

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Mary Anne Tolbert,)	Civil Action No:
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	(Jury Trial Demanded)
Chester County Sheriff's Office and)	
Alex Underwood in his official capacity)	
as Sheriff of Chester County,)	
)	
Defendants.)	
)	
_____)	

Plaintiff, complaining of Defendants herein, alleges that:

PARTIES AND JURISDICTION

1. Plaintiff, Mary Anne Tolbert (Plaintiff) is a citizen of the State of South Carolina and resides in the town of Chester. Defendant, Alex Underwood (Defendant Underwood) is the Sheriff of the County of Chester, a municipality of the State of South Carolina. Defendant Underwood is named in his official capacity as Sheriff as the alter ego of the Sheriff's office. Chester County Sheriff's Office is a law enforcement agency for the County of Chester, South Carolina, the county where most or all of the acts and omissions alleged herein occurred.

2. At all relevant times herein the Plaintiff was an employee of Chester County Sheriff's Office. This Action is brought pursuant to Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e et. Sec.

3. Plaintiff filed a Charge of Discrimination for sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e et. sec with the South Carolina Human Affairs Commission. Plaintiff received her Right to Sue from the South

Carolina Human Affairs Commission on March 9, 2014, and filed with the South Carolina Court of Common Pleas Civil Action No: 2014-cp-12-00393. Plaintiff received her Right to Sue from Equal Employment Commission on April 6, 2015. Plaintiff has exhausted her administrative remedies and this action is timely filed.

FACTUAL ALLEGATIONS

4. At all times relevant hereto Plaintiff was an employee under Defendant Underwood in his position as Sheriff and an employee for Chester County Sheriff's Office (CCSO). Plaintiff was originally hired by the Defendant in 2010.

5. Plaintiff has been a police officer for sixteen (16) years with an exemplary record. She began working for CCSO in March 2010 as the Lieutenant of Animal Control. She was hired by former Sheriff Smith. In 2011, Sheriff Smith promoted Plaintiff to Captain over the jail, and a short while after that she was put in charge of Animal Control in addition to her duties over the jail.

6. In January 2013, Defendant Underwood was elected to serve as Sheriff for Chester County. Plaintiff and Defendant Underwood were previously acquainted in or around 2005 and/or 2006. Defendant Underwood and Plaintiff worked cases together while Plaintiff worked in investigations for the Fairfield County Sheriff's Office. At that time, Defendant Underwood worked for SLED and would be assigned to some of the same investigations to which Plaintiff was assigned. For a period of time, Plaintiff and Defendant Underwood would occasionally do things together such as hunting and riding horses. Over time, their relationship went from a friendship to a physical relationship, which lasted on and off for about a year. During this time, Defendant

Underwood was very controlling and eventually the relationship faded. After that, Plaintiff did not have any contact with Defendant Underwood until just before he was elected.

7. Shortly before Defendant Underwood took office, Plaintiff saw him in the parking lot of the Sheriff's Office. Defendant Underwood approached Plaintiff and asked if she would like to return to a position in investigations. Defendant Underwood questioned Plaintiff that he was not sure "what side she was on," which Plaintiff understood to mean that he did not know if she supported him. Plaintiff told him that she was hesitant to return to investigations because she was on a sleep medication that required her to be able to have constant rest for eight (8) hours. If she were to return to investigations she was concerned that there would be nights that she would be called to a crime scene in which she would have to drive while under the influence of the sleep medication.

8. Mere days after Defendant Underwood took office with CCSO, he began to terminate people. On January 8, 2013 he fired six (6) employees. It was clear to all of the employees that if you were not a supporter of Defendant Underwood or on his good side, he would make every effort to eliminate your position or to terminate you. This created a very tense environment for all employees and many feared losing their jobs, including Plaintiff.

9. Around this time, Defendant Underwood asked Plaintiff to start supervising the investigations unit as the Captain running alongside Captain Burley McDaniel. Shortly after that, Plaintiff was put in charge of Evidence and Victims Services. Defendant Underwood then added the additional responsibility of paying bills for CCSO to Plaintiff.

10. Next, she was put in charge of narcotics. This division was in very poor shape and required a lot of attention that created a lot of stress. Several of Plaintiff's subordinates in narcotics refused to listen to any of her directives because she is a woman. The additional

responsibilities given to Plaintiff by Defendant Underwood made Plaintiff's job extremely stressful and sometimes overwhelming.

11. About a month after Defendant Underwood became Sheriff, he began to sexually harass Plaintiff. The harassment continued from February 2013 until October 2013.

12. Defendant Underwood would continually create situations where he and Plaintiff would be forced to work together alone. Defendant Underwood made every effort to assign tasks to Plaintiff that would require her to be in his office for most of the day. The number of times Defendant Underwood said and did inappropriate things during this time period are too many to list as they were virtually constant.

13. Despite her objections, Defendant Underwood would kiss her in his office or in her office. Defendant Underwood would frequently come into the office of Plaintiff, take her hand, put it on his crotch, and say "look what you did to me." He would tell her "you know how much I want you." Every time this occurred, Plaintiff made it clear to Defendant Underwood that he should not be doing this. She expressed her displeasure in being treated in such a way. Plaintiff made it clear to Defendant Underwood she did not consent to his advances. Plaintiff also cautioned Defendant Underwood that he would get in trouble and upset his wife.

14. Defendant Underwood would frequently require Plaintiff to ride along with him in the County vehicle. Most of the time Plaintiff was required to ride along with Defendant Underwood they would both have a place that they needed to go to do work related to the Sheriff's office, such as the courthouse. However, afterwards, when Plaintiff believed that she would be returning to CCSO, Defendant Underwood would instead drive to other locations that had nothing to with Sheriff's Office business. Plaintiff had no choice but to go with him, as he was driving and was the only form of transportation that she had back to the office.

15. It was on these trips that Defendant Underwood would make threats to Plaintiff about how she should know that the only reason she had a job was because of him. He told her that there were people that told him not to hire her. Defendant Underwood was aware Plaintiff had been terminated from a position at the Town of Winnsboro because she had reported police corruption and was thereafter retaliated against. Defendant Underwood knew of rumors that Plaintiff was blackballed in law enforcement in that area. He used this knowledge to manipulate Plaintiff to think that working for him was the only choice she had.

16. On one such occasion when they were both in the County vehicle returning from County business, Defendant Underwood took Plaintiff to the hunt club in Chester that was located right off of the No. 9 bypass. Plaintiff believed that because both she and Defendant Underwood liked to hunt, that his intention was simply to show her the property. However, when they arrived, Defendant Underwood asked Plaintiff to get out of the vehicle. He told Plaintiff to take her pants down and then he had sex with her. Plaintiff made it clear that she did not want to have sex with him and told him that he should not be doing this. Plaintiff felt horrible, degraded and powerless to refuse because she feared that she would lose her job. As such, Plaintiff felt she could not fight him off because she feared she would upset Defendant Underwood. To get through the act, Plaintiff would shut her eyes and pretend it was not happening.

17. On two occasions, Defendant Underwood took Plaintiff to a residence of a woman with whom he claimed to be friends. Both times the residence was empty and Defendant Underwood told Plaintiff that the woman was at the gym or was out of town and that he needed to check on the residence. Defendant Underwood had a key to the residence. When they arrived, Plaintiff asked Defendant Underwood where they were and he said a friend's house. Plaintiff tried to stay in the car, but Defendant Underwood refused and told her that she needed to come inside

while he checked things out. On both occasions, Defendant Underwood coerced Plaintiff to have sex with him inside the residence in the living room. Plaintiff, again, tried to close her eyes and pretend it was not happening.

18. Later, Plaintiff learned that the home belonged to a female by the name of Ellen Hare. Plaintiff learned this when she was placed on the hiring board for the new dispatcher positions for 911. Ellen Hare was preselected by Defendant Underwood to be a dispatcher.

19. On two occasions, Defendant Underwood took Plaintiff to another residence and told her that it was Chief Andrew Williams' home. He, again, had a key to the residence. Plaintiff, again, tried to resist him but he coerced her to have sex with him. Plaintiff pleaded she was scared they would get caught and Defendant Underwood said he was not worried because of the location of the house and the street that it was on was such that he could hear if someone approached. On another occasion, Defendant Underwood took Plaintiff to a private residence which was located on a street named for the property called Summer Breeze. At this location, Defendant Underwood once again made Plaintiff have sex with him outside of the car.

20. On two additional occasions, Defendant Underwood took Plaintiff to his home and made her have sex with him there. Plaintiff initially refused to go into the house because of fear that his wife would be at the house or that she would walk in. Plaintiff was extremely scared that Defendant Underwood's wife would come in and react in a violent manner because his wife was also in law enforcement and would be armed.

21. Plaintiff was in an extremely emotionally fragile state because she was being coerced into a nonconsensual sexual relationship with her supervisor, the Sheriff. Plaintiff feared that refusing the Sheriff would cause him to terminate her from her position. Additionally, she was under significant stress because of the additional duties that the Sheriff had given to her. By

October 2013 the stress from the harassment, sexual battery, and her heavy work load became too much for Plaintiff. She began having severe panic attacks which felt like heart attacks. One of the panic attacks occurred in Defendant Underwood's own office. Plaintiff had to be written out of work on medical leave for two weeks at that time.

22. Despite the fact that Defendant Underwood knew Plaintiff had to be written out of work for two weeks for stress and anxiety, when she returned to work, he added the additional responsibility of putting her over 911.

23. When Plaintiff returned from medical leave, she refused to continue to ride along with Defendant Underwood on trips. Defendant Underwood questioned Plaintiff in a very harsh manner as to why she refused to ride along with him anymore. Plaintiff made it clear to Defendant Underwood that she was not going to be coerced into sex with him any longer. Anytime that she was asked to ride along with Defendant Underwood, Plaintiff made up some sort of excuse to drive her own vehicle.

24. From that point forward, Defendant Underwood's actions and attitude toward Plaintiff completely changed and he began a pattern and practice of retaliating against her. During meetings that Defendant Underwood would call with Plaintiff's staff and co-workers, Defendant Underwood would severely criticize Plaintiff's work. Such criticisms were unfounded and were meant strictly to punish Plaintiff. It was such a drastic change in his treatment of Plaintiff that co-workers would frequently come up to Plaintiff and ask her why Defendant Underwood was treating her that way. Defendant Underwood would try also to instigate arguments with Plaintiff in front of others.

25. In August of 2013, the position of Chief Deputy was open and available. In the past, Defendant Underwood had promised Plaintiff the position. Plaintiff was the most qualified

person for the position as she already was the supervising officer of most of the divisions in the Sheriff's office. However, it is clear now that the promise was made on a quid pro quo basis by Defendant Underwood, who had only planned to give Plaintiff the position if she continued to acquiesce to his demands for sex. After Plaintiff refused his advances, Defendant Underwood gave the position to Robert Sprouse, an employee who had never even applied for the position and who was much less qualified than Plaintiff. Notably, Mr. Sprouse was an individual who came to Defendant Underwood's aid in a highly publicized brawl that took place on HWY 9 in West Chester between Defendant Underwood and the Chester Fire Chief.

26. In an attempt to intimidate Plaintiff, Defendant Underwood has had a blank disciplinary action with Plaintiff's name on it on top of his desk in view of all who came near for months. While Plaintiff was on family vacation in February 2014, Defendant Underwood informed Plaintiff that he wanted to have a meeting with Plaintiff when she returned. When Plaintiff returned from vacation, Defendant Underwood's secretary told her that he no longer wanted to have a meeting with Plaintiff. Instead, Defendant Underwood berated Plaintiff in front of her co-workers and peers at a staff meeting.

27. For the last six months of her employment, anytime Defendant Underwood would address Plaintiff or would speak about Plaintiff, it was in a critical manner in front of Plaintiff's peers. Defendant Underwood would refuse to respond to Plaintiff's emails and texts related to work, making it impossible to perform the tasks to which she was assigned. If Defendant Underwood did choose to talk to her, it would be in a nasty and hateful tone. For months, Defendant Underwood continued to retaliate against Plaintiff.

28. On one occasion, Plaintiff responded to a message on the former Sheriff's Facebook page and addressed him as "Sheriff Smith." When Defendant Underwood found out, he berated

and yelled at Plaintiff telling her only he should be called Sheriff. He also told her that if she could not decide what side of the fence she was on then she could find another job.

29. In March of 2014, Plaintiff's son had to be hospitalized. When he got out of the hospital he came to live with Plaintiff so that she could provide for him and ensure that he was healthy. In the past, Plaintiff's son volunteered at the animal shelter with Plaintiff for a few hours at a time on an occasional basis. When he came out of the hospital, Plaintiff wanted to make sure that he was ok and was up doing productive things. Plaintiff had her son volunteer at the animal shelter for a few hours when he got out of school until 5:00 pm. Defendant Underwood used this as a basis to write Plaintiff up accusing her of bringing her son to the shelter every day for two (2) years. The write up was unfounded and was another attempt to retaliate against Plaintiff because she refused to his sexual advances.

30. On April 7, 2014, Plaintiff could no longer take Defendant Underwood's retaliatory treatment. She reported his actions from February 2013 until April 7, 2014 to Human Resources. On April 10, 2014, Plaintiff was placed on medical leave for severe stress and anxiety. While out on medical leave, Plaintiff continued to have panic attacks and was prescribed several anti-anxiety medications.

31. To date, Plaintiff has been unable to return to work due to her severe stress and anxiety. The actions of Defendant Underwood were intentional, unwelcomed and caused damage to Plaintiff.

FOR A FIRST CAUSE OF ACTION AS TO BOTH DEFENDANTS
(Title VII Sexual Harassment)

32. Plaintiff incorporates the allegations in paragraphs two (2) through thirty (31) as set forth verbatim.

33. On numerous occasions for the period of February 2013 until October 2013, Sheriff Underwood, using his position as the Sheriff of Chester County, intentionally subjected Plaintiff to coerce the Plaintiff into having sexual intercourse with him. Defendant Underwood made inappropriate comments and gestures and touched her in inappropriate ways. Plaintiff made it clear to the comments, gestures and sexual advances were unwelcome. Plaintiff suffered severe emotional distress as a result of the sexual harassment.

34. Defendant Underwood, in his official capacity as the Sheriff of Chester County, is the alter ego of the Sheriff's office. Defendant Underwood used his position as Sheriff to coerce Plaintiff in a position in which she was subjected to said assault and battery. The sexual assault and battery also took place during work hours while using County equipment, making the intentional acts within the scope of his employment.

36. Defendant Underwood actions were willful, malicious and intentional.

37. As a direct result and consequences of the sexual harassment, Plaintiff has and will suffer compensatory damages including emotional distress, mental anguish and anxiety.

38. As a further direct result and consequence Plaintiff is entitled to compensatory damages, attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION AS TO BOTH DEFENDANTS

(Title VII Retaliation)

39. Plaintiff incorporates the allegations in paragraphs two (2) through thirty-six (38) as set forth verbatim.

40. When Plaintiff refused to continue to have sexual intercourse with Defendant Underwood, he began to retaliate against her. Said retaliation was so severe and pervasive that Plaintiff was forced to take medical leave and eventually to quit her position.

41. As a direct result and consequences of the sexual retaliation, Plaintiff has and will suffer compensatory damages including emotional distress, mental anguish and anxiety and economic damages including back pay and front pay.

42. As a further direct result and consequence Plaintiff is entitled to compensatory damages, back pay, front pay, attorney's fees and costs.

WHEREFORE, Plaintiff prays for judgment against Defendants for back pay, front pay, compensatory damages, attorney's fees and costs.

CALLISON TIGHE & ROBINSON, LLC

s/Janet Rhodes

Janet E. Rhodes, Esquire, Federal ID# 10521
1812 Lincoln Street
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: JanetRhodes@callisontighe.com

Attorney for the Plaintiff

July 1, 2015
Columbia, South Carolina