happen at the
11 edge of the road; it can happen anywhere. All these things
12 at this stage I think were kind of wrapped into the
13 question of where did he arrest the guy.

14 I state for practical reasons that part of why we're
15 here is because both these -- or at least the one officer
16 who saw it said it was in the middle of the road. He just
17 didn't tell the truth, and that's why I think I'm
18 frustrated when they keep saying that I'm trying to create
19 a subjective standard. What I'm trying to keep alive is
20 the idea that the police are treated just like every other
21 witness in this courtroom: when they lie, you can disregard
22 their testimony.

23 So, now if you're just left with this video and Mr.
24 Mack's testimony, it doesn't -- I mean, there's nothing
25 that I could ever show you that puts you now, oh, well, it

1 had to have happened the way they said it happened. I,
2 I've watched that video over and over again. I think that
3 he is right on the boundary of the road and the property.
4 I think he is on the property. I think that this
5 threatening gang member who got arrested by a security
6 guard was on the property that the club owned. It's where
7 he had been causing trouble all night, and that's where he
8 ran. He fell and hurt himself falling, but even Mr. Mack
9 says he fell face first under their -- into the car. So,
10 he's -- the car, if he falls inside of the car, it's not on
11 the road. It's in the yard, and that's where he hit it and
12 that's where he fell. That's where he got arrested.

13 And I think that, that -- I'm under no illusions that
14 I don't have yet another multi-year battle in front of me,
15 Your Honor, but objective standards simply means this: the
16 cops are allowed to be wrong. I don't particularly
17 disagree with that because it works both ways. What the
18 cops can't do is say, yeah, it happened in the middle of
19 the road and, well, that's an objective, historical fact
20 that the cop has lied about, and that's the end of the
21 analysis.

22 This -- we've never asked for a subjective rule. My
23 whole position is that you heard the evidence in front of
24 you, heard the witnesses. You heard the people testify;
25 you heard them testify. You know, we can be pretty about

1 it and say legal words like maybe they prevaricated. You
2 heard them make up testimony. It's not supported by that
3 video, and then that video doesn't support that he fell.
4 It's probably not up anymore.

5 THE COURT: It's up.

6 MR. KENDRICK: But, I mean, the road is running right
7 there. His feet are still on the property. I mean, at
8 least as far as that video can tell. I think that to say
9 that that video is a hundred percent clear just simply -- I
10 mean, it disregards what we're doing in here.

11 I understand the argument, and Mr. Garfield makes it
12 eloquently, but I don't think you can look at that video
13 and be told you're wrong. There's no way on earth he was
14 not on private property. It just, it doesn't give you that
15 view.

16 So, now you turn to the testimony.. So, you've got the
17 plaintiff who testified, and we can go through all the
18 facts in a proposed order, but he testified to exactly what
19 happened, and then you have the officer who made the
20 arrest. He said it happened in the middle of the roadway.

21 THE COURT: Let me ask you a question because I don't
22 have the transcript in front of me, and I actually, I will
23 need to get a copy of the transcript. I thought there was
24 some testimony from the officer that he, in fact -- since
25 we're talking about the historical facts -- that he

1 actually sees the -- Mack, the plaintiff, running, I think,
2 from the club. Am I right or wrong? That he, that he sees
3 them running, that somebody's chasing after someone. He
4 does, I think he testifies he sees him chasing.

5 MR. KENDRICK: Right.

6 THE COURT: I can't remember. I'll have to look at
7 the transcript as to -- he says he saw him being actively
8 pursued and that he's under the parked car. And I think
9 even the defendant says that the car is partially situated
10 -- I think the position of the defendant is that it's
11 partially in the roadway, which I would assume that means
12 it's partially in the roadway and the other part is in the
13 grassy area.

14 MR. KENDRICK: And that's the heart of our dispute.
15 The defendant calls it half in the roadway; I call it half
16 in the grassy part. We're both right but, you know, the
17 question then becomes where did ---

18 THE COURT: The arrest occur.

19 MR. KENDRICK: --- where did the arrest take place,
20 and I think that, again, you don't have to be convinced
21 beyond a reasonable doubt. You've just got to believe that
22 it's more likely that it took place in the grass than the
23 road, and I think that's what happened.

24 I think that, that ultimately, you know, what we're
25 looking to do is retry the case, which the Court of Appeals

1 could have said. They could have said it's remanded. You
2 got to try the whole thing over, but they just said we need
3 more detail, facts to determine whether he met his burden.
4 So, I don't -- nothing's changed, Your Honor. I could be -
5 wrong, but since the video was on appeal, I'm under the
6 impression you watched the video in trial, too.

7 So, I don't think it shows what they say it shows, but
8 let's assume, Your Honor, that you give a little bit of
9 credit to me and you give a little bit of credit to Mr.
10 Garfield and you say you both could have a point. Then you
11 go to the testimony. I mean, it's, it's -- even, even in
12 these situations where there's video, there's a clear
13 difference between a video that shows something that
14 absolutely can't be disputed and a video that shows
15 something that doesn't really seem to clarify the issue.
16 And that's why this video doesn't help.

17 And that's probably why the Supreme Court and the
18 Court of Appeals didn't address this as a matter of law
19 because that seems like what the defense is arguing is that
20 this fact equals this result, which is a matter-of-law
21 result. And, and no appellate court has ever been willing
22 to do that, and Your Honor didn't do it. I mean, a bench
23 trial is interesting because we have one person who's
24 deciding the law and the facts. So, nobody's ever looked
25 at this video and ruled against the plaintiff; it's always

1 been in his favor. Nothing has changed about that. I
2 mean, *Scott* is not new law; this isn't a new piece of the
3 puzzle.

4 So, I, you know, I -- here, here's my position because
5 I do, I do feel like I can tend to go too long beating a
6 dead horse. I, I think that the correct ruling was made,
7 and according to the South Carolina Court of Appeals it
8 wasn't made the way they wanted it made. I think that we
9 could both submit proposed orders. Mr. Garfield is welcome
10 to present one that shows his facts, and then we can let
11 Your Honor, you know, redecide the case. We have the
12 transcript. I mean, the testimony is there. I think we,
13 we're going to get off track if we start saying you heard
14 all this evidence and you just decided it wrong because you
15 used the wrong test. I, I don't see where you ever said
16 there is a subjective test. I don't, I don't see that in
17 your ruling, and I think that's maybe why this dispute is
18 really not much of a dispute because I don't see where you
19 said this is subjective, not objective, because the
20 difference is not really confusing. It's just, you know,
21 you looked and said these facts -- these are the facts.
22 So, I, I mean, I think that's the best way to handle it,
23 Your Honor, and I think the result's going to be exactly
24 the same.

25 MR. GARFIELD: Your Honor, if I may? And you've been

1 very indulgent with all counsel here. It is undisputed in
2 this case. There is no dispute that at the time that the
3 officers came upon and saw Mr. Williamson after he had been
4 dragged and pulled from that car, where you're looking in
5 that circle is that is where he was. He was not -- it was
6 at that moment as a snapshot in time. You're looking at
7 exactly what the officers in this particular case look
8 like.

9 Mr. Kendrick said, well, my point of view is that he
10 was sort of half on the grass or half on the roadway. It,
11 it doesn't make a difference what the actual facts were.
12 It doesn't make a difference as whether -- clearly you as
13 the fact finder, Your Honor, or a jury would be entitled to
14 believe or disbelieve any witness, including an officer,
15 absolutely, and weigh that, in fact. But in a probable
16 cause analysis, the only question in this case is in view
17 of the facts known to the officers at the time, which again
18 is circled on this screen, it -- could an objectively
19 reasonable officer -- that means could a reasonable officer
20 look at this and conclude that he was at least partially in
21 the roadway when he was beyond a car that was in the
22 roadway?

23 Your Honor, this is why we do not need to file briefs
24 because the Supreme Court has decided and defined probable
25 cause as a common sense, practical approach not by legal

1 technicians, but it's a common sense. This is a
2 presentation in an argument with counsel before the fact
3 finder, and I'm simply asking the court to look at what we
4 see contained within that particular circle that was on the
5 dashboard video of the officer. The question is not
6 whether he was on the road or not. Again, that is not the
7 issue, and it doesn't make a difference as to what the
8 officers believed. What it makes a difference is in an
9 objectively reasonable officer.

10 Your Honor, I know, I believe Your Honor has had
11 occasion in Your Honor's tenure as a circuit judge,
12 municipal court judge to have arrest warrants presented to
13 you by arresting officers, and the standard is probable
14 cause to whether the -- an objectively reasonable officer
15 could, just could or may perceive what he thought or she
16 thought at a given time. It is a low threshold and that's
17 why we do not need to brief this eighteen, twenty pages.
18 Both the Court of Appeals and the Supreme Court both
19 declined to address any factual issue. When Mr. Kendrick
20 says that, well, I'm sure they looked at the video a
21 hundred times like I did, well, we don't know that because
22 they didn't rule on that. They didn't address it one way
23 or the other. That's why they're presenting it back for
24 the trial court as the fact finder. When he says I've seen
25 this a hundred times, it's clear to me, the standard isn't

1 whether it's clear to me or clear to Mr. Kendrick, but it's
2 -- the question is, again, an objectively reasonable
3 officer, could they perceive or conclude, based on that,
4 that there was probable cause.

5 And I just want to get it straight for the court on
6 this, and I appreciate Mr. Kendrick's concern, and I really
7 appreciate the court hearing this a second time, that that
8 -- that street was very narrowed down to basically a
9 one-way thoroughfare. Could an officer -- here's another
10 picture, if I may? Could an officer see those white shoes,
11 those legs? Could an objectively reasonable officer in
12 their position look at that and conclude that he was at
13 least partially in the roadway? And I think it's
14 undisputed that an objectively reasonable officer would,
15 and again that's the objective standard. And because
16 you've got right here the grass line. You've got the grass
17 line here. The testimony, as Your Honor's ascertained,
18 that he was at least partially on the roadway. Again, it's
19 not whether he was on the roadway but could someone see
20 that and say, wow, that happened on the pavement. That
21 didn't happen on the grassy side. That happened not within
22 his jurisdiction, and it's based on that very limited
23 question that the Court of Appeals has sent back down to
24 answer.

25 And I think if they came and they remanded the case

1 for further factual findings to support your ruling, that
2 may be different, but they asked for more detailed findings
3 as to whether he met his burden of proving that Gore did
4 not have the probable cause to arrest him.

5 THE COURT: All right, I will ---

6 Yes, sir.

7 MR. KENDRICK: I'm sorry, Judge. I know I'm probably
8 driving you crazy, but I just, I would ask you to do just
9 what Mr. Garfield said. Look at both these pictures
10 carefully at both sides of the street because if you look
11 at the car line, grass line, and the street line lit up
12 versus non lit up, it's clear that this car is parked
13 basically all the way on the grass, whereas if you look at
14 the other side of the street, the cars can't get on to the
15 grass because of the landscaping. So, becoming a single
16 lane doesn't, doesn't show where they're parked.

17 And my point of all this is, Your Honor, I think you
18 can look at it that way. I think Mr. Garfield looks at it
19 a different way. I would not walk out in the hallway and
20 tell him he's crazy. I think that there is -- it's a, it's
21 a question that you have to weigh, and what, you know, what
22 the officer said was known to him was that in the middle of
23 this street he saw the guy get tackled, and I don't know
24 how you account for the fact that a new fact has arisen
25 that is not at all what the officer said he knew. But I

1 don't think the officer can rely on an unknown fact after
2 he told a fib about a known fact in the middle of the
3 street, so.

4 MR. GARFIELD: That's an interesting point, Judge, Mr.
5 Kendrick brought up when he first started saying that. I
6 guess his burden of proof would be to show the lack of
7 probable cause. He would need to show that an objectively
8 reasonable officer, based on this historical facts, could
9 not have perceived it. If he would have the burden of
10 proof by a preponderance or a greater weight of the
11 evidence to prove the lack of probable cause to prove that
12 an objectively reasonable officer, looking at this video,
13 looking at the cars, looking at the grass line, looking at
14 the roadway, he would have the burden of proving that that
15 body and his legs and that feet were not -- could not have
16 even thought of that. That would be his burden. He hasn't
17 even, with all due respect to Mr. Kendrick, made that
18 argument, much less made some sort of showing on that
19 because he would need to show that it would be just not
20 likely. It just -- there's -- no officer could even, could
21 even deduce that. Like that this car would have been 100,
22 100 yards in the other direction. That's the only point I
23 wanted to make. Thank you.

24 THE COURT: All right, I will accept proposed orders
25 from you all, and of course I know the positions are

1 different as to what the Court of Appeals has asked from
2 the court. So, I will take all of that into consideration.

3 And of course, Mr. Garfield, I have looked at the
4 orders from the Supreme Court as to the standard, and we
5 will get something, an order, and based on the remand,
6 we'll get an order and a decision to you all in due time.

7 I guess -- how much time do you need for those orders,
8 to get me the proposed orders?

9 MR. GARFIELD: I figure the longer I say anything, he
10 may go up.

11 MR. KENDRICK: Under thirty.

12 MR. GARFIELD: I'd say fifteen to twenty, Judge, just
13 because May is getting kind of ridiculous.

14 THE COURT: And I'm actually starting, supposed to be
15 starting a -- so, I mean, fifteen to twenty days is fine
16 because I won't be able to pick it up before then. I'm in
17 Aiken next week and after that, I think I come back and
18 start a week-long wrongful death case, and then after that
19 I'll be starting a two or three-week long medical
20 malpractice case. So, I will not get to it in the next --
21 I'm saying all that to say take your time; I will not be
22 able to get to it in the next probably thirty days just
23 because I have all those things back to back to back.

24 MR. GARFIELD: Could we pencil in thirty days, Judge,
25 or is that too, too far?

1 THE COURT: No, that's fine, thirty days.

2 MR. GARFIELD: Okay. Thank you, Your Honor.

3 THE COURT: All right. Thank you..

4 MR. KENDRICK: Thank you, Judge.

5 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 4TH DAY OF MAY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 26TH, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Demetrius Mack, Respondent,

v.

Leon Lott, in his Official Capacity as Sheriff of Richland
County, Appellant.

Appellate Case No. 2012-212277

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 5248
Heard April 7, 2014 – Filed July 23, 2014

REMANDED

Robert David Garfield and Andrew F. Lindemann,
Davidson & Lindemann, PA, both of Columbia, for
Appellant.

Joshua Snow Kendrick and Christopher Shannon
Leonard, Kendrick & Leonard, P.C., both of Columbia,
and Neal Michael Lourie, Lourie Law Firm, LLC, of
Columbia, for Respondent.

FEW, C.J.: The Richland County Sheriff's Department arrested Demetrius Mack—a licensed private security officer—for simple assault after Mack chased, apprehended, and handcuffed McKenzie Williamson for trespassing at the business where Mack was working. Mack brought suit for false imprisonment against Leon

Lott, in his official capacity as Sheriff of Richland County. After a bench trial, the court awarded Mack \$7,500 in actual damages, finding the Sheriff lacked probable cause to arrest Mack. We remand for more detailed factual findings as required under Rule 52(a) of the South Carolina Rules of Civil Procedure.

I. Facts and Procedural History

On December 6, 2008, Mack worked as a licensed security officer for D.T.H. Protective Services, which provided security to Club Essence, a nightclub on Weir Avenue in Columbia.

That evening, Williamson attempted several times to enter the club without paying the required cover charge. The fourth time Williamson attempted to enter, Mack approached him, and Williamson "took off" running away from the club. Mack chased Williamson and eventually arrested him. At some point during the chase and arrest, Williamson was injured.

Senior Corporal James Gore of the Richland County Sheriff's Department witnessed the incident while making an unrelated narcotics arrest approximately 200 yards from Mack and Williamson. After Gore observed Williamson's injuries, he arrested Mack for simple assault. Gore testified he arrested Mack "because he chased [Williamson] into the road and tackled him." Gore explained, "I knew for a fact that [Mack] had no jurisdiction in that roadway, being a private security guard." He later testified, however, "I gave Mr. Williamson the option if he wanted to press charges. And he told me 'yes.' And that was the only reason I took [Mack]."

Mack filed suit for false imprisonment. At trial, Gore testified that sometime between 2:00 and 3:00 a.m. he observed

one guy running out of the [club] parking lot with another guy chasing him. The second guy caught up to him, tackled him in the road by the waist and landed in the road in front of a car. And then after that I could see what appeared to be motions of somebody being handcuffed.

Mack then testified as to how Williamson incurred his injuries:

I noticed [Williamson] looking back at me to see if I was still coming at him, he looked up top and saw the county car up there. That is when he tried to cut—wanted to cut between the two cars and go through the yard. But the gravel hit his feet and his shoe went one way and he went the other way and went face-first into that car . . . halfway under it. [He] fell between those two cars and he fell face-first under that car, in the people's yard.

II. Probable Cause

To establish a claim for false imprisonment, the plaintiff must prove three elements: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 473, 710 S.E.2d 67, 73 (2011); *Gist v. Berkeley Cnty. Sheriff's Dep't.*, 336 S.C. 611, 618-19, 521 S.E.2d 163, 167 (Ct. App. 1999). "The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest." *Law v. S.C. Dep't. of Corrs.*, 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2006). "Probable cause to arrest depends upon whether . . . the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information [were] sufficient to warrant a prudent man in believing that the suspect had committed . . . an offense." *Robinson v. State*, 407 S.C. 169, 190 n.11, 754 S.E.2d 862, 873 n.11 (2014) (quoting *Adams v. Williams*, 407 U.S. 143, 148, 92 S. Ct. 1921, 1924, 32 L. Ed. 2d 612, 618 (1972)).

The Sheriff contends Gore had probable cause to arrest Mack, and therefore, the trial court erred in awarding Mack damages for false imprisonment. Because Mack was a licensed security officer working at Club Essence, Mack had authority to arrest Williamson so long as the arrest occurred on the property where the club was located. *See* S.C. Code Ann. § 40-18-110 (2011) (providing "[a] person who is . . . licensed . . . and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies" but "only on the property on which he is employed"). If Mack arrested Williamson on Club Essence property, any assault Mack committed during the arrest was lawful. However, if Williamson was in the roadway when Mack arrested him, Mack acted without legal authority to make the arrest and would be guilty of assault. Therefore, Gore had probable cause to arrest Mack if Gore reasonably believed Mack arrested Williamson in the road—not on Club Essence

property. To state the factual issue in terms of the elements of false imprisonment, Mack was required to prove as a matter of fact that Gore did not reasonably believe Mack arrested Williamson in the road. Rule 52(a), SCRCP, required the trial court to "find the facts specially" as to whether Mack met his burden of proving that element.

Although the trial court correctly recited the definition of probable cause, it did not make the factual finding necessary to support its ruling that Gore lacked probable cause. The only factual findings the trial court made regarding the non-existence of probable cause are conclusory—"a realistic assessment of the evidence in this case doesn't show that a crime had been committed by [Mack] on December 8, 2008 at the time of his arrest" and "[Senior Corporal Gore] did not have probable cause to arrest [Mack] for simple assault on December 8, 2008." These findings do not address the primary factual issue in the case—whether Gore reasonably believed Mack was off Club Essence property at the time he arrested Williamson. Thus, the trial court failed to provide a clear factual basis for its conclusion that no probable cause existed. *See In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002) ("The absence of factual findings makes our task of reviewing the court order impossible because the reasons underlying the decision [are] left to speculation." (alteration in original) (internal quotation marks and citations omitted)).

Because the trial court's findings of fact are insufficient under Rule 52(a), we remand for more detailed findings as to whether Mack met his burden of proving Gore did not have probable cause to arrest him.

REMANDED.

SHORT and GEATHERS, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Demetrius Mack, Respondent,

v.

Leon Lott, in his Official Capacity as Sheriff of Richland
County, Petitioner.

Appellate Case No. 2014-002229

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 27597
Heard November 17, 2015 – Filed December 9, 2015

**DEPUBLISH THE OPINION OF THE COURT OF
APPEALS AND DISMISS CERTIORARI AS
IMPROVIDENTLY GRANTED**

Robert D. Garfield and Andrew F. Lindemann, both of
Davidson & Lindemann, P.A., of Columbia, for
Petitioner.

Joshua Snow Kendrick and Christopher S. Leonard, both
of Kendrick & Leonard, P.C., of Columbia, and Neal
Michael Lourie, of Lourie Law Firm, L.L.C., of
Columbia, for Respondent.

PER CURIAM: We granted a writ of certiorari to review the Court of Appeals' decision in *Mack v. Lott*, 410 S.C. 28, 762 S.E.2d 719 (Ct. App. 2014). We now dismiss the writ as improvidently granted since both parties and the trial court agree that the proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. Because the Court of Appeals' language on this issue is arguably unclear, for the benefit of the bench and bar, we direct the Court of Appeals to depublish its opinion.

Accordingly, we

**DEPUBLISH THE OPINION OF THE COURT OF APPEALS AND
DISMISS CERTIORARI AS IMPROVIDENTLY GRANTED.**

**PLEICONES, Acting Chief Justice, BEATTY, KITTREDGE, HEARN, JJ.,
and Acting Justice James E. Moore, concur.**

CERTIFICATE OF COUNSEL

RECEIVED
APR 30 2018
SC Court of Appeals

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

LINDEMANN, DAVIS & HUGHES, P.A.

BY: 

ANDREW F. LINDEMANN
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

ROBERT D. GARFIELD
CROWE LAFAVE, LLC
500 Taylor Street, Suite 401
Post Office Box 1149
Columbia, South Carolina 29202
(803) 999-1225

Counsel for Appellant

Columbia, South Carolina

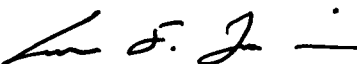
April 9, 2018

CERTIFICATE OF COMPLIANCE

RECEIVED
APR 30 2018
SC Court of Appeals

The undersigned counsel for the Appellant Leon Lott certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

LINDEMANN, DAVIS & HUGHES, P.A.

BY: 

ANDREW F. LINDEMANN
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

ROBERT D. GARFIELD
CROWE LAFAVE, LLC
500 Taylor Street, Suite 401
Post Office Box 1149
Columbia, South Carolina 29202
(803) 999-1225

Counsel for Appellant

Columbia, South Carolina

April 9, 2018