

# The State of South Carolina

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**DAVID M. PASCOE**  
Solicitor

December 17, 2019

To: Lieutenant E.G. Donohue  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398

Re: File Number 34-19-0083  
Investigation into Allegations of Official Misconduct

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Pursuant to a request by Solicitor Walt Wilkins of the Thirteenth Judicial Circuit, the Office of The South Carolina Attorney General asked my office to review materials regarding complaints of official misconduct involving the Greenville City Police Department (GPD) and Chief Ken Miller (Chief Miller). The South Carolina Law Enforcement Division (SLED) conducted a very thorough investigation into the allegations outlined below. I would also like to express my appreciation to you for meeting and talking with my office on numerous occasions concerning this matter. While my office and SLED are concerned about representations made by law enforcement officers discussed in this memorandum, our job is to determine whether enough evidence exists to prove a crime beyond a reasonable doubt. Based on the totality of the circumstances, the First Circuit Solicitor's Office finds that there is not sufficient evidence to bring criminal charges against Chief Miller or any of the parties investigated by SLED.

### **FACTUAL BACKGROUND**

There were three separate matters under investigation. The first matter involves a complaint by a defendant charged with Criminal Sexual Conduct and Criminal Domestic Violence who claims he was being maliciously prosecuted by Chief Miller because Chief Miller was allegedly having an affair with the defendant's wife. The defendant's wife is also on the Board of the Greenville Police Foundation (GPF). This investigation was closed following the defendant's plea to aggravated assault. No evidence was discovered to corroborate the defendant's complaint.

The second matter involves contracts that the City of Greenville entered into with two members of the Board of the GPF at the request of Chief Miller. One contract involved a GPF board member (the wife of the above-referenced defendant) who owns a marketing/public

relations firm. The contract was for the creation of three, 2 to 3 minute cold case videos in the amount of \$7,500.00. The contract was entered into in August 2018 and the City has paid the firm 50% of the contract price. To date, however, there have not been any videos produced by the marketing firm. The other contract was for a 48-month lease of office space owned by a GPF board member in the total amount of \$120,000. The lease was paid out of the Narcotics Special Revenue Fund.

The third matter involves an allegation that Chief Miller gave preferential treatment to a wealthy businessman who was a financial contributor to the GPF. This businessman was arrested for public intoxication on August 30, 2018, by GPD Officer Blake Gibson (Officer Gibson). Shortly after the arrest, GPD Lieutenant Jason Rampey (Lt. Rampey) contacted Municipal Court Judge Hawley and asked about dismissing the charge. Judge Hawley referred Lt. Rampey to Greenville City Prosecutor Robert Coler (Prosecutor Coler). Prosecutor Coler stated that Lt. Rampey spoke with him about dismissing the charge. Lt. Rampey represented to Prosecutor Coler that Officer Gibson agreed to the dismissal. However, the SLED report clearly indicates that Officer Gibson did not agree to the dismissal, and that he told Lt. Rampey it was not right or ethical to dismiss the charge.

Prosecutor Coler stated that because the businessman did not have a criminal history he was a candidate for "Good Behavior Dismissal" since the arresting officer consented. Prosecutor Coler said this was common with first time offenders who spent the night in jail. Based upon the information provided by Lt. Rampey, Prosecutor Coler requested that Judge Hawley dismiss the charge. Judge Hawley then dismissed the charge and signed an expungement order.

The SLED investigation produced no evidence that the businessman made any effort to have the charge dismissed and expunged. Rather, the evidence suggests that Chief Miller directed the effort that led to the dismissal of the charge.

Lt. Rampey stated that he first learned of the arrest from a call he received from Chief Miller. Chief Miller learned of the arrest the day after it occurred from internal affairs Captain Stacy Owens (Capt. Owens), who learned of the arrest from Sergeant (Sgt.) Ross. Chief Miller then called Sgt. Ross and discussed the arrest with him. Chief Miller requested a copy of the arrest report and the body camera video. Chief Miller informed SLED Lieutenant Gene Donohue (SLED Lt. Donohue) that after reviewing the video he believed the situation could have been handled differently. Chief Miller claims that it was at that time when he contacted Lt. Rampey.

Chief Miller advised SLED Lt. Donohue that he merely requested Lt. Rampey speak with the arresting officer. Chief Miller further advised that he told Lt. Rampey, "If [Officer Gibson] feels the charge should stand, it will stand." Chief Miller also volunteered to SLED Lt. Donohue during his interview that the handling of the businessman's case did not have anything to do with the fact that the businessman donated money to the GPF. However, Chief Miller's account of his involvement is contradicted by Capt. Owens.

Capt. Owens informed SLED Lt. Donohue that when he was told about the businessman's arrest, Chief Miller stated, "You've got to be shitting me. Why didn't I know?" Later, Chief Miller called Capt. Owens back and told him that he had "called [Lt.] Jason

[Rampey] and he is working on it.” Chief Miller told Capt. Owens he felt Officer Gibson “overstepped his bounds.” Capt. Owens disagreed with him and told Chief Miller he saw nothing wrong with the arrest and that Officer Gibson made a “good arrest.” Chief Miller responded by saying he “wasn’t going to let a man of his stature go down for a disorderly conduct charge.” Chief Miller went on to say that the businessman donated money to the GPF, the scholarship fund, and Unity Park and he “was going to get Rampey to handle it.” Capt. Owens said by the following Monday the charge had been dismissed, and the case was already in the process of being expunged.

Lt. Rampey’s statements to SLED Lt. Donohue are also contradicted by Officer Gibson. Lt. Rampey advised SLED Lt. Donohue that Officer Gibson told him that Gibson did not have a problem with the charge being dismissed. However, Officer Gibson informed SLED Lt. Donohue he called Lt. Rampey on two occasions to express his displeasure over the fact that the charge was being dismissed. During the second conversation, Lt. Rampey told Officer Gibson it did not matter how he felt because the case was being dismissed for “political reasons.”

## **APPLICABLE LAW**

There are two potential criminal laws we reviewed that are applicable to the conduct of Chief Miller and Lt. Rampey: Misconduct in Office and Obstruction of Justice. Unlike 18 U.S.C. § 1001 governing statements made to federal agents, South Carolina does not have a statute criminalizing false or fraudulent statements made knowingly or willfully to SLED agents. Thus, our review is limited to determining whether any of the facts rise to proof beyond a reasonable doubt that these crimes were committed.

### **I. Misconduct in Office**

There is both a statutory and common law charge for misconduct in office. S.C. Code Section 8-1-80 provides, “Any public officer whose authority is limited to a single election or judicial district who is guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression shall be liable to indictment and upon conviction thereof, shall be fined not more than one thousand dollars and imprisoned not more than one year.”

In State v. Hess, 301 S.E.2d 547, 550–51 (S.C. 1983), the Supreme Court analyzed the common law crime of misconduct in office and explained, “Misconduct in office occurs when duties imposed by law have not been properly and faithfully discharged. The existence of a duty owed to the public is essential, for otherwise the offending behavior becomes merely the private misconduct of one who happens to be an official.” The Court further explained that to be guilty of misconduct in office, the public officer must have acted willfully, dishonestly, in bad faith and with corrupt intent. Id.

### **II. Obstruction of Justice**

South Carolina common law defines obstruction of justice as, “an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice.” State v. Lyles-Gray, 492 S.E.2d 802, 805 (S.C. App. 1997). In State v. Lyles-Gray, the Court of Appeals concluded

that evidence was sufficient to support a conviction for common law obstruction of justice when a police officer, whose daughter was a potential suspect in a shoplifting investigation, failed to interview witnesses and failed to turn over stolen merchandise to the officer in charge of the shoplifting investigation. See also State v. Cogdell, 257 S.E.2d 748, 750 (S.C. 1979) (holding the intentional failure of a responsible public official to report convictions of traffic violations so as to interrupt or prevent the mandated suspension of a motorist's driver's license is an obstruction of justice and punishable at common law); State v. Love, 271 S.E.2d 110, 113 (S.C. 1980) (affirming a conviction of obstruction of justice when magistrate paid money to a public employee to obtain help in preventing the prosecution of a friend for DUI).

A police officer is not subject to prosecution for mistakes in judgment or innocent errors in the exercise of the officer's reasonable discretion. However, a police officer is not invested with discretion to decide whether the law should be enforced. He is obligated to take such lawful action as in his discretion and in the exercise of good faith and reasonable diligence is necessary to bring criminals to justice. State v. Secula, 380 A.2d 713, 715 (N.J. Super. App. Div. 1977)

## ANALYSIS

### **I. Financial Transactions with Board Members of GPF**

The available evidence does not establish probable cause, much less proof beyond a reasonable doubt, to support charges of either statutory or common law misconduct in office regarding the financial transactions with members of the Board of the GPF. Although the contract for the creation of cold case videos certainly raises questions, there is no evidence that Chief Miller or anyone else with the City received any direct or indirect benefit from the contract. The defendant's allegation that Chief Miller was having a relationship with his wife, who owned the marketing firm, has not been corroborated by SLED. More importantly, it appears that the contract was approved by the appropriate City officials following standard procurement protocols, and that the firm's owner has made multiple inquiries with the City to begin the work. In addition, there have been no findings of wrongdoing with regard to the lease agreement.

### **II. Dismissal of Criminal Charge for Prominent Businessman**

The actions of Chief Miller and Lt. Rampey in connection with the dismissal of the criminal charge are very troubling. Evidence presented by SLED is that Lt. Rampey misrepresented the arresting officer's stance on dismissal of the charge to the prosecuting attorney. This misrepresentation led to dismissal of the charge. However, we have been informed in our discussions with the City Attorney and the City's Chief Prosecutor that police officers have the authority to dismiss criminal charges without the permission of a prosecutor before a defendant requests a jury trial. Thus, the charge could have been dismissed if Lt. Rampey had simply informed Prosecutor Coler that Chief Miller wanted it dismissed. Both Chief Miller and Lt. Rampey had the authority to over-rule Officer Gibson's refusal to consent to the dismissal.

The evidence suggests that Chief Miller wanted the charge dismissed, but he did not want it known that he personally intervened in the case. Capt. Owens relayed to SLED Lt. Donohue that Chief Miller told him that Chief Miller would not let the businessman “go down for a disorderly conduct charge.”

Chief Miller’s denial to SLED Lt. Donohue that he undertook any effort to have the charge dismissed is contradicted by SLED’s investigation. First, Chief Miller admittedly requested and reviewed the incident report and the body camera video of the arrest. Second, Chief Miller admittedly contacted Lt. Rampey and asked him to speak with the arresting officer. Third, Lt. Rampey told the arresting officer that the case was being dismissed for “political reasons.”

In addition, Lt. Rampey’s representation to SLED Lt. Donohue that the arresting officer did not have a problem with the charge being dismissed is false. Officer Gibson informed SLED Lt. Donohue that he called Lt. Rampey on two occasions to express his displeasure over the fact that the charge was being dismissed.

There is evidence that Chief Miller took action to obtain the dismissal of the charge because the businessman was a contributor to the GPF. Chief Miller justified the decision not to let the businessman go down on a disorderly conduct charge to Capt. Owens by stating that the businessman “donated money to the GPF.” Interestingly, in his SLED interview, Chief Miller spontaneously said, “it didn’t matter that [the businessman] also donated to the GPF.”

Lastly, there is evidence that both Chief Miller and Lt. Rampey may have misinformed SLED during their interviews. At the very least, their statements are contradicted by other officers interviewed by SLED. Although making misrepresentations to SLED during the course of an internal investigation is not a crime per se, such conduct may be considered as consciousness of guilt. In addition, such conduct inevitably causes investigations to take more time, and increases the costs associated with the investigation, all of which occurred in this instance.

## CONCLUSION

When evaluating whether a matter should be criminally prosecuted, we determine whether there is sufficient evidence to prove beyond a reasonable doubt that an individual violated applicable criminal law. Here, there certainly is evidence that Chief Miller undertook an effort to have a criminal charge dismissed against a businessman who financially contributed to the GPF and that he did so for “political reasons.” There is also evidence that Lt. Rampey misled the prosecuting attorney in his efforts to obtain a dismissal of the charge and that Lt. Rampey was acting under the direction of Chief Miller. Furthermore, both Chief Miller and Lt. Rampey provided accounts of their involvement to SLED Lt. Donohue that contradict numerous witnesses.

Nevertheless, the evidence is insufficient to establish beyond a reasonable doubt that Chief Miller or Lt. Rampey acted with corrupt intent. The businessman qualified for the City’s

“Good Behavior Dismissal” because he did not have a criminal history. Most importantly, Chief Miller had the ultimate authority to consent to the dismissal and had the right to overrule the arresting officer’s refusal to consent.

In summary, Chief Miller has shown questionable judgment in directing police department business to members of the Board of the GPF and in the way he handled the dismissal of the criminal charge against a significant contributor to the GPF and the City of Greenville. Chief Miller and Lt. Rampey also do not appear to have been fully forthcoming with SLED in their investigation of this matter. As prosecutors, however, our job is to determine whether there is sufficient evidence and criminal intent to prove guilt beyond a reasonable doubt. We do not believe there is, and therefore, decline to bring criminal charges.

We make no comment or finding regarding Chief Miller’s or Lt. Rampey’s employment or whether they violated any City of Greenville policies. The First Circuit Solicitor’s Office considers this matter closed. If additional evidence arises at a later date that is presented to us by SLED, our office will reevaluate the matter. Do not hesitate to contact me if you have any questions or additional requests.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Pascoe", written in a cursive style.

David Pascoe