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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

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Case No.: 2014-CP-10-4591

Appellate Case No. 2021-002392

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The Estate of Jane Doe 202, by John Doe MM and John Doe HS, each of whom holds power of attorney for Jane Doe..... Appellants,

v.

City of North Charleston; Leigh Anne McGowan, individually, Charles Francis Wholleb, individually, and Anthony M. Doxey, individually ..... Respondents.

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**BRIEF OF RESPONDENTS**

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**Counter-Statement of the Issue on Appeal**

1. Did the Court of Appeals correctly hold that, based on precedent, the trial court did not abuse its discretion in charging the jury a third time on the elements necessary to prove a § 1983 claim, but in not recharging the jury a third time on damages, when the trial judge had fully covered the measures of damages in both her initial charge and her recharge to the jury?

**Counter-Statement of the Case**

The jury sent a total of six notes/questions to the court. Prior to the final two jury questions, the jury had sent four notes to the court. (R. pp. 475 & 498). The second note asked the court to provide the entire jury charge again, which the court did. (R. pp. 477-497). The third note asked the court to define the word “preponderance,” which the court did. (R. p. 498). The fourth note asked “do all the criteria under section 1983 claiming the 4<sup>th</sup> Amendment have to met (sic).” *Id.* The court answered the fourth question affirmatively, but did not, at that time, recharge the jury on the specific elements of a 1983 action. *Id.* Appellant had no exception to the court’s decisions on any of the four initial notes/questions from the jury.<sup>1</sup> (R. pp. 472 & 498).

The jury was aware that they could keep asking questions if they needed additional clarification on the law or if they needed to hear portions of the jury charge again. The trial court noted that “this jury has been very articulate. They’ve been very outspoken. If they need more I anticipate they will tell me.” (R. p. 504). The trial court confirmed that “...if they ask me for

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<sup>1</sup> The first note dealt with written jury charges being inadvertently mixed in with an exhibit. However, the jury confirmed that no juror had reviewed the written charges and the written charges were removed from the jury room.

more than I'll instruct more..." (R. p. 502). On at least two occasions, the trial court told the jury directly that they could continue asking for additional information or could ask to rehear portions of the jury charge. *See* (R. p. 475) ("... if there is something that I omit please make me aware of it. If it is something else that you desire to rehear and I will immediately accommodate your request.") *See also* (R. p. 511) ("That concludes the additional instruction. If you need anything further please advise us and I will accommodate your request immediately.")

When the trial court was considering how to answer the final two jury questions, the court took into account that the jury had asked multiple prior questions and had been informed that they could continue asking questions. In deciding to recharge the jury on the elements of a 1983 claim, but not recharging the entire damages charge, the trial judge stated, "I'll reinstruct them on the elements of 1983. And then if they ask me to reinstruct on damages I will do that *again*..." (R. pp. 501-502) (emphasis added).

The final two notes/questions sent by the jury involved what a plaintiff must prove in order to succeed on a section 1983 claim. The first note asked for a copy of U.S.C. 42 section 1983 and the second asked if a plaintiff had to prove damages for there to be a violation of a person's Fourth Amendment civil rights. (R. p. 499). The court ruled that a copy of the code section would not be sent to the jury and then went into depth in explaining its ruling on how to respond to the second question. The trial judge stated that based on the questions, it appeared the jury was not focused on Appellant's failure to train cause of action, but instead was focusing on the warrantless entry/Fourth Amendment issue. (R. p. 499). The court stated "First of all those three elements have to be met and then they move on to damages." *Id.* The trial court heard from Appellant about recharging damages and addressed the argument at length:

I am debating because the more I read this note the more I think they have confused damages in the elements of section 1983. And I think

it could be very confusing again to go through this whole explanation of damages because I think they are clear on what amounts to damages and how you calculate damages. I'm just inclined to reinstruct the elements of 1983 and instruct that before you even get to damages -- that there are two different concepts -- and before you get to damages you have to determine whether the elements of the 1983 claim have been met; that being the 4th Amendment.

And in that regard I'll reinstruct them on the elements of 1983. And then if they ask me to reinstruct on damages I will do that again, but that is a lot. I can't just dissect that out; I'd have to reinstruct all of damages, which is aggravated preexisting condition, the affirmatives defenses; all of that again.

(R. pp. 501-502)

THE COURT: And then this jury has been very articulate. They've been very outspoken. If they need more I anticipate they will tell me that. I just don't see me going through 20 minutes of damages when I don't think they are unclear about that issue. I think they know what constitutes damages. Get the jury for me please.

(R. p. 504).

Following this discussion, the Court recharged the jury. (R. pp. 505-510). At the conclusion, the trial judge informed the jury, "If you need anything further please advise us and I will accommodate your request immediately." (R. p. 511). The jury did not ask to hear any more of the jury charges, had no further questions, and later returned a verdict for the defendants.

The first question on the verdict form for the individual officers was:

Do you find that Plaintiff has proven by a preponderance of the evidence that [the officer] violated Rhonda Doe's constitutional rights by making a warrantless entry into Rhonda Doe's residence on the night of March 27, 2014?

(R. pp. 6, 8, & 10). The first question on the verdict form for North Charleston was:

Do you find that Plaintiff has proven by a preponderance of the evidence that the City of North Charleston violated Rhonda Doe's

constitutional rights by being deliberately indifferent with regard to training its officers?

(R. p. 4). For all three of the individual officers as well as for the City of North Charleston, the jury answered no to the first question, finding no constitutional violation and obviating the need to continue answering questions on the jury verdict form.

### **Argument**

#### **1. The trial court did not abuse its discretion when it chose to not fully recharge the jury a third time on damages, and Appellant cannot show that the court's decision caused prejudice to warrant a new trial.**

The majority opinion relied on precedent in finding no abuse of discretion in recharging the jury. The Court of Appeals correctly held that Petitioner's "arguments on appeal do not challenge the sufficiency of the jury instruction on nominal damages, but merely that they were not given for a third time, which precedent states is not an error." Opinion at p. 8-9.

The precedent noted by the Court of Appeals are the cases of *Rauch v. Zayas*, 284 S.C. 594 (Ct. App. 1985) and *The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc.*, 418 S.C. 142 (Ct. App. 2016), both of which dealt with a trial judge's discretionary decision on recharging the jury. In the *Rauch* case, the jury sent three questions back to the court concerning damages – "(1) Is the actual damage amount stated by the bills in the courtroom or is the amount determined by the jury? (2) is the 'actual' separate from the pain and suffering award? and (3) Would an amount determined by the jury be the final amount awarded." *Rauch* 284 S.C. at 596. In response, the trial judge recharged the jury on actual damages, but he omitted the element of future damages. *Id.* The Plaintiff asked the court to instruct the jury that future damages were actual damages, and the judge refused. *Id.* at 596-597. The jury returned a verdict of \$1,000.

On appeal, the Court of Appeals held that when the jury requests to rehear charges, the court need only include the portions of the initial charge that are responsive, a "failure to charge

in greater detail is not error if the details were fully covered in the original charge,” and the alleged error must be prejudicial to warrant a new trial. *Id.* at 597. The *Rauch* court held that the initial charge covered actual damages in full, and the court’s decision not to recharge the jury on future damages was not an error. *Id.*

In the case at bar, the trial court fully instructed the jury on the elements of damages not once, but twice. Appellant did not object to either the initial charge or recharge and has not argued that either charge failed to fully cover the elements of damages. Rather, Appellant argues that the trial court erred in not fully recharging the jury a third time, which is akin to arguing that the trial court failed to recharge the jury in greater detail. However, as precedent sets out, the “failure to charge in greater detail is not error if the details were fully covered in the original charge.” *Id.*

The trial court made a discretionary decision regarding all of the jury notes/questions, and the final three questions indicate that the trial court properly used its discretion in responding to the final question. The fourth question asked about proving elements of a 1983 claim and the fifth asked for a copy of the code section. The court, in its discretion, could have responded to either question by recharging on the elements of a 1983 claim, but did not. The final question again concerned the elements and proof necessary for a 1983 claim. The court reasonably considered the jury’s prior questions together with the final question and determined that the jury needed clarification on the elements necessary to prove a 1983 claim. The court recharged the jury on the elements of a 1983 claim, which was not an abuse of discretion. This is supported by the fact that the prior two questions essentially sought the same information/clarification. Therefore, the court provided the jury with the elements of a 1983 claim, which was a reasonable response to the jury’s final questions to the court. Further, the trial court explicitly informed the jury that they could request additional information/clarification and the court would provide the same.

If the trial court's decision to not recharge the jury on damages was an error, as Appellant has alleged, Appellant cannot show that the alleged error was prejudicial to warrant a new trial. Specifically, the verdict form prevents Appellant from arguing that a failure to recharge changed the outcome of the trial. The first question as to each of the individual defendants was

Do you find that Plaintiff has proven by a preponderance of the evidence that [the officer] violated Rhonda Doe's constitutional rights by making a warrantless entry into Rhonda Doe's residence on the night of March 27, 2014?

(R. pp. 6, 8, & 10). For each individual defendant, the jury answered, "No." This answer could indicate that the jury determined the Appellant had not met her burden of proof. It could mean that the jury believed there were exigent circumstances. It could mean that the jury believed there was simply no constitutional violation. Because of how the verdict form was drafted and answered, it is impossible to determine what the jury based its verdict upon and whether the issue of damages or nominal damages was factored into the jury's decision.

Appellant asks this Court to speculate concerning what the jury based its verdict upon. Neither the verdict form nor anything else in the Record on Appeal indicates the basis for the jury's verdict. Therefore, Appellant cannot prove that a failure to recharge caused prejudice to warrant a new trial nor that a different response to the jury's final question would have changed the outcome. As such, Appellant cannot show that any alleged error warrants a reversal of the jury's verdict.

## Conclusion

For the reasons cited above and based on precedent, Respondents respectfully ask this court to find that there was no error or abuse of discretion and to affirm the decision of the Court of Appeals.

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December 2, 2022  
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**RESPONDENTS' PROOF OF SERVICE**

I certify that I have served copies of *Brief of Respondents* on December 2, 2022 by email at the address listed below:

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