

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

DeAndrea Gist Benjamin, Circuit Court Judge

AUG 18 2014

Case No. 2012-212277

SC Court of Appeals

Demetrius Mack

Respondent,

v.

Richland County Sheriff
Leon Lott

Appellant.

RESPONDENT'S RETURN IN OPPOSITION TO
APPELLANT'S PETITION FOR REHEARING

Appellant Leon Lott has requested this Court rehear this matter, continuing to insist this Court does not need to remand the case to the trial court. This Court has decided the matter correctly and there is no need for a rehearing.

Lott misunderstands the primary factual issue in this case, as well as the reasoning behind this Court's decision. This Court's statement that the primary factual issue turns on a reasonable belief of whether the arrest took place in the road addresses exactly what the officer saw and could prove.

This not a case involving a subjective test that would turn on what

the officer believed. Rather, the decision below turned on the trial court's credibility assessment of the officers' testimony. Finding the testimony not credible, the judge ruled for Mack. As stated in the brief in this matter, the trial court did not disregard the officers' testimony; she did not believe the officers' testimony.

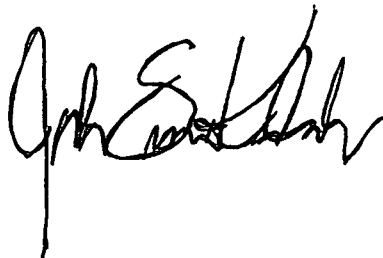
Lott's reliance on *Scott v. Harris* is misplaced. *Scott v. Harris*, 550 U.S. 372 (2007). *Scott* addresses a case in which the video reflected the events at issue in the case. In the instant case, the video at best shows the aftermath of the events in issue and is of little help in resolving the matter. As the video has been part of the record on this appeal, this Court has had the opportunity to view how little help the video offers in resolving this matter.

Lott mischaracterizes Mack's argument regarding "road rash." Initially, it should be noted that Lott is describing scratches on Williamson. The term "road rash" is slang for scratched resulting from contact with the ground. Mack's argument that it was just as reasonable these injuries supported his version of events is in no way a concession that Lott was correct. Rather, it is a statement that the "road rash" could have resulted from the contact with the ground as he slid under the car, and does not require contact with the road. Lott presented no evidence at trial that this "road rash" was an injury that could only have resulted from contact with the public roadway. It could have easily resulted from contact with the ground rather than the road.

Lott is again making the argument that the version of events told by

law enforcement is to be accepted without question. This is simply not the law. At trial, the judge found Mack's version of events more credible and ruled in his favor. Lott's insistence that the trial court, and now this Court, have ruled incorrectly is a reflection of the disagreement with the verdict rather than any legal mistake made by either court.

The trial judge should have included more facts in reaching her verdict. This Court has ordered that and there are no more issues to be resolved on appeal. The petition for rehearing should be denied and the matter remanded as previously ordered by this Court.

A handwritten signature in black ink, appearing to read 'Joshua Snow Kendrick', with a long vertical line extending downwards from the end of the signature.

Joshua Snow Kendrick
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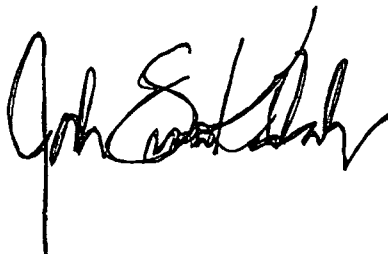
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PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING** on Richland County Sheriff Leon Lott by depositing a copy of it in the United States Mail, postage prepaid, on August 18, 2014, addressed to his attorney of record, Andrew Lindemann, Esq., P.O. Box 8568, Columbia, SC 29202.



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