

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

RECEIVED
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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.

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

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South Carolina Code Section 23-11-30

South Carolina Code Section 23-27-70

South Carolina Code Ann. Section 22-5-110

STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT PROPERLY INTERPRETED AND APPLIED CODE SECTION 22-5-110 TO THE FACTS OF THIS CASE**
- II. THE TRIAL COURT PROPERLY DENIED SHERIFF LOTTS' DIRECTED VERDICT AND POST-TRIAL MOTIONS**
- III. THE TRIAL COURT FOUND AMPLE EVIDENCE TO SUPPORT RESPONDENT/APPELLANT'S ABUSE OF PROCESS CLAIM**

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, after hearing arguments of counsel, 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 Rule 59(c) Motion to Reconsider. (Plaintiff's Motion to Reconsider; R. ____). On April 27, 2015, Judge Keesley issued his Order denying this motion. (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 longtime 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"), operating at all times under color of State Law. Kay brought suit against 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 David's 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 a 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 both 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, that 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 his 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. ____). Although Sheriff Lott makes much of the preparation and execution of the POA in his Brief, the jury heard ample testimony and evidence that 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 with the Court. During David's hospital stay, she was instructed by David's 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. To the
contrary, the Wallace children never challenged Kay's use of the Power of Attorney to care
for their father at any time during his lifetime. (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. ____). Contrary to
information given to the Lexington Magistrate by Appellant/Respondent, 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 for David. (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. Contrary to the representations of Appellant/Respondent, 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 David’s lifetime, the children’s contact with him was limited. The jury heard testimony that the children rarely visited David. The jury heard testimony that they did not participate in David’s 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, for the first time challenging the POA and Kay’s use of it to care for their father. (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) (“Lt. Jackson”). All of Lt. 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 Lt. Jackson had any such surety bond.

The Wallace children's criminal complaint against Kay ultimately found its way to Lt. 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 so 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. ___). Lt. Jackson personally travelled to Lexington County to obtain these warrants. The jury heard testimony that this was the first time she had ever done this in her career. (Transcript Page 247, line 25 - Page 248, Page 2; 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. ___) (Transcript Page 245, Lines 11-24; R. ___). The jury heard testimony that Lt. Jackson did not have any evidence that Kay intentionally or willfully used a fraudulent POA. (Transcript of Record, Page 260, Line 12 - Page 261, Line 13; R. ___). The jury heard testimony from which it could have inferred that Lt. Jackson was less than candid or truthful in swearing out the warrants before Judge Whittle. These warrants resulted in Kay turning herself in and being arrested. 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 warrants. (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 not 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 heard ample evidence of the degradation that Kay, a member of the South Carolina Bar and 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 McMahan, 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 during 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 McMahan'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 McMahan 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 firsthand 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

In ruling on motions for a directed verdict or JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions.” *Steinke v. S.C. Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). “In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct.App.2002) (quoting *Sims v. Giles*, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001)). “When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” *Id.* The Appellate Court will reverse the trial court's ruling on a directed verdict or JNOV motion only where there is no evidence to support the ruling or where the ruling is controlled by an error of law. *Clark v. S.C. Dep't of Public Safety*, 362 S.C. 377, 382–83, 608 S.E.2d 573, 576 (2005); *Hinkle v. Nat'l Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

ARGUMENT

I. THE TRIAL COURT’S USE OF 22-5-110 WAS PROPER AND DID NOT RESULT IN APPELLANT/RESPONDENT RECEIVING AN UNFAIR TRIAL

Appellant/Respondent Sheriff Lott first takes issue with the Trial Court’s use of South Carolina Code Section 22-5-110 to evaluate the actions of Lt. Jackson with respect to her appearance before the Lexington Magistrate, Judge Whittle, and the arrest warrants that she obtained in Lexington County. Appellant/Respondent Sheriff Lott asserts that the Trial Court’s use of this statute at trial resulted in denial of Appellant/Respondent Sheriff

Lott's directed verdict motions, as well as his post-trial JNOV Motions. Appellant/Respondent Sheriff Lott finally asserts that this resulted in him receiving an unfair trial. This assertion lacks merit.

Although this Statute came up on multiple occasions during the Trial, it was not, contrary to the arguments of Appellant/Respondent, "the centerpiece or focus of her (Respondent/Appellant Paschal's) case." (Brief of Appellant, page 11). Rather, reference to this statute was only one instance or example of Lt. Jackson's improper conduct and activities in Lexington County and interaction with the Lexington County Magistrate that were presented to the jury. Further, the Court's use of 22-5-110 by the Trial Court was proper and did not constitute an error of law. As correctly recognized by the Trial Court, the Appellant/Respondent's conduct with respect to this statute was only one example of the "...overzealous, ill-willed, and improper prosecution...conducted by the Defendant (Appellant/Respondent) with respect to the Lexington County charges." (Order of Judge Keesley, Page 6; R. ____).

In evaluating and ultimately denying the Respondent's Post-Trial Motions, Judge Keesley recognized that "...whether the court applied the law properly...has been the cause of some angst in evaluating the post-trial motions." (Order of Judge Keesley, Page 7; R. ____). Judge Keesley recognized that, "some of this relates to the proper interpretation of S.C. Code Ann. 22-5-110 and its applicability to the actions of the Defendant's Deputy." (Order of Judge Keesley, Page 7; R. ____). The Court rejected Respondent's argument that this statute had no applicability to the actions of Lt. Jackson, concluding:

Viewing the totality of the circumstances, the court finds that sufficient evidence was presented to enable the jury to determine that the conduct of the Defendant (Respondent) in pursuing and obtaining the arrest warrant that is the subject of this action was contrary to the procedure provided in

S.C. Code Ann 22-5-110, that the Defendant (Respondent) was put on notice by the 11th Circuit Solicitor's office of the applicability of that statute, that there was mention to the Richland County Lieutenant about Magistrates having to issue a courtesy summons in some situations, that the Richland County failed to alert the Magistrate about the information she obtained related to a courtesy summons, and that she withheld from the Magistrate the fact that the Lexington County Sheriff's Office investigation did not conclude that charges were warranted. (Order Regarding Defendant's Post-Trial Motions; R. ____).

The Trial Court's analysis and conclusions were correct and supported by the evidence presented at Trial. The jury heard ample evidence of Lt. Jackson's participation in the preparation and procurement of two arrest warrants in Lexington County for Kay's arrest. (Transcript Page 124, Line 21 - Page 125, Line 6; R. ____). These were done in the course and scope of her employment by the Richland County Sheriff's Department (Transcript, Page ____, Lines ____; R. ____). These 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 Sheriff's Department, had 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. ____).

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. 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, the assistant solicitor in Lexington County who had raised concerns about Lt. Jackson swearing out a warrant in Lexington County (Transcript of Record, Page 287, Lines 4-20; R. ____) (Transcript of Record Page 288, Lines 1-20; R. ____) (Transcript of Record, Page 851, Lines 17-21; R. ____) (Transcript of Record Page 852, Lines 1-18; R. ____). (Order Regarding Defendant's Post-Trial Motions; R. ____). As correctly recognized by Judge Keesley in his Order, Solicitor Riddle pointed out the statute and its possible application to Lt. Jackson obtaining warrants to arrest Kay. However, at no time did Lt. Jackson convey these concerns to the Magistrate in her haste to obtain arrest warrants against Kay. (Transcript of Record, Page 287, Lines 4-20; R. ____).

The Appellant/Respondent argues that the Trial Court's alleged misinterpretation and misapplication of this code section resulted in the denial of a directed verdict and JNOV motions and also caused Sheriff Lott to receive an unfair trial. This argument is not supported by the facts that were presented to the jury. As set forth by Judge Keesley on numerous occasions during Trial and in his Order, the jury heard ample evidence to support

Respondent/Appellant's causes of action. (Order Regarding Post-Trial Motions; R. ____).

There is simply nothing to support the Appellant/Respondent's assertions that the Trial Court's handling of this statute resulted in either the denial of Appellant/Respondent's directed verdict or JNOV motions or resulted in an unfair trial. This argument should be rejected by this Court.

II. THERE WAS AMPLE EVIDENCE TO SUPPORT RESPONDENT/APPELLANT'S MALICIOUS PROSECUTION CLAIM

Appellant/Respondent Sheriff Lott argues that the Trial Court erred in denying his Motions for Directed Verdict/JNOV with respect to Respondent/Appellant's cause of action for malicious prosecution. (Appellant/Respondent's Brief Page 19; R. ____). To recover in a malicious prosecution action, a plaintiff must prove the following: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in the plaintiffs favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Broyhill v. Resolution Mgmt. Consultants, Inc.*, 401 S.C. 466, 736 S.E.2d 867, 870-71 (Ct.App.2012) The Respondent/Appellant asserts that there was ample evidence in this case to support her claim for Malicious Prosecution. (Order Regarding Post-Trial Motions, R. ____).

Appellant/Respondent Sheriff Lott focuses his argument by alleging that Respondent/Appellant failed to prove two essential elements of her malicious prosecution cause of action, probable cause and termination of the underlying proceedings in her favor. See, *Broyhill v. Resolution Management Consultants, Inc.*, 401 S.C.466, 736 S.E.2d 867 (Ct. App. 2012).

Contrary to the assertions and arguments of Appellant/Respondent Sheriff Lott, the jury heard ample evidence as to both of these elements and the Trial Court correctly denied Appellant/Respondent Sheriff Lott's directed verdict and post-trial motions with respect to this cause of action.

The jury heard ample evidence from which it could have concluded that facts within the knowledge of Lt. Jackson would have lead a reasonable person to believe the individual arrested was not guilty of a crime. *Jackson v. City of Abbeville*, 366 S.C.662, 623 S.E. 2d. 656 (Ct. App. 2005). The jury heard conflicting testimony as to Lt. Jackson's investigation, or lack thereof prior to obtaining her arrest warrants. The jury heard conflicting testimony regarding Lt. Jackson's contact with Tim Peterson, the employee with Carolina Mobility who handled the sale of the van. The jury heard evidence as to her "version" of sale of the van. The jury also heard testimony and evidence regarding the Lexington County Sheriff's Department's own investigation of the same transaction. The jury heard testimony that these same 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, had 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. ____).

As he did in his post-trial motions, Appellant/Respondent Lott relies upon Lt. Jackson's conversations with various law enforcement personnel as justification of her

actions with respect to the arrest warrants. However, as brought out by Ms. Paschal's counsel in his cross examination of these witnesses, these contacts were fatally flawed in that Lt. Jackson did not present any of these individuals with a full set of facts prior to eliciting their opinions and were therefore designed to bolster her own flawed prosecution of the case, as opposed to obtaining objective opinions regarding the status of her investigation. (Transcript, page 280, line 2 – page 281, line 16; R. _____). The Trial Court properly considered this argument and rejected it, recognizing, "there is a dispute as to whether there was a full and complete disclosure of all the material facts, and whether Defendant acted and relied upon such advice in good faith before seeking the arrest warrants in Lexington County." (Order Regarding Post-Trial Motions, page 8; R. ____).

Unlike the *Jackson* case, relied upon by Appellant/Respondent Lott, the facts of this case with respect to probable cause certainly do not yield "but one conclusion" making this issue a question of law and not fact. Whether probable cause exists is ordinarily a jury question, but it may be decided as a matter of law when the evidence yields only one conclusion. *Law v. South Carolina Department of Corrections*, 368 S.C. at 436, 629 S.E.2d 642 (2006) (citing *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 323, 143 S.E.2d 607, 609 (1965)). This is certainly not an instance where the evidence presented regarding probable cause yields only one conclusion. The Trial Court properly submitted the question of probable cause to the jury and did not err in denying Appellant/Respondent Lott's post-trial motions with respect to this issue.

Appellant/Respondent Sheriff Lott next argues that Kay failed to present evidence from which a jury could have determined that the judicial proceedings (in this case the arrest warrants and subsequent criminal charges terminated in her favor. See, *McKenney v.*

Jack Eckerd Company, 304 S.C. 21, 402 S.E.2d 887 (1991). However, as recognized by Judge Keesley, there was ample evidence presented for the jury to conclude that the proceedings terminated in Kay's favor. The jury heard ample evidence that 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. ____) (Transcript Page 855, Lines 20-24; R. ____) (Transcript Page 856, Lines 3-10; 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. ____).

In denying Appellant/Respondent Lott's post-trial motions, the Court disagreed with Sheriff Lott's argument "...that there is a lack of evidence that the Richland County Sheriff's Department acted with malice in instituting or continuing the proceedings, and a lack of evidence about the Defendant instituting or continuing an action that lacked probable cause." (Order Regarding Post-Trial Motions, Page 8; R. ____). To the contrary, the Court concluded that, ".....there is sufficient evidence to allow the jury to draw those conclusions." (Order Regarding Post-Trial Motions, Page 8; R. ____). The Court's Order is supported by the evidence presented to the jury in this case and should be affirmed by this Court.

III. THERE IS AMPLE EVIDENCE TO SUPPORT RESPONDENT/APPELLANT'S ABUSE OF PROCESS CLAIM

Finally, Appellant/Respondent Sheriff Lott argues that the Trial Court erred in denying his directed verdict and post-trial motions relating to Kay's abuse of process claim. The tort of abuse of process is intended to compensate a party for harm resulting from another party's misuse of the legal system. *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 74 n. 5, 567 S.E.2d 251, 255 n. 5 (Ct. App. 2002). To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. With respect to the cause of action for abuse of process, the issuance of the process may be justified in itself; it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process. *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967).


As recognized by the Trial Court, the jury heard ample evidence from which it could have concluded that Lt. Jackson completely perverted the legal process in this case, resulting in humiliation, embarrassment and damages to Kay. The jury heard evidence that the Appellant/Respondent's officers, particularly Lt. Jackson, single-mindedly and doggedly pursued its investigation oblivious to the actual facts of this case. The jury heard ample testimony that this was done, in part, to assist the Wallace children in pursuing a vendetta (both in and out of Probate Court) against Respondent/Appellant. As the jury correctly determined, the Defendant knew very well the potential consequences of her actions and proceeded without just cause despite the consequences. The Trial Court correctly determined and ruled that the jury heard ample testimony on which it could have

returned a verdict for abuse of process under South Carolina Law. The Trial Court's Order should be affirmed by this Court.

CONCLUSION

For the reasons set forth, the Trial Court correctly denied Appellant/Respondent Sheriff Lott's directed verdict motions and post-trial motions with respect to South Carolina Code Section 22-5-110, Malicious Prosecution and Abuse of Process. (Order on Post-Trial Motions; R. _____). The Trial Court's Order should be affirmed by this Court with respect to the issues raised by Appellant/Respondent in his brief.

By: _____



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May 4, 2016

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