THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

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Sep 03 2026
SC Court of Appeals

Appellate Case No. 2024-000833

Christine Jernigan and Justin Jernigan,..... Appellants,

v.

Kershaw County Sheriff's Office, ...Respondent.

PETITION FOR REHEARING

Appellants Christine Jernigan and Justin Jernigan, pursuant to Rule 221(a), SCACR, petition for rehearing of the Court's recent decision in *Jernigan v. Kershaw County Sheriff's Office* ("KCSO"), Op. No. 2026-UP-417 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion").

The grounds for Appellants' petition for rehearing are addressed in the supporting memorandum filed herewith and incorporated herein. Appellant's petition for rehearing is based on the Court's Opinion; the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

Respectfully submitted,

By: s/Justin A. Jernigan

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ATTORNEY FOR APPELLANTS

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MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

Appellants Christine Jernigan and Justin Jernigan have petitioned this Court for rehearing of the Court's recent decision in *Jernigan v. Kershaw County Sheriff's Office* ("KCSO"), Op. No. 2026-UP-417 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion"). Appellants respectfully submit that the following points were overlooked or misapprehended by this Court.

I. The Opinion misapprehends or overlooks Appellants' arguments and portions of the record with respect to the spoliation decision

The Opinion, at page 2 (*see* below), finds that spoliation of the body-worn camera ("BWC") recordings of Count II was not properly raised and ruled upon by the circuit court in a manner sufficient to preserve the issue for appeal.

> [W]e conclude Appellants' contention that the circuit court ruled on the spoilation issue 'sub silentio' in its order denying the motion for sanctions/contempt to be without merit. Nowhere in the order did the circuit court mention the body worn camera data or spoilation. The order simply stated that KCSO complied with the directive to comply with FOIA. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497

> S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Appellants respectfully request that the Court reconsider these findings on the spoliation issue in view of Appellants' briefing on this matter, and the applicable portions of the record on appeal cited therein, particularly in Appellants' Reply Brief at pages 6-8.

Notably, Appellants' timely-filed April 24, 2023, Memorandum in Support of the Motion for Sanctions/Contempt clearly raised and requested relief due to Respondent's spoliation of the BWC recordings of Count II, which was a well-known issue in this case. (*See* R. pp. 90, 101-10). Spoliation of the BWC recordings of Count II was addressed at the April 27, 2023, hearing on Appellants' Motion for Sanctions/Contempt. (*See* R. p. 501, ln. 6-7; R p. 511, ln. 14-24; R. p. 519, ln. 19-22). At the conclusion of the April 27, 2023, hearing on Appellants' Motion for Sanctions/Contempt, the Honorable Daniel M. Coble took the matter under advisement stating:

> THE COURT: …I'm going to try to address those three main issues *about destroying evidence*. The FOIA response and then the discovery response.
>
> MR. JERNIGAN: Thank you, Your Honor.

(App. Br. at 6; R. p. 521, lines 15-17 (emphasis added).

Appellants' position that the circuit court ruled on the spoilation issue "sub silentio" (i.e., in silence) in the October 20, 2023, Order denying Appellants' Motion for Sanctions/Contempt is consistent with the Court's finding that "[n]owhere in the order did the circuit court mention the body worn camera data or spoilation." Op. 2. Appellants filed a Rule 59(e) Motion requesting that the circuit court reconsider the October 20, 2023, Order and provide explicit findings/rulings on the spoliation issues and argument that had not been explicitly addressed. (R. pp. 572, 581 ("Plaintiffs respectfully request explicit rulings on the spoliation issues and arguments raised"). The circuit court, however, denied Appellants' Rule 59(e) Motion without providing explicit

rulings or otherwise mentioning the body worn camera data or spoilation (i.e., in silence). (R. p. 585-86).

Appellants respectfully ask this Court to reconsider the findings of its Opinion that Respondent's spoliation of the BWC recordings of Count II was never properly raised to or ruled upon by the circuit court in a manner sufficient to preserve the matter for appellate review. Our Supreme Court has identified "two basic situations in which a party should consider filing a Rule 59(e) motion." *Elam v. S.C. Dep't of Transp*., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id*. (emphasis added). But, "[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id*.

Upon the foregoing, Appellants submit that spoliation of the BWC recordings of Count II was properly raised on two occasions, and that this is sufficient to preserve the issue for review despite the lack of explicit rulings by the circuit court.

II. The FOIA analysis of the Opinion overlooks or misapprehends Appellants' position and Issue II of Appellants' Brief

The FOIA issues in this case are simple. Count I of the Complaint seeks declaratory/equitable relief: (*i*) finding that the written determination provided by Respondent to Appellants on July 25, 2022, violates the statutory written determination requirements of FOIA, Section 30-4-30(c); and (*ii*) finding that Respondent failed to disclose all relevant records of the FOIA Request within the time periods required by FOIA, Section 30-4-30(c). (R. pp. 11-12).

The Opinion finds that the circuit court did not make any determinative rulings on FOIA issues (*i*) or (*ii*) at the December 19, 2022, initial hearing: "Contrary to Appellants' contentions,

we conclude the circuit court's directive was a directive to comply with FOIA and produce what was requested for a later judge to determine whether KCSO complied with FOIA." Op. 4. Appellants agree with the Opinion's findings that the circuit court left final determination open on FOIA issue (*ii*) pending completion of discovery, but respectfully requests reconsideration with respect to the Opinion's findings as to FOIA issue (*i*).

Notably, at the December 19, 2022, initial hearing, the circuit court stated: "I think that [KCSO] should do a written response, almost like you're responding to interrogatories or requests for production, as to each item set forth in the FOIA request." (R. p. 251, lines 17-20; R. p. 255, lines 5-16). Appellants believe that the circuit court's instructions at the December 19, 2022, initial hearing were intended to resolve FOIA issue (*i*) – the written response required by FOIA, Section 30-4-30(c) – consistent with precedent. *See*, *e.g*., *Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (holding that the DOR's "equivocal and evasive" FOIA response was "manifestly at odds with the clarity mandated by" Section 30-4-30(c)). Appellants believe the written Order's statements that "[KCSO] shall fully comply with the South Carolina Freedom of Information Act vis-a-vis [Appellants'] requests within 20 days of the hearing" are consistent with directing KCSO to provide the written response required by FOIA, Section 30-40-30(c). (R. p. 24).

Issue II of Appellant's Brief requests that this Court extend its holding in *Osmundson v. School District 5*, 443 S.C. 610, 905 S.E.2d 418 (2014), to the present case by finding that the circuit court is required to make a final ruling at the 10-day initial hearing, if possible, and to otherwise establish a scheduling order to conclude the FOIA action within six months of initial filing. App. Br. 12-14, 20-21. Appellants believe that the circuit court was intending to resolve FOIA issue (*i*) at the initial hearing consistent with these requirements of FOIA, 30-4-100(A).

Upon the foregoing, Appellant respectfully asks this Court to reconsider its finding that the circuit court did not make any rulings on FOIA issue (*i*) – the written response required by FOIA, Section 30-4-30(c) – at the December 19, 2022, initial hearing.

III. The Opinion overlooks or misapprehends Issue II of Appellant's Brief; i.e., the mandatory procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)

Issue II of Appellant's Brief requests that this Court extend its holding in *Osmundson v. School District 5*, 443 S.C. 610, 905 S.E.2d 418 (2014), to the present case by finding that the circuit court is required to make a final ruling at the 10-day initial hearing, if possible, and to otherwise establish a scheduling order to conclude the FOIA action within six months of initial filing. App. Br. 12-14, 20-21. The Court's Opinion, however, does not mention, consider, or rule on Issue II of Appellants' Brief. *See* SCRAP 220(b). Appellants respectfully ask this Court to reconsider its Opinion by addressing Issue II of Appellant's Brief.

During the 2017 round of updates, the General Assembly amended FOIA, Section 30-4-100(A) (effective May 19, 2017, emphasis added) to include the below procedural mandates and deadlines that the CAJ's of the circuit courts are required to follow upon the filing of a FOIA case.

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

The 2017 FOIA amendments impose "time constraints within which *determinative hearings* on the requests for relief must be made." 2017 Act No. 67 (H. 3352), Section 4, Effect of Amendment (emphasis added). Appellants respectfully submit that the expedited resolution

requirements and substantive legal standards of Section 30-4-100(A) are "mode of trial" rights imposed using "must" and "shall" language, that automatically apply to the benefit of all FOIA plaintiffs without requiring resort to formal motion practice.

As noted above, the FOIA issues in this case are simple. Yet, no resolution on these matters has been reached despite procedural history involving multiple hearings. Appellants request that this Court extend its holding in *Osmundson* to the present case by finding that the circuit court is required to make a final ruling at the 10-day initial hearing, if possible, and to otherwise establish a scheduling order to conclude the FOIA action within six months of initial filing.

CONCLUSION

Based on the foregoing discussion, Appellants respectfully request that the Court grant their petition for rehearing of the Court's recent decision in *Jernigan v. Kershaw County Sheriff's Office* ("KCSO"), Op. No. 2026-UP-417 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Rehearing and Memorandum in Support of Petition for Rehearing is being served by email to counsel for Respondent as follows: David Morrison, Esq., at david@gslawsc.com.

Respectfully submitted,

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