RECEIVED
Sep 24 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Case No. 2021-CP-40-05620
Appellate Case No. 2025-000902

Sherman Green, ... Respondent,

v.

City of Columbia and George Simpson, ... Defendants

of whom
George Simpson is . . . . . Appellant.

INITIAL BRIEF OF APPELLANT

John S. Nichols, Esquire
SC Bar # 4210
Bluestein Thompson Sullivan, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
John@bluesteinattorneys.com

Mary Daniel LaFave, Esquire
SC Bar # 75366
LaFave Bagley, LLC
2019 Park Street
Columbia, SC 29201
(803) 726-6756
mary@lafavebagley.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES
Cases

South Carolina

Other Jurisdictions

Statutes

Rules

Miscellaneous

STATEMENT OF THE ISSUES ON APPEAL

Did the Circuit Court err in denying Officer Simpson's motion for summary judgment based upon qualified immunity because under the undisputed facts either:

A. It was objectively reasonable for Officer Simpson to believe that probable cause existed to arrest Plaintiff?

Or

B. Officers of reasonable competence could disagree on whether the probable cause test was met so as to support obtaining a warrant for Plaintiff's arrest?

STATEMENT OF THE CASE

On November 15, 2021, Sherman Green (Plaintiff) filed a summons and complaint against the City of Columbia and one of its police officers, George Simpson. (Complaint). Plaintiff alleged causes of action related to Investigator Simpson's arrest of Plaintiff on December 5, 2019, for murder. The charges arose out of the death of Dara Washington on December 4, 2019. Plaintiff was held in jail until February 12, 2020, when a magistrate dismissed the charges. Plaintiff's lone claims against Officer Simpson were for unlawful arrest and malicious prosecution under 28 U.S.C. § 1983, asserting a lack of probable cause for the arrest. (Complaint, pp. 6-7, First Cause of Action).

Following service upon the defendants, Officer Simpson filed his Answer on December 20, 2021. (Simpson Answer). Among other defenses Officer Simpson raised qualified immunity. (Answer, p. 6, Third Defense).

On December 21, 2021, the City removed the matter to the United States District Court. (Notice of Removal). On May 24, 2022, the District Court remanded the matter back to the state court. (Remand Order). With leave of court on January 30, 2023, Officer Simpson filed an amended Answer raising, among other things, qualified immunity. (Amended Answer, p. 6, Third Defense).

Following discovery pursuant to a scheduling order, on May 3, 2024, Officer Simpson moved for summary judgment on the ground of qualified immunity. (Simpson Motion for Summary Judgment). The City also moved for summary judgment on May 6, 2024. (City's Motion for Summary Judgment). On August 23, 2024, Officer Simpson filed a memorandum in support of summary judgment. (Memo. filed 8/23/24 with attachments). That same date the City

filed a memorandum in support of its motion.

On August 26, 2024, Plaintiff filed his Memorandum in Opposition to both motions for summary judgment. Following additional discovery Plaintiff filed an amended Memorandum in Opposition on December 5, 2024. (Amended Memorandum with attachments).

On January 16, 2025, the circuit court entered a detailed Form 4 order denying the City's motion for summary judgment. (Form 4 Order of 1/16/25). On January 27, 2025, the City moved for reconsideration.

On April 10, 2025, the court entered a detailed Form 4 order denying Officer Simpson's motion. (Form 4 Order 4/10/25). Officer Simpson moved for reconsideration on April 21, 2025. (Simpson Motion for Reconsideration with exhibits).

On May 8, 2025, Officer Simpson filed and served a notice of appeal "out of an abundance of caution." Plaintiff had contended Officer Simpson's failure to send a copy of the motion for reconsideration to the judge violated Rule 59(g), SCRCP, and this violation made the motion for reconsideration untimely. (Notice of Appeal of May 8, 2025).

On May 14, 2025, Plaintiff filed a memorandum in opposition to the motion for reconsideration. (Memo. in Opp. with attachments). The circuit court entered a Form 4 order on June 27, 2025, noting that Officer Simpson withdrew the motion for reconsideration with Plaintiff's consent. (Form 4 order on June 27, 2025).

The matter is now before this Court.

STANDARD OF REVIEW

The order on appeal denied Officer Simpson's motion for summary judgment on the ground of qualified immunity, which denied Officer Simpson's right to avoid not only trial but also the burdens of pre-trial matters, including discovery. The Court must therefore apply the same standards as those applied below, and determine whether the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact on the issue of qualified immunity such that Officer Simpson must prevail as a matter of law. Rule 56(c), SCRCP; *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023).

This requires the Court to assess whether the undisputed portions of the record establish, as a matter of law, that Officer Simpson had probable cause to obtain the arrest warrant for Plaintiff. Whether an arrest warrant was supported by probable cause is a question for the court, not for a jury. *Carter v. Bryant*, 429 S.C. 298, 310, 838 S.E.2d 523, 530 (Ct. App. 2020). The reviewing court, while giving great deference to the magistrate's probable cause conclusion, much decide whether the conclusion is anchored by a substantial basis. *Id.*

FACTS

This case involves the death of Dara Washington ("Victim"). Taking the facts in the light most favorable to the Plaintiff, on December 4, 2019, the Plaintiff and Aja Prophet (herein "Prophet") were sharing a room at the Budget Inn at 1601 Sunset Drive in Columbia. Plaintiff and Prophet had been living in Room 115 at the Budget Inn for a "month or two." (Exhibit A, Pl's Depo. p. 47, ln. 1; p. 91, ln. 23). Plaintiff had an unrelated 2017 pending murder charge and was out on bond. (Exhibit A, Pl's Depo. p. 56, ln. 7).

On December 4, 2019, Plaintiff testified that, after smoking marijuana and drinking whiskey with Prophet early in the day, he decided to go to the store that evening. (Exhibit A, Pl's Depo. pp. 68-69). He recalled that he left the hotel room shortly before 8:00 p.m. and was aware that Prophet had "company" coming to the hotel room. (Exhibit A, Pl's Depo. p. 70, ln. 3-4). Plaintiff walked to the Family Dollar and Burger King and returned 30 minutes later. (Exhibit A, Pl's Depo. p. 71, 73).

The events that occurred in Room 115 after the Plaintiff returned resulted in a multi-disciplinary response by the City of Columbia and are the subject of the instant action. The Victim died at the scene and Officer Simpson was the investigating officer. The encounter between the Plaintiff, Prophet, and the Victim that night can best be understood using the three-part description provided by the eye-witness Prophet in her statement to investigators. (Exhibit B, Prophet's Statement).

PART 1: Prophet and the Victim

The first part of the altercation occurred when the Plaintiff was still at the store and the Victim would not permit Prophet to leave the hotel room. Specifically, Prophet described that

after she and the Victim had sex multiple times they would smoke crack cocaine. According to Prophet, after the second "hit" that night, the Victim "freaked out," thinking he was being set up by Prophet to be robbed by Plaintiff. (Exhibit B, Prophet's Statement). Prophet explained that she tried to get out of the room but the Victim would not let her.

Plaintiff, who Prophet described as her "brother" or "cousin," returned and was trying to "figure out a way to get in the room." (Exhibit B, Prophet's Statement). Plaintiff yelled at Prophet from outside the door of the motel room to lock herself in the bathroom. She did so and waited for everyone to calm down. (Exhibit B, Prophet's Statement).

The motel's video surveillance shows Plaintiff outside the hotel room in an orange shirt yelling, kicking the door, and causing a disturbance. (Exhibit C, Budget Inn Surveillance Video, timestamp around 5 minutes; Exh. A, Plaintif's dep., p. 96, l. 16). Plaintiff admitted that he was yelling loud enough that another patron of the hotel called and made a complaint causing the night manager to respond. (Exhibit A, Pl's Depo. p. 104; Exhibit C, Budget Inn Surveillance (video timestamp up through 9 minutes and 58 seconds)).

PART 2: The Calm

The second part of the events consists of about 15 minutes where everyone had calmed down. (See Exhibit B, Prophet's Statement). Plaintiff corroborated Prophet's description that there was a lull in the excitement for about 15 minutes while Prophet was in the bathroom, and Plaintiff testified that he and the Victim were calm while waiting on the police. Around this time, Plaintiff is informed by the night manager that the manager has also called the police before the manager leaves the immediate vicinity. (Exhibit A, Pl's Depo. p. 98, l. 9; p. 102, l. 22; Exhibit C, Budget Inn Surveillance (see video timestamp up through 12 minutes 8 seconds)).

Minutes pass and the scene is calm enough that the Plaintiff leans against the nearby retaining wall with his leg casually propped up. (Exhibit A, Pl's Depo. p. 104, Exhibit C, Budget Inn Surveillance (see video timestamp up through 14 minutes and 27 seconds)). Plaintiff describes the scene at that moment: "She was in the bathroom, he was there, everything was calm. It was calm. Everybody was calm. Waiting on the police right now, really." (See Exhibit A, Pl's Depo. p. 108, ll. 12-14).

By this time it is uncontested that the Plaintiff knew that the Columbia Police Department had been summoned to the scene and that Prophet was locked behind a door out of harm's way. (Exhibit A, Pl's Depo. p. 90, l. 16). During this calm, the Victim made a phone call using the hotel phone line.

PART 3: Plaintiff and the Victim

Everything would change as Plaintiff can be seen approaching the motel room door. Prophet heard Plaintiff yelling threats to the Victim and she exited the bathroom to "check" on things, opening up the door to the hotel room. (Exhibit B, Prophet Statement; Exhibit D, Prophet Video Interview at 23:40:20 - 23:42:54). A few seconds before Prophet opened the door, the Plaintiff can be seen yelling at the door on video. Then Plaintiff quickly rushed into the hotel room. (Exhibit C, Budget Inn Surveillance).

At this moment, the Victim is high on crack cocaine and naked. Prophet recalled in her statement that the Plaintiff rushed into the hotel room and "roughed" up the Victim. (Exhibit B, Prophet's Statement). The Plaintiff would initially lie to law enforcement about this moment, though he would later tell the truth at the station. (See Exhibit A, Pl's Depo. p. 122).

The Plaintiff explained that he lied when "[t]he officer asked me at the hotel did I hit him,

I say no." (Exhibit A, Pl's Depo. p. 122, ln. 12-13). The Plaintiff explained he did so "[b]ecause I was out on a murder bond and I didn't want nothing to do with that." (Exhibit A, Pl's Depo. p. 122 -124). Eventually, the Plaintiff told the truth and explained, just as Prophet described, that the Plaintiff rushed into the hotel room and physically fought the Victim. The Plaintiff testified that the officer "manipulated (him) into telling the truth." (Exhibit A, Pl's Depo. p. 129, ll. 4-7). He also admitted that it would be reasonable for the officer to conclude that if Plaintiff lied about one portion of these events, that he lied about other details such as the severity of the attack. (Exhibit A, Pl's Depo. p. 126, l. 25).

In the video recording of her statement to Defendant Simpson, Prophet described the Plaintiff's actions in more detail. Prophet described the calm as she sat in the bathroom for about 15 minutes. She could hear the Victim on the phone with 911 and the Plaintiff still trying to get into the room. Importantly, she informed investigators that she heard the Plaintiff threaten the Victim stating "[w]ait until you come outside, I got something for you because this is some f*cking sh*t you pulling."

Shortly thereafter, once the door was opened, Prophet said that the Plaintiff "bumrushed" the naked Victim and "jacked him up a little bit." (Exhibit D, Prophet Video Interview at 23:40:20 - 23:42:54). She recalled that Plaintiff was so aggressive that she had to intervene to get Plaintiff off the Victim who had "learned his lesson." (Exhibit D, Prophet Video Interview 23:48:09).

Consistent with Prophet's statement, Plaintiff recalled under oath that Prophet also told him to "calm down." (Exhibit A, Pl's Depo. p. 113, l. 23). Video surveillance reflects that Plaintiff (orange shirt) then dragged the naked Plaintiff out of the hotel room and slung the

Victim into the concrete retaining wall, where the Victim struck his head. Plaintiff readily admitted that the Victim's head and hand hit the concrete retaining wall. (Exhibit A, Pl's Depo. p. 126).

After hitting his head, the Victim crumpled to the ground, got to his feet clumsily, and stumbled erratically toward the camera. The Victim appeared clearly disoriented and confused. (Exhibit C, Budget Inn Surveillance). Moments later, the Victim died on the scene at the Budget Inn parking lot in the presence of EMS.

Officer Simpson provided a synopsis of these facts in his case summary maintained by the City of Columbia as a business record that sets out his mental impressions of the investigation:

> On 12/04/2019 at Sunset Dr. (Budget Inn motel), officers were dispatched to the location and observed the victim Mr. Dara Washington lying in the parking lot at the location unresponsive. He was transported to Prisma hospital (Richland Memorial) for treatment but was later pronounced deceased. Contact was made with [Plaintiff] who stated that while inside of room 115 at the location, a physical assault took place which led to him punching and kicking the victim several times inside of the room. The victim was extremely dazed and disoriented and was extremely unsteady on his feet as he retreated from the room before collapsing in the parking lot area where he was ultimately contacted by EMS and transported to the hospital where he was pronounced deceased. [Plaintiff] stated that he assaulted the victim because he observed the victim physically assaulting a witness who was also inside the room (Ms. Aja Prophet) and he felt the need to protect her from the victim.
>
> An interview was conducted with Ms. Prophet who stated that she did not feel her life was in danger and she didn't feel that she needed to be protected from the victim but the victim was upset and was paranoid after he had smoked crack cocaine after they had sex and [Plaintiff] came to the room upset and the victim believed that Ms. Prophet had set him up to be robbed so he did not want for [Plaintiff] to come inside of the room due to his fear that [Plaintiff] was there to rob him. Ms. Prophet stated that as [Plaintiff] entered the room, the victim was not a threat to him and did not attempt to assault him prior to observing [Plaintiff] attack the victim with his fists while the victim cowered in a corner and dropped

> to the ground. Ms. Prophet stated that she pulled [Plaintiff] off due to the assault appearing to be excessive and [Plaintiff] then drug him out of the room and tossed him out. Prior to entering the room, [Plaintiff] spoke with management at the location who came to the room and looked inside through the window and stated that everything appeared to be fine inside so he was not authorized to open up the door and he stated that the police has already been notified and were responding. During the 911 call for service, [Plaintiff] is heard on the recording threatening the victim while outside the room stating that he better hope that the police gets there before he gets inside of the room.

(Exh. F, Simpson Case Summary; Exhibit G, Full CPD Report).

The Victim was taken for an autopsy but the toxicology screen was not completed by the third-party lab until February 2020. (Exh. N, Goldberg Depo., p. 53). In the interim, Prophet and the Plaintiff were taken for interrogation. After his rights were read to him, the Plaintiff finally admitted that he assaulted the Victim in the hotel room and the officers could see the Plaintiff on the video slinging the Victim into the wall. (Exhibit E, Simpson Depo. p. 89 – 94). Plaintiff testified in his deposition that he would have considered a charge of assault and battery reasonable, he just did not agree with murder. (Exhibit A, Pl's Depo. p. 165, ll. 17-23).

Following the investigation, Officer Simpson consulted with his supervisor Sergeant Arthur Thomas along with Fifth Circuit Assistant Solicitor Lamar Fyall regarding the charges and probable cause. Officer Simpson disclosed to Sergeant Thomas all the information known to Officer Simpson. (Exhibit E, Simpson Depo. p. 269 – 280). Solicitor Fyall agreed with a finding of probable cause at that time and maintained, even in light of the finalized autopsy, that the Defendants had probable cause to make an arrest of the Plaintiff for a crime. (Exhibit H, Fyall Depo. p. 25-29, 75-79). After full review of the investigation, including the pending toxicology and Plaintiff's statements that he was defending Prophet, Sergeant Thomas decided to charge the Plaintiff with murder. (Exhibit E, Simpson Depo. p. 280, ln. 15).

On December 5, 2024, Officer Simpson provided an affidavit for an arrest warrant against the Plaintiff for the charge of murder to Magistrate Angela Ladson, who signed the warrant. (Exhibit I, Warrant). The warrant was based on the information known to Officer Simpson at the time, including his observations of the physical evidence, his review of the 911 call, his review videotapes, and his interviews with the Plaintiff and Ms. Prophet.

On December 5, 2024, Dr. Amy Durso conducted the autopsy but delayed declaring the cause of death pending toxicology results, but noted findings of blunt force injuries. (Exhibit J, Durso Depo. p. 13; Exhibit K, Preliminary Autopsy Report). Dr. Durso testified that she needed more information at the time. (Exhibit I, Durso Depo. p. 13-15). She also testified, consistent with this preliminary report, that she found physical evidence of assault and battery on the Victim in the form of "abrasions and lacerations." (Exhibit J, Durso Depo. p. 56). She testified the injuries were to the Victim's "forehead, the right lower chest, upper abdomen, the right hand, the knees, the right feet." (Exhibit I, Durso Dep. p. 56, ll. 8-12).

At the preliminary hearing in magistrate's court on February 12, 2020, Officer Simpson relayed the information he had at the time he gave his affidavit. (Exhibit M, Prelim Transcript). This included his observation of Ms. Prophet that night that she did not have any injuries, although she stated the Victim had been verbally aggressive with her. (Exhibit M, p. 17, ll. 14-23). Officer Simpson also stated that once the Plaintiff changed his story and admitted he did not calmly escort the Victim out of the room, he admitted "he was upset, he was angry through the whole course of him trying to get into the room and not being able to, and ... he did admit that the assault did take place in the room." (Exhibit M, p. 18, l. 20 - p. 19, l. 15).

The magistrate stated "I don't think there's any dispute that [Victim] was assaulted."

(Exh. M, p. 31, ll. 21-22). However, the magistrate dismissed the murder charge since toxicology, and consequently the cause of death, remained pending. (Exhibit M, Prelim Transcript, pp. 31, l. 24 - p. 33, l. 3; p.). The magistrate stated:

> Now, back to probable cause. I don't think you've got it, you don't have a manner of death here. You don't know if he had a bad heart and the cocaine caused the heart to stop which resulted in the death, we just don't know. There's no evidence in the record whatsoever that the assault caused the death. Therefore, at this time it's dismissed.

(Exhibit M, p. 36, ll. 7-14).

Seven days after the preliminary hearing, on February 19, 2020, the toxicology results were received, and the final cause of death was "excited delirium due to cocaine abuse *and physical altercation*." (Exhibit L, Amended Autopsy Report) (emphasis added). Dr. Durso testified that in the thousands of autopsies that she has performed in her career, she had never rendered this conclusion before. (Exhibit J, Durso Depo. p. 47, ll. 2-3).

Upon receipt of the final autopsy, Fifth Circuit Deputy Solicitor Dan Goldberg elected not to pursue a direct indictment as to murder, specifically because of the questions surrounding the February 2020 "excited delirium" autopsy conclusion. (Exhibit N, Goldberg Depo. p. 44-53).

In denying Officer Simpson's motion for summary judgment based upon qualified immunity, the Circuit Court stated:

> 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; (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.

(Form 4 Order of April 10, 2025).

This appeal follows.

ARGUMENTS

THE CIRCUIT COURT ERRED IN DENYING OFFICER SIMPSON'S MOTION FOR SUMMARY JUDGMENT BASED UPON QUALIFIED IMMUNITY

Qualified immunity protects officers who commit constitutional violations but who, in light of clearly established law, could reasonably believe their actions were lawful. *Henry v. Purnell*, 652 F.3d 524 (4th Cir. 2011). *See also Benton v. Layton*, 139 F.4th 281 (4th Cir. 2025) (qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known). It protects all but the plainly incompetent or those who knowingly violate the law. *Benton v. Layton.* As the federal Fourth Circuit recently explained:

> Qualified immunity does not permit law enforcement to act with impunity, throwing our nation's constitutional commitments to the winds of individual discretion. But it does require fair notice of the landscape of the law to those who must enforce it.

Somers v. Devine, 132 F.4th 689, 695-696 (4th Cir. 2025).

Whether a police officer is entitled to qualified immunity requires a two-prong analysis:

(1) Did the officer violate a constitutional or statutory right? and

(2) Was the right *clearly established* at the time the officer acted?

Benton v. Layton; *Belton v. Loveridge*, 129 F.4th 271, 277 (4th Cir. 2025), *citing District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018). "These questions need not be answered sequentially, and if either is determined in the negative, the claims must be dismissed." *Somers v. Devine*, 132 F.4th at 696.

As this Court stated:

> * * * "The doctrine of qualified immunity shields police officers acting in

> their official capacity from suits for damages under 42 U.S.C. § 1983, unless their actions violate clearly-established rights of which an objectively reasonable official would have known." *Rogers v. City of Amsterdam*, 303 F.3d 155, 158 (2nd Cir. 2002) (quoting *Thomas v. Roach*, 165 F.3d 137, 142 (2nd Cir. 1999)); *accord Williams v. Goord*, 142 F.Supp.2d 416, 428 (2001). "This policy is justified in part by the risk that the 'fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties.'" *Williams*, 142 F.Supp.2d at 428 (quoting *Anderson v. Creighton*, 483 U.S. 635, 638, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)). If the plaintiff alleges "an arrest without probable cause, an arresting officer may assert the defense of qualified immunity if 'either (a) it was objectively reasonable for the officer to believe that probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met.'" *Rogers*, 303 F.3d at 158 (quoting *Golino v. City of New Haven*, 950 F.2d 864, 870 (2nd Cir. 1991)). Because qualified immunity is an affirmative defense, the defendant bears the burden of proving the challenged act was objectively reasonable in light of the existing law. *Varrone v. Bilotti*, 123 F.3d 75, 78 (2nd Cir. 1997). The United States Supreme Court has held a clearly established statutory or constitutional right "must be sufficiently clear that a reasonable official would understand what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson*, 483 U.S. at 640, 107 S.Ct. at 3034, 97 L.Ed.2d at 531.

Camden v. Hilton, 360 S.C. 164, 177-178, 600 S.E.2d 88, 94-95 (Ct. App. 2004).

In this case the Plaintiff's right to be free from arrest absent probable cause was clearly established. The narrow question is therefore whether Officer Simpson violated that constitutional right. That is, taken in a light most favorable to the Plaintiff, do the undisputed facts demonstrate that it was reasonable for Officer Simpson to believe he had probable cause to arrest the Plaintiff?

This question controls whether the Plaintiff may proceed on his claim for malicious prosecution. *Carter v. Bryant*, at 307, 838 S.E.2d at 528 ("In the event no probable cause existed, the remedy is to sue for malicious prosecution, not false arrest."); *Id.* at 315, 838 S.E.2d at 532 (one element of a claim for malicious prosecution is "lack of probable cause"; the Court must

view things as they appeared to the officer arriving at the scene). An arrest pursuant to a facially valid warrant will not support an action for false arrest. *Id.*, at 307-308, 838 S.E.2d at 528.

"[T]he proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *Mack v. Lott*, 415 S.C. 22, 23, 780 S.E.2d 176 (2015). As the *Carter* Court explained:

> In assessing whether probable cause existed, we must view things as they appeared to the officers arriving at this chaotic scene. It is an inquiry guided by common sense, and one that acknowledges human conflict is messy and tense encounters can produce differing perspectives on what happened. Recognizing that lack of clarity, at the warrant stage the law does not demand certainty, clear and convincing proof, proof beyond a reasonable doubt, or even proof by the greater weight of the evidence. Instead, the law insists on something less, but something more than reasonable suspicion: it demands a "fair probability." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); *see also Jones v. City of Columbia*, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990) ("'Probable cause' is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise."); *Jackson v. City of Abbeville*, 366 S.C. 662, 667, 623 S.E.2d 656, 659 (Ct. App. 2005) ("Probable cause is determined as of the time of the arrest, based on facts and circumstances—objectively measured—known to the arresting officer. The determination of probable cause is not an academic exercise in hindsight."); *State v. Morris*, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015) ("Probable cause is a 'commonsense, nontechnical conception [ ] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' " (alterations in original) (quoting *Ornelas v. United States*, 517 U.S. 690, 695, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996))). As noted in *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949):
>
> > These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some

> mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Carter, 429 S.C. at 315-316, 838 S.E.2d at 532-533.

The issue therefore becomes whether either (a) it was objectively reasonable for Officer Simpson to believe that probable cause existed to obtain a warrant for Plaintiff's arrest, or (b) officers of reasonable competence could disagree on whether the probable cause test was met. *Camden v. Hilton*. The only material facts are those facts Officer Simpson knew at the time he met with Sergeant Thomas and Assistant Solicitor Fyall before obtaining the warrant.

(A) WAS IT WAS OBJECTIVELY REASONABLE FOR OFFICER SIMPSON TO BELIEVE THAT PROBABLE CAUSE EXISTED TO ARREST PLAINTIFF?

The undisputed facts known to Officer Simpson prior to obtaining the warrant were as follows:

1. Officer Simpson observed the Victim lying on the pavement and non-responsive, and that he was declared deceased following transfer to the hospital.
2. Officer Simpson interviewed the Plaintiff, who initially lied about the encounter with the Victim because he had a pending murder charge, but then admitted his encounter with the Victim was more violent that he first stated.
3. Officer Simpson also interviewed Ms. Prophet, who told him she did not feel threatened, she observed the Plaintiff becoming "excessive" in his assault on the

Victim (she had to pull him off), and she observed the Plaintiff drag the Victim out the door and slam him against the concrete wall.

4. Officer Simpson also listened to Victim's 911 call and heard the Plaintiff threaten that Victim better hope the police get inside the room before he did.

5. Officer Simpson reviewed the videotape which showed the violence of the Victim's impact on the concrete wall when the Plaintiff slung him against the wall.

6. Officer Simpson was aware that the hotel manager had earlier looked through the window and did not see the Victim assaulting Ms. Prophet.

7. Officer Simpson was also aware that the Plaintiff had been told, repeatedly, that the police were on their way.

8. Officer Simpson observed no injuries on Ms. Prophet, but did observe injuries on the Victim.

9. Officer Simpson consulted with his supervisor, Sergeant Thomas, who instructed Officer Simpson to obtain the arrest warrant.

10. Officer Simpson met with Solicitor Fyall, who assessed there was sufficient probable cause to obtain the arrest warrant.

Under these undisputed facts Officer Simpson could have reasonably believed there was sufficient probable cause to arrest the Plaintiff, that is, "to believe that [the Plaintiff] was committing or had committed a criminal offense." *Sevigny v. Dicksey*, 846 F.2d 953, 956 (4th Cir. 1988).

Even if probable cause to support a murder charge was questionable, Plaintiff's arrest was

not unlawful. Probable cause may be based on an uncharged offense. *Jackson v. City of Abbeville*, 366 S.C. 662, 669, 623 S.E.2d 656, 660 (Ct. App. 2005) citing *Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 220 S.E.2d 649 (1975) (one may not maintain an action for malicious prosecution because he was charged with the wrong crime; if it appears affirmatively from the facts that plaintiff was guilty of a crime containing different elements there still would not be an absence of probable cause) and *State v. Freiberger*, 366 S.C 125, 133, 620 S.E.2d 737, 741 (2005) (holding that "an officer's 'subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause"). The *Jackson* Court noted the Supreme Court in *Freiberger* relied upon *Devenpeck v. Alford*, 543 U.S. 146 (2004) (repeating the settled principle that "'the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action'"). *Jackson v. City of Abbeville*, at 669, 623 S.E.2d at 660. *See also United State v. McNeill*, 484 F.3d 301, 311 (4th Cir. 2007) (holding an arrest is valid if, "based on the facts known to the officer, objective probable cause exist[s] as to *any* crime")(emphasis in original).

The undisputed facts known to Officer Simpson would have supported probable cause to charge Plaintiff with a number of offenses under South Carolina law, including the following:

(i) Manslaughter pursuant to S.C. Code Ann. § 16-3-50 (2015) (the unlawful killing of another without malice, express or implied);

(ii) Involuntary manslaughter pursuant to S.C. Code Ann. § 16-3-60 (2015) (killing another person as the result of criminal negligence, or the reckless disregard of the safety of others);

(iii) Assault and battery at various levels pursuant to S.C. Code Ann. § 16-3-600 (2015) (unlawful injury to another person);

(iv) Obstruction of justice pursuant to *State v. Needs*, 333 S.C. 134, 508 S.E.2d 857 (1998) (where witness concealed evidence and lied to investigators to protect her boyfriend the Court held the prosecutor had probable cause to charge her with several crimes, including obstruction of justice) and *State v. Cogdell*, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979) ("At common law it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice");

(v) Breach of the peace pursuant to *State v. Peer*, 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996) ("breach of the peace" embraces a great variety of conduct destroying or menacing public order and tranquility).

The fact that the magistrate dismissed the charge at the preliminary hearing does not undermine the existence of probable cause to charge Plaintiff with any number of these offenses at the time Officer Simpson obtained the arrest warrant for murder.

Plaintiff contends that Officer Simpson failed to wait for the toxicology report or follow other evidence before obtaining the warrant and therefore despite facial validity, the warrant was defective. This is akin to an argument under *Franks v. Delaware*, 438 U.S. 154 (1978). *See Carter v. Bryant*, 429 S.C. at 311, 828 S.E.2d at 530 (describing *Franks* as "holding the Fourth and Fourteenth Amendments gave defendants the right to challenge the veracity of a warrant affidavit after the warrant was issued and executed if the defendant could make a preliminary showing the officer who presented the case to the magistrate judge intentionally or with reckless disregard told false information to the judge"). The Court should not be persuaded by this

contention.

First, as this Court explained in *Carter*:

> [W]e are not aware of any reported decision by our state appellate courts transporting the *Franks* procedure – designed for use in motions to suppress evidence in criminal prosecutions – to civil false arrest claims. But the transfer has occurred in § 1983 cases in other courts, and some think it a logical extension of *Franks*. *See* Goldstein, *From the Exclusionary Rule to a Constitutional Tort for Malicious Prosecutions*, 106 Colum. L. Rev. 643, 681-84 (2006).

Carter v. Bryant, at 311, 838 S.E.2d at 530. Even so, there is no evidence, or even assertion, that Officer Simpson provided false information to the magistrate who issued the warrant.

Furthermore, whether Officer Simpson had probable cause is not judged based upon a 20/20 hindsight review of evidence he could have obtained prior to getting the warrant. As the Fourth Circuit explained:

> 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. *Smith v. Reddy*, 101 F.3d 351, 357 (4th Cir.1996) (citing *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir.1991)). Reasonable law enforcement officers are not required to "exhaust every potentially exculpatory lead or resolve every doubt about a suspect's guilt before probable cause is established." *Torchinsky*, 942 F.2d at 264 (citing *Krause v. Bennett*, 887 F.2d 362, 371 (2d Cir.1989) ("[P]robable cause does not require an officer to be certain that subsequent prosecution of the arrestee will be successful.")).

Wadkins v. Arnold, 214 F.3d 535, 541 (4th Cir. 2000). The *Wadkins* Court noted:

> In our *Torchinsky* decision, we explained the rationale behind this approach:
>
> > 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.
>
> 942 F.2d at 264.

Wadkins, at 541 n. 7. Officer Simpson was, therefore, entitled to qualified immunity from suit.

(B) COULD OFFICERS OF REASONABLE COMPETENCE DISAGREE ON WHETHER THE PROBABLE CAUSE TEST WAS MET?

Alternatively, if officers of reasonable competence could disagree over whether a warrant should issue, then immunity should be recognized. *Malley v. Briggs*, 475 U.S. 335 (1986).

Under the undisputed facts set forth above, assuming they do not rise to probable cause as a matter of law to support the decision to obtain an arrest warrant, reasonably competent officers could disagree over whether the warrant against Plaintiff should have issued. It matters not that there may have been other evidence Officer Simpson could have collected. *See Wadkins v. Arnold*, 214 F.3d 535, 541 & n. 7 (4th Cir.)("Reasonable law enforcement officers are not required to 'exhaust every potentially exculpatory lead or resolve every doubt about a suspect's guilt before probable cause is established.'"), *cert. denied*, 531 U.S. 993 (2000). It also does not matter whether Officer Simpson "guessed wrong." *See Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992)("[O]fficials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines."), *cert. denied*, 506 U.S. 1080 (1993).

Under the undisputed facts as described by both the Plaintiff and Ms. Prophet, it was reasonable for Officer Simpson to conclude that despite knowing that the police were on the way and that Ms. Prophet was not in imminent danger, the Plaintiff threatened the Victim through the door and once he entered the room, he carried out his threat, which to Officer Simpson's eyes on the scene at least contributed to the Victim's death. *See Torchinsky v. Siwinski*, 942 F.2d 257, 261 (4th Cir.1991) ("The very idea of reasonableness requires that courts accord interpretive

latitude to official judgments.").

Under this prong Officer Simpson was entitled to qualified immunity from civil suit.

CONCLUSION

For the reasons stated, this Court should reverse the circuit court's order and hold Appellant is entitled to protection under qualified immunity. The Court should remand the matter with instructions for the circuit court to dismiss the case.

Respectfully submitted,

John S. Nichols, Esquire
SC Bar # 4210
Bluestein Thompson Sullivan, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
John@bluesteinattorneys.com

Mary Daniel LaFave, Esquire
SC Bar # 75366
LaFave Bagley, LLC
2019 Park Street
Columbia, SC 29201
(803) 726-6756
mary@lafavebagley.com

Attorneys for Appellant

September 24, 2025