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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Op. No. 2026-UP-417 (S.C. Ct. App. filed Aug. 19, 2026)

Christine Jernigan and Justin Jernigan, Appellants,

v.

Kershaw County Sheriff's Office,Respondent.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

CERTIFICATE OF COUNSEL	1
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	1
A. Count I - FOIA	1
B. Count II - Body-Worn Camera Data	6
C. Motion/Memorandum for Sanctions or Contempt	7
ARGUMENT	9
I. The Court of Appeals erred by failing to consider and apply the mandatory “must” and “shall” provisions of FOIA, Section 30-4-100(A)	9
II. The Court of Appeals erred by finding that spoliation of the BWC recordings of Count II was not properly raised to the circuit court in a manner sufficient to preserve the issue for appeal	13
CONCLUSION	15

CERTIFICATE OF COUNSEL

Undersigned counsel certifies that the Petition for Rehearing of *Jernigan v. Kershaw County Sheriff's Office* ("KCSO"), Op. No. 2026-UP-417 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion"), was denied by the Court of Appeals on September 15, 2026.

QUESTIONS PRESENTED

- I. The interpretation and application of FOIA, Section 30-4-100(A) (eff. May 19, 2017) is a novel question. The Court of Appeals dismissed this appeal without considering the mandatory "must" and "shall" statutory provisions of Section 30-4-100(A). Did the Court of Appeals err by failing to consider and apply Section 30-4-100(A)?
- II. Did the Court of Appeals err by finding that spoliation of the BWC recordings of Count II was not properly raised to the circuit court in a manner sufficient to preserve the issue for appeal in conflict with this Court's Opinion in *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004)?

STATEMENT OF THE CASE

Appellants initiated this special-proceeding, Counts I and II, seeking declaratory and equitable relief on September 12, 2022. (R. pp. 1-18).

A. Count I - FOIA

Count I seeks declaratory and equitable relief: (i) finding that the written determination provided by Respondent Kershaw County Sheriff's Office ("KCSO") on July 25, 2022 (*see* below, p. 2), violates the requirements of FOIA, Section 30-4-30(C); and (ii) finding that Respondent failed to disclose records of the FOIA Request within the time periods required by Section 30-4-30(C). (R. pp. 11-12).

Appellants' July 22, 2022, FOIA Request seeks public records relevant to police-involved events of June 28-29, 2022, including audio/video recordings and personnel/training information for the employees involved. (R. pp. 15-18). KCSO responded on July 25, 2022, as follows:

After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

(R. pp. 8, 169-70).

KCSO's July 25, 2022, Response asserts that the requested communications records in "our" system must be obtained from the Kershaw County E-911/Dispatch Department ("KCSC"). Appellants' position is that, pursuant to FOIA, Section 30-4-20(c), KCSO prepares, owns, uses, possesses, or retains access to its law enforcement communications/dispatch records despite its E-911/dispatch arrangement with KCSC. (*See* R. p. 97).¹ Even so, Appellants submitted the July 22, 2022, FOIA Request to KCSC in a further effort to obtain the E-911/dispatch records requested. (R. p. 178-79).²

On August 18, 2022, pre-suit counsel for KCSO and KCSC, Mr. Morgan ("pre-suit counsel"), mailed Appellants a CD optical disc containing 12 audio files of phone calls that concern or involve undersigned counsel, and one associated public document – CFS2022-39001 (Aug. 18, 2022). (R. pp. 9 at ¶54, 145-48, 269). No audio recordings of undersigned counsel's phone communications reporting OAPA-related concerns to KCSO Officer #45 Joseph Branham

¹ The Sheriff is a constitutional officer of this State, requires access to law enforcement communication/dispatch records to conduct criminal investigations, and cannot lawfully be restricted from accessing these records by KCSC. *See, e.g.,* Op. S.C. Att'y Gen., p. 6 (Oct. 2, 2026).

² The facts of this case overlap with those of a later-filed, related FOIA case seeking to obtain the relevant E-911/dispatch records requested – *Jernigan v. Kershaw County South Carolina* ("KCSC"), App. No. 2024-002127 – which is currently awaiting a final ruling from the Court of Appeals. Both cases present the same question regarding whether the circuit court erred by failing to follow the mandatory legal requirements of FOIA, Section 30-4-100(A).

on the morning of June 29, 2022, were provided.³ (R. p. 148). No records or audio recordings of the E-911/dispatch communications accusing Appellants of improper or unlawful conduct on June 29, 2022, were provided.

On August 23, 2022, pre-suit counsel mailed Appellants a CD optical disc containing a dash camera video of the approximately 45-minute roadside seizure/detention of Appellant Mrs. Jernigan, and her mother Mrs. Martin, on June 29, 2022. (R. pp. 10 at ¶¶ 60-61). The disclosed video, however, omits video/audio documenting KCSO's decision to pursue, and pursuit of, Appellant Mrs. Jernigan's vehicle; and omits audio documenting the KCSO officers' out-of-vehicle enforcement activities because the only audio is from an in-vehicle microphone.⁴ (*Id.*).

In late August 2022, near the expiration of FOIA, Section 30-4-30(C)'s disclosure deadlines, Appellants attempted to resolve the FOIA matters amicably. (R. p. 10 at ¶¶ 58-59). On August 23, 2022, Appellants offered to extend the disclosure deadlines of Section 30-4-30(C) if pre-suit counsel would provide the E-911 call records/recordings that triggered KCSO's June 29, 2022, police-actions as soon as possible. (R. p. 185). Otherwise, Appellants requested that pre-suit counsel agree to keep them "in the loop" moving forward regarding when the additional records of the FOIA Request – e.g., personnel/training records for the employees involved – would be disclosed. (*Id.*).

Undersigned counsel noted, pursuant to *Burton v. York County Sheriff's Dept.*, that Appellants would likely be entitled to recover attorney's fees if the personnel/training records

³ See Omnibus Adult Protection Act ("OAPA"), S.C. Code Ann. § 43-35-10(3)(a) ("[e]xploitation" means, among other definitions, "causing or requiring a vulnerable adult [i.e., Mrs. Martin] to engage in activity ... which is ... against the reasonable and rational wishes of the vulnerable adult").

⁴ A USB Drive containing the 12 audio recording files of phone calls that concern or involve undersigned counsel, and the approximately 45-minute dash camera video, was submitted as Exhibit 1 at the April 27, 2023, Hearing. (R. p. 498, Ins. 19-23).

requested were provided after the disclosure deadlines of FOIA, Section 30-4-30(C), expired. ((R. pp. 429 and 185 (citing 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) (reversing and remanding “for a full and proper consideration of the attorney’s fees request”)). Pre-suit counsel rejected the August 23, 2022, offer to extend the disclosure deadlines of FOIA, Section 30-4-30(C), that same night at 9:00pm. (*See* R. pp. 10 at ¶58, 184-85).

Over a month after Appellants filed suit, on October 14, 2022, pre-suit counsel mailed Appellants a CD optical disc containing personnel/training files (redacted) for three of the KCSO Officers personally involved in the events of June 29, 2022 – i.e., KCSO Officers Dustin Tate, Grant Arledge, and Miles Taylor. (R. pp. 429-30, 437-39); (Reply Br. 12-13). KCSO subsequently disclosed personnel/training files (redacted) for a fourth officer, KCSO Officer #45 Joseph Branham, on January 9, 2023. (*See* R. pp. 77-78).

On December 2, 2022, KCSO disclosed the CFS 2022-39001 (Nov. 17, 2022) and CFS2022-39009 (Nov. 17, 2022) public records. (R. pp. 139-43, 269 at ¶¶17-18). These public records are Computer-aided Dispatch (“CAD”) logs/reports that document KCSO’s June 29, 2022, law enforcement activity pursuant to KCSO’s Policy Manual, Chapter 209.11 – Records. (*See* R. pp. 130-31, 269 at ¶15). Appellants’ position is that, pursuant to FOIA, Section 30-4-20(c), KCSO prepares, owns, uses, possesses, or retains access to these communication-related public records (i.e., CAD logs/reports) despite its E-911/dispatch arrangement with KCSC. (Reply Br. 12). Notably, at 8:18pm on June 29, 2022, KCSO Officer #32 Dustin Tate prepared notes in CFS 2022-39001 (Nov. 17, 2022) indicating that undersigned counsel’s reporting of suspected OAPA-exploitation of a vulnerable adult to KCSO Officer #45 Joseph Branham on the morning of June 29, 2022, were Code 12 (“C12”) civil matters rather than criminal matters. (R. pp. 143, 217); *but see* fn. 3, above.

The Complaint requests that the circuit court “[s]chedule an initial hearing within 10 days of the date of service” pursuant to FOIA, Section 30-4-100(A). (R. p. 12). In this respect, the General Assembly updated Section 30-4-100(A) (eff. May 19, 2017, emphasis added) to include procedures and deadlines (underlined below) that the chief administrative judge of the circuit court (“CAJ”) is required to follow:

A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. 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 court may order equitable relief as it considers appropriate, and a violation of this chapter *must* be considered to be an irreparable injury for which no adequate remedy at law exists.

Appellants contacted the CAJ’s law clerk, and the clerk’s office, on multiple occasions in an effort to obtain the 10-day initial hearing required by FOIA, Section 30-4-100(A). (R. pp. 12; 207, lns. 1-23). The December 5, 2022, hearing before the Honorable DeAndrea G. Benjamin proceeded as a status conference because the circuit court determined that Section 30-4-100(A) required that the then-current CAJ conduct the initial hearing. (R. p. 199, lns. 14-23; R. pp. 206, ln. 14-p. 208, ln. 21). Undersigned counsel again reached out to court staff to obtain the December 19, 2022, initial hearing before the Honorable Jocelyn C. Newman, CAJ. (R. p. 238, ln. 17-p. 239, ln. 10).

At the December 19, 2022, initial hearing, Judge Newman, CAJ, 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, lns. 17-20; R.

p. 255, lns. 5-16). Appellants' position is that Judge Newman's instructions at the December 19, 2022, initial hearing regarding the written response required by FOIA, Section 30-4-30(C) are 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)). At the December 19, 2022, initial hearing, Judge Newman also stated that KCSO must provide its discovery responses to Appellants' October 29, 2022, First Set of Discovery Requests within 20-days. (R. pp. 250, ln. 22-p. 251, ln. 1).

The circuit court's December 28, 2022, Form 4 Order states that "[KCSO] shall fully comply with the South Carolina Freedom of Information Act vis-a-vis [Appellants'] requests within 20 days of the hearing." (R. p. 24).

B. Count II – Body-Worn Camera Data

Count II of the Complaint seeks declaratory and equitable relief pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.*, and statutory provisions allowing individuals to request and receive body-worn camera ("BWC") data, S.C. Code Ann. § 23-1-240(g)(5). (R. pp. 11-12). Notably, Subsection (5) of Section 23-1-240(g) (emphasis added) specifies that individuals who are themselves the subjects of BWC recordings – i.e., Appellants on June 29, 2022 – are "persons who may request and must receive data recorded by a body-worn camera ... pursuant to ... a court order." (R. pp. 4 at ¶¶19-20; 11 at ¶69).

With regard to Count II, Appellants' July 22, 2022, FOIA Request "respectfully requests that all body-worn camera records ... be preserved" by KCSO. ((R. p. 17 (last lines))). Pre-suit counsel indicated via email on July 28, 2022, that the relevant BWC recordings of the June 29, 2022, police-involved incidents would not be provided in response to Appellants' FOIA Request.

(*See* R. p. 166). Appellants replied, on August 1, 2022, as follows: “Understand [that] there is [a] FOIA exemption for body cam video, but respectfully request preservation.” (R. p. 165).

At the status conference before Judge Benjamin on December 5, 2022, Respondent’s counsel revealed that all BWC recordings of the June 29, 2022, police-involved incidents (Count II) – for which preservation was explicitly requested – had been destroyed (i.e., written over) by KCSO. (R. p. 210, lns. 2-3; R. p. 212, lns. 18-19; R. p. 213, lns. 2-3). Judge Benjamin stated that Appellants should conduct some limited discovery with respect to Respondent’s destruction of the BWC records. (*Compare* R. p. 213, lns. 13-21 *with* R. pp. 61-62).

Respondent produced its BWC Records Retention Schedules to Appellants on January 9, 2023. (R. pp. 217-18, 270 at ¶28). The BWC recordings of June 29, 2022, were destroyed, or written over, once the 60-day “Code 12” civil issue retention period of the BWC Retention Schedules expired; i.e., on August 27, 2022. (R. p. 217). In contrast, the “Traffic Stop” label of the BWC Retention Schedules, and its corresponding 180-day retention period, should have applied to the recordings of KCSO’s traffic stop of Appellant Mrs. Jernigan’s vehicle on the morning of June 29, 2022. (*See* R. p. 218).

C. Motion/Memorandum for Sanctions or Contempt

Appellants filed a February 23, 2023, Motion, and April 24, 2023, supporting Memorandum raising three primary issues: (i) spoliation of the BWC records/evidence of Count II (R. pp. 101-10); (ii) failure to comply with the written determination obligations of FOIA, Section 30-4-30(C), as ordered by Judge Newman in December 2022 (R. pp. 110-12); and (iii) failure to comply with the discovery requirements of the SCRCF (R. pp. 112-18).

Rather than being assigned to Judge Newman, CAJ, pursuant to FOIA, Section 30-4-100(A), the Motion/Memorandum for Sanctions or Contempt was assigned to the Honorable

Daniel M. Coble. At the conclusion of the April 27, 2023, hearing, Judge Coble took the matter under advisement stating:

THE COURT: ...I'm going to try to address those three main issues about [i] destroying evidence. [ii] The FOIA response and then [iii] the discovery response.

(R. p. 521, lns. 15-17).

The circuit court's June 2, 2023, Form 4 Order states that Appellants' Motion/Memorandum is denied, and that a written order would be entered at a later date. (R. p. 315). The circuit court's October 20, 2023, Written Order, however, only explicitly addresses one of the three main issues raised by Appellants' Motion/Memorandum (*see* R. pp. 564-65):

On December 28, 2022 Judge Jocelyn C. Newman issued a Form 4 Order (the Order) stating, 'Following a hearing on December 19, 2022, the Court ordered that Defendant[] shall fully comply with the South Carolina Freedom of Information Act vis-à-vis Plaintiff's requests within 20 days of the hearing.'

After thoroughly considering all of the arguments made during the April 27th, 2023 hearing and the written submissions of the parties, this Court finds that Defendant complied with the Order to the best of its ability and in good faith. Therefore, Plaintiff's Motion for Sanctions/Contempt is hereby **DENIED**.

The Written Order finds that Respondent "complied with" Judge Newman's December Orders "to the best of its ability and in good faith" even though Respondent did not provide a response consistent with the written determination obligations of FOIA, Section 30-4-30(C). (R. p. 50). Moreover, even where it is undisputed that a public body has acted in good faith, no "good faith exception" exists to foreclose an award of attorney's fees under FOIA, much less the failure to respond or disclose public records as legally required. *See New York Times v. Spartanburg County School District*, 374 S.C. 307, 312-313, 649 S.E. 2d 28 (2007) (citation omitted).

The circuit court's Written Order does not explicitly address spoliation of the BWC records/evidence of Count II. (*See* R. pp. 564-65). Pursuant to Rule 59(e), SCRCP, Appellants filed a Motion requesting that the circuit court reconsider the October 20, 2023, Written Order, and provide explicit findings/rulings on the spoliation issues that had not been explicitly addressed. ((R. p. 572 quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“[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”); R. p. 581)). The circuit court, however, denied Appellants' Rule 59(e) Motion without mentioning the body worn camera data or spoliation for a second time. (R. p. 585-86). Appellants timely-filed and served a Notice of Appeal on May 21, 2024.

ARGUMENT

I. The Court of Appeals erred by failing to consider and apply the mandatory “must” and “shall” provisions of FOIA, Section 30-4-100(A)

The FOIA issues of Court I are simple. Count I seeks declaratory/equitable relief: (i) finding that the written determination provided by Respondent to Appellants on July 25, 2022, violates the 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 Section 30-4-30(C). (R. pp. 11-12).

The Opinion finds that neither Judge Newman's December 2022 Orders nor the October 20, 2023, Written Order made any determinative rulings on FOIA issue (i) above: “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 submit that the Court of Appeals erred by failing to consider and

apply the mandatory “must” and “shall” provisions of FOIA, Section 30-4-100(A) (eff. May 19, 2017).

The expedited resolution requirements and substantive legal standards of Section 30-4-100(A) are mode of trial rights that automatically apply to the benefit of FOIA plaintiffs without requiring resort to formal motion practice. *See Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (holding that orders affecting the mode of trial are immediately appealable and become law of the case if a timely appeal is not filed). In *Osmundson*, the Court of Appeals held, pursuant to the plain and unambiguous language of FOIA, Section 30-4-100(A), that the circuit court is responsible for scheduling an initial hearing within ten days of the service on all parties. *See Osmundson v. School District 5*, 443 S.C. 610, 905 S.E.2d 418 (Ct. App. 2024) (interpreting the 10-day hearing requirement as a matter of first impression). Appellants request that this Court extend the Court of Appeals’ holding in *Osmundson* by finding, pursuant to FOIA, Section 30-4-100(A), that FOIA issue (i) should have been resolved at an initial hearing held within 10 days of service, like a motion for temporary injunction, and that a scheduling order should have been entered to resolve FOIA issue (ii) and conclude this FOIA action within six months of initial filing.

The prevailing rule of statutory interpretation is that “use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (citation omitted). Statutory provisions are generally regarded as mandatory when, as in the present case, the power or duty to which it relates is for the security or protection of important rights. *See State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) (citation omitted); *Seago v. Horry Cnty.*, 378 S.C. 414, 423, 663 S.E.2d 38, 42 (2008) (“FOIA grants the public an immutable right to access public

records”). Indeed, mandamus may be an appropriate remedy to compel a public official to perform mandatory “must” and “shall” duties, and in cases where clear abuse of discretion would otherwise result the matter is effectively a ministerial decision. *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 445 S.E.2d 441, 444 (1994).

The General Assembly previously updated Section 30-4-100 (eff. May 26, 1987) to mandate that all FOIA violations “must be considered an irreparable injury for which no adequate remedy at law exists.” 1987 Act No. 118, Section 8. The most recent, 2017 FOIA amendments were added to 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. When H. 3352 was considered by the Judiciary Committee, Senator Margie Bright Matthews explained that adding the scheduling/time constraints would “create an avenue of filing FOIA requests like a temporary [injunction] motion so that it would have [to be] fast-tracked within ten days.”⁵ Accordingly, Section 30-4-100(A) (eff. May 19, 2017) was updated by the General Assembly to require that FOIA actions be resolved on an expedited basis like a temporary injunction motion. *See, e.g., Scratch Golf v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (applying temporary injunction factors)

“The General Assembly has the power and authority to change the statutes in any manner in which, in its best judgment, it may deem wise.” *Fort Sumter Hotel v. S.C. Tax Comms.*, 201 S.C. 50, 60, 21 S.E. 2d 393, 397 (1942). The circuit court can “now only carry out by its order the plain meaning and intent of the statutes as they appear on the books today. That course alone constitutes the cornerstone of constitutional government.” *Id.* The circuit court’s failure to

⁵ S. Judiciary Comm. Meeting, 122d Gen. Assemb., 1st Reg. Sess. (S.C. May 2, 2017), available at <https://www.scstatehouse.gov/video/archives.php>, at 01:53:00 to 1:54:50; *see also* Rule 65, SCRCP.

follow the expedited resolution requirements of FOIA, Section 30-4-100(A) has denied Appellants the mode of trial rights enacted by the legislature for the benefit of FOIA plaintiffs. This places Appellants, and all similarly-situated FOIA-plaintiffs, in an untenable situation.

“The interpretation of a statute is a question of law.” *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016) (citations omitted). Declaratory and injunctive relief are equitable remedies and “this Court may make factual findings based on its own view of the preponderance of the evidence.” *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 760 S.E.2d 785, 788 (2014) (citation omitted). Pursuant to the expedited resolution requirements of FOIA, Section 30-4-100(A), the primary relief requested with respect to Count I – a finding that the written determination provided by KCSO on July 25, 2022, violates the requirements of FOIA, Section 30-4-30(C) – should have been settled as a matter of law at an initial hearing held within ten (10) days of service. *See Sloan*, 409 S.C. 551, 762 S.E.2d 687 at 688-89 (holding that the DOR’s “equivocal and evasive” FOIA response was “manifestly at odds with the clarity mandated by” Section 30-4-30(C)).⁶

Following the 10-day initial hearing, a scheduling order to resolve the further relief of Count I, i.e., finding that Respondent failed to disclose relevant records of the FOIA Request within the time periods required by Section 30-4-30(C), and to conclude this case within six months of initial filing, should have been entered. *See* FOIA, Section 30-4-100(A). At the very least, personnel/training records of the July 22, 2022, FOIA Request were disclosed well after

⁶ The 2017 FOIA amendments provided public bodies the right to seek declaratory relief via an expedited hearing under Section 30-4-110(A) with respect to (i) alleged “unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests,” or (ii) where the public body “received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.” S.C. Code Ann. § 30-4-110(A). KCSO did not request a hearing or seek declaratory relief pursuant to Section 30-4-110(A) in this case.

the disclosure deadlines of FOIA, Section 30-4-30(C), had expired. *See above*, at p. 4; *Burton*, 358 S.C. 339, 594 S.E.2d 888 (reversing and remanding “for a full and proper consideration of the attorney’s fees request”).

Upon the foregoing, Appellants respectfully submit that the Court of Appeals erred by dismissing this appeal without considering and applying the mandatory “must” and “shall” provisions of FOIA, Section 30-4-100(A).

II. The Court of Appeals erred by finding that spoliation of the BWC recordings of Count II was not properly raised to the circuit court in a manner sufficient to preserve the issue for appeal

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 spoliation 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 spoliation. 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 submit that the Court of Appeals erred by finding that spoliation of the BWC recordings of Count II was not properly raised to the circuit court in a manner sufficient to preserve the issue for appeal pursuant to *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Appellants’ April 24, 2023, Memorandum in support of the Motion for Sanctions or 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. 101-10). Spoliation of the BWC recordings of Count II was discussed at the April 27, 2023, hearing. (*See*

R. p. 501, ln. 6-7; R p. 511, ln. 14-24; R. p. 519, ln. 19-22). Judge 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.

((R. p. 521, lines 15-17 (emphasis added))).

Appellants' contention that the circuit court ruled on the spoliation issue "sub silentio" (i.e., in silence) in the October 20, 2023, Written Order is consistent with the Opinion's finding that "[n]owhere in the order did the circuit court mention the body worn camera data or spoliation." Op. 2. Appellants filed a Rule 59(e) Motion requesting that the circuit court reconsider the October 20, 2023, Written Order and provide explicit findings/rulings on the spoliation issues and arguments raised 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 spoliation, for a second time. (R. p. 585-86).

Appellants contend that the Court of Appeals erred by finding that spoliation of the BWC recordings of Count II was not properly raised to the circuit court in a manner sufficient to preserve the issue for appeal. This 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.* 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.* (emphasis added). Appellants submit that spoliation of the BWC

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

See id.

Upon the foregoing, Appellants respectfully submit that the Court of Appeals erred by finding that spoliation of the BWC recordings of Count II was not properly raised to the circuit court in a manner sufficient to preserve the issue for appeal.

CONCLUSION

For the reasons set forth herein, the Opinion's dismissal of this appeal should be reversed and appropriate relief entered. Appellants respectfully request that this Court, or any two justices thereof, issue a writ of certiorari to review the Opinion.

Respectfully submitted,

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October 14, 2026

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Appellate Case No. 2024-000833

Christine Jernigan and Justin Jernigan, Appellants,

v.

Kershaw County Sheriff's Office, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PETITION FOR A WRIT OF CERTIORARI is being served by email to counsel for Respondent as follows: David Morrison, Esq., at david@gslawsc.com.

Respectfully submitted,

By: s/Justin A. Jernigan

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