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May 14 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-000902

Sherman Green, Respondent,

v.

City of Columbia and George Simpson, Defendants, of which George Simpson is the Appellant.

RESPONDENT’S MOTION TO DISMISS APPEAL

Sherman Green (“Respondent”) moves this Court for an order dismissing the above-captioned appeal 1) pending resolution of George Simpson’s (“Appellant”) motion for reconsideration of the Honorable Thomas W. McGee, III’s order denying Appellant’s motion for summary judgment and 2) upon appeal from the Honorable Thomas W. McGee, III’s order denying Appellant’s motion for summary judgment.

PROCEDURAL HISTORY

On November 15, 2021, Plaintiff filed this action in the Richland County Court of Common Pleas against Appellant pursuant to 42 U.S.C. § 1983 alleging violation of his clearly established rights. On December 20, 2021, this action was removed to the United States District Court for the District of South Carolina and on May 23, 2022, remanded to the Richland County Court of Common Pleas for defendants’ failure to provide timely unambiguous consent to the removal of the

action.

Appellant moved for summary judgment on May 3, 2024. On February 19, 2025, Judge Thomas W. McGee, III, heard Appellant's motion for summary judgment. On February 28, 2025, Judge Thomas W. McGee, III, informed the parties of his decision to deny Appellant's motion for summary judgment and on April 10, 2025, Appellant's motion was denied pursuant to Form 4 order ("Order"). **Exhibit A, Order.** On April 21, 2025, Appellant filed a motion for reconsideration of the Order ("Motion") pursuant to Rule 59(e), SCRCPC and on May 8, 2025, filed his notice of appeal from the Order denying his motion for summary judgment. **Exhibit B, Motion.** Appellant's Motion is still pending.

ARGUMENT

1. Dismissal Pending Resolution of Motion for Reconsideration

The Appellant has moved, pursuant to Rule 59(e), SCRCPC, the trial court to reconsider the Order now on appeal and Appellant's Motion for reconsideration remains pending. The appellate courts have held that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature).

Because Appellant's Motion has not been ruled upon by the trial court, Respondent respectfully submits the Order is not immediately appealable and this Court should dismiss this

appeal.

2. Dismissal of Appeal from Order Denying Summary Judgment

The Order on appeal is an order denying Appellant’s motion for summary judgment. “[I]t is well settled that an order denying summary judgment is never reviewable on appeal.” *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010) (citing *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003)). An appellate court is “prohibited from reviewing” the denial of a motion for summary judgment because it is “never subject to review, not in an interlocutory appeal []or even after final judgment.” *AJG Holdings, LLC v. Dunn*, 392 S.C. 160, 167, 708 S.E.2d 218, 222 (Ct. App. 2011). “A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial.” *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). “The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for directed verdict.” *Id.*

Because the Order denying a motion for summary judgment is not appealable, this Court should dismiss this appeal.

CONCLUSION

For the above-stated reasons, Respondent respectfully requests this Court 1) dismiss Appellant’s appeal pending resolution of his motion for reconsideration and 2) dismiss Appellant’s appeal from denial of his motion for summary judgment.

May 14, 2025

s/ Chris S. Truluck
Chris S. Truluck, (S.C. Bar 77829)
924 Gervais Street
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Attorney for Respondent

EXHIBIT A; ORDER

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Sherman Green
PLAINTIFF(S)

City Of Columbia et al
DEFENDANT(S)

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SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

On 2/19/25, an in-person hearing was held on Defendant Simpson's Motion for Summary Judgment. Chris Truluck argued on behalf of the Plaintiff and Mary LaFave argued on behalf of the Defendant. Judge McGee reviewed all relevant pleadings, memoranda/exhibits, and other evidence properly before the Court, and also heard arguments from both sides.

Pursuant to SCRPC 56, A Motion for Summary Judgment will be denied where, when viewed in the light most favorable to the non-moving party, there is found to be a genuine issue of material fact. Upon such a finding, the moving party is not entitled to a judgment as a matter of law.

Judge McGee found certain material issues of facts as to the elements of all claims against Mr. Simpson including, but not limited to: (1) whether Simpson conducted a sufficient investigation of the incident before seeking and obtaining a warrant for murder;

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/10/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

(2) whether Simpson fully disclosed all relevant, known information before seeking and obtaining a warrant for murder; (3) whether Simpson's actions in seeking and obtaining a warrant for murder included any material omissions or representations; (4) whether Simpson's acts and/or omissions caused or contributed to a false arrest of Plaintiff; and/or (5) whether Simpson's acts and/or omissions caused and/or contributed to a malicious prosecution of the Plaintiff.

Because the Court finds that there are genuine issues of material fact regarding the claims against Defendant Simpson, this Defendant's Motion for Summary Judgment is respectfully DENIED.



Richland Common Pleas

Case Caption: Sherman Green vs City Of Columbia , defendant, et al

Case Number: 2021CP4005620

Type: Order/Electronic Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

EXHIBIT B; MOTION

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Sherman Green,)
Plaintiff,)
v.)
City of Columbia & George Simpson,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2021-CP-40-05620

**GEORGE SIMPSON’S MOTION FOR
RECONSIDERATION**

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SC Court of Appeals

THE DEFENDANT GEORGE SIMPSON hereby most respectfully moves this Honorable Court under Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its ruling denying Defendant George Simpson’s Motion for Summary Judgment. A Form 4 Order was served upon the parties by ECF on April 10, 2025, and is attached hereto as Exhibit A rendering this Motion timely filed within ten (10) days of receipt.

PROCEDURAL POSTURE

This action was filed on November 15, 2021, in the Richland County Court of Common Pleas. Defendant George Simpson moved for Summary Judgment on May 3, 2024, and the motion came for hearing before the Honorable Judge Thomas W. McGee, III, on February 19, 2025. On April 10, 2025, Defendant Simpson’s Motion for Summary Judgment was denied. This Motion to Reconsider follows.

BACKGROUND

Plaintiff maintains one cause of action against this Defendant for a Fourth Amendment claim for unlawful arrest (although there are other tort claims against the Defendant City of Columbia to include malicious prosecution). Defendant Simpson moved for Summary Judgment on the grounds that he is entitled to judgment as a matter of law on the ground that 1) Plaintiff

cannot show that the officer lacked probable cause to arrest the Plaintiff; 2) Defendant George Simpson is entitled to qualified immunity; and 3) George Simpson cannot be held individually liable for following the instructions of his supervisor.¹

The Court's Form 4 Order denying Defendant Simpson's Motion for Summary Judgment filed on April 10, 2025, (hereinafter "the Order") set forth that the Court held that genuine issues of material fact exist on the questions presented as follows:

- 1) **Whether Simpson conducted a sufficient investigation;**
- 2) **Whether Simpson fully disclosed all relevant, known information before seeking a warrant;**
- 3) **Whether Simpson's actions in seeking and obtaining a warrant for murder included any material omissions or representations;**
- 4) **Whether Simpson's acts or omissions caused or contributed to a false arrest of Plaintiff; and**
- 5) **Whether Simpson's acts and/or omissions caused and/or contributed to a malicious prosecution of Plaintiff.**

Defendant Simpson hereby files this Motion to Reconsider asking the Court to reconsider its decision on the motion, including but not limited to, the following grounds:

1. That the Court has erroneously applied the ordinary negligence standard in its Order which is a misapplication of the standard for probable cause which is that of an "objectively reasonable officer". Unlike in tort law, in Fourth Amendment cases, objective reasonableness [of an officer's actions] is not a jury question—it is a question of law. Said differently, the court must decide, under the nonmovant's version of the facts, the purely legal issue of whether a constitutional violation has occurred." *See Scott v. Harris*, 550 U.S. 372, 381 n.8; *Putman v. Harris*, 66 F.4th 181, 186–87 (4th Cir. 2023); *Henry*, 652 F.3d at 531; and *Cloaninger v. McDevitt*, 555 F.3d 324, 333

¹ Defendant Simpson withdrew the issue of whether the warrant was *prima facie* evidence of probable cause due to procedural issues as to the City of Columbia.

- (4th Cir. 2009). Further, that the standard of care by the City of Columbia for negligence under the South Carolina Tort Claims Act is commingled with the constitutional claims against the officer, which requires a separate analysis.
2. That the Court failed to address the critical and wholly dispositive issue of whether George Simpson, individually and not in his official capacity, is entitled to Qualified Immunity and is absolutely immune from suit. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The Court was required to employ the two-step process as set forth in *Saucier v. Katz*, 533 U.S. 194 (2001) and the Court did not conduct the analysis or make a ruling on this issue. *See also Parrish v. Cleveland*, 372 F.3d 294, 301 (4th Cir. 2004); *Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir. 2003); *Owens v. Lott*, 372 F.3d 267 (4th Cir. 2004). In the context of probable cause to arrest, actual probable cause is a more stringent standard than objective reasonableness and the Court failed to make this distinction. Even law enforcement officers who reasonably, but mistakenly, conclude that probable cause is present are entitled to immunity. *See Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991); *Hunter v. Bryant*, 502 U.S. 224 (1991). To receive qualified immunity, this defendant only had to show “arguable probable cause” under *Gomez v. Adkins* and the Court failed to conduct an analysis and/or rule on this issue under the appropriate less stringent standard of care. 296 F.3d 253 (4th Cir. 2002). Officers are not liable for bad guesses in gray areas. *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992).
 3. That the Court has overextended the standard for investigatory practices for officers. Officers are not required to answer every question prior to arrest. Although an officer may not ignore exculpatory evidence, failure to pursue a potentially exculpatory lead

is not sufficient to negate probable cause. Plaintiff argues that Simpson did not wait for the toxicology report, but he is not required to under the law. *See Wadkins v. Arnold*, 214 F.3d 535, 543 (4th Cir.2000) (“The question before us is not whether [the officer] exhausted every potential avenue of investigation.”); *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir. 1991) (“It will, of course, always be possible to contend in court that an arresting officer might have gathered more evidence, but judges cannot pursue all the steps a police officer might have taken that might have shaken his belief in the existence of probable cause.”). Just because Simpson was aware of the existence of a pending toxicology test does not establish that Simpson was aware of, much less that he ignored, exculpatory evidence. *See Wadkins*, 214 F.3d at 541 (“Although an officer may not disregard readily available exculpatory evidence of which he is aware, the failure to pursue a potentially exculpatory lead is not sufficient to negate probable cause.”). *See McKinney v. Richland Cty. Sheriff's Dep't*, 431 F.3d 415, 418-19 (4th Cir. 2005) (“The district court erred in concluding that the officer ignored exculpatory evidence when he failed to conduct more interviews or discuss the incident with the school's representatives. At most, these omissions amounted to a failure to pursue potentially exculpatory leads, and such does not negate probable cause.”) *See Battle v. Jones*, No. 6:15-CV-4960-BHH-KDW, 2016 WL 7800306, at *6 (D.S.C. Dec. 20, 2016), report and recommendation adopted, No. CV 6:15-4960-BHH, 2017 WL 167930 (D.S.C. Jan. 17, 2017) (“Were the court to find otherwise and place a duty on an officer to investigate further despite having sufficient probable cause for a warrant, any suspect could defeat probable cause and delay an arrest simply by saying, ‘I didn't

- do it.”); *see also*, *Ruszala v. Walt Disney World Co.*, 95 F. Supp.2d 1323, 1326 (M.D. Fla. 2000).
4. That the court relied on surmise, conjecture, and/or speculation which is improper for consideration in a Motion for Summary Judgment pursuant to South Carolina law. *See Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 701 S.E.2d 776 (Ct. App. 2010) *citing McKnight v. Dep’t of Corr.*, 385 S.C. 380, 389-390, 684 S.E.2d 566, 571 (Ct. App. 2009) (applying the directed verdict standard to a summary judgment motion and holding “[a] jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror.... ‘However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation.’”).
 5. The Court improperly relied on the absence of a witness’s memory stating they “did not recall” and using that as evidence to create a question of fact. This is a settled rule of evidence in South Carolina. *See Bank of Aynor v. Adams*, 132 S.C. 107, 128 S.E. 168 (1925) (Supreme Court affirmed a trial court’s ruling that a witness’s testimony “I do not recall” did not serve as positive evidence of the fact in issue). Though not authoritative, this is also a settled principle of law in other jurisdictions. *See Western Pride Builders, Inc. v. Zicha*, 320 N.E.2d 181 (Ill. App. 1974) in which the Court held “negative testimony does not raise an issue of fact” so that a witness’s testimony “I don’t recall” was negative (and did not positively prove a fact in issue).

6. The Court failed to consider that the record reflects that Defendant Simpson's supervisor was fully aware of the video and all the witness statements (which formed the basis of Plaintiff's arrest) because the evidence shows, without contradiction, that the supervisor actually remotely witnessed those interviews and reviewed the video. Defendant Simpson pointed out to the Court the repeated miscarriage of the facts in the briefings on this issue at the hearing and in its objections to the Plaintiff's Proposed Order (which was not signed). Those objections are attached hereto and incorporated in their entirety by this reference as Exhibit B, Objections by Simpson.
7. The Court misapplied the holding of *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024) which is distinguishable in meaningful ways. The Court failed to consider and rule on the issue of whether probable cause existed for involuntary or voluntary manslaughter if Plaintiff did not intend to cause the death of the decedent. *See* S.C. Code Ann. §16-3-50 and §16-3-50. Defendant Simpson needed only probable cause to arrest for any crime that would carry jail time, and both involuntary and voluntary satisfy the law's criteria.
8. The Court applied the wrong standard in evaluating the facts regarding consultation with a supervisor which does not require that all facts be presented to the supervisor as Plaintiff alleges, and Plaintiff has no evidence of a misrepresentation of the facts to Sargent Thomas who, based on his own testimony, personally witnessed all the witness interviews. *See Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991); *Gomez v. Atkins*, 296 F.3d 253 (4th Cir. 2002).
9. Finally, the Court found a question of fact whether George Simpson's actions or inactions caused or contributed to the malicious prosecution of the Plaintiff. No proper

cause of action for malicious prosecution is brought against George Simpson under the South Carolina Tort Claims Act as the Order implies; rather, the only cause of action in the present matter is under 42 U.S.C. §1983 for a Fourth Amendment Violation which required the constitutional analysis that has been omitted from the Court's ruling.

Defendant Simpson prays that this Honorable Court reconsider its decision on summary judgment to apply the correct legal standard, separately consider the issue of Qualified Immunity, and further address the issues outlined herein. This motion is based upon the pleadings, the discovery responses of the parties, the deposition(s), oral arguments of counsel, memoranda, exhibits and applicable law.

Respectfully Submitted,

s/Mary D. LaFave
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STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Case No. 2021-CP-40-05620

Sherman Green,..... Respondent,

v.

City of Columbia and George Simpson, Defendants, of which George Simpson is the Appellant.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Respondent’s Motion to Dismiss in the above-referenced case has been served upon Mary D. LaFave, Counsel of Record, by delivering the same this date to her by U.S. Mail, postage prepaid, on May 14, 2025, at 2019 Park Street, Columbia, South Carolina 29201 and by electronic email at mary@lafavebagley.com.

The undersigned attorney hereby certifies that a true copy of the Respondent’s Motion to Dismiss in the above-referenced case has been served upon W. Mike Hemlepp, Jr., Counsel of Record, by delivering the same this date to him by U.S. Mail, postage prepaid, on May 14, 2025, at Post Office Box 667, Columbia, South Carolina 29202 and by electronic email at william.hemlepp@columbiasc.gov.

TRULUCK LAW FIRM, LLC

May 14, 2025

s/ Chris S. Truluck
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