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**THE STATE OF SOUTH CAROLINA**

**Aug 07 2024**

**In the Honorable Court of Appeals**

**SC Court of Appeals**

**APPEAL FROM THE YORK COUNTY**

Hon. WILLIAM McKinnon, Chief Administrative Law Judge  
For the Circuit Court Case no 2022-cv-46-01509

**Appellate Docket/Case No. 2024-000269**

Kalishwar Das	Appellant.
v.	
York County	Appellee

**FINAL BRIEF OF APPELLANT**

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## DESIGNATION OF MATTER

Pursuant to SCRAP Rule 209

**SET-A Contents of the Record: Contains filing, counter-filing, orders, and court proceedings:**

1. Notice of Appeal filed and extended after delivery of  
Transcript on May 21, 2024
2. Initial Complaint filed on May 16, 2022 Exhibit-1
3. Defendant's motion to dismiss, filed June 16, 2022. Exhibit-2
4. Joint Stipulation of settlement filed July 21, 2022 Exhibit-3
5. Appellant's request for expedite seizure(4) Exhibit-4
6. Court order dated September 27, 2022, Exhibit-5
7. Plaintiff's amended complaint filed Oct 3<sup>rd</sup>, 2022 Exhibit-6
8. Defendant's reply to amended complaint filed Oct. 18, 2022 Exhibit-7
9. Court order dated January 10, 2023 Exhibit-8
10. Plaintiff's 2<sup>nd</sup> amended complaint filed Jan. 25<sup>th</sup>, 2023 Exhibit-9
11. WRIT OF MANDAMUS Exhibit-10
12. Court order dated March 29, 2023 Exhibit-11
13. Plaintiff's Motion to Reconsider filed March 30, 2023 Exhibit-12
14. Plaintiff's Motion to Reconsider filed Jan 19, 2024 Exhibit-13
15. Plaintiff's Supp. Motion to Reconsider filed Feb 06, 2023 Exhibit-14
16. Court dismissal order dated February 13, 2024 Exhibit-15

### SET-B

17. Transcript-1 of hearing held on April 14, 2022 in the Magistrate Court
18. Transcript-2 of hearing held on September 20, 2022
19. Transcript-3 of Hearing held on January 5, 2023
20. Transcript-4 of Hearing of March 9, 2023
21. Transcript-5 of Telephonic hearing on February 13, 2024

### **Certification**

I hereby certify that the designation of matter to be included in the record on appeal contains no irrelevant material. This certification is made in compliance with Rule 209 of the South Carolina Appellate Court Rules, ensuring that all designated materials are pertinent to the issues raised in the appeal.

Respectfully,

*Kalishwardas*

August 8, 2024

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**INITIAL BRIEF WITH RECORD**

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Pursuant to SCRAP Rule 208

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## **List of Authorities/Referred Cases**

### **Claim 1: Circuit Court Erred in Removing Magistrate Colton, Resulting in a Significant Miscarriage of Justice**

#### **Cases Referenced:**

- **Mathews v. Eldridge, 424 U.S. 319 (1976):** Establishes a framework for determining the procedural protections due in due process claims.
- **Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009):** Emphasizes the importance of avoiding even the appearance of bias to maintain public confidence in the judiciary.

### **Claim 2: Circuit Court's Substitution of York County Thwarts Due Process and Renders SCRCP Rule 12(b)(6) Futile**

#### **Cases Referenced:**

- **Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007):** Clarifies the standard for dismissal under Rule 12(b)(6), requiring complaints to state plausible claims for relief.
- **Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006):** Emphasizes the right to due process and a fair hearing.
- **Mathews v. Eldridge, 424 U.S. 319 (1976):** Guarantees procedural fairness.

### **Claim 3: Circuit Court's Disregard for Security Concerns Raises Questions About Judicial Duty and Impartiality**

### **Cases Referenced:**

- **DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989):** Acknowledges the state's responsibility to protect individuals when a "custodial relationship" exists or when the state "creates the danger."
- **Gomez v. Toledo, 446 U.S. 635 (1980):** Establishes that officials can be held liable under § 1983 for failing to protect individuals from harm.
- **Canon 2 of the Code of Conduct for United States Judges:** Requires judges to avoid impropriety and the appearance of impropriety.

### **Claim 4: Circuit Court Erred by Failing to Address Racial Discrimination Allegations**

#### **Cases Referenced:**

- **McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973):** Establishes a framework for proving employment discrimination.
- **Civil Rights Act of 1866 (42 U.S.C. § 1981):** Guarantees all persons the right to make and enforce contracts without regard to race.
- **Batson v. Kentucky, 476 U.S. 79 (1986):** Prohibits racial discrimination in jury selection, emphasizing broader judicial obligations to prevent racial bias.

### **Claim 5: Circuit Court's Disregard for Security Concerns Potentially Impedes Plaintiff's Economic Liberty**

#### **Cases Referenced:**

- **Board of Regents v. Roth, 408 U.S. 564 (1972):** Recognizes the right to engage in common occupations as part of liberty protected by the Due Process Clause.
- **Paul v. Davis, 424 U.S. 693 (1976):** Emphasizes that reputation and the ability to engage in business are protected interests under the Due Process Clause.

### **Claim 6: Circuit Court's Actions Raise Concerns About Impartiality and Potential Conflict of Interest**

#### **Cases Referenced:**

- **Gideon v. Wainwright, 372 U.S. 335 (1963):** Emphasizes the broader principle of fairness for all litigants.
- **Canon 3 of the Code of Conduct for United States Judges:** Requires judges to perform their duties impartially.
- **Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009):** Emphasizes the importance of judicial impartiality and avoiding even the appearance of bias.
- **Tumey v. Ohio, 273 U.S. 510 (1927):** Highlights the need to avoid potential bias or conflicts of interest.

## Statement of the Case

The current name of this case, Kalishwar Das vs. York County, is a distorted version, altered by the order of the Circuit Court and is one of the main issues under this appeal. The Appellant, Kalishwar Das, filed a complaint in the York County Circuit Court on May 16, 2022, alleging misconduct by Magistrate Colton and court staff during an eviction hearing disputed with the landlord for the adjustment of rent with a counterclaimed investment. Due to wrongful conduct on April 12, 2022, the case was reheard on April 14, 2022 when Magistrate Colton unusually exposed the Appellant's name in a federal investigation for reasons best known to her. Later, due to controversial removal of the Appellant from the court premises on April 18, 2022 by the order of Magistrate Colton, and preventing him from entering the court premises on April 29, 2022, the matter took a different route. Court staff were relieved from the charges with prejudice, and the landlord was removed from the case after filing a joint stipulation on settlement.

Central to the complaint was Magistrate Colton's actions on three separate dates:

- On April 14, 2022, during a court hearing, Magistrate Colton discussed a federal investigation concerning the Appellant. In the Audio recording provided by Circuit Court, same exact moment is omitted [**See Transcript-5, Page 7 from line 1-5**]. Circuit Court denied this proof of tampering without consideration.
- Following this incident on April 18, 2022, Magistrate Colton ordered to remove Appellant through court constable from the Court premises and

- Prohibited the Appellant from entering into the courthouse for no known reason on April 29, 2022.

After federal agencies confirmed they did not share any information with Magistrate Colton, concerns were raised for the Appellant. Magistrate Colton's discussion of the investigation constituted a security breach, the source of which only Magistrate Colton knew. However, the Circuit Court, after denying all of the Appellant's motions to seize computer recordings, obtain video footage, compel discovery, recuse, or change venue, finally dismissed the case after controversially replacing Ms. Colton with York County following contentious Tort Claim Act, on March 29, 2023. After Appellant's hastily filed Writ of Mandamus petition got denied by Supreme Court, Appellant requested the Circuit Court again to reinstate the case for a normal hearing. After getting denied this Appeal process started.

As stated above, this dismissal followed the substitution of York County for Magistrate Colton as the defendant on September 20, 2022 to follow the Tort Claims Act. The Appellant argues that this substitution shielded Magistrate Colton from personal liability, hindering the pursuit of claims against her where Tort Claim was not applicable and thereby rendering the application of SCRCF Rule 12(b)(6) effectively futile.

## PROCEDURAL HISTORY OF THIS CASE

1. May 16, 2022: Complaint filed in York County Circuit Court by Plaintiff-Appellant Kalishwar Das.
2. April 12, 2022: Alleged wrongful conduct occurred.
3. April 14, 2022: Case reheard; Magistrate Colton exposed Appellant's name in a federal investigation.
4. April 18, 2022: Appellant removed from court premises by order of Magistrate Colton.
5. April 29, 2022: Appellant prohibited from entering courthouse.
6. September 20, 2022: York County substituted for Magistrate Colton as defendant.
7. March 29, 2023: Circuit Court dismissed the case.
8. May 16, 2024: Appeal initiated by Kalishwar Das in the South Carolina Court of Appeals.
9. June 29, 2024: Record on Appeal served to Appellee.
10. July 29, 2024: Appellee's response deadline, which was not met.
11. Motion for Extension of time to the final brief received on August 6th, 2024.

12. Plaintiff's Final Brief is submitted on August 7th, 2024 before deadline of August 8th, 2024 while the motion for extension is filed and active.

13. Pursuant to South Carolina Appellate Court Rule 211, the Plaintiff now submits this final brief in accordance with the procedural rules governing this case, given the Appellee's lack of response. The absence of a response from the Appellee further underscores the Plaintiff's position and the merits of the case as detailed herein.

## **Statement of Issues on Appeal**

**Issue:** Whether the Circuit Court of York County erred by dismissing the Appellant's case against Magistrate Colton due to procedural technicalities, specifically by illegally substituting York County for Magistrate Colton to controversially substantiate Tort Claims, thereby denying him due process and a fair hearing regarding Magistrate Colton's alleged personal misconduct on April 18, 2022, and for exposing the Plaintiff's participation in a terror attack investigation, which she allegedly breached during the hearing on April 14, 2022.

## **Statement of Facts on this case**

### **1. Initial Hearing and Disclosure:**

- On April 14, 2022, during a hearing presided over by Magistrate Colton, the magistrate made an unauthorized disclosure regarding the Plaintiff's involvement in a federal terror attack investigation. This information was highly sensitive and unrelated to the matter being heard in court.

### **2. Removal from Court Premises:**

- On April 18, 2022, the Plaintiff entered the court to file a motion. Upon learning of the Plaintiff's presence, Magistrate Colton ordered the court constable to remove the Plaintiff from the court premises. This action was taken without any justifiable reason, demonstrating personal misconduct on the part of Magistrate Colton.

### **3. Email Communication:**

- The following day, Magistrate Colton sent a rude email to the Plaintiff from her iPhone, informing him that his motion, which had not yet been filed, was being canceled without a hearing. This communication further highlighted the Magistrate's lack of professionalism and respect towards the Plaintiff.

### **4. Federal Agencies' Clarification:**

- In subsequent months, federal agencies confirmed that they had not shared any information regarding the Plaintiff's involvement in the terror investigation with Magistrate Colton. This revelation raised serious concerns about how the Magistrate obtained such sensitive

information and the potential threat it posed to the Plaintiff's safety.

**5. Incident on April 29, 2022:**

After his public humiliation on April 18, 2022, the Plaintiff returned to the court to obtain the promised order copy on April 29, 2022. The same court constable who had previously removed him barred him from entering with his phone, stating it was the Magistrate's order. Observing another visitor with a phone, the Plaintiff questioned the inconsistency but received no satisfactory answer. After complying by leaving his phone in the car, the constable further prevented the Plaintiff from entering, instructing him to wait outside for the order. The provided order was incorrect, and despite the Plaintiff's insistence, the constable refused to let him enter or bring the correct order, demonstrating targeted discrimination against the Plaintiff.

**6. Filing of Initial Complaint:**

- On May 16, 2022, the Plaintiff filed a complaint based on the incident of being removed from the court premises and other alleged misconduct by court employees and the landlord. The complaint primarily focused on discrimination and the controversial conduct of the court and the landlord.

**7. Procedural Complications:**

- The Defendant filed a motion to dismiss the case based on the Tort Claims Act, arguing that the Plaintiff's claims were barred by governmental immunity. The Circuit Court granted the dismissal

but simultaneously ordered the Plaintiff to amend the complaint to name York County as the defendant instead of Magistrate Colton.

**8. Amended Complaint and Dismissal:**

- Trusting the court's guidance, the Plaintiff amended the complaint as instructed. However, this change led to further procedural delays and complications. The court eventually dismissed the case, stating that the Plaintiff could not substantiate the claims with the same charge and relief demanded.

**9. Request for Reconsideration:**

- The Plaintiff filed multiple motions for reconsideration, highlighting the error in the court's order to change the defendant's name and the ongoing security concerns. Despite these efforts, the court retained the dismissal, exacerbating the Plaintiff's situation.

**10. Impact on Plaintiff's Life:**

- Due to the Circuit Court's actions, the Plaintiff was forced into a state of lockdown at home due to security concerns. This situation halted his business activities and resulted in significant health issues, including two minor heart attacks. The Plaintiff remains in constant fear for his and his family's safety.

**11. Appeal for Relief:**

- The Plaintiff has brought this appeal, arguing that the Circuit Court of York County's actions denied him due process and a fair hearing. The procedural errors and judicial misconduct have severely impacted his ability to seek justice and maintain personal and economic security.

By presenting these facts, the Plaintiff seeks to demonstrate the procedural and ethical failings of the Circuit Court, requesting the Court of Appeals to rectify these injustices and ensure a fair and impartial hearing.

## **Standard of Review**

The standard of review refers to the level of scrutiny or evaluation that an appellate court applies to a lower court's decision on appeal. In this case, the standard of review will be determined by the nature of the legal issues presented and the specific arguments made by the parties. Generally, appellate courts give deference to the lower court's findings of fact but review questions of law de novo, meaning that they are reviewed without deference to the lower court's decision.

The standard of review in this case involves:

1. **Findings of Fact:** The appellate court will defer to the lower court's findings of fact unless they are clearly erroneous.
2. **Questions of Law:** The appellate court will review questions of law de novo, giving no deference to the lower court's conclusions.
3. **Mixed Questions of Law and Fact:** The standard of review for mixed questions of law and fact may vary, often requiring a combination of de novo review for the legal components and clear error review for the factual components.

The appellate court's application of these standards ensures that the lower court's factual determinations are respected while providing a fresh, independent review of legal issues.

## **The Background of This Dispute**

This controversy originated from Magistrate Colton's unnecessary mention of the plaintiff's involvement in a federal case during a court hearing on April 14, 2022. When questioned about this disclosure, the magistrate became visibly upset and, on April 18, 2022, had the plaintiff removed from the court premises by a court constable when he attempted to file a motion. The following day, Magistrate Colton further demonstrated her lack of professionalism by rudely emailing the plaintiff from her iPhone, informing him that his motion (which was interrupted due to his sudden removal from the court premises) was being denied without a hearing.

The question arose: how could such a narrow-minded magistrate possess sensitive information about the plaintiff? Advised not to escalate the matter without confirmation from federal agencies, the plaintiff initially filed a case on May 16, 2022 [**Exhibit-1**], based solely on the incident of his humiliating removal from the court premises, framing it as a case of racial discrimination and highlighting the controversial conduct of other court employees and the landlord's failure to adjust the plaintiff's personal investment on their property. Due to the plaintiff's lack of legal knowledge, the complaint required amendments. However, when federal agencies later clarified that they had not shared any information with the magistrate, it became clear that someone was providing information about all the plaintiff's cases to Magistrate Colton with harmful intent.

Magistrate Colton also discussed the plaintiff's pending case in North Carolina, the involved lawyers, and his family, which was alarming. The mention of the

plaintiff's name in the context of a 9/11 investigation posed a potential danger, as federal agencies had instructed the plaintiff to remain cautious. Once the dispute with the landlord was resolved [**Exhibit-3**], the plaintiff hope that Magistrate Colton would explain the source of her information so the matter could be resolved got shattered. Speaking with her lawyer Mr. Darwin went futile.

As a result, the plaintiff abandoned his plan to restart his business instead filed a motion with the Circuit Court to seize the Magistrate Court recordings [**Exhibit-4**] just to confirm the source of her information, —harmless.

Meanwhile, the defendant filed a 'motion to dismiss' the case based on the Tort Claims Act [**Exhibit-2**]. The Circuit Court, instead of addressing the plaintiff's motion, instructed him in an order [**Exhibit-5**] to file an amended complaint naming York County as the defendant instead of Colton, promising that his demands would then be considered.

Confused but trusting the information provided on the York County website—the name of the attorney for York County—the plaintiff served copies of his amended complaint to both the old and new attorneys. However, neither attorney served their reply properly, and the matter approached the hearing date with a claim of default judgment, which the court denied, stating that the previous attorney could still represent the new defendant, York County.

Because of the change in the defendant's name, it became impossible for the plaintiff to substantiate the basic requirements with the same charges and relief demanded, leading the court to grant dismissal of the case while ALSO allowing the plaintiff to refile the complaint once again. But the Circuit court now, on the basis of failing to comply Rule 12(b)(6) and under the purview of

Tort Claims Act, dismissed the case. Appellant demanded reconsideration and was denied twice. Second denial lingered due to pending Writ of Mandamus with SC Supreme Court.

The plaintiff demanded an inquiry by the Office of Disciplinary Counsel to investigate Magistrate Colton for her moral misconduct and endangering him and his family by exposing his name without reason. After 18 months, the Counsel members reported “**...disposition of this matter based on the information gather...Rule 502, SCACR, ....were limited to whether or not there was evidence of ethical misconduct...**” [evident racial hate crime was renamed as ethical here] —without interrogating the plaintiff or demanding proof from him. This biased decision provided the ground of having some relevant tool of their reporting which could be used to retrieve information as it was used to negate the claim of discrimination charge against Magistrate Colton. While the Disciplinary Counsel delayed their inquiry, the plaintiff, assuming a ‘Writ of Mandamus’ with the SC Supreme Court might be a better route before pursuing an appeal, requested the Supreme Court to compel the Circuit Court to follow the 'rule of evidence' and conduct a proper hearing to uncover the source of the magistrate’s secret information about him. However, the court dismissed the writ on technical grounds [**Exhibit-10**].

Returning to the Circuit Court for pending hearing of reconsideration, the plaintiff once again demanded [**Exhibit-13 &14**] in a telephonic hearing the reinstatement of his dismissed case by substantiating the 'order to change the defendant' [**Exhibit-5**] “freshly” as a serious error, but the court refused to cancel the dismissal [**Exhibit-15**], prompting this appeal.

Due to the Circuit Court's actions, the plaintiff was forced into a state of lockdown at home due to security concerns, halting his business activities. The ongoing stress and fear resulted in significant health issues, including two minor heart attacks. The plaintiff remains in constant anxiety about his family's future and safety, enduring emotional pain, constant fear, and humiliation without justice.

## **Argument divided by issues**

(Legal Arguments on Appeal)

This appeal contends that the Circuit Court of York County's actions violated the Plaintiff's due process rights, disregarded his legitimate security concerns arising from Magistrate Colton's conduct, and created an appearance of impropriety. The court's decisions effectively shielded Magistrate Colton from accountability and left the Plaintiff without a fair opportunity to address the alleged misconduct, compromising his personal security and professional well-being.

### **Claim 1: Circuit Court Provided a Tampered Piece of Audio Recording and Denied Considering it which was the Proof of Concealment of Controversial Statement by the Magistrate**

**Factual Argument:** The Appellant requested an audio recording of the April 14, 2022, hearing to provide evidence of Magistrate Colton's alleged controversial statement. The York County Circuit Court addressed this request by providing an audio recording, but the certified transcript proves it was tampered with. Specifically, on **Page 7, Lines 1 to 5, of the hearing transcript of April 14, 2022** the transcript omits crucial statements made by Magistrate Colton regarding the Appellant's participation in a federal investigation, as well as discussions about the Appellant's pending cases in North Carolina, the opposing attorney, and his father and family. The purpose of discussing these topics was irrelevant, but their deletion by the York Circuit Court (because it

provided the audio recording) when there is a related issue makes it highly controversial. It suggests the Circuit Court's involvement in shielding Magistrate Colton by jeopardizing the Appellant's security concerns for some unknown purpose.

The provision of a tampered transcript by the Circuit Court raises significant due process concerns, as it obstructs the Appellant's ability to present crucial evidence for ensuring his personal security. The failure to provide an accurate and complete recording proves that York Circuit Court openly shielded Magistrate Colton for her every misconduct that started with a racial mindset to maximize the harm on the vulnerable Appellant who was presenting his matter himself. Because of the Circuit Court's irresponsible action, the Appellant is still suffering the emotional pain of being humiliated and deprived of justice by none other than the justice providers themselves.

### **Legal Argument:**

#### **1. Due Process Violation:**

- **Mathews v. Eldridge, 424 U.S. 319 (1976):** Establishes the framework for procedural protections required in due process claims. The Circuit Court's action in providing a tampered audio recording and denying its consideration may violate the procedural fairness guaranteed under this case. The Court's duty to ensure procedural fairness was not met, denying the Appellant an essential component of his due process rights.

#### **2. Evidence Tampering and Judicial Misconduct:**

- **Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006):** Emphasizes the importance of due process and the

opportunity for a fair hearing. Providing a tampered recording undermines these principles by presenting false evidence, which misleads the court and obstructs justice. This action demonstrates judicial misconduct and calls into question the integrity of the judicial process.

### **3. Impartiality and Integrity:**

- **Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009):**  
Emphasizes the importance of avoiding even the appearance of bias to maintain public confidence in the judiciary. The provision of a tampered recording raises concerns about the court's impartiality and integrity. By presenting a tampered transcript, the court compromised its duty to remain impartial and protect the rights of all parties involved.

### **4. Judicial Conduct and Accountability:**

- **Canon 3 of the Code of Conduct for United States Judges:**  
Mandates that judges perform their duties impartially and diligently. The Circuit Court's handling of evidence tampering violates this ethical obligation and undermines judicial accountability. The actions of the court in this matter demonstrate a failure to adhere to the highest standards of judicial conduct, necessitating a review and correction of the procedural errors.

### **5. Right to Fair Trial:**

- **Gideon v. Wainwright, 372 U.S. 335 (1963):** Emphasizes the broader principle of fairness for all litigants. The provision of a tampered recording denies the Plaintiff-Appellant the opportunity for a fair trial. Without the ability to present accurate and complete

evidence, the Appellant's right to a fair trial is significantly compromised, undermining the justice system's integrity.

The Circuit Court's provision of a tampered audio recording and its denial of this evidence as proof of Magistrate Colton's misconduct constitutes a serious breach of judicial duty and due process. The actions taken by the court have significantly undermined the Appellant's ability to present his case effectively, raising concerns about judicial impartiality, integrity, and the overall fairness of the judicial process. The Appellant seeks a thorough review of these procedural errors to ensure that justice is served and his rights are protected.

## **Claim 2: Circuit Court Erred in Dismissing the Case Based on the Tort Claims Act**

**Factual Argument:** The Circuit Court's decision to dismiss the case based on the Tort Claims Act while simultaneously ordering the Plaintiff to change the defendant's name appears procedurally misleading and unjust. This action created a false impression of assistance, potentially confusing the Plaintiff and delaying justice. The dismissal under the Tort Claims Act was likely inevitable because the Tort Claims Act generally provides immunity to government entities and employees for actions taken in their official capacities. However, the allegations made against Magistrate Colton were for actions outside her official duties, making the dismissal and the order to change the defendant's name inappropriate and further complicating the Plaintiff's pursuit of a fair hearing. The Court's handling of this matter undermines procedural fairness and transparency, eroding the Plaintiff's trust in the judicial process and necessitating a review to ensure that due process and justice are upheld.

The Plaintiff was seeking to get rid of junior court staffs after removing Landlord as defendant but the Magistrate Colton as the only defendant. However, the Defendant sought dismissal based on the Tort Claims Act, and at the benefit of Plaintiff-Appellant's limited knowledge of law, argued that the Plaintiff's claims were barred by governmental immunity (**Page 14-15, Transcript-5 of hearing held on Sep. 20, 2022**). The Circuit Court granted the dismissal but simultaneously ordered the Plaintiff to amend the complaint to name York County as the defendant instead of Magistrate Colton (See Order signed on September 27, 2022 **Exhibit-5**), as suggested that this change would allow the claims to proceed when Appellant asked court to suggest because he was confused, See **Page-14 of the Transcript-5 of hearing held on Sep. 20, 2022** by Hon. Judge Sprouse.

The dismissal of an individual defendant under the Tort Claims Act was likely inevitable because the Tort Claims Act generally provides immunity to government entities and employees for actions taken in their official capacities. But as said above, the allegations made against Magistrate Colton were solely for actions outside her official duties, such as the unauthorized disclosure of sensitive information and her racial misconduct of removing appellant out from the court premises and barring him to re-enter. With these facts, Circuit Court's dismissal and subsequent order to rename the defendant is proving procedurally inappropriate and misleading.

This dual action by the Circuit Court misled the Plaintiff into believing that renaming the defendant would remedy the legal obstacles presented by the Tort Claims Act, delaying the Plaintiff's pursuit of substantive justice. The procedural complexity and the Court's lack of clear guidance compounded the

Plaintiff's confusion and frustration, ultimately impeding his right to a fair hearing. This procedural error is further complicated by the court proceedings as evidenced in the **Transcript-5 of Hearing, September 20, 2022, Page 14-15**.

## **Legal Arguments:**

### **1. Due Process Violation:**

- *Mathews v. Eldridge*, 424 U.S. 319 (1976): Establishes the framework for procedural due process, requiring that individuals be given notice and an opportunity to be heard in a meaningful manner. The Circuit Court's actions deprived the Plaintiff of a clear and transparent legal process, failing to adequately inform him of the implications of the Tort Claims Act and the futility of simply renaming the defendant.

### **2. Misleading Procedural Guidance:**

- *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009): Emphasizes the need for judicial impartiality and the avoidance of even the appearance of bias. The Circuit Court's simultaneous dismissal and order to rename the defendant created an appearance of judicial assistance that was procedurally hollow and misleading, undermining the Plaintiff's trust in the judicial system.

### **3. Failure to Provide a Fair Hearing:**

- *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006): This case reinforces the importance of due process and the right to a fair hearing. The Circuit Court's dismissal without a clear

explanation of how the Plaintiff could properly address the legal barriers under the Tort Claims Act denied the Plaintiff a fair opportunity to present his case.

**4. Judicial Integrity and Accountability:**

- *Canon 3 of the Code of Conduct for United States Judges:* Mandates that judges perform their duties impartially and diligently. The Circuit Court's handling of the dismissal and subsequent procedural orders compromised judicial integrity and failed to adhere to the highest standards of judicial conduct.

**Claim 3: Circuit Court Erred in Removing Magistrate Colton, Resulting in a Significant Miscarriage of Justice**

**Factual Argument:** The Circuit Court's decision to remove Magistrate Colton from the case before trial raises due process concerns and undermines the Plaintiff-Appellant's ability to hold her accountable for alleged misconduct. This action has the potential to create a significant miscarriage of justice, as it impedes the Plaintiff's right to a fair trial and the opportunity to seek redress for the misconduct experienced. This error compounds the issues already raised in Claim 2 regarding the misleading procedural guidance and the inappropriate application of the Tort Claims Act (See transcript of the hearing held on September 20, 2022, Transcript-5 of Hearing, September 20, 2022, Page 14-15, and Order signed on September 27, 2022, Exhibit-5).

**Legal Argument:**

**1. Due Process Violation:**

- *Mathews v. Eldridge*, 424 U.S. 319 (1976): Establishes a framework for determining the procedural protections required in due process claims. The Circuit Court's removal of Magistrate Colton without a hearing on the allegations against her potentially violated the Plaintiff's due process rights. The Court's failure to provide a hearing on the disqualification request did not satisfy the procedural safeguards mandated by *Mathews*.

## 2. Appearance of Impropriety:

- 28 U.S.C. § 455: Requires judges and magistrates to disqualify themselves when their impartiality might be questioned. The Circuit Court's substitution of York County for Magistrate Colton raises significant concerns about potential bias, especially given the Plaintiff's request for disqualification. This approach aligns with *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), which emphasizes avoiding even the appearance of bias to maintain public confidence in the judiciary. Removing Magistrate Colton without addressing the Plaintiff's allegations undermines the integrity of the judicial process and the Plaintiff's trust in the system.

### **Claim 4: Circuit Court's Substitution of York County Thwarts Due Process and Renders SCRCP Rule 12(b)(6) Futile**

**Factual Argument:** As evidenced in **Transcript-5** on **page 14-15**, and in the **order signed on September 27, 2022, Exhibit-5** the Circuit Court's decision to replace Magistrate Colton with York County as the defendant raises serious

concerns about due process and the Plaintiff-Appellant's ability to pursue his claims effectively. This substitution appears strategically aimed at undermining the Plaintiff's legal strategy and obstructing justice by:

**1. Hindering Application of SCRCP Rule 12(b)(6):**

- Rule 12(b)(6), SCRCP: Allows for dismissal of a complaint for failing to state a claim. Replacing Magistrate Colton with York County (a government entity) introduces a new dynamic, making it easier for the case to be dismissed under Rule 12(b)(6), a rule that may not apply if Magistrate Colton were sued in her individual capacity. This move effectively undermines the Plaintiff's ability to address the merits of the case and seek justice for the alleged misconduct.

**2. Denying a Fair Hearing on Individual Liability:**

- **Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006):** Emphasizes the right to due process and a fair hearing. The Circuit Court's substitution of York County for Magistrate Colton deprives the Plaintiff of the opportunity to hold her individually accountable for her actions. This substitution denies the Plaintiff a fair chance to present his case against the Magistrate, as emphasized in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which guarantees procedural fairness. By replacing a key defendant with a government entity, the Court has thwarted the Plaintiff's right to a fair hearing and due process.

Claims 3 and 4, together with the issues highlighted in Claim 2, demonstrate critical errors in the Circuit Court's handling of the case. The removal of

Magistrate Colton, the substitution of York County as the defendant, and the misleading procedural guidance provided by the Court raise significant due process concerns, undermine the Plaintiff's ability to hold the Magistrate accountable, and complicate the Plaintiff's pursuit of justice. These actions collectively impede the Plaintiff's right to a fair trial, erode trust in the judicial system, and necessitate a thorough review to ensure that due process and justice are upheld.

**Claim 5: Circuit Court's Disregard for Security Concerns Raises Questions About Judicial Duty and Impartiality**

**Factual Argument:** The Circuit Court's decision to remove Magistrate Colton without addressing the Plaintiff-Appellant's security concerns raises serious questions about the court's fulfillment of its duty to protect litigants and uphold judicial impartiality. Appellant's continuous statement in two consecutive hearing held on September 20, 2022 (**Transcript-5, Page 11-15**), and on January 5, 2023 (**Transcript-3**)

**Legal Argument:**

- **Duty to Protect Litigants:** Courts have a duty to ensure the safety of litigants within judicial proceedings. Ignoring the Plaintiff's security concerns in light of the allegations against Magistrate Colton could be seen as a breach of this duty.
- **DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989)**, while limiting the state's duty to protect from private harm, acknowledges the state's responsibility to protect individuals when

a "custodial relationship" exists or when the state "creates the danger."

The court's decision to remove Colton, potentially leaving the Plaintiff exposed to retaliation, might fall under this category.

- **Gomez v. Toledo, 446 U.S. 635 (1980)** establishes that officials can be held liable under § 1983 for failing to protect individuals from harm. While not directly applicable here (as you're not suing for damages), it highlights the potential legal consequences of the court's inaction.
- **Appearance of Impropriety:** Canon 2 of the Code of Conduct for United States Judges requires judges to avoid impropriety and the appearance of impropriety. Disregarding the Plaintiff's security concerns creates the impression that the court is more concerned with protecting Magistrate Colton than ensuring the Plaintiff's safety.

### **Claim 6: Circuit Court Erred by Failing to Address Racial Discrimination Allegations**

**Factual Argument:** The Circuit Court's decision to disregard the Plaintiff-Appellant's allegations of racial discrimination by Magistrate Colton is a significant error. This omission raises concerns about the court's adherence to the Equal Protection Clause and its duty to uphold civil rights protections. As clearly outlined in verbatim **transcript-5 of September 20, 2022**, and **Transcript-3 of January 5<sup>th</sup>, 2023**, it was reiterated by Appellant that Magistrate Colton had some kind racial hate toward him, his traditional appearance and being vegetarian which drove her anger when ordered court constable to remove and prevent him from entering in the court premises.

Defense Attorney Mr. Darwin argued that Appellant was disturbing other filers so Magistrate ordered his removal, is a deceptive statement because no other filers was behind him to do their any court business at the moment when he was removed. Even if, because of Appellant creating any chaos had to be in the video footage but the Magistrate court or on behalf of them Circuit Court refused to provide video footage to verify the claim made by defense attorney but the court blindly believed everything true as what the defense attorney described without evidence.

**Legal Argument:**

- **Equal Protection Clause Violation:** The Fourteenth Amendment's Equal Protection Clause guarantees everyone equal protection under the law. The court's failure to address the racial discrimination allegations undermines this core principle.
- **McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)** established a framework for proving employment discrimination. While not directly applicable here, it highlights the need for a proper legal process to address such claims. The court's dismissal without allowing the Plaintiff to establish a prima facie case of discrimination raises concerns about due process.
- **Civil Rights Act of 1866 (42 U.S.C. § 1981):** This statute guarantees all persons the right to make and enforce contracts without regard to race. While the specific application to this case requires further analysis, it demonstrates the broader legal context for addressing racial discrimination.

- **Batson v. Kentucky, 476 U.S. 79 (1986):** This case prohibits racial discrimination in jury selection. It emphasizes the broader judicial obligation to prevent racial bias in all aspects of the legal system, including addressing allegations of discrimination by court officials.

### **Claim 7: Circuit Court's Disregard for Security Concerns Potentially Impedes Plaintiff's Economic Liberty**

**Factual Argument:** The Circuit Court's decision to remove Magistrate Colton without addressing the Plaintiff-Appellant's security concerns creates uncertainty that could hinder his ability to pursue personal and business endeavors. In the **Transcript-3 and 5**, it can be seen how desperately Appellant requested court to consider his security concern after FBI has cleared to have never shared any information with Magistrate Colton, and was suggested to stay cautious while requesting the audio-video footage of the incident. In fear of getting his security concern denied, Appellant fear started driving him to discard all his business plan and he started remaining home like confined with emotional pain of being humiliated and depressed. This caused Appellant a heart symptom which he controlled eventually but with loss of weight, taste, interest and trust in the judiciary system.

#### **Legal Arguments:**

- **Economic Liberty:** The Fourteenth Amendment protects the right to pursue a livelihood. By failing to ensure a safe environment, the court's actions could infringe upon this right.

- **Board of Regents v. Roth, 408 U.S. 564 (1972)** recognizes the right to engage in common occupations as part of liberty protected by the Due Process Clause. The Plaintiff's fear for his safety could restrict his ability to freely engage in business activities.
- **Paul v. Davis, 424 U.S. 693 (1976)** emphasizes that reputation and the ability to engage in business are protected interests under the Due Process Clause. The uncertainty created by the court's inaction could damage the Plaintiff's business reputation and hinder his ability to conduct business freely.

### **Claim 8: Circuit Court's Actions Raise Concerns About Impartiality and Potential Conflict of Interest**

**Factual Argument:** The Plaintiff-Appellant argues that the Circuit Court's treatment throughout the proceedings raises concerns about impartiality and potential conflicts of interest. This lack of neutrality undermines the public's confidence in the court's ability to provide a fair hearing. Should the hearing held on any dates with denial of all vital motions of seizing computer recording, provision of audio-video footage to substantiate the truth, be the ground of this claim of Conflict of Interest? Circuit court on behalf of Magistrate court provided a tampered piece of audio recording of hearing held on **April 14, 2022** and the certified **Transcript-1** (please see on **page 7 Line 1-5** to find a disconnection of recording which was at the same moment when Ms. Colton had started discussing about Appellant's case in North Carolina, case history, its opponent attorney, his father and family for no reason and then suddenly started

talking about appellant's so-called participation in 9/11 attack related investigation, are deleted.) of it proves deletion on record, which was provide to the court during last hearing in March 2023, but the court did not consider them at all.

**Legal Argument:**

- **Due Process and Equal Protection:** The Fourteenth Amendment guarantees a fair and impartial trial. The Plaintiff-Appellant alleges that the court's treatment, particularly considering his pro se status, violated these principles.
- **Gideon v. Wainwright, 372 U.S. 335 (1963)**, while focused on the right to counsel, emphasizes the broader principle of fairness for all litigants. The perceived discriminatory treatment raises questions about whether the Plaintiff-Appellant was afforded a fair opportunity to present his case.
- **Canon 3 of the Code of Conduct for United States Judges** requires judges to perform their duties impartially. The Plaintiff-Appellant's allegations of bias and potential conflicts of interest suggest a violation of this ethical code.
- **Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009)** emphasizes the importance of judicial impartiality and avoiding even the appearance of bias. The Plaintiff-Appellant argues that the court's actions create doubt about its neutrality.
- **Tumey v. Ohio, 273 U.S. 510 (1927)** highlights the need to avoid potential bias or conflicts of interest. The Plaintiff-Appellant contends that the circumstances surrounding his case raise concerns about this principle being upheld.

## **Claim 9: Abuse of Authority by Providing Free Legal Counsel to Magistrate Colton**

**Factual Argument:** The Circuit Court's decision to provide Magistrate Colton with free legal representation at the expense of government funds, while the Plaintiff proceeds pro se, is a clear demonstration of bias and favoritism. Magistrate Colton, accused of personal misconduct, was afforded legal resources paid for by the government, creating an unfair advantage over the Plaintiff. This action represents a significant abuse of authority, further complicating the Plaintiff's pursuit of justice and exacerbating the existing power imbalance. This matter was brought under consideration of court when court ordered to change the defendant. To the Attorney of changed defendant Appellant provided copies as well but instead of getting any reply from any of them they defendant defaulted which the Circuit court dismissed when requested on September 20, 2022.

### **Legal Argument:**

#### **1. Favoritism and Conflict of Interest:**

- **Use of Public Funds:** The provision of free legal counsel to Magistrate Colton, an individual defendant accused of personal misconduct, indicates favoritism and a conflict of interest. Utilizing government resources to defend her, while the Plaintiff, a pro se litigant, receives no such support, undermines the fairness of the judicial process.
- **Abuse of Authority:** The decision to allocate public funds for the defense of a judicial officer accused of personal misconduct is an abuse of authority. This support not only disadvantages the

Plaintiff but also raises serious questions about the impartiality and integrity of the judicial system.

## **2. Due Process and Equal Protection:**

- **Fourteenth Amendment:** The unequal allocation of legal resources violates the Plaintiff's right to due process and equal protection under the law. The Plaintiff, representing himself, is placed at a significant disadvantage against a well-represented defendant, undermining his ability to receive a fair hearing.

The Circuit Court's provision of free legal counsel to Magistrate Colton, while denying the Plaintiff similar support, constitutes a serious abuse of authority and demonstrates clear favoritism. This action has further eroded the Plaintiff's trust in the judicial process and compromised the fairness and integrity of the proceedings.

## **Conclusion and Relief Requested**

From the outset, this case has fundamentally been about racial discrimination, public humiliation, endangering the Appellant due to his federal investigation reporting, abuse of authority, conflict of interest, and corruption. It was never simply an eviction-related dispute or a tort claim. The Circuit Court, in an absolute showcase of favoritism, departed from their ethical behavior in mistreating a pro se immigrant Appellant and delivered a biased and controversial order that failed to address the Appellant's serious security concerns. The Circuit Court's actions and decisions have significantly undermined the principles of justice, fairness, and due process, leaving the Appellant's life constantly under threat from both the Circuit Court and Magistrate Colton. Therefore, the Appellant anticipates serious corrective action from this honorable Court of Appeals.

### **Relief Requested:**

In light of these grave violations, intentional negligence, and procedural errors, the Appellant respectfully requests the following relief from this honorable appellate court:

1. **Reversal of Dismissal:** Reverse the Circuit Court's decision to dismiss the case, recognizing the procedural errors and the impact of judicial misconduct on the Appellant's right to due process.
2. **Remand for Fair Hearing:** Remand the case for a new hearing with a different, unbiased magistrate, ensuring that all relevant and untampered

evidence is properly considered, and the Appellant's claims are heard impartially.

3. **Ensuring Appellant's Personal Security and Rights:** Ensure that measures are taken to protect the Appellant's rights and personal security throughout the legal process, addressing any potential bias or retaliation.
4. **Addressing Racial Discrimination:** Mandate a review of the racial discrimination claims and ensure that the Appellant's civil rights are upheld.
5. **Independent Investigation:** Order an independent investigation into the alleged judicial misconduct, including the tampering of the audio recording, to ensure accountability and maintain public confidence in the judicial system.
6. **Legal Fees and Costs:** Award the Appellant legal fees and costs incurred due to the need to appeal and rectify the procedural injustices.
7. **Equal Treatment:** Implement measures to ensure that all parties in similar situations receive equal treatment and resources, upholding the principles of due process and equal protection.

By addressing these issues, the Court can restore the integrity of the judicial process, uphold the principles of fairness and due process, and ensure that justice is duly served. The Appellant's right to a fair and impartial hearing must be preserved to maintain trust in the legal system. Thank you for your consideration.

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### Certificate of Compliance

I hereby certify that this brief complies with the typeface, word count, and formatting requirements of Rule 208(b)(1) of the South Carolina Appellate Court Rules. This brief is in BLUE Color (Rule 267(e), SCACR) and contains 7293 words, excluding the parts exempted by Rule 213.

**Kalishwar Das**

August 7, 2024

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**Aug 07 2024**

**SC Court of Appeals**

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Appellant's Designation of Matter with Brief has been served upon currently named Defendant through their counsel Mr. Todd A. Darwin electronically at email: tdarwin@holcombebomar.com on August 7, 2024 at their Spartanburg, SC address below:

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