

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-001153

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SC Court of Appeals

Kay F. Paschal Respondent/Appellant,

v.

Leon Lott, the Duly Elected Sheriff of
Richland County, South Carolina Appellant/Respondent.

**RESPONDENT/APPELLANT KAY F. PASCHAL'S
INITIAL APPELLANT'S BRIEF**

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE TRIAL COURT ERR IN REDUCING THE JURY'S VERDICT TO \$300,000.00 DOLLARS?**

- 2. DID THE TRIAL COURT ERR IN RULING THAT THE \$300,000.00 DOLLAR CAP ON DAMAGES APPLIED INSTEAD OF A \$600,000.00 CAP ON DAMAGES?**

STATEMENT OF THE CASE

Respondent/Appellant Kay F. Paschal commenced this action against Appellant/Respondent Leon Lott alleging causes of action against him for false arrest, malicious prosecution, abuse of process, negligence and civil conspiracy. (Complaint; R. ____). Appellant/Respondent answered the Complaint and asserted a counterclaim against Ms. Paschal for Abuse of Process. (Answer and Counterclaim; R. ____). The parties subsequently engaged in written discovery as well as discovery depositions.

The case was tried before the Honorable William P. Keesley and a jury on July 21-25, 2014. At the close of the Plaintiff's case and again at the close of the evidence, Sheriff Lott moved for a Directed Verdict on various grounds. (Transcript of Record, Page 718, Line 3 - Page 719; Line 15; R. ____). The Court granted Defendant's Motion as to Plaintiff's False Arrest Cause of Action. All remaining motions were denied. (Transcript of Record, Page 771, Line 23 - Page 776, Line 19; R. ____) (Transcript of Record, Page 790; Lines 17-20; R. ____).

At the close of the evidence, Plaintiff moved for a Directed Verdict as to the Defendant's counterclaim. (Transcript of Record Page 872, Line 11 - Page 875, Line 3; R. ____). This motion was granted by the Court. (Transcript of Record, Page 875, Lines 4 - 22; R. ____). Defendant renewed his Directed Verdict Motions. (Transcript of Record, Page 880, Line 21 - Page 889, Line 20; R. ____). The Court denied the Defendant's Motions as to the causes of action for abuse of process and malicious prosecution. (Transcript of Record, Page 889, Lines 21-24; R. ____). Plaintiff withdrew her cause of action for negligence. (Transcript of Record Page 890; Lines 12-13; R. ____).

The Plaintiff's causes of action for malicious prosecution and abuse of process claims were submitted to the jury. After deliberation, the jury returned a verdict in favor of Plaintiff on both claims and awarded Plaintiff actual damages of 1.61 Million dollars. (Verdict Form; R. ____).

The Defendant subsequently filed three post-trial motions: a Motion to Reduce Verdict, or in the Alternative for a New Trial (New Trial *Nisi* Remittitur); Motion for JNOV, or in the Alternative for a New Trial Absolute; and Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine (Defendant's Post Trial Motions; R. ____). On December 9, 2014, Judge Keesley issued his Order reducing the Plaintiff's award to Three Hundred Thousand and No/100 (\$300,000.00) dollars. All of the Defendant's remaining Motions were denied. (Order Regarding Defendant's Post Trial Motions; R. ____).

Plaintiff timely filed a Motion to Reconsider. (Plaintiff's Motion to Reconsider; R. ____). On April 27, 2015, Judge Keesley issued his Order denying both Motions for Reconsideration. (Order Denying Motion to Alter or Amend; R. ____). On June 10, 2015, after the Appellant/Respondent filed his Notice of Appeal, the Respondent/Appellant filed her Cross Appeal. (Notice of Appeal; R. ____) (Notice of Cross Appeal; R. ____).

STATEMENT OF THE FACTS

This is a very serious case which involves humiliation and abuse suffered by Respondent/Appellant Kay Paschal ("Kay"), a long time member of the South Carolina Bar. The abuse came at the hands of the Appellant/Respondent Leon Lott, Duly Elected Sheriff of Richland County, South Carolina ("Sheriff Lott") the operating at all times

under color of State Law. Kay brought suit against the Sheriff Lott alleging that Appellant/Respondent conspired to, and did intentionally, abuse her by wrongful law enforcement tactics used to intimidate and to effect/alter the outcome of a Richland County Probate Court proceeding (Complaint; R. ____). Kay's case was tried for approximately five (5) days before a Lexington County jury. The jury found for her on her causes of action for abuse of process and malicious prosecution (Verdict Form; R. ____). The jury awarded Kay 1.6 Million dollars in actual damages (Verdict Form; R. ____)

Kay Paschal is an elderly member of the South Carolina Bar. (Transcript Page 487, Lines 18-19; R. ____). Throughout her legal career she worked representing indigent citizens of South Carolina. (Transcript Page 500, Line 12 -24; R. ____). She also worked for the University of South Carolina. (Transcript Page 500, Line 25 - Page 501, Line 16; R. ____). She operated her own law practice for a while. (Transcript Page 501, Line 17-19; R. ____).

Apart from her law practice, Kay otherwise lived a quiet life taking care of her family and her pets. (Transcript Page 500, Line 5 - Page 501, Line 16; R. ____). In her later years, she developed a relationship with David Wallace ("David"). In 2001 or 2002 she did some legal work for him and for his company. (Transcript Page 519, Lines 13-17; R. ____). In 2002, David hired Kay as his secretary. (Transcript Page 519, Lines 22-25; Page 520, Line 1; R. ____). As David's secretary Kay operated his office, paid his bills, kept his books and did his correspondence. (Transcript Page 519, Lines 22-25; Page 520; Line 1; R. ____) (Transcript Page 531; Lines 6-16; R. ____). She did not

perform any legal work for him or his business once she went to work for him as his secretary. (Transcript Page 520; Lines 2-6; R. ____).

Later, she and David developed a romantic relationship. At the time Kay was living in a small house she owned in Lexington County. (Transcript Page 516; Lines 9-19; R. ____) (Transcript Page 517; Line 25 - Page 518, Line 5; R. ____). Kay moved in with David in 2003 at his house in Forest Acres, South Carolina. (Transcript Page 518; Lines 8-12; R. ____). Kay and David lived there together until after his death in 2011 when she was evicted from their Forest Acres home by his children. (Transcript Page 518; Lines 19-21; R. ____).

Kay and David worked together in his yard creating a "showcase" home. (Transcript Page 531, Lines 20-25; R. ____) (Transcript Page 532, Lines 1-2; R. ____). They owned a number of pets together including cats and pond full of Koi Fish. (Transcript Page 514; Lines 18-25; R. ____). (Transcript Page 515; Line 1; R. ____) (Transcript Page 515; Lines 5-11; R. ____). They took many vacations together. They maintained separate and joint bank accounts. (Transcript Page 528, Lines 6-11; R. ____).

Kay and David considered themselves to be husband and wife, although they never formally married. (Transcript Page 506, Lines 6-11; R. ____). Ms. Paschal wore a ring given to her by David. She adopted his last name as her own. (Transcript Page 487, Lines 23-25; Page 488, Line 7; R. ____). Many of their mutual friends believed them to be husband and wife. (Transcript Page 633, Line 25 - Page 634, Line 4; R. ____). The jury heard testimony that on the Friday prior to David's stroke, he and Kay applied for a marriage license. (Transcript Page 533, Lines 11-25; R. ____) (Transcript Page 534, Lines 1-4; R. ____).

In April of 2010, David went to Providence Hospital for insertion of a stent in his carotid artery. (Transcript Page 532, Lines 21-25; R. ___) (Transcript Page 533, Lines 1-10; R. ___). It was anticipated that this would be a same day surgery or, at most, David would only be hospitalized overnight. (Transcript Page 534, Lines 5-7; R. ___). No problems were anticipated or expected. (Transcript Page 534, Lines 5-7; R. ___). Unfortunately, shortly after the procedure David suffered a debilitating stroke which left him paralyzed. (Transcript Page 535, Lines 3-12; R. ___) (Transcript Page 491, Lines 20-25; R. ___) (Transcript Page 492, Lines 1-7; R. ___). This complication resulted in a lengthy hospital stay, both at Providence Hospital and at HealthSouth Rehabilitation Hospital. (Transcript Page 535, Line 16 - Page 536, Line 5; R. ___).

Sometime prior to the Providence/HealthSouth hospitalizations, David executed a Power of Attorney ("POA") giving Kay Power of Attorney. (Transcript Page 520, Lines 16-25; R. ___) (Plaintiff's Exhibit 2; R. ___). The POA was prepared in the office and given to David. He took the POA and had it executed outside of the presence of Kay and away from the office. (Transcript Page 521, Lines 1-19; R. ___). Kay had absolutely no involvement in its execution by David. (Transcript Page 526, Lines 7-22; R. ___). She testified that she did not know where he had it executed or any of the witnesses to the execution of the agreement. (Transcript Page 521, Lines 17-19; R. ___).

David brought the executed POA back to the office and gave it to Kay who put it in a file. She did not file it. During David's hospital stay, she was instructed by his medical care providers to file it. (Transcript of Record, Page 493, Lines 20-25; R. ___) (Transcript Page 494, Lines 1-8; R. ___). After filing the POA, Ms. Paschal signed David's name on checks as she had always done, even in front of David's two children.

(Transcript Page 494, Lines 1-5; R. ____) (Transcript Page 527, Lines 1-5; R. ____)
(Transcript Page 526, Line 1; R. ____). The Wallace children were well aware of the
Power of Attorney and during their father's lifetime raised no issue with Kay using it.
(Transcript Page 545, Lines 13-17; R. ____).

David was discharged from the hospital with significant physical disabilities and
limitations. As a result of the stroke he could not walk. (Transcript Page 491, Line 20 -
Page 492, Line 22; R. ____). He could not feed himself. He had issues with bowel
control. (Transcript Page 537, Lines 2-12; R. ____). He was, however, able to
understand and converse with others around him even though his speech was somewhat
impaired. (Transcript Page 536, Lines 6-24; R. ____). Individuals who spoke to him
were able to understand him and carry on a conversation with him. (Transcript Page 464,
Lines 5-14; R. ____) (Transcript Page 491, Line 20 - Page 492, Line 7; R. ____). David
was never declared mentally incompetent in any way prior to his death. (Transcript Page
212, Lines 16-22; R. ____) (Transcript Page 213, Lines 18-23; R. ____) (Transcript Page
214, Line 1; R. ____). He was never declared to be a vulnerable elderly adult.
(Transcript Page 213, Lines 12-17; R. ____). No guardian was ever appointed for him
during his lifetime. (Transcript Page 215, Lines 3-5; R. ____).

After the stroke, Kay was David's primary caregiver. While he was hospitalized
she remained at the hospital with him. (Transcript Page 548, Lines 1-5; R. ____). Kay
hired two caregivers to assist her with David's care during the day. (Transcript Page 537,
Lines 13-23; R. ____). At night, Kay was his primary caregiver. She drove him to his
rehabilitation/physical therapy/doctor's visits. She took him on outings. She prepared
his meals. (Transcript of Record Page 539, Lines 7-12; R. ____) (Transcript Page 538,

Lines 13-23; R. ____). She changed David's dressings and gave him his medications. (Transcript of Record, Page 548, Lines 1-18; R. ____). She did all of the laundry. (Transcript Page 489, Line 25 - Page 490, Line 3; R. ____). She purchased a queen sized hospital bed and slept with him at night in case he needed her. (Transcript of Record, Page 491, Lines 7-19; R. ____).

She also oversaw modifications to the house which included replacing carpet with linoleum (to make it easier for him to get around in a wheelchair), constructing an indoor ramp, and contacting an architect to make the bathrooms more accessible. She purchased a refrigerator for protein drinks for David. (Transcript Page 489, Line 15 - 25; R. ____) (Transcript Page 490, Lines 10-16; R. ____). Kay purchased a Hoyer lift to assist in getting David in and out of bed. (Transcript of Record, Page 489, Line 15 - Page 491, Line 12; R. ____).

One of Kay's many responsibilities was to drive David to and from his rehabilitation/doctor's appointments. She also drove him to dinner and on outings. (Transcript, Page 538, Lines 14-21 R. ____). Because of his paralysis and size (compared to her own) she had difficulty getting him in and out of their vehicle in his wheelchair. (Transcript Page 538, Line 22 - Page 539, Line 2; R. ____). She went to Carolina Mobility and spoke with Tim Petersen, the general manager, about purchasing a handicap accessible van. (Transcript Page 454, Lines 10-12; R. ____) (Transcript Page 462, Lines 3-9; R. ____). Mr. Petersen left the dealership with Kay and picked up David who was at a rehabilitation appointment. The three of them returned to Kay and David's residence. (Transcript of Record, Page 462, Line 21 - Page 463, Line 2; R. ____). Mr. Petersen assisted Kay in getting David out of the van and into the house.

Mr. Peterson spoke with David and Kay regarding their choice of handicap accessible vans. David was present and participated in the decision as to which van they preferred. Mr. Petersen was able to verbally communicate with David. (Transcript Page 463, Lines 19-23; R. ____). He was able to understand what David was saying to him. (Transcript Page 463, Lines 19-23; R. ____). David was able to communicate what he liked or disliked in a particular van. (Transcript Page 464, Lines 19-23; R. ____). (Transcript Page 464, Lines 11-16; R. ____). David and Kay decided to purchase a handicap accessible Toyota van. Kay consummated the transaction, which involved trading in a Cadillac, using her Power of Attorney. (Transcript Page 209, Lines 11-22; R. ____) (Transcript of Record Page 456, Lines 17-25, R. ____). She used David's money to pay for the van. (Transcript Page 540, Line 6 - 25; Page 541, Lines 1-3; R. ____) (Transcript of Record Page 543, Lines 9-13; R. ____) (Plaintiff's Exhibit 3; R. ____) (Plaintiff's Exhibit 4; R. ____) (Plaintiff's Exhibit 5; R. ____). David was aware of this transaction and aware of the fact that his money and the Cadillac were being used to purchase the van. (Transcript Page 543, Lines 11-13; R. ____). (Transcript Page 467, Lines 19-24; R. ____). Kay testified that she would not have consummated the transaction if David had not wanted her to do so. (Transcript Page 543, Lines 3-7; R. ____).

All of the proceeds from the Cadillac were applied to the price of the van. Kay did not realize any of the proceeds from the sale of the car. (Transcript Page 469, Lines 5-22; R. ____). Mr. Petersen, as was his customary practice, recommended that the van be titled as "Mr. Wallace or Ms. Paschal" to make transfer of the van easier for the

“surviving party.” (Transcript Page 455, Lines 16-25; R. ___) (Transcript Page 456, Lines 1-8; R. ___).

Kay used the van to transport David to his appointments and on outings. She only used the van without David to buy groceries. She did not use the van for any personal reasons or use. (Transcript Page 454, Lines 1-12; R. ___).

On February 20, 2011, David died leaving an estate of approximately 6 Million dollars. (Transcript Page 532, Lines 17-22; R. ___). At the time of his death, David had two adult children, a son Jeffrey Wallace and a daughter Elizabeth Wallace. (Transcript Page 209, Lines 1-10; R. ___). The jury heard testimony that Elizabeth is a lawyer and Jeffrey at one time worked for the CIA. During his lifetime, the children’s contact with David was limited. The jury heard testimony that they rarely visited David. The jury heard testimony that they did not participate in his care, instead leaving it to Kay. (Transcript Page 539, Lines 3-12; R. ___). However, after his death they immediately instituted criminal proceedings against Kay alleging abuse and neglect. (Transcript Page 181, Lines 11-22; R. ___). They also initiated proceedings against Kay in the Richland County Probate Court. (Transcript Page 548, Lines 23-25; R. ___).

Leon Lott is the duly elected Sheriff of Richland County. He hired a deputy named Heidi Scott (now Heidi Scott Jackson). All of Lieutenant Jackson’s actions were carried out in her capacity as a deputy for the Richland County Sheriff’s Department. (Transcript Page 116, Lines 3-5; R. ___) (Transcript Page 117, Lines 11-14; R. ___) (Transcript Page 118, Lines 7-18; R. ___). The jury heard evidence that Lt. Jackson was never properly deputized. South Carolina Code Section 23-27-70 requires each deputy sheriff to post a surety bond prior to functioning as a deputy. South Carolina Code

Section 23-11-30 also requires a bond on the part of the Sheriff. Neither Sheriff Lott nor Deputy Jackson had any such surety bond.

The Wallace children's criminal complaint against Kay ultimately found its way to Lt. Heidi Jackson. The jury heard evidence that Lt. Jackson had very little training as a law enforcement officer. She did have training and experience as a victim's advocate. (Transcript Page 127, Lines 14-20; R. ____). Lt. Jackson was assigned to the Wallace case. She became very close to the Wallace children during the investigation. By her own admission, she worked closely with them. (Transcript Page 167, Lines 16-20; R. ____)(Transcript Page 168, Line 3 - Page 171, Line 7: ____). As set forth below, the jury heard ample evidence that Lt. Jackson did everything in her power to provide the Wallace children an advantage in the Probate Court proceedings.

Lt. Jackson's first interaction with Kay occurred on March 8, 2011, less than three weeks after David's death. At that time, Kay was at the home she shared with David with his children explaining computer passwords and the property owned by David at the time of his death. (Transcript Page 549, Lines 9-25 - Page 551, Line 7; R. ____). Lt. Jackson showed up with Richland County Sheriff's Department officers and a search warrant. This was a complete surprise to Kay, but not to the Wallace children. (Transcript Page 562, Lines 13-18; R. ____). The Wallace children appeared to Kay be very friendly with Lt. Jackson and the deputies. There appeared to Kay to be a "special relationship" between the Wallace children, Lt. Jackson and the Richland deputies. (Transcript Page 562, Lines 3-18 R. ____). The jury heard evidence that the Wallace children appeared to not only assist Lt. Jackson with her search, but to direct it. (Transcript of Record Page 551 Lines 8-16; R. ____)(Transcript Page 551, Line 25 - Page

552, Line 16; R. ____). On at least one occasion during the search, the children personally found items and handed them to Lt. Jackson. (Transcript Page 565, Lines 1-7; R. ____).

In addition, during the search, Lt. Jackson and her cohorts took computers, printers, cameras and photo cards. Many of the pictures seized during the search were pictures of Kay and David's pets and pictures that Kay had taken during her vacation trips with David. These belongings had great sentimental value to Kay. (Transcript Page 550, Lines 11-24; R. ____) (Transcript Page 565, Lines 8 -17; R. ____). None of these seized items have ever been returned to her. (Transcript Page 565, Lines 18-23; R. ____).

As set forth above, Lt. Jackson was a Richland County deputy. She had absolutely no authority at all in Lexington County. (Transcript of Record Page 121; Lines 5-25; R. ____) (Transcript page 122, Lines 21-25; R. ____). Lt. Jackson testified that she is aware that she had no jurisdiction in Lexington County. (Transcript Page 121, Line 10 - Page 123, Line 21; R. ____). She was never asked by anyone in Lexington County to participate in any ongoing Lexington County investigation. (Transcript Page 123, Lines 22-25; R. ____).

Notwithstanding this fact, Lt. Jackson arranged for a second search of Kay's former residence on Kitty Hawk Drive in Lexington County on May 8, 2011. (Transcript Page 137, Line 18- Page 140, Line 21; R. ____). (Plaintiff's Exhibit 6; R. ____). The search warrants are directed to "any bonded law enforcement officer of the aforementioned county." (Transcript Page 139, Lines 17-25; R. ____). (Plaintiff's Exhibit 6; R. ____). As set forth above, Lt. Jackson was not a bonded law enforcement officer and she was not an officer of Lexington County. (Transcript Page 140, Lines 5-15; R. ____)

(Transcript Page 159, Lines 20-22; R. ____). Despite this obvious deficiency, Lt. Jackson conducted the search and seized Kay's property located in Lexington County anyway.

This search occurred immediately after Kay had been evicted from the Forest Acres home in the Probate Court proceeding initiated by the Wallace children. (Transcript Page 568, Line 2 - Page 569, Line 6; R. ____). Kay was in the process of trying to convert her former Lexington County residence, which had been used for storage during the years she lived with David, back into a habitable residence when Lt. Jackson and Richland County Sheriff's Department officers arrived at her house. Like the first search, this second search was done on the authority and direction of Lt. Jackson and carried out solely by Richland County Sheriff's Department officers. (Transcript Pages 138-139; R. ____) (Transcript Page 158, Lines 12-16; R. ____) (Transcript Page 575, Lines 9-16; R. ____). Like the first search, the Wallace children, Kay's adversaries in the Probate Court proceeding, were present when this search occurred. (Transcript Page 569, Line 7 -24; R. ____). Once again this search (which was very surprising to Kay) did not appear to be a surprise to the Wallace children. (Transcript Page 569, Lines 15-17; R. ____). Once again they participated in the search and assisted Lt. Jackson and her cohorts in it. (Transcript Page 570, Lines 21-Page 571, Line 3; R. ____) (Transcript Page 571, Lines 12-24; R. ____). Kay testified that during the search Lt. Jackson laughed and joked with Elizabeth Wallace. (Transcript Page 571, Line 23 - Page 12; R. ____) (Transcript Page 572, Line 18 - Page 573, Line 12; R. ____).

As she had done during the earlier search in Richland County, Lt. Jackson took computers and cameras containing items of great sentimental value to Kay including family photographs, not just of David but also of her own family. The items seized from

Kay's Lexington County home were taken to the Richland County evidence room by Lt. Jackson. (Transcript Page 193, lines 3-4; R. ____). None of these items were ever returned to Kay. (Transcript Page 575, Line 23 - Page 576, Line 23; R. ____). Kay has never received any explanation from the Sheriff's Department as to why they will not return what has been seized. These items have been in the possession of the Sheriff's Department for years with no explanation or excuse. (Transcript Page 598, Lines 15-21; R. ____).

The jury heard evidence that these searches were done close to Probate Court hearings. The jury heard ample evidence that it could have concluded that the two searches were done in a way which deprived Plaintiff of relevant evidence to present to the Probate Court (Transcript Page 565, Line 21 - Page 566; Line 3; R. ____) (Transcript Page 566, Line 19 - Page 567, Line 2; R. ____). The jury heard testimony regarding the impact of the illegal search and seizure and the fact that it (along with the Richland County search) resulted in the Plaintiff being unable to properly present evidence to the Probate Court (Transcript page 566, Line 19 - Page 567, Line 2; R. ____). Kay did not have access to her evidence and she did not have access to her records.

Lt. Jackson's improper involvement in this case did not end with the illegal search. On November 16, 2011, a hearing to remove Kay as the administrator and trustee of David Wallace's estate was scheduled in the Richland County Probate Court. (Transcript Page 579, Lines 5-23; R. ____) (Plaintiff's Exhibit 5; R. ____). After the illegal search and seizure, Lt. Jackson, with the knowledge, permission and ratification of Sheriff Lott, participated in the preparation of two arrest warrants in Lexington County for Kay's arrest. (Transcript Page 124, Line 21 - Page 125, Line 6; R. ____). The charges

had previously been investigated in Lexington County by Lexington County authorities. (Transcript Page 223, Lines 6-23; R. ____). Steve Baumgartner, an 18 year employee of the Lexington County Sherriff's Department, thoroughly investigated the matter involving the use of the POA to purchase the handicap accessible van and determined that there was no probable cause to charge Kay with any wrongdoing or to arrest her. (Transcript Page 226, Lines 18 - Page 227, Lines 7: R. ____) (Transcript Page 238, Line 8 - Page 241, Line 11; R. ____) (Transcript Page 380, Line 23 - Page 381, Line 10: R. ____) (Transcript Page 385, Lines ____; R. ____) (Plaintiff's Exhibit 11; R. ____). Despite this finding by the investigating authorities in Lexington County Law Enforcement, Lt. Jackson continued her crusade against Kay.

The two warrants were sworn to by Lt. Jackson. (Arrest Warrants, Plaintiff's Exhibits 9 and 10; R. ____) (Transcript Page 124, Lines 21-23; R. ____). They were issued solely on information supplied to the issuing Judge (Judge Whittle) by Lt. Jackson. (Transcript Page 125, Lines 1-10; R. ____). The jury heard evidence that Lt. Jackson did not know the meaning of foundational words that she used in the affidavit to obtain the arrest warrant. (Order Regarding Defendant's Post-Trial Motions; R. ____). These warrants resulted in Kay turning herself in and being arrested immediately before another very important Probate Court hearing. There was no proof Kay did anything wrong and the jury heard testimony that Lt. Jackson withheld information from the Lexington County Magistrate when she got the warrant (Order Regarding Defendant's Post-Trial Motions; R. ____). She did not tell the Lexington County Magistrate that Lexington County had already investigated these charges and found no probable cause (Order Regarding Defendant's Post-Trial Motions; R. ____). In securing the warrants, Lt. Jackson

did tell the Magistrate that she had spoken with Dayton Riddle, a solicitor in Lexington County who had raised concerns about Lt. Jackson swearing out a warrant in Lexington County (Order Regarding Defendant's Post-Trial Motions; R. ____).

As a result of the arrest warrants, Lt. Jackson called Kay on November 15th, the day before a scheduled Probate Court hearing, and informed her of the outstanding warrants and that she needed to go to the Lexington County jail the next morning at 5:30 AM. (Transcript Page 579, Line 5 - Page 581, Line 2; R. ____) (Plaintiff's Exhibit 7; R. ____). Kay went to the jail at the direction of Lt. Jackson at 5:30 AM on the following day (November 16th) and was arrested. As a result of her arrest and incarceration she was not able to attend the Probate Court hearing. (Transcript Page 581, Line 25 - Page 581, Line 16; R. ____). The matter was heard in Probate Court in Kay's absence. (Transcript Page 584; Lines 15-19; R. ____).

The jury found there to be no coincidence between the fact the arrest happened the day before the Probate Court case. The jury heard evidence that every time Kay was scheduled to do something in Probate Court, the Richland County Sheriff, specifically Lt. Jackson, working closely with the Wallace children, did something to frustrate her efforts to secure justice in the Probate Court.

The jury heard ample evidence of the degradation that Kay, an officer of the South Carolina Courts, experienced during her 40 hours in the Lexington County jail. (Transcript Page 584, Line 19; R. ____). Kay was booked, photographed and fingerprinted. (Transcript Page 582, Line 25 - Page 583, Line 5; R. ____). Her bond was set for \$50,000, in part due to testimony from Elizabeth Wallace. (Transcript, Page 584, Lines 4-14; R. ____). Kay did not have the money to post bail. (Transcript Page 584,

Lines 13-17; R. ____). She was initially given a jumpsuit to wear, but due to the fact it needed to be washed, she had to turn it in after the bond hearing and was given a sheet to wear. (Transcript Page 583, Lines 6-19; R. ____). She was forced to spend the night in jail with only a sheet (no bra or panties) sleeping on a mat on the floor with other prisoners. (Transcript Page 585, Lines 4 - Page 587, Line 9; R. ____). The jury heard ample evidence of the fear, anxiety, humiliation and shock that this caused Kay. (Transcript Page 585, Lines 4- Page 587, Line 9; R. ____).

A bond modification hearing was held on November 17, 2011, before the Honorable Knox McMahon, Presiding Judge of Lexington County. (Transcript of Record, Page 589, Line 3 - Page 591, Line 8; R. ____) (Plaintiff's Exhibit 11; R. ____). To get to the hearing, Kay had to walk through the Courthouse in a prison jumpsuit. She suffered the humiliation of seeing faces she had worked with in her long years as a practicing attorney in Lexington County. The jury heard testimony that neither Lt. Jackson nor any of the Wallace children were present at the bond modification hearing. Judge McMahon's Order granting Kay's Motion to Modify her Bond expressed concerns about the fact that Kay had been arrested in Lexington County on arrest warrants signed by a Richland County Deputy "apparently functioning in Lexington County." His Order raised questions as to the legality of the warrants. (Transcript Page 590, Lines 2-8; R. ____). Judge McMahon ordered Kay's release on a \$1,000.00 personal recognizance bond on each count. (Transcript Page 590, Line 22-25; R. __) (Plaintiff's Exhibit 11; R. ____).

The charges brought against Kay by Lt. Jackson were ultimately dismissed for lack of probable cause in January of 2012. (Transcript Page 195, Lines 19-24; R. ____). (Transcript Page 596, Lines 16- 21; R. ____) (Transcript Page 599, Lines 7-23; R. ____)

Based on the lack of evidence and the lack of jurisdiction, the Honorable Gary Morgan, Magistrate for Lexington County, dismissed the criminal warrants in Lexington County. (Transcript Page 135; Lines 7-10; R. ___) (Transcript Page 401, Lines 1-2; R. ___) (Transcript Page 403, Lines 1-3; R. ___).

Sadly the dismissal of the Lexington County charges for lack of probable cause did not bring this matter to an end. In December 2013, after Kay commenced this action, two additional warrants for “forgery, no dollar amount” were sworn out by the Richland County Sheriff’s Department. (Transcript Page 196, Lines 21-25; R. ___) (Transcript Page 197, Lines 1-11; R. ___) (Transcript Page 599, Line 15 - Page 601, Line 24; R. ___) (Plaintiff’s Exhibit 23 and 24; R. ___). Howard Hughes, an employee of the Sheriff’s Department prepared these affidavits “upon information and belief.” (Plaintiff’s Exhibit 23 and 24; R. ___). There are no factual averments in the compliant, nor is there any indication that Mr. Howard Hughes had any first hand knowledge of any of the claimed allegations against Kay. Kay has never been given any information as to what these charges are or what they involve. Her efforts to get a preliminary hearing as to these charges have been unsuccessful. (Transcript Page 601, Line 8 -19; R. ___). These cases have languished for over two years.

As a result of the Arrest Warrants sworn out by Lt. Jackson, Kay had to report her arrest to the South Carolina Supreme Court. Her license to practice law was suspended and has remained suspended since that date. (Transcript Page 495, Lines 12-25; R. ___) (Transcript Page 499, Lines 7-10; R. ___) (Plaintiff’s Exhibit 13; R. ___). The jury heard evidence of the damages suffered by Kay as a result of her arrest including

embarrassment, humiliation, and loss of income (Order Regarding Defendant's Post-Trial Motions; R. ____).

STANDARD OF REVIEW

At the close of the evidence Sheriff Lott moved to Reduce the Verdict by a New Trial *Nisi* (New Trial *Nisi Remittitur* or in the alternative to impose the statutory cap of \$300,000.00 (Order Regarding Defendant's Post-Trial Motions; R. ____) (Defendant's Post Trial Motions; R. ____). The Trial Court's Order denied Sheriff Lott's Motion for New Trial *Nisi Remittitur* but granted his Motion to impose the statutory cap of \$300,000.00 (Order Regarding Defendant's Post-Trial Motions; R. ____). The Plaintiff timely moved for Reconsideration. (Plaintiff's Motion to Reconsider; R. ____). The Plaintiff's Motion was denied. (Order of Judge Keesley dated April 27, 2015; R. ____).

The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 88-89 610 S.E.2d 852, 856 (Ct.App.2005) (citing *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct.App.1996)); *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct.App.2004). The Trial Judge's Order granting Sheriff Lott's impose the statutory cap of \$300,000.00 are clearly erroneous, are controlled by an error of law and should be reversed by this Court.

LEGAL ARGUMENT

1. The statutory damage caps of section 15-78-120 do not apply to intentional torts and therefore do not apply to this case.

The Trial Court erred in granting Appellant/Respondent Lott's Motion for a reduction of the jury's verdict on the grounds that the damage cap for negligent conduct in the South Carolina Tort Claims Act ("SCTCA") applies in this case. (Order Regarding Defendant's Post-Trial Motions; R. ____). The statutory cap only applies in cases where the governmental entity has injured the plaintiff by an act of negligence. The cap does not apply in this case because the jury rendered a verdict on two intentional torts, and not negligence. In fact, the negligence claim was withdrawn after Appellant/Respondent's counsel argued there was no proof of negligence. (Transcript Page 890, Lines 12-13; R. ____). Sheriff Lott's motion to reduce the verdict should have been denied and the Trial Court committed an error of law in ruling otherwise. (Order Regarding Defendant's Post-Trial Motions, R. ____).

An injured party may sue a governmental entity for all torts, intentional and negligent. Pursuant to section 15-78-40, "[a] governmental entity [is] liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." The government's liability in torts includes liability for the intentional torts of malicious prosecution and abuse of process. *McBride v. School Dist. Of Greenville County*, 389 S.C. 546, 689 S.E.2d 845 (Ct. App. 2010). *See also, Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct. App. 2008), which involved the identical Appellant/Respondent's firm and the same Appellant/Respondent at bar here.

Whether the damages caps apply in this case (or any case) turn upon the plain language of the damages cap statute. While it is true that the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature, the court cannot change the plain definition of a statutory term. *Hodges v. Rainey*, 341 S.C.79, 533 S.E.2d. 578 (2000); *In re Vincent*, 333 S.C.233, 509 S.E.2d. 261 (1998). The General Assembly's intent must be ascertained primarily from the plain language of the statute in question. *Bass v. Isochem*, 365 S.C.454, 617 S.E.2d. 369 (Ct. App. 2005). Under the plain meaning rule it is not the Court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of construction and statutory interpretation are not needed and the court has no right to impose another meaning. Once the legislature makes a choice, there is no room for the Courts to imposed a different judgment or meaning based on their own notions of public policy. *South Carolina Farm Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 382 S.E.2d 11 (Ct. App. 1998).

Whether the damages caps apply in this case turns upon the plain language of the damages cap statute. There is no question the damages cap statute is triggered by an "occurrence." Pursuant to section 15-78-120:

[N]o person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single **occurrence** regardless of the number of agencies or political subdivisions involved.

S.C. Code § 15-78-120(a)(1) (emphasis added).

An occurrence is a term of art specifically defined within the SCTCA:

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of *negligence*.

S.C. Code § 15-78-30(g) (emphasis added).

Read together, the statutory damage caps only apply to causes of action for negligence:

[N]o person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from [an unfolding sequence of events which proximately flow from a single act of *negligence*] regardless of the number of agencies or political subdivisions involved.

S.C. Code §§ 15-78-30(g) and 120(a)(1) (emphasis added).

"[I]n construing a statute its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit *or expand* the statute's operation." *McGill v. University of South Carolina*, 310 S.C. 224, 228, 423 S.E.2d 109, 111 (1992) (quoting *Bryant v. City of Charleston*, 295 S.C. 408, 411, 368 S.E.2d 899, 900-901 (1988) (emphasis added)). To apply the statutory caps to intentional tort claims would improperly expand the statute's operation.

The use of the term negligence is clear and unambiguous. To read the SCTCA as a cap on damages for intentional torts in addition to negligence would disregard the stated definition of an occurrence and replace it with "any tort." If the General Assembly intended the cap in section 15-78-120 to include a cap on damages for intentional torts, it would not have limited the definition of an occurrence to include only acts of negligence.

The jury returned verdicts for Kay Paschal on causes of action for malicious prosecution and abuse of process, not negligence. "The gist of negligence is failure to observe a duty of care owed to the plaintiff by law. Negligence is determined by

measuring the defendant's conduct against a standard of care, not by discovering his feelings towards the plaintiff (malice) or his subjective reasons for acting (motive)." *Snakenburg v. Hartford Cas. Inc. Co., Inc.*, 299 S.C. 164, 173, 383 S.E.2d 2, 7 (Ct. App. 1989).

There are a number of cases where the Court has reduced significant verdicts in SCTCA cases, but all of these cases involve allegations of negligence. There are also instances where the South Carolina Supreme Court has refused to apply a cap in cases against a government entity. In *McGill v. University of South Carolina*, the Court refused to apply the cap because the claim was brought pursuant to the Whistleblower Statute. "Had the legislature intended to limit the amount of damages to be recovered, it could have done so." *McGill v. University of South Carolina*, 310 S.C. 224, 228, 423 S.E.2d 109, 111-112 (1992).

Kay Paschal was not harmed by Appellant/Respondent Lott's negligence. She was systematically hounded, searched, interfered with, and arrested without probable cause by the Sheriff. These were covered intentional acts, not negligence. The Appellant/Respondent Sheriff Lott should not now be allowed to shield himself with a statute intended to cap damages for unintentional acts. The Trial Court's Order reducing her actual damages should be reversed and the full amount of the damages award reinstated.

Because the statutory caps in section 15-78-120 do not apply to actions involving intentional torts, the Trial Court should have denied Appellant/Respondent's motion to reduce the verdict and for new trial nisi remittitur. The Court's Order reducing the actual

damages award and its Order denying Respondent/Appellant's Motion to Reconsider were clearly erroneous and should be reversed by this Court.

2. Assuming the negligence damage caps do apply, the Appellant/Respondent is only entitled to a reduction to \$600,000 because the jury rendered a verdict in favor of the Plaintiff on two separate claims.

While the undersigned counsel does not believe the Appellant/Respondent Lott is entitled to any reduction in the jury award due to the negligence caps of section 15-78-120, and believes the Court's Order to the contrary was erroneous, in the alternative, even if the caps do apply (which Respondent-Appellant strenuously denies) the jury rendered a verdict on two separate claims and therefore a reduction to \$600,000 would have been appropriate.

The second part of negligence cap statute reads as follows:

[T]he total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

S.C. Code § 15-78-120(a)(2).

The jury awarded a verdict for Kay Paschal on both claims for malicious prosecution and abuse of process. The malicious prosecution involved Sheriff Lott's harassment, search, and arrest of Kay Paschal without probable cause. The abuse of process was based upon Sheriff Lott's use of the legal process to interfere with and restrict Kay Paschal's ability to engage in civil litigation. While the improper conduct of Appellant/Respondent Lott in both of the causes of action is intertwined, the impact on Ms. Paschal's life was distinct and the claims were distinct. It was admitted the damages calculations for the causes of action were identical.

Because the jury rendered verdicts on two separate claims involving separate and distinct causes of action, the individual cap applies to each individual claim and therefore the damages should only be reduced to \$600,000.

CONCLUSION

For the reasons set forth above, the Trial Judge committed a manifest error of law in granting the Appellant/Respondent Lott's Motion to reduce the jury's award of damages to \$300,00.00 dollars. His Order should be reversed by this Court and the original verdict amount of 1.6 Million dollars reinstated.

In the alternative, even if a reduction in damages pursuant to the statutory cap was proper (which the Respondent/Appellant submits it was not), then the Trial Judge erred in reducing the jury's damages award to \$300,000.00 and the Court should reverse the Trial Court's Order and set an award of \$600,000.00 dollars.

Respectfully submitted,

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West Columbia, South Carolina

February 29, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-001153

Kay F. PaschalRespondent-Appellant,

v.

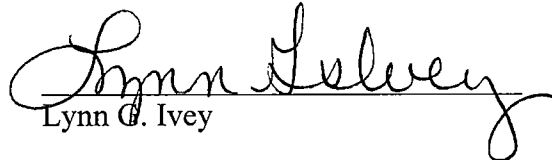
Leon Lott, the Duly Elected Sheriff of
Richland County, South Carolina Appellant-Respondent.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Taylor Law Firm, P.A., certify that I have served the Respondent/Appellant's Initial Brief, by United States mail, in an envelope with sufficient postage affixed thereto, upon all counsel of record on February 29, 2016.

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Lynn G. Ivey

West Columbia, South Carolina
February 29, 2016

February 29, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

RE: Kay F. Paschal v. Leon Lott, the Duly Elected Sheriff of Richland
County, South Carolina
Appellate Case No. 2015-001153

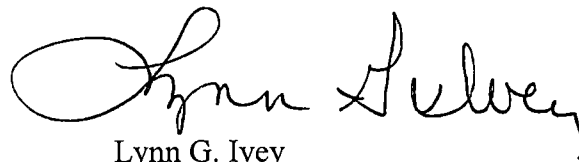
Dear Ms. Kitchings:

Enclosed please find the original and five (5) copies of Respondent/Appellant's Initial Appellant's Brief and Designation of Matter in the above referenced matter. We would appreciate your filing the original and returning the extra copies. A self addressed, stamped envelope is enclosed for your convenience.

By copy of this letter I am providing counsel with a copy of the same.

Thank you for your assistance in this matter. If you have any questions or need any additional information and/or documentation, please do not hesitate to contact our office.

Sincerely,



Lynn G. Ivey
Assistant to John C. Bradley, Jr.

Enclosures

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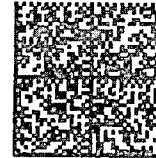
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