



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 PETITION FOR CLARIFICATION AND/OR REHEARING

Pursuant to Rules 221(a), (c), and Rule 240, SCACR, Sherman Green (“Respondent”) petitions this Court to clarify whether its ruling filed on June 20, 2025 reinstating this appeal (“Order Reinstating”) pursuant to the holding in *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985), “denial of a claim of qualified immunity, . . . on an issue of law, is an appealable ‘final decision,’” is a final order pursuant to Rule 221(c) on the issue of appealability or whether Respondent will be permitted to address the issue of appealability pursuant to the holding in *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995) which held an order denying summary judgment on the issue of qualified immunity “was not immediately appealable because it merely decided ‘a question of evidence sufficiency’” which “does not present a legal question in the sense in which the term was used in *Mitchell*.” Order Reinstating; *Plumhoff v. Rickard*, 134 S.Ct. 2012, 188 L.Ed.2d 1056, 572 U.S. 765, 772 (2014). Alternatively, if the Order Reinstating is a final order, Respondent petitions

this Court rehear its final Order Reinstating, decided without Respondent’s opportunity to respond as proscribed by Rule 221(a) in the absence of a request from this Court, and allow Respondent to address the issue by motion or final brief. Rule 221(a), SCACR.

PROCEDURAL HISTORY

On February 19, 2025, Judge Thomas W. McGee, III, (“Judge McGee”) heard Appellant’s motion for summary judgment and on April 10, 2025, Appellant’s motion was denied pursuant to Form 4 order (“Order Den. MSJ”). **Exhibit A, Order Den. MSJ.** “Judge McGee found certain material issues of facts as to the elements of all claims against Mr. Simpson [b]ecause 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.” *Id.* On May 8, 2025, Appellant filed his notice of appeal from the Order Den. MSJ. On May 14, 2025, Respondent filed his motion to dismiss this appeal for 1) untimeliness pending resolution of Appellant’s motion for reconsideration before Judge McGee and, 2) appeal from an order denying summary judgment (“Motion to Dismiss Appeal”).¹ On May 14, 2025, this Court dismissed this appeal, sua sponte, because “[t]his appeal arises out of an order of the circuit court denying Appellant’s motion for summary judgment [and] . . . is not immediately appealable” (“Dismissal Order”). Dismissal Order. The letter to counsel accompanying the Dismissal Order (“Letter to Counsel”) specifically informed the parties that the Court, “based on the disposition herein, decline[d] to consider Respondent’s motion to dismiss” appeal.² On May 16, 2025, Appellant filed his petition for rehearing (“Petition for Rehearing”) citing *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985) for the holding that denial of a claim of qualified immunity is an appealable final decision. *Mitchell v. Forsyth*, 472 U.S. 511, 527

¹ Appellant has since withdrawn his motion for reconsideration before Judge McGee (“Withdrawal”). **Ex. B, Withdrawal.**

(1985). Without requesting Respondent file a return to Appellant’s Petition for Rehearing pursuant to Rule 221(a), this Court reinstated the appeal stating, “we reinstate the appeal. *See Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985) . . . (‘We hold that a district court’s denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable ‘final decision’).” Rule 221(a), SCACR; Order Reinstating.

ARGUMENT

1. Request for Clarification as to Finality of Order

This Court reinstated the appeal stating, “we reinstate the appeal. *See Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985) . . . (‘We hold that a district court’s denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable ‘final decision’).” Order Reinstating. The Order Reinstating does not make explicitly clear whether it is a final order determining the appealability from denials of summary judgment on the issue of qualified immunity for the purposes of Rule 242(c), SCACR or, if not a final order, whether the parties may address the issue of appealability by motion or in briefs. Accordingly, Respondent respectfully requests this Court rehear and/or reconsider the Order Reinstating and clarify whether it is intended to be a final order or whether Respondent may be allowed an opportunity to address the issue of appealability by motion and/or in briefs.

2. Request to Rehear or for Leave to Address Appealability from Order Denying Summary Judgment as to Qualified Immunity Pursuant to *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995)

In the event this Court clarifies the Order Reinstating is a final order, Respondent respectfully request the Court reconsider, as provided below, and/or allow the Respondent to address the issue of appealability by motion or in briefs.

2 Appellant incorrectly asserts in his Petition for Rehearing that this “Court summarily granted

Notwithstanding the holding in *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985) which provided that a “denial of a claim of qualified immunity, . . . on an issue of law, is an appealable ‘final decision,’” the Supreme Court later clarified the appealability from denials of summary judgment on the issue of qualified immunity upon genuine issue of material fact in *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238. In *Johnson*, the Court held a denial of summary judgment as to qualified immunity on factual grounds “was not immediately appealable because it merely decided ‘a question of evidence sufficiency,’ i.e., which facts a party may, or may not, be able to prove at trial.” *Plumhoff v. Rickard*, 134 S.Ct. 2012, 188 L.Ed.2d 1056, 572 U.S. 765, 772 (2014); *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995) (“a district court’s summary judgment order that, though entered in a ‘qualified immunity’ case, determines only a question of ‘evidence sufficiency,’ . . . is not appealable.”). “The Court noted that an order denying summary judgment based on a determination of ‘evidence sufficiency’ does not present a legal question in the sense in which the term was used in *Mitchell*, the decision that first held that a pretrial order rejecting a claim of qualified immunity is immediately appealable.” *Plumhoff*, 572 at 773. The Court further “observed that a determination of evidence sufficiency is closely related to other determinations that the trial court may be required to make at later stages of the case” and “that appellate courts have ‘no comparative expertise’ over trial courts in making such determinations and that forcing appellate courts to entertain appeals from such orders would impose an undue burden.” *Id.* at 773. Otherwise, *Johnson* determined that the issue of immediately appealable was relegated to, “not which facts the parties might be able to prove, but, rather, whether or not certain given facts show a violation of ‘clearly established’ law.” *Johnson*, 515 at 304. Accordingly, appeals from denials of summary judgment on the issue of qualified immunity for issues of material fact, as

Respondent’s Motion to Dismiss” Petition for Rehearing at 1.

opposed to whether there exists a clearly established legal right, are not immediately appealable.

The Order Den. MSJ provides, “Judge McGee found certain material issues of facts as to the elements of all claims against Mr. Simpson 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.” **Exhibit A, Order Den. MSJ.** The Order Den. MSJ makes explicitly clear that the basis for denying summary judgment is upon the existence of “genuine issues of material fact” as opposed to issues of law. Alternatively, nowhere in Judge McGee’s Order Den. MSJ are legal issues considered including whether Respondent’s rights were not clearly established.

Otherwise, in South Carolina “it 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.* Appellant provides no South Carolina authority compelling this Court to adopt a different procedural decision from dismissal of an appeal from a denial of summary judgment.

Because the Order Den. MSJ is established upon issues of material fact as opposed to the legal

issue of whether Respondent's rights were clearly established, it is not immediately appealable and this Court should dismiss this appeal and/or allow Respondent to further address the issue by motion or in briefs.

CONCLUSION

For the above-stated reasons, Respondent respectfully requests this Court 1) clarify whether its Order Reinstating issued June 20, 2025 is a final order on the issue of appealability, and/or 2) if the Order Reinstating is a final order, reconsider the Order Reinstating pursuant to the holding in *Johnson v. Jones* and dismiss the appeal or allow Respondent to address the issue of appealability by motion or in briefs.

June 30, 2025

s/ Chris S. Truluck
Chris S. Truluck, (S.C. Bar 77829)
924 Gervais Street
Columbia, SC 29201
(803) 556-7285
Attorney for Respondent

EXHIBIT A; ORDER

Sherman Green
PLAINTIFF(S)

City Of Columbia et al
DEFENDANT(S)

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; WITHDRAWAL

Sherman Green
PLAINTIFF(S)

City Of Columbia et al
DEFENDANT(S)

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 6/26/2025, the Court was informed of Defendant's withdrawal of the Motion to Reconsider filed 4/21/2025. This withdrawal was consented to by Plaintiff. As a result, the prior 6/23/2025 Form 4 requiring a proposed order denying the Motion is moot.

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 06/26/2025 .

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.



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

RECEIVED

Jun 30 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.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Respondent’s Petition for Clarification and/or Rehearing in the above-referenced case has been served upon Mary D. LaFave, Counsel of Record, by delivering the same this date to her by electronic email only at mary@lafavebagley.com.

The undersigned attorney hereby certifies that a true copy of the Respondent’s Petition for Clarification and/or Rehearing 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 electronic email only at William.Hemlepp@columbiasc.gov.

The undersigned attorney hereby certifies that a true copy of the Respondent’s Petition for Clarification and/or Rehearing in the above-referenced case has been served upon John S. Nichols, Counsel of Record, by delivering the same this date to him by electronic email only at john@bluesteinattorneys.com.

(Signature page to follow)

June 30, 2025

TRULUCK LAW FIRM, LLC

s/ Chris S. Truluck

Chris S. Truluck, (S.C. Bar 77829)

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Attorney for Respondent