

LOWNDES COUNTY, GEORGIA  
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*Beth C. Greene*  
CLERK OF SUPERIOR STATE  
JUVENILE COURTS

**IN THE SUPERIOR COURT OF LOWNDES COUNTY  
STATE OF GEORGIA**

SHERMAN MAINE,

Plaintiff,

v.

STATE OF GEORGIA  
GEORGIA DEPARTMENT OF  
CORRECTIONS

Defendant.

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) CIVIL ACTION FILE NO.  
) 2015CV1695  
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**PRETRIAL ORDER**

The following constitutes the pretrial order entered in the above-styled case for the parties:

1. The name, address and phone number of the attorneys who will conduct the trial are as follows:

**Plaintiff:**

Trent Coggins  
Coggins & McMillan, LLP  
706 N. Patterson Street  
Valdosta, GA 31601

Douglas McMillan  
Shingler & McMillan, LLC  
210 S. Wiley Avenue  
Donalsonville, Georgia 39845

**Defendant:** Laura McDonald  
Senior Assistant Attorney General  
Courtney C. Poole  
Assistant Attorney General  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334  
Telephone: 404-656-3350

2. The estimated time required for trial is:

The parties estimate the trial will last 6-7 days.

3. There are no motions or other matters pending for consideration by the Court except as follows:

The parties reserve the right to file any applicable motions in limine before trial or during trial as evidentiary issues arise.

4. The jury will be qualified as to relationship with the following:

All parties, witnesses, and counsel in the case.

5. (a) All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

(b) Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

Defendant contends that the only proper Defendant to this action is the Georgia Department of Corrections (“GDC”). To the extent Plaintiff has named the state of Georgia in addition to GDC, its inclusion is improper.

6. The following is the Plaintiff’s brief and succinct outline of the case and contentions:

Plaintiff began his employment at Valdosta State Prison (“VSP”) in 2001. From 2009 until his termination for misconduct on or around August 23, 2014, Plaintiff was a Captain at VSP. Prior to his promotion to Captain, Plaintiff had been a supervisor with the Correctional Emergency Response Team (“CERT”), a group of trained correctional officers handling contraband, hostile inmates, and emergency situations.

Plaintiff contends that he engaged in whistleblowing activities on two separate occasions. The first was in 2010 when Plaintiff objected to an investigation by GDC Internal Affairs that involved placing an inmate to be used as a confidential informant within Valdosta State Prison for the purpose of obtaining information on corrupt prison staff. Plaintiff was told that the inmate was to be given a cell phone in order to contact the Internal Affairs officers and that he was to give him one. On several occasions the phone in the inmate’s possession was confiscated and Plaintiff was ordered to provide another phone to the inmate.

Plaintiff raised his concerns and objections about the violations of the law, rules, and regulations as well as the inmate's safety. The second was in or around December, 2012, when he complained to Commissioner Brian Owens about having been placed on administrative leave.

Defendant alleges that Plaintiff was terminated for a myriad of reasons, and those reasons have changed and morphed as this case has progressed. Plaintiff contends that he was terminated for his whistleblowing activities and that all other reasons given for termination are pretextual and Plaintiff is entitled to damages.

7. The following is Defendant's brief and succinct outline of the case and contentions:

Plaintiff began his employment at Valdosta State Prison ("VSP") in 2001. From 2009 until his termination for misconduct on or around August 23, 2014, Plaintiff was a Captain at VSP. Prior to his promotion to Captain, Plaintiff had been a supervisor with the Correctional Emergency Response Team ("CERT"), a group of trained correctional officers handling contraband, hostile inmates, and emergency situations.

At the time of his termination, Plaintiff was under criminal investigation by the FBI. GDC's own internal affairs ("IA") department also conducted an investigation into charges of misconduct against him. During the course of GDC's

investigation, Plaintiff's sworn statements in his defense were never corroborated by the other witnesses. The IA's Report of Investigation found that there was sufficient evidence that Plaintiff violated the law as well as internal Standard Operation Procedures ("SOPs"). After the IA completed its investigation, GDC terminated Maine as a result of his misconduct.

Plaintiff claims that he engaged in whistleblowing activities on two occasions. The first was in 2010 when Plaintiff claims to have objected to a sting operation that involved placing an inmate confidential informant within Valdosta State Prison for the purpose of obtaining information on corrupt prison staff. The second was in or around December, 2012, when he complained to Commissioner Brian Owens about having been placed on administrative leave and referred to the 2010 operation.

Defendant contends that Plaintiff never engaged in protected whistleblowing activity and his termination is in no way a result of any of his objections or complaints about the sting operation.

8. The issues for determination by the jury are as follows:

**By Plaintiff:**

- (a) Whether Plaintiff reported violations of a law, rule or regulation in accordance with the Georgia Whistleblower statute in 2010 when he objected to the sting operation.
- (b) Whether Plaintiff disclosed the violation of a law, rule or regulation when he complained, via letter, to Commissioner Brian Owens about having been placed on administrative leave?
- (c) Whether Plaintiff can prove by a preponderance of the evidence that Defendant Georgia Department of Corrections retaliated against him for disclosing a “violation of or noncompliance with a law, rule, or regulation.”
- (d) Whether Plaintiff can prove by a preponderance of the evidence that Defendant Georgia Department of Corrections retaliated against him for objecting to an activity that he had reasonable cause to believe was in violation or noncompliance with a law, rule, or regulation.
- (e) If Plaintiff can prove these things, what, if any, damages, is he entitled to recover?

**By Defendant:**

- (a) Whether Plaintiff reported violations of a law, rule or regulation in accordance with the Georgia Whistleblower statute in 2010 when he objected to the sting operation.
- (b) Whether Plaintiff disclosed the violation of a law, rule or regulation when he complained, via letter, to Commissioner Brian Owens about having been placed on administrative leave?
- (c) Whether Plaintiff can prove by a preponderance of the evidence that Defendant Georgia Department of Corrections retaliated against him for disclosing a “violation of or noncompliance with a law, rule, or regulation.”
- (d) Whether Plaintiff can prove by a preponderance of the evidence that Defendant Georgia Department of Corrections retaliated against him for objecting to an activity that he had reasonable cause to believe was in violation or noncompliance with a law, rule, or regulation.
- (e) If Plaintiff can prove these things, what, if any, damages, is he entitled to recover?

9. Specifications of negligence including applicable code sections are as follows:

N/A

10. If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this Order):

N/A

11. The types of damages and the applicable measure of those damages are stated as follows:

**By Plaintiff:**

If the jury finds that Plaintiff suffered an adverse employment action in retaliation for disclosing the violation of a law, rule or regulation, then he may be entitled to the damages outlined in O.C.G.A. § 45-1-4, which include: compensation for lost wages, benefits, and other remuneration, compensatory damages, injunctive relief, and reasonable attorney's fees and costs.

**By Defendant:**

Defendant denies that Plaintiff is entitled to any damages at all. However, if the jury finds that Plaintiff suffered an adverse employment action in retaliation for disclosing the violation of a law, rule or regulation, then he may be entitled to the damages outlined in O.C.G.A. § 45-1-4, which include: compensation for lost wages, benefits, and other remuneration, compensatory damages, injunctive relief, and reasonable attorney's fees and costs.

Defendant believes that the issues of back-pay, reinstatement, and attorneys fees, as items of equitable relief, should be determined by the Court in post-judgment proceedings and not by a jury. The jury should be limited to determining any non-equitable relief damages.

12. If the case involves divorce, each party shall present to the court at the Pre-Trial Conference the Affidavits required by Rule 24.2.

N/A

13. The following facts are stipulated:

- 1) At all times relevant to this case, Sherman Maine has been a “public employee” as that term is defined by O.C.G.A. § 45-1-4(a)(3);
- 2) The Department of Corrections is a “public employer” as that term is defined by O.C.G.A. § 45-1-4(a)(4).

14. The following is a list of all documentary and physical evidence that will be tendered at the trial by Plaintiffs or Defendants. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

**(a) By the Plaintiff:**

Plaintiff reserves the right to amend this list should it become necessary during the course of litigation. Plaintiff further reserves the right to introduce at trial any document the use of which was not reasonably anticipated prior to trial, either for impeachment or rebuttal.

Any and all documents produced by Plaintiff or Defendant throughout the course of discovery.

**(b) By Defendant:**

Defendant reserves the right to amend this list should it become necessary during the course of litigation. Defendant further reserves the right to introduce at trial any document the use of which was not reasonably anticipated prior to trial, either for impeachment or rebuttal.

1. Shawn Corley's Complete Investigative File;<sup>1</sup>
  - a. Report of Investigation
  - b. Travarres Asberry's Interview Summary
  - c. Agent Mike Sellars' Interview Summary
  - d. Mike Sellars' sworn statement
  - e. Lt. Frank Swanson's Interview Summary
  - f. Agent Rob Picciotti's Interview Summary
  - g. Agent Kenny Busby's Interview Summary
  - h. Warden William Danforth's Interview Summary
  - i. Warden William Danforth's Sworn Statement

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<sup>1</sup> Defendant intends to introduce the entire investigative file as one exhibit. It also intends to use subsections of the file, delineated here, as separate demonstrative aids, for ease of use for the witnesses and the Court.

- j. Deputy Warden Calvin Orr's Interview Summary
- k. Deputy Warden Calvin Orr's Sworn Statement
- l. Investigator John Moore's Interview Summary
- m. Investigator John Moore's Sworn Statement
- n. Investigator Sandra Smith's Interview Summary
- o. Investigator Ruby Long's Interview Summary
- p. Warden Marty Allen's Interview Summary
- q. Warden Mary Allen's Sworn Statement
- r. Warden Artis Singleton's Interview Summary
- s. Warden Artis Singleton's Sworn Statement
- t. Superintendent Ted Philbin's Interview Summary
- u. Superintendent Ted Philbin's Sworn Statement
- v. Gail Knowles' Interview Summary
- w. Gail Knowles' Sworn Statement
- x. Sherman Maine's Interview Summary
- y. Sherman Maine's Sworn Statement
- z. Investigator's Notes regarding Green Dot Memo
- aa. Green Dot Memo
- bb. Investigator's Notes regarding Supervisor Meeting Minutes
- cc. February 2012 Security Supervisor's Meeting Minutes
- dd. January 2012 Security Supervisor's Meeting Minutes
- ee. Investigator's Notes regarding CERT Bates Termination
- ff. Bates Suspension with Pay Notice
- gg. Bates Termination Letter
- hh. Investigator's Notes regarding Sgt. Snyder
- ii. Warden Taylor's memo regarding Sgt. Snyder
- jj. Investigator's Notes regarding Sgt. Snyder's Termination
- kk. Investigator's Notes regarding Maine's Letter to  
Commissioner Owens
- ll. Maine's Letter to Commissioner Owens
- mm. Maine's Cell Phone Acknowledgement (7/24/08)
- nn. Investigator's Notes regarding phone records
- oo. November 2010 phone records
- pp. December 2010 phone records
- qq. January 2011 phone records
- rr. Memo to Maine re: Suspension with Pay
- ss. Maine Acknowledgement of Employee Standards of  
Conduct (1/25/2011)

- tt. Maine Acknowledgement of Employee Standards of Conduct (9/10/2012)
  - uu. Audio statement of Sherman Maine
  - vv. Audio statement of DTF Officer Busby
  - ww. Audio statement of DTF Officer Piccioti
  - xx. Audio statement of DWS Calvin Orr
  - yy. Audio statement of Gail Knowles
  - zz. Audio statement of Investigator Long
  - aaa. Audio statement of Investigator Moore
  - bbb. Audio statement of DTF Frank Swanson
  - ccc. Audio statement of DTF Mike Sellars
  - ddd. Audio statement of SIC Smith
  - eee. Audio statement of Artis Singleton
  - fff. Audio statement of Ted Philbin
  - ggg. Audio statement of Warden Danforth
2. Maine Termination Letter (8/22/2014)
  3. Maine Appeal of Termination (8/27/2014)
  4. Notice of Final Action (9/18/2014)
  5. Carey Barnes' notes reviewing the investigative file
  6. Standard Operating Procedure IVO14-0001
  7. Standard Operating Procedure IIB06-0002 (eff. 6/01/2005)
  8. Maine Acknowledgement of Employee Standards of Conduct (9/24/2008)
  9. Memo regarding "No rehire recommendation" for Maine
  10. Maine Signed Memo re: Governor's Code of Ethics (2/23/03)
  11. Personnel Action Request re: suspension with pay
  12. Memo from Rob Jones to Mary Allen re: Sherman Maine
  13. Separation Notice
  14. Memo from James Knox to Rick Jacobs et al. re: Sherman Maine
  15. All exhibits to depositions submitted in this case
  16. All pleadings and discovery of record
  17. Any documents or things listed by the Plaintiff
  18. Any documents or things needed for impeachment or rebuttal

15. Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows:

None at this time, but Plaintiff reserves the right to address evidentiary issues in motions in limine, as necessary, and to respond to any evidentiary questions raised by Defendant.

16. Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

None at this time, but Defendant reserves the right to address evidentiary issues in motions in limine, as necessary, and to respond to any evidentiary questions raised by Plaintiff.

17. All requests to charge anticipated at the time of trial will be filed in accordance with **Rule 10.3**.

18. The testimony of the following persons may be introduced by depositions if they are legally unavailable to testify:

(a) By Plaintiff: Plaintiff reserves the right to take any additional depositions for the preservation of evidence or of newly identified witnesses. Any objections to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to trial or during trial where the attorneys did not raise an objection but rather reserved objections until trial.

(b) By Defendant: Travarres Asberry. Defendant reserves the right to take any additional depositions for the preservation of evidence or of newly identified witnesses. Any objections to the depositions or questions or arguments in the depositions shall be called to the attention of the court prior to trial or during trial where the attorneys did not raise an objection but rather reserved objections until trial.

19. The following are lists of witnesses the

a. Plaintiff **will have** present at trial:

1. Sherman Maine;

b. Plaintiff **may** have present at trial:

1. Darrell Hart

2. Randall Holden

3. William Danforth

4. Calvin Orr

5. Sandra Smith

6. Shawn Corley

7. John Moore

8. Mike Sellars

9. Frank Swanson
10. Kenneth Busby
11. Rob Piccioti
12. Ricky Myrick
13. William Nix
14. Ted Philbin
15. Brian Owens
16. Ashley Paulk
17. Carey Barnes
18. Artis Singleton
19. Ruby Long
20. Taylor Allen
21. James Knox
22. Robert Jones
23. David Taylor
24. Cedric Taylor
25. Thomas Clarke
26. Bennett Threlkeld
27. George Jackson

28. Travarres Asberry
29. David Snyder
30. Cheryl Black
31. Any witness necessary for the purpose of impeachment  
or rebuttal
32. Any person identified by the Defendant in this Order
33. Any person identified in the parties' discovery responses
34. Plaintiff reserves the right to supplement or amend its  
witness list prior to trial

c. Defendant **will have** present at trial:

None

d. Defendant **may** have present at trial:

1. William Danforth
2. Calvin Orr
3. Sandra Smith
4. Shawn Corley
5. John Moore
6. Mike Sellars
7. Frank Swanson

8. Kenneth Busby
9. Rob Piccioti
10. Ricky Myrick
11. William Nix
12. Ted Philbin
13. Brian Owens
14. Ashley Paulk
15. Carey Barnes
16. Artis Singleton
17. Ruby Long
18. Taylor Allen
19. James Knox
20. Robert Jones
21. David Taylor
22. Cedric Taylor
23. Thomas Clarke
24. Bennett Threlkeld
25. George Jackson
26. Travarres Asberry

27. Any witness necessary for the purpose of impeachment or rebuttal
28. Any person identified by the Plaintiff in this Order
29. Any person identified in the parties' discovery responses
30. Defendant reserves the right to supplement or amend its witness list prior to trial

Opposing counsel may rely on representation that the designated party will have a witness present unless notice to the contrary is give in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

20. The form of all possible verdicts to be considered by the jury are as follows:

**By Plaintiff:**

(1) Do you find by a preponderance of the evidence that Plaintiff Sherman Maine objected to the violation of a law, rule or regulation in 2010 when he objected to the use of a confidential informant in a sting operation at Valdosta State Prison?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If you answered "Yes" or "No" to No. 1, then answer No. 2.

(2) Do you find by a preponderance of the evidence that Plaintiff Sherman Maine disclosed the violation of a law, rule or regulation in his letter to Commissioner Brian Owens in which he complained about having been placed on administrative leave?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If you answered “Yes” to No. 1 or No. 2, then answer No. 3.

If you answered “No” to No. 1 and No. 2, then do not answer any more questions.

(3) Do you find by a preponderance of the evidence that Defendant Georgia Department of Corrections subjected Plaintiff Sherman Maine to an adverse employment action in retaliation for his engaging in activity protected by the Georgia Whistleblower Act when it terminated his employment?

If you answered “Yes” to No. 3, then answer No. 4.

If you answered “No” to No. 3, then do not answer any more questions.

(4) Do you find that Plaintiff Sherman Maine is entitled to recover any damages from Defendant Georgia Department of Corrections?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If so, what amount of damages should he receive? \_\_\_\_\_

**By Defendant:**

(1) Do you find by a preponderance of the evidence that Plaintiff Sherman Maine objected to the violation of a law, rule or regulation in 2010 when he objected to the use of a confidential informant in a sting operation at Valdosta State Prison?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If you answered “Yes” or “No” to No. 1, then answer No. 2.

(2) Do you find by a preponderance of the evidence that Plaintiff Sherman Maine disclosed the violation of a law, rule or regulation in his letter to Commissioner Brian Owens in which he complained about having been placed on administrative leave?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If you answered “Yes” to No. 1 or No. 2, then answer No. 3.

If you answered “No” to No. 1 and No. 2, then do not answer any more questions.

(3) Do you find by a preponderance of the evidence that Defendant Georgia Department of Corrections subjected Plaintiff Sherman Maine to an adverse employment action in retaliation for his engaging in activity protected by the Georgia Whistleblower Act when it terminated his employment?

If you answered "Yes" to No. 3, then answer No. 4.

If you answered "No" to No. 3, then do not answer any more questions.

(4) Do you find that Plaintiff Sherman Maine is entitled to recover any damages from Defendant Georgia Department of Corrections?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If so, what amount of damages should he receive? \_\_\_\_\_

21.           (a) The possibilities of settling the case are: poor.
- (b) The parties do want the case reported.
- (c) The cost of take-down will be shared equally between the parties.
- (d) Other matters: None at this time.

**SUBMITTED BY:**

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\_\_\_\_\_  
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It is hereby ORDERED that the foregoing, including the attachments thereto, constitute the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the Court to prevent manifest injustice.

This 20 day of July, 2018.

  
FRANK HORKAN, SENIOR JUDGE  
Superior Court of Lowndes County