THE STATE OF SOUTH CAROLINA
In the Court of Appeals



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APPEAL FROM LEXINGTON COUNTY

William P. Keesley, Circuit Court Judge

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Appellate Case No. 2015-001153

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Kay F. Paschal.....Respondent/Appellant,

v.

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

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# RESPONDENT/APPELLANT KAY F. PASCHAL'S FINAL BRIEF OF APPELLANT

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S. Jahue Moore,
Stanley L. Myers
John C. Bradley, Jr.
MOORE TAYLOR LAW FIRM, P.A.
1700 Sunset Boulevard
West Columbia, SC 29169
803-796-9160

Counsel for Respondent/Appellant

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## 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. (R. p. 16). Appellant/Respondent answered the Complaint and asserted a counterclaim against Ms. Paschal for Abuse of Process. (R. p. 26). 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. (R. p. 698, line 3 – p. 699, line 15). The Court granted Defendant's Motion as to Plaintiff's False Arrest Cause of Action. All remaining motions were denied. (R. p. 751, line 23 – p. 756, line 19) (R. p. 770, line 17-20).

At the close of the evidence, Plaintiff moved for a Directed Verdict as to the Defendant's counterclaim. (R. p. 852, line 11 – p. 855, line 3). This motion was granted by the Court. (R. p. 855, lines 4 - 22). Defendant renewed his Directed Verdict Motions. (R. p. 860, line 21 - p. 869, line 20). The Court denied the Defendant's Motions as to the causes of action for abuse of process and malicious prosecution. (R. p. 869, lines 21-24). Plaintiff withdrew her cause of action for negligence. (R. p. 870, lines 12-13).

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. (R. p. 950).

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 (R. pp. 41-75). 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. (R. p. 1).

Plaintiff timely filed a Motion to Reconsider. (R. p. 76). On April 27, 2015, Judge Keesley issued his Order denying both Motions for Reconsideration. (R. p. 12). On June 10, 2015, after the Appellant/Respondent filed his Notice of Appeal, the Respondent/Appellant filed her Cross Appeal. (R. p. 1148) (R. p. 1170).

## 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 (R. p. 16). 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 (R. p. 950). The jury awarded Kay 1.6 Million dollars in actual damages (R. p. 950).

Kay Paschal is an elderly member of the South Carolina Bar. (R. p. 467. lines 18-19). Throughout her legal career she worked representing indigent citizens of South Carolina. (R. p. 480, lines 12-24). She also worked for the University of South Carolina. (R. p. 480, line 25 – p. 481, line 16). She operated her own law practice for a while. (R. p. 481, lines 17-19).

Apart from her law practice, Kay otherwise lived a quiet life taking care of her family and her pets. (R. p. 480, line 5 – p. 481, line 16). 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. (R. p. 499, lines 13-17). In 2002, David hired Kay as his secretary. (R. p. 499, lines 22-25; p. 500, line 1). As David's secretary Kay operated his office, paid his bills, kept his books and did his correspondence. (R. p. 499, lines 22-25; p. 500; line 1) (R. p. 511, lines 6-16). She did not perform any legal work for him or his business once she went to work for him as his secretary. (R. p. 500. lines 2-6).

Later, she and David developed a romantic relationship. At the time Kay was living in a small house she owned in Lexington County. (R. p. 496, lines 9-19) (R. p. 497, line 25 – p. 518, line 5). Kay moved in with David in 2003 at his house in Forest Acres, South Carolina. (R. p. 498, lines 8-12). Kay and David lived there together until after his death in 2011 when she was evicted from their Forest Acres home by his children. (R. p. 498, lines 19-21).

Kay and David worked together in his yard creating a "showcase" home. (R. p. 511, lines 20-25) (R. p. 512, lines 1-2). They owned a number of pets together including cats and a pond full of Koi Fish. (R. p. 494, lines 18-25). (R. p. 495, line 1) (R. p. 495,

lines 5-11). They took many vacations together. They maintained separate and joint bank accounts. (R. p. 508, lines 6-11).

Kay and David considered themselves to be husband and wife, although they never formally married. (R. p. 486, lines 6-11). Ms. Paschal wore a ring given to her by David. She adopted his last name as her own. (R. p. 467, lines 23-25; R. p. 468, line 7. Many of their mutual friends believed them to be husband and wife. (R. p. 613, line 25 – p. 614, line 4). The jury heard testimony that on the Friday prior to David's stroke, he and Kay applied for a marriage license. (R. p. 513, lines 11-25) (R. p. 514, lines 1-4).

In April of 2010, David went to Providence Hospital for insertion of a stent in his carotid artery. (R. p. 512, lines 21-25) (R. p. 513, lines 1-10). It was anticipated that this would be a same day surgery or, at most, David would only be hospitalized overnight. (R. p. 514, lines 5-7). No problems were anticipated or expected. (R. p. 514, lines 5-7). Unfortunately, shortly after the procedure David suffered a debilitating stroke which left him paralyzed. (R. p. 515, lines 3-12) (R. p. 471, lines 20-25) (R. p. 472, lines 1-7). This complication resulted in a lengthy hospital stay, both at Providence Hospital and at HealthSouth Rehabilitation Hospital. (R. p. 515, line 16 – p. 516, line 5).

Sometime prior to the Providence/HealthSouth hospitalizations, David executed a Power of Attorney ("POA") giving Kay Power of Attorney. (R. p. 510, lines 16-25) (R. p. 954). 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. (R. p. 501, lines 1-19). Kay had absolutely no involvement in its execution by David. (R. p. 506, lines 7-22). She testified that she did not know where he had it executed or any of the witnesses to the execution of the agreement. (R. p. 501, lines 17-19).

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. (R. p. 473, lines 20-25) (R. p. 474, lines 1-8). 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. (R. p. 474, lines 1-5) (R. p. 507, lines 1-5) (R. p. 506, line 1). The Wallace children were well aware of the Power of Attorney and during their father's lifetime raised no issue with Kay using it. (R. p. 525, lines 13-17).

David was discharged from the hospital with significant physical disabilities and limitations. As a result of the stroke he could not walk. (R. p. 471, line 20 – p. 472, line 22). He could not feed himself. He had issues with bowel control. (R. p. 517, lines 2-12). He was, however, able to understand and converse with others around him even though his speech was somewhat impaired. (R. p. 516, lines 6-24). Individuals who spoke to him were able to understand him and carry on a conversation with him. (R. p. 444, lines 5-14) (R. p. 471, line 20 – p. 472, line 7). David was never declared mentally incompetent in any way prior to his death. (R. p. 192, lines 16-22) (R. p. 193, lines 18-23) (R. p. 194, line 1). He was never declared to be a vulnerable elderly adult. (R. p. 193, lines 12-17). No guardian was ever appointed for him during his lifetime. (R. p. 195, lines 3-5).

After the stroke, Kay was David's primary caregiver. While he was hospitalized she remained at the hospital with him. (R. p. 528, lines 1-5). Kay hired two caregivers to assist her with David's care during the day. (R. p. 517, lines 13-23). 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. (R. p. 519, lines 7-12) (R. p.

518, lines 13-23). She changed David's dressings and gave him his medications. (R. p. 528, lines 1-18). She did all of the laundry. (R. p. 464, line 25 – p. 470, line 3). She purchased a queen sized hospital bed and slept with him at night in case he needed her. (R. p. 471, lines 7-19).

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. (R. p. 469, lines 15-25) (R. p. 470, lines 10-16). Kay purchased a Hoyer lift to assist in getting David in and out of bed. (R. p. 464, line 15 – p. 471, line 12).

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. (R. p. 518, lines 14-21). Because of his paralysis and size (compared to her own) she had difficulty getting him in and out of their vehicle in his wheelchair. (R. p. 518, line 22 – p. 519, line 2). She went to Carolina Mobility and spoke with Tim Petersen, the general manager, about purchasing a handicap accessible van. (R. p. 434, lines 10-12) (R. p. 442, lines 3-9). 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. (R. p. 442, line 21 – p. 443, line 2). 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. (R. p. 443, lines

19-23). He was able to understand what David was saying to him. (R. p. 443, lines 19-23). David was able to communicate what he liked or disliked in a particular van. (R. p. 444, lines 19-23). (R. p. 444, lines 11-16). 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. (R. p. 189, lines 11-22) (R. p. 436, lines 17-25). She used David's money to pay for the van. (R. p. 520, lines 6-25; R. p. 521, lines 1-3) (R. p. 523, lines 9-13) (R. p. 966) (R. p. 967) (R. p. 968). David was aware of this transaction and aware of the fact that his money and the Cadillac were being used to purchase the van. (R. p. 523, lines 11-13). (R. p. 447, lines 19-24). Kay testified that she would not have consummated the transaction if David had not wanted her to do so. (R. p. 523, lines 3-7).

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. (R. p. 479, lines 5-22). 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." (R. p. 435, lines 16-25) (R. p. 436, lines 1-8).

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. (R. p. 434, lines 1-12).

On February 20, 2011, David died leaving an estate of approximately 6 Million dollars. (R. p. 512, lines 17-22). At the time of his death, David had two adult children, a son Jeffrey Wallace and a daughter Elizabeth Wallace. (R. p. 189, lines 1-10). 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. (R. p. 519, lines 3-12). However, after his death they immediately instituted criminal proceedings against Kay alleging abuse and neglect. (R. p. 161, lines 11-22). They also initiated proceedings against Kay in the Richland County Probate Court. (R. p. 528, lines 23-25).

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. (R. p. 96, lines 3-5) (R. p. 97, lines 11-14) (R. p. 98, lines 7-18). 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. (R. p. 107, lines 14-20). 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. (R. p. 147, lines 16-20) (R. p. 148, line 3 – p. 151, 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 then 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. (R. p. 529, line - p. 531, line 7). 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. (R. p. 542, lines 13-18). 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. (R. p. 542, lines 3-18). The jury heard evidence that the Wallace children appeared to not only assist Lt. Jackson with her search, but to direct it. (R. p. 531, lines 8-16) (R. p. 531, line 25 – p. 532, line 16). On at least one occasion during the search, the children personally found items and handed them to Lt. Jackson. (R. p. 545, lines 1-7).

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. (R. p. 530, lines 11-24) (R. p. 545, lines 8 -17). None of these seized items have ever been returned to her. (R. p. 545, lines 18-23).

As set forth above, Lt. Jackson was a Richland County deputy. She had absolutely no authority at all in Lexington County. (R. p. 101, lines 5-25) (R. p. 102, lines 21-25). Lt. Jackson testified that she is aware that she had no jurisdiction in Lexington County. (R. p. 101, line 10 – p. 103, line 21). She was never asked by anyone

in Lexington County to participate in any ongoing Lexington County investigation. (R. p. 103, lines 22-25).

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. (R. p. 117, line 18 - p. 120, line 21). (R. p. 969). The search warrants are directed to "any bonded law enforcement officer of the aforementioned county." (R. p. 119, lines 17-25). (R. p. 969). As set forth above, Lt. Jackson was not a bonded law enforcement officer and she was not an officer of Lexington County. (R. p. 120, lines 5-15) (R. p. 139, lines 20-22). 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. (R. p. 548, line 2 – p. 549, line 6). 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. (R. pp. 118-119) (R. p. 138, lines 12-16) (R. p. 555, lines 9-16). Like the first search, the Wallace children, Kay's adversaries in the Probate Court proceeding, were present when this search occurred. (R. p. 549, lines 7-24). Once again this search (which was very surprising to Kay) did not appear to be a surprise to the Wallace children. (R. p. 549, lines 15-17). Once again they participated in the search and assisted Lt. Jackson and her cohorts in it. (R. p. 550, line 21 - p. 551, line

3) (R. p. 551, lines 12-24). Kay testified that during the search Lt. Jackson laughed and joked with Elizabeth Wallace. (R. p. 551, line 23) (R. p. 552, line 18 – p. 553, line 12).

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. (R. p. 173, lines 3-4). None of these items were ever returned to Kay. (R. p. 555, line 23 – p. 556, line 23). 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. (R. p. 578, lines 15-21).

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 (R. p. 545, line 21 – p. 546, line 3) (R. p. 546, line 19 – p. 547, line 2). 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 (R. p. 546, line 19 – p. 547, line 2). 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. (R. p. 577, lines 5-23) (R. 968). 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. (R. p. 104, line 21 – p. 105, line 6). The charges had previously been investigated in Lexington County by Lexington County authorities. (R. p. 203, lines 6-23). 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. (R. p. 206, line 18 – p. 207, line 7) (R. p. 218, line 8 – p. 221, line 11) (R. p. 360, line 23 – p. 361, line 10) (R. p. 365) (R. p. 979). 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. (R. pp. 977-978) (R. p. 104, lines 21-23). They were issued solely on information supplied to the issuing Judge (Judge Whittle) by Lt. Jackson. (R. p. 105, lines 1-10). 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. (R. p. 1). 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 (R. p. 1). She did not tell the Lexington County Magistrate that Lexington County had already investigated these charges and found no probable cause (R. p. 1). 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 (R. p. 1).

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. (R. p. 559, line 5 – p. 579, line 2) (R. p. 975). 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. (R. p. 561, line 25 – p. 561, line 16). The matter was heard in Probate Court in Kay's absence. (R. p. 564, lines 15-19).

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. (R. p. 564, line 19). Kay was booked, photographed and fingerprinted. (R. p. 562, line 25 – p. 563, line 5). Her bond was set for $50,000, in part due to testimony from Elizabeth Wallace. (R. p. 564, lines 4-14). Kay did not have the money to post bail. (R. p. 564, lines 13-17). 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. (R. p. 563, lines 6-19). 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. (R. p. 565, line 4 – p. 567,

line 9). The jury heard ample evidence of the fear, anxiety, humiliation and shock that this caused Kay. (R. p. 565, line 4 – p. 567, line 9).

A bond modification hearing was held on November 17, 2011, before the Honorable Knox McMahon, Presiding Judge of Lexington County. (R. p. 568, line 3 – p. 571, line 8) (R. p. 979). 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. (R. p. 570, lines 2-8). Judge McMahon ordered Kay's release on a $1,000.00 personal recognizance bond on each count. (R. p. 570, lines 22-25) (R. p. 979).

The charges brought against Kay by Lt. Jackson were ultimately dismissed for lack of probable cause in January of 2012. (R. p. 175, lines 19-24). (R. p. 576, lines 16-21) (R. p. 579, lines 7-23). 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. (R. p. 115, lines 7-10) (R. p. 381, lines 1-2) (R. p. 383, lines 1-3).

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. (R. p. 176, lines 21-25) (R. p. 177, lines 1-11) (R. p. 579, line 15 – p. 581, line 24) (R. p. 1016-1017). Howard Hughes, an employee of the Sherriff's Department prepared these affidavits "upon information and belief." (R. p. 1016-1017). 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. (R. p. 581, line 8 -19). 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. (R. p. 475, lines 12-25) (R. p. 479, lines 7-10) (R. p. 987). The jury heard evidence of the damages suffered by Kay as a result of her arrest including embarrassment, humiliation, and loss of income (R. p. 1).

## 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 (R. p. 1) (R. pp. 41-75). 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 (R. p. 1). The Plaintiff timely moved for Reconsideration. (R. p. 76). The Plaintiff's Motion was denied. (R. p. 12).

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. (R. p. 1). 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. (R. p. 870, lines 12-13). Sheriff Lott's motion to reduce the verdict should have been denied and the Trial Court committed an error of law in ruling otherwise. (R. p. 1).

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 plan 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 $300,000.00 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,

MOORE TAYLOR LAW FIRM, P.A.

BY: _____

S. Jahue Moore
Stanley L. Myers
John C. Bradley, Jr.
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEYS FOR RESPONDENT/
APPELLANT KAY F. PASCHAL

West Columbia, South Carolina

July 18, 2016

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

Kay F. Paschal..... Respondent/Appellant,

v.

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

**CERTIFICATE OF COUNSEL**

The undersigned counsel for Respondent/Appellant certifies that Respondent/Appellant Kay F. Paschal's Final Brief of Appellant complies with Rule 211(b) SCACR.

Respectfully submitted,

S. Jahue Moore
MOORE TAYLOR LAW FIRM, P.A.
P.O. Box 5709
West Columbia, South Carolina 29171
Telephone: 803-796-9160
Attorney for Respondent/Appellant

July 19, 2016

THE STATE OF SOUTH CAROLINA
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APPEAL FROM LEXINGTON COUNTY
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**PROOF OF SERVICE**

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I, Gina M. Nolasco, an employee of the Moore Taylor Law Firm, P.A., certify that I have served Respondent/Appellant Kay F. Paschal's Final Brief of Appellant and Respondent/Appellant Kay F. Paschal's Final Brief of Respondent by United States mail, in an envelope with sufficient postage affixed there to, upon all counsel of record on July 19, 2016.

Andrew W. Lindemann, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202-8568

Patrick J. Frawley, Esquire
Davis Frawley, LLC
P. O. Box 489
Lexington, SC 29071-0489

Gina M. Nolasco

West Columbia, South Carolina