

**O'LEARY  
ASSOCIATES, P.A.**

JOHN A. O'LEARY, ATTORNEY

February 19, 2007

**REPORT OF JOHN A. O'LEARY**

**Southern Holdings, Inc.; James Spencer; Rodney Keith Lail; Irene Sanacroce; Ricky Stephens; Marguerite Stephens; Doris Holt; and Nicholas C. Williamson vs. Horry County, South Carolina; Horry County Sheriff's Department; et al.**  
**Civil Action No.: 4:02-1859-12**

The above referenced matter was reviewed pursuant to the request of John R. Rakowsky, Counsel for the Plaintiff.

In formulating the opinions expressed below, I have reviewed the following materials:

**Documents Reviewed:**

1. Order dismissing fugitive warrant G-107489
2. Warrant No. G-107489
3. Signed statement fo Charles K. McLendon ref 8/5/00 and 8/6/00
4. Statement of Deputy Rick Thompson 6/5/2002
5. Correspondence of Solicitor 5/4/01 to McLendon
6. Search Warrant- Horry County 6/7/00
7. Advice of Rights Form 8/7/00
8. Complaint 4:02-1859-12
9. Plaintiff's Response to Summary Judgement Motion
10. Horry County Police Department Policy and Procedures Manual
11. FBI letter ref NCIC inquiries 7/10/01
12. Newspaper articles, The Sun News
13. Transcript of McLednon Videotape
14. Deposition Excerpt Jay Brantly
15. Deposition Excerpts Charles McLendon
16. Incident Report 8/9/00
17. 8/29/00 Correspondence Ralph J. Wilson

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18. 3/11/04 letter from Irene Santacroce to Major J. Morgan
19. Plaintiff's Supplemental Brief in Support of Motion for Reconsideration on Municipal Liability
20. Deposition of Doris Holt
21. Deposition of Irene Santacroce
22. Deposition of Tamala Lail
23. Deposition of Rodney Lail
24. Deposition of Ricky Stephens
25. Transcript of Dispatch Tapes
26. Deposition of C. Vance McLaughlin, Ph. D.

### **Findings and Facts:**

It appears that a fugitive warrant was issued for the arrest of one Robert B. Holt, a/k/a James Brian Spencer, on June 7, 2000, by a Magistrate in Horry County, South Carolina, pursuant to a request from Guilford County, North Carolina. The warrant was based upon an order for arrest for civil contempt which allegedly occurred in North Carolina on or about December 1997.

On or about June 10, 2000, a hearing was held before the Honorable Sydney P. Floyd, residence Judge, Fifteenth Judicial Circuit, Horry County, South Carolina and an order was signed on July 28, 2000 by Judge Floyd and filed with the Horry County Clerk on July 31, 2000. The court found as a matter of law that a civil contempt in this matter is not a criminal offense within the meaning of the S.C. Code of Laws § 17-19-10 et. seq. The Court found that 17-19-10 required both the existence of a crime and that the penalty of that crime be one year or more. Neither criminal contempt nor civil contempt under North Carolina General Statutes have a penalty of one year or more as required under the S.C. Code § 17-19-10. As a result of the hearing and findings, the Court ordered that the fugitive warrant, G-107489 be dismissed and removed from the NCIC forthwith.

Prior to the hearing, and subsequent or contemporaneous with the issuance of South Carolina arrest warrant G-107489, citing S.C. Code § 17-19-10, a search warrant was issued by

Magistrate Dennis E. Phipps, Horry County, for a search of the premises of 7996 Short Needle Court, Socastee section of Horry County. It appears that at least two locations were searched over an extended period of time by several of the officers named in this action and the subject of the search was not located. In addition, it appears that both locations that were searched, were searched in a manner contrary to acceptable law enforcement practice in the duration of the search as well as the searching of drawers, boxes, and documents which were not authorized on the face of the search warrant. Instrumental in pushing these actions here in South Carolina were the actions taken by two of the Defendants, Michael Stephen Hartnett, and Harold Stephen Hartness, Detectives/Investigators from North Carolina.

On August 5, 2000, attempts were made by the Plaintiffs to file reports, but the information was not accepted by the Department and no reports were subsequently entered. On August 6, 2000, Officer Charles K. McLendon was contacted by Deputy Rick Thompson of the Horry County Sheriff's Department who indicated that information had just been received as to the whereabouts of the subject James Spencer. Further, prior to this information being received on August 6, 2006, Officer McLendon had personally spoken with Deputy Al Allen of the Horry County Sheriff's Department who informed him that Mr. Spencer had been entered into NCIC as a wanted person out of North Carolina. Further, the facts show that Officer Al Allen, the officer originally assigned to the case and the investigator who obtained the warrant on June 7, 2000, advised Charles McLendon that the matter had been heard before the Court and an Order issued by Circuit Court Judge Floyd dismissing the warrant.

In spite of this information, a concerted felony traffic stop was instigated by the Defendants on Highway 707, Horry County, at which time the referred to subject, James Spencer, and Rodney Keith Lail (a Myrtle Beach Police Officer) were held and apprehended at gun-point, their vehicle searched, and arrests were made. As to Plaintiff Lail, he was subsequently released into the custody of a supervisor who transported him from the scene. Plaintiff Spencer however, was detained for a lengthy period of time from 5 hours to 7 hours in the back seat of a patrol car

on the scene in handcuffs that were not properly secured or double-locked, causing serious emotional trauma as well as physical pain to the Plaintiff Spencer.

The facts and circumstances and all the parties in this case are extensive and their roles are intertwined and often overlap. It appears that the actions taken by the officers in the searches of the houses earlier in June and the arrests subsequently in August were intertwined with the actions of the Horry County officers together with the private investigator Michael Stephen Hartnett and Harold Stephen Hartnett.

**Conclusions:**

Based upon a review of the above, the following is a opinion as to inappropriate actions taken by law enforcement which are contrary to acceptable standards and practices set forth for the field of law enforcement.

1. The actions taken by Horry County and Horry County Police Departments exhibit a deliberate indifference and reckless disregard for the Constitutional rights of the Plaintiffs set forth both in the South Carolina and United States Constitution. There appears to be a complete and deliberate disregard by the leading investigator as to policies and procedures of the Department. It is clear that the policy in place has little or no controls built into it with reference to verification of out-of-state documents requesting arrest. Nowhere in the policies and procedures or in the actions taken by the lead investigator, indicate efforts of verification as to the underlying out-of-state offense which was critical as referenced in the South Carolina statutes discussed by Judge Floyd. On the date of the arrest and detention within the police vehicle at the scene, the techniques utilized are inappropriate in light of the absence of facts to justify the prolonged detention, confinement and arrest. The radio logs show that the South Carolina Fugitive Warrant

came back without a hit on NCIC. The arresting officers demonstrated a deliberate disregard for the rights of the suspects since, clearly they had information at approximately 1:44pm that the South Carolina Fugitive Warrant came back without a hit on NCIC. The dispatch transcript on its face eliminates any facts which would justify the arrest and detention. The facts also show that Officer McLendon, by his own admission in a statement discussing his actions on August 5, 2000, (the date prior to the arrest) that he had spoken with Al Allen with the Horry County Office who informed him that it had been entered into NCIC as a wanted person out of North Carolina. The radio transmissions reviewed are totally contrary to this statement and the documents show that Deputy Al Allen had personal knowledge that the matter had been disposed of in front of Judge Floyd on July 10, 2000, with a subsequent Order issued and filed in Horry County Circuit Court.

2. The actions taken by the County, contrary to written guidelines with reference to warrants, specifically Policy 3-9, shows a total absence of any law enforcement protocol as to dissemination of information of warrants such as the one in this case. This is critical in a situation such as this where the same were dismissed by Order of the Circuit Court and police administration is critical not only to have orders, but to likewise to train the officers in the proper response and handling as to the protocol desired for that agency. The facts here show that there was a total absence of supervision and control with reference to the NCIC dissemination of information system within the Department to the various officers, both detective and patrol. Nowhere is this more evident than the fact that, despite the information received from the radio as to the NCIC and the fact that there was no hit on NCIC for the subject in custody, the officer deliberately disregarded this information and placed him into long-term detention, not only at the scene, but likewise within the jail system itself.
3. The materials reviewed indicate that the officers, in holding a subject improperly

handcuffed, deviated from the standard methods utilized by all police agencies and the subject of training both within the department and at the South Carolina Criminal Justice Academy, both in basic and advance courses. Specifically, the documents show a deliberate disregard to the issue as to the double locking of the cuffs, which is designed to protect not only the subject, but likewise the officers who places the cuffs on the person who is in custody.

4. The fact that the Plaintiff, Mr. Spencer, remained in a restrained position within the patrol car for some 5 to 7 hours, depending upon which version of the testimony you place credence to, shows a deliberate indifference to the person arrested and is contrary to acceptable standards of law enforcement practice. This fact, combined with the actions taken by the officers as to the length of detention, the improper hand-cuffing techniques. Further, the deliberate disregard for the information received from dispatch via NCIC as well as the personal knowledge of the officers involved, that the warrant had been dismissed by the Court in concert with the lack of a NCIC hit, shows a total lack of supervision and control on the street officers by the administration. The actions of the administration in this matter can best be described as a deliberate indifference to not only the duties imposed upon law enforcement officers, but likewise a disregard of the rights set forth in not only case law but the decisions of both Federal as well as our State Courts.
5. A review of the policies and procedures in this case reveal several deficiencies:
  - a. That Horry County and Horry County Police Departments do not appear to have Policy and Procedures in place to advise law enforcement officers that a warrant was dismissed. Nowhere do I find a protocol for the dissemination of the information.
  - b. The Horry County Policies and Procedures appear to be violated with reference to search and seizure. This is evidenced in a review of policy 3-18 referencing search by consent, search of vehicles, and inventory of vehicles or other property.

The evidence shows that, not only was the search of the locations and vehicle in question improper and contrary to acceptable law enforcement standards and practices, but further violated agency protocol.

- c. The search warrant referred to on June 7, 2000, appears to be a defective warrant in this sense that there are absolutely no facts or circumstances leading any person who reads the document to garner any type of factual basis for why they think the person is on the premises or the location named in the one warrant. In this case, there were actually two sites with a warrant only for one which is defective. In spite of that, the actual protocol and procedures used by the officers in searching the property, specifically Doris Holt's property, took approximately 4 to 5 hours in an area that is approximately 1200 square feet. The purpose of the search was for a person and all the evidence shows that boxes and drawers and documents were not only viewed, but likewise seized. The extent of the seizure is unclear, but the search went well beyond the scope of the warrant which was obtained. The scope of the search was exceeded which is not only contrary to acceptable law enforcement practices, but highly questionable in being legal. Police communication transcripts show Officer McLendon's voice on audio as he talks about legal documents he read located at the briefcase in the vehicle at the time of the stop on August 6, 2000. These actions show a deliberate indifference by the Department and the supervisors as to the scope of their authority on searches.
6. The Horry County policies and procedures appear to have been violated in regard to uniform crime reports. The evidence shows that the Horry County Police totally disregarded any policies set forth in their Procedure and Policy Manual Number 3-23 by failing to accept any type of report which is set forth in the testimony given by numerous witnesses.
7. The Horry County policies and procedures appear to have been violated with reference to

the video and audio taping on in-car mobile systems. The video policies of the Department in 3-22 section 3, specifies the procedures in Section B for the operating procedures requiring that nothing be altered, erased or tampered with. It is clear in the videos reviewed that the microphones were shut off, contrary to the policy - again demonstrating a deliberate disregard by the individual officers for the policies and procedures of the Department. Further, it shows the total lack of enforcement by the Department as to the accountability of the officers for deliberate disregard for the token policies. To be effective, any law enforcement agency policy and procedure or administrative directive, be it written directives or other, must be enforced. Further, there must be accountability for the violation of the standards established in such policies. The video tapes not only failed to include the audio in most instances, but likely show premature endings of several of the tapes referencing the paperwork of officer McLendon. It appears that the actions took place over 7 ½ hour time period which is not reflected on the face of the document from the on-scene detention and arrest.

8. The Horry County policies and procedures were further violated as to the questioning of prisoners and the administration of the Miranda rights set forth in Policy Number 3-1. Documents reviewed showed that the Miranda warnings were signed and dated the day after the date of arrest which is a questionable policy or procedure. Further, the deliberate disregard for any protocol as well as individual rights is demonstrated by the actions of the officers in this incident.
9. The Horry County Police Department officers have failed to follow policies and procedures with reference to establishing probable cause. The facts and circumstances are clear that the officers deliberately not only disregarded the Order of the Circuit Court issued on or about June 10, 2000, but with full knowledge that no NCIC entry was involved reference the Plaintiff James Spencer, he was arrested, detained, and held improperly not only on the street, but later at the Detention Center. Transcripts are clear



as to the notification given to officers McLendon and Christiansen that there were no outstanding warrants and Officer Christiansen is captured on the audio tape hoping there is some justification as to the August 6, 2000 arrest, despite the notification and personal knowledge of Officer McLendon as well as the officer in charge of the initial warrant.

10. The Horry County Policies and Procedures manual was totally disregarded with reference to Policy Number 2-4, media relations/information release. The facts of this case show that the Sun News was notified by law enforcement and appeared at the scene in an attempt to report this information which was in fact incorrect. The arrest was based upon faulty information and the subsequent news coverage was highly defamatory and damaging to those individuals involved. Transcripts of police dispatch show clearly that the main subject of the take-down was not wanted on an outstanding warrant and not in NCIC. In spite of this, the media was called to the scene which is not only contrary to acceptable law enforcement standards and practices, but likewise highly prejudicial to any defendant.
11. The Horry County Sheriff's Department personnel failed to follow policies and procedures regarding the verification of an out-of-state warrant. This was clear and discussed in the Court in depth in Judge Sydney Floyd's hearing of July 10, 2000, and subsequent Order signed on July 28, 2000, and filed with the Court on July 31, 2000. The filing of the notice and Order by the Court dismissing the action was personally known to the officer in charge, and constructively known to all since the filing of the document places them on notice. In this instance, there was actual personal knowledge by Officer Allen who subsequently passed such information on to other members of the Department. In spite of this personal knowledge, the actions were taken by officers and defendants in this matter on August 6, 2000.
12. The most disturbing part of the actions taken by the Departments in this case appears to be the relationship between the defendants Michael Stephen Hartnett and Harold Stephen

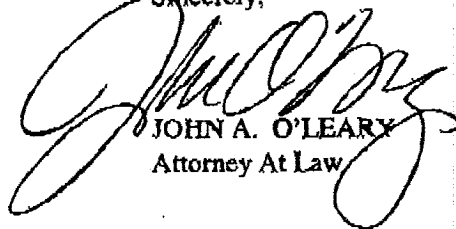
Hartnett, a father and son detective team from North Carolina who appear to have great influence and inroads with the officers and fellow-defendants in this case. Testimony shows that the actions in the search of the locations in early June 2000, were directed either in part or in whole by the private detectives who are not members of the law enforcement community in North Carolina nor South Carolina. To further confirm this, the actions in the extensive searches of the house for a person which takes 5 hours in roughly a 1200 square foot house, documents reviewed, drawers opened, papers removed on a search warrant looking for a "person" indicates clearly that the underlying purpose for the search was to reach something other than the party who was not in the house. Contrary to logic would be the argument that a subject to be looked for under a warrant could possibly be hiding in a box of papers, demonstrates clearly the intent of the search for the subject being utilized by the officers in this case together with the private detectives from North Carolina.

13. The facts of this case are extremely intense and the relationships are clouded; however, it is clear that the actions taken by law enforcement officers in this case are contrary to acceptable standards in numerous instances. The actions taken by the individual officers in this case as well as the Horry County and Horry County Sheriff's Department and Horry County Police Department show deliberate indifference to not only the rights of the Plaintiffs in this matter but likewise a total and absolute disregard for the authority for the Courts of South Carolina by deliberately ignoring and disregarding the Order of Judge Floyd on June 10, 2000. The overall areas with reference to deficiencies exist not only in the actions taken by the officers on the street, but likewise show a deliberate indifference by the administration and the agencies as to the training, supervision, and control of those officers whom they have placed into a position of trust.
14. The above is a opinion based upon those documents which we have referenced and it is my intention to review any additional documents which are forwarded to me at which

time I can do or will supply upon request a more detailed report.

Thank you for the opportunity to review this matter and I look forward to a further review and discussion of this case. Thank you.

Sincerely,



JOHN A. O'LEARY  
Attorney At Law

JAO/ffk