RECEIVED
Apr 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2025-000818
Case No. 2021-CP-07-1217

Paul Vernon Coffman, Jr., ... Respondent,

v.

Town of Port Royal and Kimberly Carter,..... Appellants.

BRIEF OF APPELLANTS

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

THOMAS A. BENDLE
ROBERT S. DENNIS
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400

Counsel for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in denying the Appellants' motions for directed verdict and judgment notwithstanding the verdict on both the federal and state law claims?

   A. Did the trial court err in failing to rule as a matter of law that probable cause existed for the Respondent's arrest?

   B. Did the trial court err in denying qualified immunity to the Appellant Kimberly Carter on the § 1983 claims?

   C. Did the trial court err in allowing the Respondent to proceed on a "negligent arrest" theory against the Appellant Town of Port Royal?

II. Did the trial court err in the award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 by awarding unreasonable hourly rates, by not requiring proper documentation of billable hours worked or a reduction for unsuccessful claims, by allowing duplicative or redundant time entries by multiple counsel performing the same or similar tasks, by awarding travel time at the full hourly rate, and by awarding costs in violation of United States Supreme Court precedent?

STATEMENT OF THE CASE

This is an action brought by the Respondent Paul Vernon Coffman, Jr. against the Appellants Town of Port Royal and Kimberly Carter, as well as the Defendants Alan Beach, John Griffin, and Ron Wekenmann, alleging an unlawful arrest following an incident that took place at the Sands Beach Boat Landing on July 6, 2019. The Respondent was arrested pursuant to a warrant for Assault and Battery, Third Degree, following an investigation conducted by the Appellant Carter, who was employed as a detective with the Town of Port Royal Police Department. The Respondent brought federal claims pursuant to 42 U.S.C. § 1983 against the Appellant Carter and the Defendants Alan Beach, John Griffin, and Ron Wekenmann for a violation of his Fourth Amendment rights, alleging an unlawful seizure and malicious prosecution. The Respondent also brought state law claims pursuant to the South Carolina Tort Claims Act against the Appellant Town of Port Royal, including claims for malicious prosecution and negligence. (R. 63-78).

Following the completion of discovery,[1] the case proceeded to trial before Circuit Court Judge H. Steven DeBerry, IV and a jury from June 17-21, 2024, in the Beaufort County Court of Common Pleas. The trial court granted a directed verdict for the Defendants Beach, Griffin, and Wekenmann on the § 1983 claims. The trial court also dismissed the state law claim for false arrest. (R. 1415-1418). The Fourth Amendment claims against the Appellant Carter and the malicious prosecution and negligence claims against the Appellant Town went to the jury. The jury returned a verdict in favor of the Respondent and against the Appellant Carter on the Fourth Amendment claims and awarded actual damages of $60,000 and punitive damages of $40,000.

[1] The Respondent's claims against Joshua Smith as well as the loss of consortium claim brought by his wife, Stephanie Coffman, were dismissed at the summary judgment stage.

The jury also returned a verdict on the remaining state law claims against the Appellant Town and awarded actual damages of $250,000. (R. 9-12).

The Appellants filed post-trial motions including for judgment notwithstanding the verdict (JNOV), or alternatively, a new trial absolute. (R. 544-551). The Respondent also moved for attorneys' fees and costs pursuant to 42 U.S.C. § 1988. (R. 469-487). The trial court held a hearing on the post-trial motions on December 11, 2024. (R. 1946-2035).

Thereafter, on January 15, 2025, the trial court issued an Order Denying Defendants' Post-Trial Motions and an Order Awarding Fees and Costs. (R. 13-18). All parties subsequently filed motions for reconsideration. On March 24, 2025, the trial court issued an Order of Reconsideration. (R. 23-31). Thereafter, on May 14, 2025, the trial court issued an Order Reconsidering Attorney's Fees and Costs and awarded attorney's fees in the amount of $369,713.30 and costs in the amount of $10,057.78. (R. 32-51). On May 27, 2025, the Appellants filed a timely Rule 59(e) motion, which was denied by Order issued July 15, 2025. (R. 52-53).

The Appellants thereafter filed a timely appeal to this Court.

STATEMENT OF FACTS

On July 6, 2019, the Respondent Paul Coffman had been boating with his wife, Stephanie Coffman, and a friend, Aaron Abercrombie. At that time, Joshua Smith had also been boating with his wife, Brittany Smith, and two of their friends, Jessica Bradley and Hunter Lewis, on their boat named "Bad Company." (R. 65). Both Mr. Smith and the Respondent were heading back to the landing in Port Royal to pull their boats out of the river. The Respondent claimed that Mr. Smith was intoxicated, playing loud music, and performing donuts in his boat, which conduct had angered him. (R. 65, 1773-1774, 1846).

As the Respondent waited to use the boat ramp to remove his boat from the water, he approached Brittany Smith and Jessica Bradley and asked how their day had been. Mrs. Smith indicated that it was great until her husband started playing his music loudly. The Respondent replied by questioning how she could tolerate that behavior and by telling her that he was "9/10ths of the way to whupping her husband's ass." (R. 1811, 1842). According to Brittany Smith, the Respondent further stated, "I'm not too old to fight for an old man." (R. 1811, 1842). Thereafter, the Respondent was observed by the two women walking to his truck in the parking lot and retrieving a fish-bat, which was described as similar to a police baton. (R. 1839-1842). He attempted to hide the fish-bat behind his leg. The Respondent's actions were corroborated by video surveillance footage at the boat landing. (R. 1779).

On his return to the dock, the Respondent passed Mrs. Smith and Ms. Bradley. It appeared to the two women that the Respondent was concealing something behind his back. The women asked the Respondent if he had a weapon, and he pulled his shirt up and told them that he did not. (R. 1840, 1842). The women indicated that they were not referring to an object in his waistband, but whatever he was holding in his hand (the fish-bat). Ms. Bradley informed the

Respondent that Mrs. Smith was a police officer with the Beaufort County Sheriff's Department, and a verbal altercation ensued. (R. 1763). Joshua Smith, having finished with loading his boat on the trailer, noticed that words were being exchanged and profanity was being directed towards his wife. According to Mr. Smith, after he approached, he saw the Respondent holding a fish-bat up in the position to strike him. Mr. Smith grabbed the Respondent by the shoulder, took the fish-bat from him, and threw it in the river. (R. 1778, 1843).

As this was occurring, Officer Peter Bunting with the Town of Port Royal Police Department had been on patrol in the area and arrived to see the final seconds of the altercation, witnessing Mr. Smith throw an object into the water. (R. 1765). Officers from Port Royal Police Department interviewed the Respondent and Mr. Smith at the boat landing. During their respective interviews, both men denied the need for medical attention and informed the officers that they did not want to press any charges. Because of this, an incident report was prepared, and the case was closed. (R. 1765).

After returning home, the Respondent walked to a friend's home to discuss what had occurred and had a few cocktails. (R. 1811-1812). The Respondent's wife testified at trial that her husband did not go to the hospital that evening or the next day. Further, she stated that on the evening of the altercation, she did not check the Respondent's body for any injuries. (R. 1355-1357).

A few days after the incident, the Respondent began calling and visiting the Port Royal Police Department. Correspondence through emails, letters, and calls continued during the weeks after the incident with the Respondent's goal being a re-opening of the case. The Respondent and his wife submitted written statements describing their recollection of the events. (R. 1844-1847). The Respondent also contacted Brittany Smith's employer, the Beaufort County

Sheriff's Office, to report her actions. (R. 1865). The Sheriff's Office also investigated the incident as a personnel matter. (R. 1865-1876). Eventually, and after several requests from the Respondent, the case was reopened and a detective with the Town, Kimberly Carter, was assigned to investigate. Detective Carter testified that she was not involved in the initial response to the altercation at the boat landing.

During her investigation, Detective Carter interviewed all of the witnesses who were present at the scene, including Paul Coffman, Stephanie Coffman, Joshua Smith, Brittany Smith, Hunter Lewis, Jessica Bradley, and Aaron Abercrombie. She also interviewed Austin Pritcher, an officer with the Department of Natural Resources ("DNR") who was patrolling on the river. Detective Carter prepared detailed summaries of these interviews which were incorporated into her investigative file. (R. 1800-1813). The interviews of the principal witnesses were also video and audio recorded. Detective Carter also reviewed the body-worn cameras of the responding officers and reviewed the video footage captured by the Sands Boat Landing surveillance camera, interviewed a friend of the Respondent, reviewed the written file from the Port Royal Police Department, and reviewed the written statements submitted by the Respondent and his wife. Based on the totality of the evidence, Detective Carter determined that the Respondent was the primary aggressor in the altercation. (R. 1722-1723, 1728-1730).

As a result, Detective Carter prepared a warrant for the Respondent's arrest for the offense of Assault and Battery, Third Degree. She met with Municipal Judge James Grimsley on August 1, 2019, at which time the arrest warrant was issued. (R. 1832). On the following day, the Respondent was served with the warrant. He was booked into the Beaufort County Detention Center and received a bond hearing the next day. He spent one night at the Detention Center before he was released without bond. Later, the prosecutor agreed to dismiss the charges.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

"In an action at law, on appeal of a case tried by a jury, [appellate courts] may only correct errors of law. The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 142 (2010).

ARGUMENTS

I. The trial court erred in denying the Appellants' motions for directed verdict and judgment notwithstanding the verdict on both the federal and state law claims.

A. Evidence of Probable Cause

In its Order Relating to Post-Trial Motions filed January 15, 2025, the trial court did not address the Appellants' JNOV argument that there was probable cause for the Respondent's arrest for Assault and Battery, Third Degree. (R. 13-18). After the Appellants filed a Rule 59(e) motion, the trial court issued an Order of Reconsideration on March 24, 2025, in which the court simply ruled that "[t]he jury found that probable cause for the arrest of Paul Coffman did not exist" and "[a]mple evidence in the record supports this conclusion." (R. 25). The trial court provided no further analysis and did not describe any of that "ample evidence." The Appellants submit that the record reflects that the Appellants were entitled to a directed verdict and JNOV on the issue of probable cause.

The Respondent was arrested for Assault and Battery, Third Degree. According to S.C. Code Ann. § 16-3-600(E)(1), "[a] person commits the offense of assault and battery in the third degree if the person unlawfully injures another person or offers or attempts to injure another person with the present ability to do so." S.C. Code Ann. § 16-3-600(E)(1). The evidence supports the elements of that offense as a matter of law.

As the South Carolina Supreme Court has explained, "the 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, 780 S.E.2d 761, 761

(2015). In *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005), this Court explained that "[p]robable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime." 623 S.E.2d at 658, *citing State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996). "Probable cause is determined as of the time of the arrest, based on facts and circumstances -- objectively measured -- known to the arresting officer." *Jackson*, 623 S.E.2d at 659. Importantly, "[t]he determination of probable cause is not an academic exercise in hindsight." *Id*.

"The term 'probable cause' does not import absolute certainty." *Lapp v. South Carolina Department of Motor Vehicles*, 387 S.C. 500, 692 S.E.2d 565, 568 (Ct. App. 2010). In fact, "[a] finding of probable cause may be based upon less evidence than would be necessary to support a conviction." *Id*. Thus, it is well settled that "probable cause does not turn on an individual's actual guilt or innocence." *State v. Manning*, 400 S.C. 257, 734 S.E.2d 314, 319 (Ct. App. 2012). This Court has previously explained that "[a]lthough the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion." *Jackson*, 623 S.E.2d at 660.

The United States Supreme Court has similarly explained that "[t]o determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *District of Columbia v. Wesby*, 138 S.Ct. 577, 586 (2018). "Because probable cause deals with probabilities and depends on the totality of the circumstances, it is 'a fluid concept' that is not readily, or even usefully, reduced to a neat set of legal rules." *Id*. Probable cause "requires only a probability or substantial chance of criminal

activity, not an actual showing of such activity." *Id*. Thus, the Supreme Court has described probable cause as not being "a high bar." *Id*.

In *Baker v. McCollan*, 443 U.S. 137 (1979), the United States Supreme Court held that "[t]he Constitution does not guarantee that only the guilty will be arrested." 443 U.S. at 145. The Supreme Court explained that law enforcement is not required "to investigate every claim of innocence" and is not required to perform "an error-free investigation" to avoid liability under Section 1983. 443 U.S. at 146.

In the case at bar, Detective Carter developed evidence during her investigation to support a finding of probable cause, and in fact, a neutral and detached judge found probable cause. Importantly, the existence of conflicting statements or evidence does not defeat probable cause. "Probable cause does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands." *Brown v. Lott*, 2022 WL 2093849, *2 (4th Cir. 2022), *citing Gerstein v. Pugh*, 420 U.S. 103, 121 (1975). The Fourth Circuit has ruled that "probable cause does not require an officer to be certain that subsequent prosecution of the arrestee will be successful." *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir. 1991), *citing Krause v. Bennett*, 887 F.2d 362, 371 (2d Cir. 1989). *See also*, *Brice v. Nkaru*, 220 F.3d 233, 239, n.5 (4th Cir. 2000) ("the police are not required to conduct a trial before making an arrest").

As discussed above, Detective Carter performed a thorough investigation. She first spoke with Austin Pritcher, a DNR agent who pulled Joshua Smith over immediately prior to Smith using the boat ramp. Agent Pritchard stated that he did not believe Joshua Smith to be too intoxicated to drive his boat. (R. 1800). This contradicted the Respondent's statement that Mr. Smith was grossly intoxicated during the altercation.

Next, Detective Carter interviewed Jessica Bradley who stated that the Respondent was hiding the fish-bat when he returned from his truck, and that he had made a comment to Brittany Smith about "beating someone's ass." (R. 1713, 1800-1801, 1839-1841). This contradicted the Respondent's contention that he had no contact with anyone from the Smiths' boat prior to the altercation. (R. 1846). Detective Carter also interviewed Brittany Smith who stated the Respondent said he was "9/10ths of the way from kicking her husband's ass" and that "I'm not too old to fight for an old man." (R. 1811, 1842). Brittany Smith also confirmed that the Respondent was attempting to hide his fish-bat on the way back from the truck. (R. 1811, 1842). This statement, as well as the fact that the fish-bat was held by the Respondent at the time of the incident, contradicts his contention that he retrieved the fish-bat for the purpose of returning it to his boat, as he had an hour to do so, but never put the fish-bat down.

In his interview with Detective Carter, the Respondent conceded that he did indeed have an interaction with the two women prior to the altercation. This was a discrepancy from his written statement. (R. 1846). He also said that he did conceal the fish-bat on his way back to the boat, which was omitted from his written statement. (R. 1846-1847). The Respondent thereafter said that Brittany Smith "looked him in the eye and said she [was] a police officer." (R. 1808). This was inconsistent with the statements of Mrs. Smith and Ms. Bradley, who both said that Jessica Bradley made that comment. Thus, evidence emerged during Detective Carter's investigation that the Respondent had admittedly not been candid about his lack of communications with the two women.

Additionally, in his interview, the Respondent described a brutal beating where he was thrown to the ground, hit with "long arms blows to the back of the head and back," and received several punches to the kidneys. (R. 1808). He said that Joshua Smith "dragged him to the edge

of the dock" where the surface of the dock acted like a "cheese grater" on his skin. (R. 1808). Finally, he claimed that Joshua Smith had dragged him to a position where he was lying prone on his stomach, with his face looking over the dock and into the water and Mr. Smith sitting on his back. At that point, the Respondent stated: "I decided I wasn't going in the water. I stood up with him on my back, I lifted his arms up off me, I looked him straight in the eye and I dropped my hands and never said a word to the man." (R. 1808). His statement to Detective Carter that he stood up under the full weight of Joshua Smith was not believable considering his earlier statements about the age and size difference between the two men. The Respondent's purported lifting of Mr. Smith was not described by any other witness to the altercation, despite five other people standing on the dock at the time. As the interview continued, despite emphasizing earlier that the Respondent had "never known anyone under any circumstances to use [a fish-bat] as a weapon on another human being" when asked why he concealed the bat on his return to the dock, the Respondent said that he "did not want to cause any alert" to the members of the other boat. (R. 1809). In sum, during the investigation, the Respondent provided a recollection of the altercation that was not credible and admitted that he put the fish-bat behind his back to hide it from the other people on the dock.

Detective Carter also reviewed the camera footage from the Sands boat landing during her investigation. She noted that the Respondent retrieved the bat from beside the driver's side seat and placed it behind his back as he exited the truck. (R. 1715, 1779). When Detective Carter reviewed the photos that the Respondent submitted documenting his injuries (bruise to the shoulder and cut to the knee), she noted that the injuries were consistent with the story of Joshua Smith. (R. 1779). Smith's story was that he pushed the Respondent down by the shoulder, took the bat from him, and threw it in the water. (R. 1778). Detective Carter specifically noted that

no evidence of bruising was seen on the Respondent's back or kidneys, and that his injuries appeared consistent with "someone push[ing] him down from his shoulder." (R. 1779). This contradicted the Respondent's recollection of the events and his description of the "beating." Instead, these injuries appeared consistent with Joshua Smith's statement that he pushed the Respondent by the shoulder to neutralize the fish-bat. The Respondent's account was also undercut when Detective Carter interviewed Vaughn Keown, who told her that the Respondent came to his home after the "brutal beating" to drink a few cocktails. (R. 1812). Therefore, the Respondent's story was further contradicted by the lack of injuries matching his description of the altercation and his actions after the altercation.

In sum, the inconsistencies in the Respondent's story were numerous:

1. That the Respondent had no communication with the members of the other boat.
    - The interviews of Brittany Smith, Jessica Bradley, and the Respondent confirmed that he initially approached the women despite his prior written statements about the incident.

2. That the Respondent was attacked without any provocation.
    - The interviews with Brittany Smith and Jessica Bradley indicated that he spoke with the women and described wanting to fight Joshua Smith.
    - In the interview of Vaughn Keown, he indicated that the Respondent was known to have a temper.

3. The Respondent's story about standing up from a prone position with a much larger man on his back.
    - This is a highly suspect claim considering the age and size difference between the two men.
    - Despite five other people being feet away from the altercation, no other witnesses described that this occurred.

4. That the Respondent suffered a "brutal beating."
    - This is inconsistent with:
        - The photos from the incident,
        - The statements of the other witnesses, and
        - Respondent's actions after the incident (walking to Vaughn Keown's house to have cocktails).

5. That Joshua Smith was highly intoxicated at the time of the altercation.
    - The DNR Agent who pulled him over minutes beforehand did not believe Smith was intoxicated to any unreasonable degree.

6. The Respondent's reason for retrieving the fish-bat (to put it in the boat).
    - The Respondent waited for what he believed to be over an hour on the dock with the fish-bat in hand and never placed it in his boat.

7. The Respondent's description of receiving severe injuries from the altercation.
    - The injuries shown in the photos were more consistent with Joshua Smith's description of the altercation (pushing the Respondent by the shoulder and neutralizing the fish-bat).
    - No photos or evidence were provided showing that the Respondent suffered punches to his back, kidneys, or any other part of his body.
    - The Respondent did not seek any medical attention immediately after the altercation (which was offered by the police) nor at any other time after the altercation.

8. The Respondent's concealment of the fish-bat on his way from the truck to the dock.
    - This was inconsistent with his statement that the fish-bat could not be used as a weapon.

9. The Respondent's recollection that Brittany Smith "looked him in the eyes and told him she was a cop."
    - Jessica Bradley stated that Smith was a police officer, not Smith.

In sum, Detective Carter obtained statements from witnesses, including Jessica Bradley and Brittany Smith, that the Respondent made negative comments about Joshua Smith and about wanting to "beat his ass." The Respondent then made his way to his vehicle and returned with a fish-bat in his hand which he was hiding against his leg. This was also consistent with the video footage reviewed by Detective Carter. There were also substantial inconsistencies in the statements provided by the Respondent, as detailed above. That evidence supports each of the elements for the offense of Assault and Battery, Third Degree. Thus, for the reasons addressed at the directed verdict stage and again at JNOV, there was evidence to establish probable cause as a matter of law which should have resulted in the trial court granting JNOV for the Appellant Carter on the § 1983 claim and for the Appellant Town on the state law claims.

B. Qualified Immunity Defense

The United States Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), set forth objective standards for the utilization of the qualified immunity defense and gave specific benchmarks to the judiciary in determining when to protect public officials from undue interference with the exercise of their official duties. In setting forth its guidelines, the Supreme Court ruled that "government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate a clearly established statutory or constitutional right of which a reasonable person should have known." 457 U.S. at 818. Subsequently, the Supreme Court held in *Anderson v. Creighton*, 483 U.S. 635 (1987), that a court must look for the "'objective legal reasonableness' of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken." 483 U.S. at 639. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. ... [This] is to say that in the light of preexisting law the unlawfulness must be apparent." 483 U.S. at 640.

The Fourth Circuit has explained that qualified immunity protects government officials from liability for "bad guesses in gray areas" and "ensures that they will be held liable only for violating bright-line rules." *Hill v. Crum*, 727 F.3d 312, 321 (4th Cir. 2013). Qualified immunity "operates to ensure that before they are subjected to suit, [officials] are on notice that their conduct is unlawful." *Hope v. Pelzer*, 536 U.S. 730, 731 (2002). In other words, as the Supreme Court phrased the standard, the unlawfulness of the conduct must be "beyond debate." *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2083 (2011).

In determining whether an individual defendant is entitled to qualified immunity, courts typically engage in a two-step process as set forth in *Saucier v. Katz*, 533 U.S. 194 (2001). A

court must first determine "whether a constitutional right would have been violated on the facts alleged." 533 U.S. at 200. If the facts viewed in a light most favorable to the plaintiff do not establish a constitutional violation, the inquiry ends and the plaintiff cannot prevail. *Parrish v. Cleveland*, 372 F.3d 294, 301 (4th Cir. 2004). "Next, assuming that the violation of the right is established, courts must consider whether the right was clearly established at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right." *Bailey v. Kennedy*, 349 F.3d 731, 739 (4th Cir. 2003).

In denying qualified immunity, the trial court ruled as follows: "The Court finds upon review of the facts and evidence that the Defense has failed to meet their burden with regard to Qualified Immunity. The facts and circumstances as a whole, in totality, support a finding of this Court that the Officer's actions were not objectively reasonable." (R. 25). The trial court further ruled that "the Plaintiff has a clearly established right to not be arrested in the absence of probable cause." (R. 26). The trial court, however, framed and then ultimately analyzed the issue for qualified immunity incorrectly.

For starters, the issue is not whether Detective Carter's actions were objectively reasonable. Rather, as framed by this Court in *Camden v. Hilton*, 360 S.C. 164, 600 S.E.2d 88, 95 (Ct. App. 2004), the question is whether "(a) it was objectively reasonable for the officer to believe probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met." 600 S.E.2d at 95.

Importantly, the trial court failed to consider or address whether there was "arguable probable cause" for the Respondent's arrest. As the Fourth Circuit has explained, "[q]ualified immunity applies if there is arguable probable cause, which exists even where an officer mistakenly arrests a suspect believing it is based on probable cause if the mistake is objectively

reasonable." *Oren v. Gilmore*, 813 Fed. Appx. 90, 92 (4th Cir. 2020). The Fourth Circuit has further held:

> In analyzing whether law enforcement officers have qualified immunity in a false arrest claim pursuant to § 1983, the issue is not whether probable cause actually exists but whether a reasonable officer in the officer's position would have believed he had probable cause to arrest. Courts consider all of the circumstances known to the officer at the time of the arrest to determine whether there was probable cause. The arresting officer's belief need not be correct or even more likely true than false, so long as it is reasonable.

Sowers v. City of Charlotte, 659 Fed. Appx. 738, 740-41 (4th Cir. 2016). (Citations omitted) *See also*, *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) ("Even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity"); *Smith v. Reddy*, 101 F.3d 351, 356 (4th Cir. 1996) (in qualified immunity context, "[t]he reasonableness of [defendant's] conduct does not turn on whether probable cause was, in fact, present"). To receive qualified immunity, an officer need not have actual probable cause, but only arguable probable cause. *See, Gomez v. Atkins*, 296 F.3d 253, 261-62 (4th Cir. 2002) ("In our assessment of whether Atkins is entitled to qualified immunity, however, the question is not whether there actually was probable cause for the murder warrant against [Gomez], but whether an objective law officer could reasonably have believed probable cause to exist"). *See also*, *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010) ("To receive qualified immunity, an officer need not have actual probable cause, but only 'arguable' probable cause"); *Kuehl v. Burtis*, 173 F.3d 646, 650 (8th Cir. 1999) ("The issue for immunity purposes is not probable cause in fact but arguable probable cause"). This is true because it is "inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause

is present, and in such cases those officials should not be held personally liable." *Brown*, 608 F.3d at 734-35.

In this case, Detective Carter had, at a minimum, arguable probable cause based on the evidence collected in her investigation. In essence, based on the evidence, statements, video, and inconsistencies in the Respondent's story, it was objectively reasonable for Detective Carter to believe that probable cause existed for the Respondent's arrest. Detective Carter testified that, after reviewing all the material and conducting all the interviews, based on the totality of the circumstances, she believed probable cause existed for the Respondent's arrest. (R. 1722-1723, 1729-1730). The fact that other officers may not have felt that probable cause existed does not defeat "arguable probable cause" because, as this Court in *Camden* recognized, "officers of reasonable competence could disagree on whether the probable cause test was met." *Camden*, 600 S.E.2d at 95. Moreover, the probable cause determination was also supported by the issuance of the arrest warrant by a neutral and detached municipal court judge. *See*, *Sowers*, 659 Fed. Appx. at 741 ("[a] magistrate's probable cause determination indicates a reasonable officer would believe he or she had probable cause to arrest").

The trial court did not need to look any farther that its own rulings at the directed verdict stage, which are the law of the case. In ruling on the directed verdict motions, the trial court stated:

> Again, the case law certainly there's evidence that – that support the finding of probable cause in this record, but there's also evidence in this record that negates that – that finding of probable cause, and I think that the case law, the *Plowden* case, you know, certainly suggests that where there's only one outcome possible, then it is a matter of law for the Court, but where we have conflicting testimony in evidence, then it's a jury question.

(R. 1417). Certainly, the trial court recognized – and correctly so – that there is evidence to support a finding of probable cause. That demonstrates that Detective Carter had at a minimum "arguable probable cause" meaning that there was evidence upon which Detective Carter could reasonably believe, albeit mistakenly perhaps, that probable cause was present. The evidence outlined herein fully demonstrates that arguable probable cause existed for the Respondent's arrest.

Furthermore, the trial court erred in viewing the second prong of the qualified immunity analysis much too generally. To recap, the trial court found that "the Plaintiff has a clearly established right to not be arrested." (R. 26). However, the qualified immunity inquiry must focus on the *specific factual situation* in this case to determine whether Detective Carter enjoys immunity. *See*, *Parrish*, 372 F.3d 294, 301 (4th Cir. 2004). "If the right was not clearly established in the specific context of the case -- that is, if it was not clear to a reasonable [official] that the conduct in which he allegedly engaged was unlawful in the situation he confronted -- then the law affords immunity from suit." *Clem v. Corbeau*, 284 F.3d 543, 549 (4th Cir. 2002). The Fourth Circuit has explained that the nature of the right violated must be defined "at a high level of particularity." *Edwards v. City of Goldsboro*, 178 F.3d 231, 250-51 (4th Cir. 1999). Moreover, as the Supreme Court has explained, "when the legality of a particular course of action is open to reasonable dispute, an officer will not be subjected to trial and liability." *Figg v. Schroeder*, 312 F.3d 625, 636 (4th Cir. 2002).

In sum, even assuming the jury found that probable cause did not exist for the Respondent's arrest, qualified immunity still attaches and protects Detective Carter's mistaken finding. To reiterate, qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments." *Smith*, 781 F.3d 95, 100 (4th Cir. 2015). Here, to the

extent Detective Carter may have made a mistake in her ultimate determination that the Respondent committed Third Degree Assault and Battery, this mistake was not unreasonable considering the facts learned in her investigation. Again, the trial court already found there is evidence "that supports the finding of probable cause in this record." (R. 1417).

On appeal, this Court should apply the law of the case based on the trial court's unappealed ruling at the directed verdict stage and conclude that the Appellant Carter is entitled to qualified immunity even if she ultimately made an error.

C. State Law Claims

The jury returned a verdict against the Appellant Town of Port Royal on causes of action for malicious prosecution and negligence. The issue of probable cause is addressed above. The Appellant Town was entitled to a directed verdict and JNOV based on the existence of probable cause.

As for the negligence cause of action, the Appellant Town contends that the claim went to the jury on a "negligent arrest" theory. In its ruling on the directed verdict motion, the trial court stated:

> As to the Town of Port Royal, you know, I can see a theory of law for an agency ground where the Town of Port Royal having -- being -- having under their employment Detective Carter, by and through that agency can be -- could be found liable for negligence, based on whether or not the jury believes there wasn't probable cause. And as such, if a jury were to make that conclusion, then they could consider the elements of malicious prosecution. And I don't think they can reach the malicious prosecution if they don't find in the Plaintiff's favor for that negligence claim as it relates to -- as it relates to the existence or not probable cause. Because as -- as the trial court, I don't -- I think that's the only place that breach of duty could possibly exist as it relates to the facts and testimony and evidence in this case.

(R. 1417-1418). In short, the trial court tied the negligence cause of action to the existence of probable cause. Therefore, given the existence of probable cause as a matter of law as discussed above, the negligence claim also fails. In other words, the existence of probable cause is a bar to a cause of action for "negligent arrest," assuming such a cause of action even exists under South Carolina law.

In the Order of Reconsideration filed March 24, 2025, the trial court cited *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), and acknowledged that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. (R. 28). However, the trial court proceeded to explain that "the record reflects that Defendant Carter's arrest warrant omitted material information." (R. 28). That ruling is inconsistent, however, with the later ruling in the same order where the trial court states that "at this stage in civil litigation the necessity of a *Franks* analysis does not apply." (R. 29). In *Franks v. Delaware*, 438 U.S. 154 (1978), the United States Supreme Court established a two-prong analysis in addressing allegations that an arrest warrant was procured using deliberately false, misleading, or omitted information. The trial court erred because a *Franks* analysis is very much applicable to a civil case where a plaintiff alleges that an arrest warrant was procured using deliberately false, misleading, or omitted information.

As for the "negligent arrest" theory, the trial court erred because a cause of action for "negligent arrest" is not recognized under South Carolina law. The case of *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020), is directly on point. In that case, the plaintiff sued for an arrest without probable cause and included causes of action for false arrest, malicious prosecution, and gross negligence. In affirming summary judgment on the gross negligence claim, this Court wrote: "*There is also no viable claim for negligence or gross*

negligence. Seabrook contends the officers negligently arrested him without probable cause. This is indistinguishable from his malicious prosecution claim." 853 S.E.2d at 510. (Emphasis added).

Additionally, in *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), this Court held that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Accordingly, this Court concluded that "the gross negligence standard is not applicable" to claims for intentional torts. *Id*. The same would be true for a malicious prosecution claim. Moreover, as mentioned above, in *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Supreme Court explained that "police owe a duty to the public at large and not to any individual." *Id*. Consequently, the *Seabrook*, *Gist*, and *Wyatt* cases demonstrate that South Carolina does not recognize a cause of action for "negligent arrest" or an actionable claim for negligence where there is an arrest based on probable cause.

Returning to the issue of a *Franks* analysis, the trial court erred in finding that the negligence claim could be based on a *Franks* violation, i.e., an arrest warrant that omitted material information; yet at the same time ruling that *Franks* has no applicability in a civil case. (R. 28-29).

In actuality, the trial court should have engaged in the *Franks* two-prong analysis as follows: "First, plaintiffs must allege that defendants knowingly and intentionally or with a reckless disregard for the truth either made false statements in their affidavit or omitted facts

from those affidavits, thus rendering the affidavits misleading." *Evans v. Chalmers*, 703 F.3d 636, 650 (4th Cir. 2012). The second prong requires the plaintiff to "demonstrate that those false statements or omissions are material, that is, necessary to a neutral and disinterested magistrate's authorization" of the warrant. *Id*.

Importantly, "[t]he *Franks* Court recognized a strong 'presumption of validity with respect to the affidavit supporting the … warrant' and thus created a rule of 'limited scope.'" *United States v. Coakley*, 899 F.2d 297, 300 (4th Cir. 1990). *Franks* "also applies when affiants omit material facts with the intent to make, or in reckless disregard of whether they thereby made, the affidavit misleading." *Id.* Most critically, "[a]llegations of negligence or innocent mistake are insufficient." *Franks*, 438 U.S. at 171.

In *Miller v. Prince George's County*, 475 F.3d 621 (4th Cir. 2007), the Fourth Circuit explained that "with respect to omissions, 'reckless disregard' can be established by evidence that a police officer failed to inform the judicial officer of facts he knew would negate probable cause." 475 F.3d at 627. In addition, "in order to violate the Constitution, the false statements or omissions must be 'material,' that is, necessary to the neutral and disinterested magistrate's finding of probable cause." 475 F.3d at 628. "To determine materiality, a court must excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the 'corrected' warrant affidavit would establish probable cause." *Id*. "If the 'corrected' warrant affidavit establishes probable cause, no civil liability lies against the officer." *Id*.

As the Fourth Circuit has recognized, "[t]he mere fact that the affiant did not list every conceivable conclusion does not taint the validity of the affidavit." *Coakley*, 899 F.2d at 301. "*Franks* protects against omissions that are *designed to mislead*, or that are made in *reckless disregard of whether they would mislead*, the magistrate." *Id*. (Emphasis in original). "[T]o be

material under *Franks,* an omission must do more than potentially affect the probable cause determination: it must be 'necessary to the finding of probable cause.'" *Id.* For an omission to be actionable under *Franks,* "it must be such that its inclusion in the affidavit would defeat probable cause for arrest. Omitted information that is potentially relevant but not dispositive is not enough." *Id*. (Citation omitted).

As the Appellants argued, the Respondent did not prove that the arrest warrant was procured using deliberately false, misleading, or omitted information in violation of *Franks*. In addition to the lack of evidence to make that showing, the trial court never engaged in the two-prong analysis, the second part of which is a legal question for the court. Moreover, the issue was never presented to the jury. The jury charge does not include any instructions related to the *Franks* analysis, and certainly the verdict cannot be based or upheld on a legal theory that was never charged to the jury.

Finally, it is noteworthy that the trial court also never charged the jury as to the duty of care on which the negligence cause of action was based. During the jury charge, the trial court charged the jury that "[i]t is incumbent upon the Plaintiff to prove the Defendant was negligent in one or more of the particulars as alleged in the complaint." (R. 1504). However, the trial court never charged the jury as to any of those particulars from the Complaint nor as to the applicable duty of care, which is a legal question for the court. Moreover, the negligence verdict may not be upheld on a negligent hiring, supervision, or training theory because the law on those forms of negligence was never charged to the jury. Thus, it appears that the negligence cause of action, as the trial court alluded to in its directed verdict ruling, was premised, like malicious prosecution, solely on the existence of probable cause. Thus, if there was probable cause for the Respondent's arrest, the negligence claim fails, just as the malicious prosecution claim fails.

II. The trial court erred in the award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 by awarding unreasonable hourly rates, by not requiring proper documentation of billable hours worked or a reduction for unsuccessful claims, by allowing duplicative or redundant time entries by multiple counsel performing the same or similar tasks, by awarding travel time at the full hourly rate, and by awarding costs in violation of United States Supreme Court precedent.

The Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025, makes an award of attorney's fees in the amount of $369,713.30 and costs in the amount of $10,057.78. The trial court committed several errors of law.

Before addressing those errors, it must be first emphasized that, as a corollary to the Appellant Carter's qualified immunity defense, if Carter is entitled to qualified immunity, the Respondent would no longer qualify as a prevailing party under 42 U.S.C. § 1988. On that basis, the award of attorney's fees and costs against the Appellant Carter must be reversed.

Nonetheless, if the § 1983 judgment against the Appellant Carter is upheld, then the Court is respectfully requested to address the following errors committed by the trial court in its award of those attorney's fees and costs.

A. Reasonableness of Hourly Rates

A reasonable award of attorney's fees is achieved by use of the "lodestar" analysis, where a reasonable hourly rate is multiplied by the number of hours reasonably expended. *Grissom v. Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008). The party seeking an award of attorney's fees has the burden to establish the prevailing market rates for billable hours. *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 245 (4th Cir. 2009). The hourly rate should be the "prevailing market rates in the relevant community." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). "This determination is fact-intensive and is best guided by what attorneys

earn from paying clients for similar services in similar circumstances." *Id.* "While evidence of fees paid to attorneys of comparable skill in similar circumstances is relevant, so too is the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client." *Id*.

As the Fourth Circuit has explained, "[t]he relevant market for determining the prevailing rate is ordinarily the community in which the court where the action is prosecuted sits." *Rum Creek*, 31 F.3d at 175. Thus, the relevant market is Beaufort County in which this action was brought. In addition, the court in attorneys' fee cases may rely on its own knowledge of the market in determining the reasonableness of requested rates. *See, Jessco, Inc. v. Builders Mut. Ins. Co.,* 2012 WL 1825340, *1 (D.S.C. 2012).

The Respondent sought and was granted by the trial court attorney's fees at the following rates: $650 per hour for Thad L. Myers; $400 per hour for Joshua Golson; $350 per hour for Jeremiah "JJ" Shellenberg; and $300 per hour for Grady Patterson, plus $125 and $175 per hour for two paralegals. (R. 45-46).

The Fourth Circuit has explained that "[w]hen applying for a fee, an attorney has the burden to make out the reasonableness of his hourly rate with *specific evidence*." *Newport News Shipbuilding and Dry Dock Co. v. Holiday*, 591 F.3d 219, 230 (4th Cir. 2009). (Emphasis added). The Fourth Circuit has also explained that evidence should include "affidavits of other *local lawyers* who are familiar both with the skills of the fee applicants and more generally with the type of work *in the relevant community*." *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 245 (4th Cir. 2009). (Emphasis added). Here, the Respondent supported his fee petition with affidavits from Keith Babcock, Joel Hughes, and Neil Lourie. All of those attorneys have their practices located in Richland County, and none of them have attested in their

affidavit to having practiced in Beaufort County or even in the Fourteenth Judicial Circuit or to having personal knowledge of the current market rates within the Fourteenth Judicial Circuit (as opposed to other markets). None of these counsel affidavits, in fact, attest that they have charged or been paid similar rates in cases they have personally handled in Beaufort County.

As noted above, the Fourth Circuit has explained that particularly relevant evidence is "the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client." *Rum Creek*, 31 F.3d at 175 (4th Cir. 1994). In the case at bar, the Respondent's counsel has not provided a copy of the fee agreements signed by counsel and the Respondent.[2] Thus, the trial court was denied the "starting point" in order to assess the reasonableness of their requested rates. *Id*., *citing Gusman v. Unisys Corp.*, 986 F.2d 1146 (7th Cir. 1993) (recognizing that an attorney's actual billing rate provides the "starting point" for purposes of establishing a prevailing market rate). Additionally, the Respondent presented no court orders where his attorneys have been previously awarded the rates they seek, nor did the Respondent present any other pertinent evidence that this client or any other client has paid what they attested to be "my hourly rate" in their affidavits.

As noted above, courts may rely on their own knowledge of the market in determining a reasonable hourly rate. Furthermore, courts may rely on prior awards made in comparable cases within the relevant market. Notably, in its order, the trial court cites no comparable cases or awards of attorney's fees under 42 U.S.C. § 1988 or any comparable federal statutes from the prevailing market, that being Beaufort County or the Beaufort Division of the U.S. District Court. (R. 32-51).

---

[2] The contract between an attorney and client is not privileged under South Carolina law. *Strickland v. Capital City Mills*, 74 S.C. 16, 54 S.E. 220, 221 (1906).

B. Inadequate Documentation

The leading case on the reasonableness of attorney's fees awards under § 1988 is *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In *Hensley*, the Supreme Court explained that "the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." 461 U.S. at 437. " In addition, the Supreme Court instructs courts to exclude "hours that were not reasonably expended." 461 U.S. at 434.

The *Hensley* Court further held that "[t]he applicant should exercise 'billing judgment' with respect to hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." 461 U.S. at 437. Elaborating on the concept of "billing judgment," the Supreme Court explained:

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

461 U.S. at 434. (Citation omitted).

It is well settled that "fee claimants must submit documentation that reflects 'reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity,' sufficient to permit the court to weigh the hours claimed and exclude hours that were not 'reasonably expended.'" *Guidry v. Clare*, 442 F.Supp.2d 282, 294 (E.D. Va. 2006), *citing Hensley*, 461 U.S. at 433. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433.

In its recent decision pertaining to an award of attorney's fees under the Freedom of

Information Act, the South Carolina Court of Appeals adopted the *Hensley* analysis and recognized that "[a] review of the results obtained is a particularly important consideration, especially where a plaintiff is deemed "prevailing' even though he succeeded on only some of his claims for relief." *Brawley v. Richland County*, 445 S.C. 80, 911 S.E.2d 156, 164 (Ct. App. 2025). In *Brawley*, the plaintiff prevailed on only one of four FOIA requests that were litigated; yet, the trial court awarded virtually all of the claimed fees, which thereupon resulted in a reversal of the fee award. The Court of Appeals observed that "there is no adequate explanation of the amount originally granted or the deductions made in the amended order, and the amount awarded is difficult to justify." 911 S.E.2d at 165. The *Brawley* decision demonstrates that the degree of success should mirror the fees awarded and that deductions should be made to account for claims on which the fee applicant did not prevail. In this case, that would also include deductions for claims on which the Respondent was not a "prevailing party" under § 1988 including all state law claims (even the ones on which he did receive a verdict).

In the case at bar, the trial court was urged to reject all or most of the claimed fees. The Respondent failed to provide the court or opposing counsel with contemporaneous billing records for three of the four attorneys or their law firms – in particular the attorneys most involved, who tried the case and incidentally are claiming the highest hourly rates. The Respondents served subpoenas for the Respondent counsel's contemporaneous billing records. The trial court denied a subsequent motion to quash those subpoenas. Despite that order, of the four lawyers, only Grady Patterson produced what would appear to be *contemporaneous* billing records.[3] The others simply produced a typed out list of purported time entries, but there is no indication that such information

[3] Ironically, Grady Patterson, who provided contemporaneous billing records, never actually made an appearance as counsel of record until June 24, 2024, which was after the trial, although his records suggest his involvement since November 2021.

was recorded or maintained contemporaneously in that fashion over multiple years of litigation.

The necessity of furnishing detailed *and contemporaneous* billing records is particularly important in this litigation because, as mentioned, there are multiple components to the litigation, for several of which attorney's fees are not recoverable. To recap, the Respondent did not prevail on the § 1983 claims against the Defendants Beach, Griffin, and Wekenmann. He did not prevail on his state law claims for false arrest/false imprisonment. In addition, these same lawyers represented the Respondents in claims brought in this same action against Joshua Smith as well as the loss of consortium claim brought by his wife, Stephanie Coffman, which was also dismissed at the summary judgment stage. Moreover, the Respondent cannot recover attorney's fees for his prosecution of any of his state law claims because attorney's fees are not recoverable under the Tort Claims Act.

In his supporting memorandum, the Respondent wrote: "Plaintiff produced detailed records of the hours each attorney devoted to this action and applied substantial discounts for every task that could reasonably have been attributed to multiple cases, including waiving/reducing any hours related specifically to Josh Smith as Defendant, during the time periods in which Plaintiff's attorneys were simultaneously handling cases on behalf of other claimants, i.e. Stephanie Coffman, against Defendants." (R. 477). The Respondent never stated that any deductions were made for claims on which the Defendants prevailed at summary judgment or the federal claims on which the Respondent did not prevail against Defendants Beach, Griffin, and Wekenmann or for any of the state law claims. Moreover, the Respondent never explains how any deductions were determined or made. In short, the assertion in the supporting memorandum is purely conclusory. Quite simply, with the exception of Grady Patterson's records, the Respondent presented no proof as to any contemporaneous billing entries which were actually deducted and/or not included in the table of

time entries submitted with the attorney's fees motion.

In short, without the submission of *contemporaneous* billing records from all of the law firms (not just Patterson's firm), the trial court, like the Appellant Carter, was left to merely guess or speculate at the work performed as well as the time entries that have allegedly been deducted. The time entries provided quite simply do not allow for any reasonable evaluation as to whether any work is attributable to the federal claims against the Appellant Carter, as opposed to work on the state law claims or the claims brought by Stephanie Coffman or the claims brought against Joshua Smith. Most critically, without such records, the trial court was not in a position to determine reasonable deductions for the federal and state law claims on which the Respondent did not prevail.

Because the Respondent failed to properly support his attorney's fees request with contemporaneous billing records, the Appellant Carter asked the trial court to deny the attorney's fees claim. Yet, the trial court did not do so nor address this issue. The trial court additionally made no reduction of fees for the claims on which the Respondent was unsuccessful or the state law claims for which attorneys' fees are not recoverable.[4] That constitutes an abuse of discretion that warrants the reversal of the award of attorney's fees.

C. Duplication of Services -- Multiple Counsel

The Fourth Circuit has made clear that "[t]he number of hours must obviously be adjusted to delete duplicative or unrelated hours." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). The Fourth Circuit has been "sensitive to the need to avoid use of multiple counsel for tasks where such use is not justified by the contributions of each attorney" and that

[4] Attorneys' fees are not recoverable pursuant to the South Carolina Tort Claims Act. *See*, *Knoke v. South Carolina Department of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996).

"[g]eneralized billing by multiple attorneys on a large case often produces unacceptable duplication." 31 F.3d at 180. In *Brawley*, this Court was in accord. This Court, citing *Hensley*, explained that "hours not reasonably expended should be excluded from this initial fee calculation" and "[t]his includes hours that are excessive, redundant, or otherwise unnecessary." *Brawley*, 911 S.E.2d at 164.

In the case at bar, the Respondent is claiming the fees for three and sometimes four lawyers for the same or related tasks. There has been no justification provided for such duplication of effort and the number of attorneys that made various appearances or billed for the same or related tasks. Likewise, there is no justification provided for having even three lawyers at depositions, court appearances, mediation, and the trial. Clearly, the attendance of two lawyers in many instances may be reasonable such at depositions and some motion hearings, but anything above that is certainly duplicative without a specific showing of the justification, which was not provided to or considered by the trial court. The pattern of the duplicative billings by multiple attorneys performing the same tasks violate the basic principle of "billing judgment" discussed in *Hensley*, and the trial court should have but did not deduct the redundant hours which was prevalent. As the Supreme Court states:

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. … Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

Hensley, 461 U.S. at 434. (Citation omitted).

In sum, because the Respondent's counsel failed to exercise appropriate billing judgment in their submission, the trial court was asked to strike the redundant hours and reduce the fee accordingly. The trial court did not do so nor even address this issue. That represents an abuse

of discretion that should result in a reversal and remand. Clearly, a failure to exercise discretion amounts to an abuse of that discretion. *See*, *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987) ("[w]hen the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred"); *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213, 216 (Ct. App. 1997) ("[a] failure to exercise discretion amounts to an abuse of discretion").

D. Travel Time

The Respondent claimed travel time for his lawyers at the full claimed hourly rates, despite the fact that the lawyers are located in Columbia rather than Beaufort. In *Interfaith Community Organization v. Honeywell Intern., Inc*., 426 F.3d 694, 710 (3d 2005), the Third Circuit explained that "under normal circumstances, a party that hires counsel from outside the forum of the litigation may not be compensated for travel time, travel costs, or the costs of local counsel. However, where forum counsel are unwilling to represent the plaintiff, such costs are compensable." 426 F.3d at 710. Similarly, in *Martinez v. Hernando County Sheriff's Office*, 2014 WL4099254 (11th Cir. 2014), the Eleventh Circuit explained that "although there are no precise rules with respect to travel time, a fee applicant seeking to recover expenses incurred for retaining non-local counsel generally must show a lack of attorneys practicing in that place who are willing and able to handle his claims." 2014 WL4099254, *3. Here, the Respondent made no showing that he was unable to retain competent counsel within Beaufort County willing to handle this case.

In short, to the extent the Respondent chose to retain counsel outside the Fourteenth Judicial Circuit, that is certainly his prerogative, but consideration should be given to discounting the travel time that resulted. Thus, the Court is asked to discount the hourly rate for travel time

to, at most, one-half of the normal rate. This is consistent with what other courts have done. *See e.g.*, *Lochren v. County of Suffolk*, 2010 WL 1207418, *4 (E.D.N.Y. 2010) (reimbursing attorneys for travel time at fifty percent of their hourly rate); *Duke v. County of Nassau*, 2003 WL 23315463, *5 (E.D.N.Y. 2003) (reducing the amount billed for travel time by fifty percent of the attorney's general billing rate).

E. Award of Costs

In its Order Reconsidering Attorneys' Fees and Costs, filed May 14, 2025, the trial court failed to address the objection made by the Appellant Carter to the Respondent's claimed costs in the amount of $17,238.90. Although the trial court ultimately awarded $10,057.78 in costs, the court did not address Carter's argument that the Respondent is only entitled to costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d) or the comparable Rule 54(e), SCRCP, which is substantially less that than the $10,057.78 awarded.

To recap, as the Fourth Circuit explained in *Johnson v. City of Aiken,* 278 F.3d 333 (4th Cir. 2002), the Respondent is only entitled to "costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)." 278 F.3d at 339. The only taxable costs that the Respondent may recover are as follows: "(1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 of this title; [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title." 28 U.S.C. § 1920.

The "other costs" claimed by the Respondent would be more properly characterized as "expenses" but not "taxable costs" that are recoverable under 28 U.S.C. § 1920 and Rule 54(d), FRCP or the comparable Rule 54(e), SCRCP. The United States Supreme Court has explained: "Although 'costs' has an everyday meaning synonymous with 'expenses,' the concept of taxable costs under Rule 54(d) is more limited and represents those expenses, including, for example, court fees, that a court will assess against a litigant." *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 537 (2012). "Taxable costs are limited to relatively minor, incidental expenses as is evident from § 1920, which lists such items as clerk fees, court reporter fees, expenses for printing and witnesses, expenses for exemplification and copies, docket fees, and compensation of court-appointed experts." *Id*.

Importantly, the United States Supreme Court has explained that the Court's case law on Rule 54(d) has now established a "clear rule" as follows: "A statute awarding 'costs' will not be construed as authorizing an award of litigation expenses beyond the six categories listed in §§ 1821 and 1920, absent an explicit statutory instruction to that effect." *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873, 878 (2019). In *Rimini*, the Supreme Court ruled that "Section 1821 and 1920 create a default rule and establish a clear baseline against which Congress may legislate. Consistent with that default rule, some federal statutes simply refer to 'costs.' In those cases, federal courts are limited to awarding the costs specified in §§ 1821 and 1920." 139 S.Ct. at 877. Further explaining, the Supreme Court states: "If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so. … But absent such express authority, courts may not award litigation expenses that are not specified in §§ 1821 and 1920." *Id*. Quite simply, the *Rimini* decision overrules any previous decisions where courts have allowed prevailing parties to

recover "reasonable litigation expenses" under § 1988, including the Fourth Circuit's decisions in *Spell v. McDaniel*, 852 F.2d 762 (4th Cir. 1986), and *Daly v. Hill*, 790 F.2d 1071 (4th Cir. 1986), as cited by the Respondent.

More recently, the Tenth Circuit recognized that *Rimini* "hold[s] that the authorization in 42 U.S.C. § 1988 to award 'full costs' does not provide the 'explicit statutory authority' required to award costs, including expert witness fees, beyond those provided by §§ 1920 and 1821." *Alfwear, Inc. v. Mast-Jaegermeister US, Inc.*, 2023 WL 8232072, *5 (10th Cir. 2023). That is the crux of the Appellant Carter's position. Under the "clear rule" announced in *Rimini*, costs may not be awarded under § 1988 to the prevailing party except for the taxable costs allowed for the six categories listed in §§ 1821 and 1920. The one exception created by Congress is for § 1981 cases where the statute says, "the court, in its discretion, may include expert fees as part of the attorney's fee." 42 U.S.C. § 1988(c). There are no other exceptions for the award of costs or expenses – as part of the attorney's fees or otherwise – that have been explicitly authorized by Congress under § 1988.

In sum, there is no "explicit statutory authority" in § 1988 that allows for the award of non-taxable costs as claimed by the Respondent, including travel expenses, hotels, meals, mileage reimbursement, and postage, among others. The Respondent, in fact, made no attempt to point out any such explicit language in § 1988 to support an award of the non-taxable costs" claimed in Exhibit 9 to his motion. Quite clearly, none of those items are taxable as costs under 28 U.S.C. § 1920 and Rule 54(d), FRCP (or Rule 54(e), SCRCP), and as a result, those non-taxable costs should not have been awarded.

For the foregoing reasons, the trial court erred in awarding costs in excess of what is taxable under 28 U.S.C. § 1920 and Rule 54(e), SCRCP. The Respondent is entitled only to the costs taxable under 28 U.S.C. § 1920 and Rule 54(e), SCRCP.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellants Town of Port Royal and Kimberly Carter respectfully request that the Court reverse the trial court's order denying their motions for directed verdict and JNOV and remand for entry of judgment for the Appellants. The Appellant Carter further requests that that the Court reverse the trial court's award of attorney's fees and costs under 42 U.S.C. § 1988. In the alternative, if the § 1983 judgment stands, the Court is requested to remand with instructions that the trial court limit or reduce the attorney's fees for the reasons discussed herein and with instructions that the Respondent is entitled only to those costs taxable under 28 U.S.C. § 1920 and Rule 54(e), SCRCP, in accordance with *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873 (2019).

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400

Counsel for Appellants Kimberly Carter and Town of Port Royal

April 27, 2026

RECEIVED
Apr 27 2026
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants Kimberly Carter and Town of Port Royal certify that the Final Brief of Appellants complies with Rule 211(b), SCACR.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400

Counsel for Appellants Kimberly Carter and Town of Port Royal

April 27, 2026

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellants Kimberly Carter and Town of Port Royal certify that the Final Brief of Appellants complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

THOMAS A. BENDLE #69561
ROBERT S. DENNIS #104304
HOWELL, GIBSON & HUGHES, P.A.
25 Rue Du Bois
Post Office Box 40
Beaufort, South Carolina 29901-0040
(843) 522-2400

Counsel for Appellants Kimberly Carter and Town of Port Royal

April 27, 2026

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellants, does hereby certify that service of the **Final Brief of Appellants** in the above-captioned matter was made upon all counsel of record by email only this the 27th day of April 2026, as follows:

John S. Nichols, Esquire
Bluestein Thompson Sullivan, LLC
Email: john@bluesteinattorneys.com

Thad L. Myers, Esquire
Jeremiah J. Shellenberg, Esquire
Thad L. Myers, P.A.
Email: thad@thadmyerspa.com
Email: jj@thadmyerspa.com

Joshua P. Golson, Esquire
Law Office of Joshua P. Golson, LLC
Email: josh@joshgolsonlaw.com
Grady L. Patterson, Esquire
Patterson Law Offices, LLC
Email: glp@pattersonlawoffices.net

Thomas A. Bendle, Esquire
Robert S. Dennis, Esquire
Howell, Gibson & Hughes, P.A.
Email: tbendle@hghpa.com
Email: rdennis@hghpa.com

s/ Andrew F. Lindemann