

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

William P. Keesley, Circuit Court Judge

Case No. 2012-CP-32-0342

RECEIVED

JUL 20 2016

SC Court of Appeals

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

v.

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

**RECORD ON APPEAL - VOLUME I**

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Kay F. Paschal,

Plaintiff,

vs.

Leon Lott, the Duly Elected Sheriff  
of Richland County, South Carolina,

Defendant.

C/A No. 2012-CP-32-00342

ORDER REGARDING  
DEFENDANT'S  
POST-TRIAL MOTIONS

FILED

Wpa  
#1

The Defendant has filed three post-trial motions: a Motion to Reduce Verdict by granting a New Trial *Nisi* (New Trial *Nisi Remittitur*), or in the alternative to impose the statutory cap of \$300,000; a Motion for Judgment Notwithstanding the Verdict (JNOV), or in the Alternative for a New Trial Absolute; and, a Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine. The motion to reduce the verdict to \$300,000 is granted. The remaining motions are denied. While the court is seriously concerned about the cumulative effect of the forceful presentation of issues that seemed irrelevant, abandoned, or barred by *res judicata*, it is the court's conclusion that the jury's verdicts must be given deference, the overall trial was fair, that there was sufficient evidence to support the jury's verdicts, and that the jury's verdicts should be allowed to stand.

**1. The damage cap under § 15-78-120 is applicable and limits recovery to \$300,000.**

The Plaintiff contends that the damage cap in the South Carolina Tort Claims Act ("SCTCA") does not apply because the jury found intentional torts. If the court believes that the cap does apply, the Plaintiff argues that the proper cap is \$600,000.

It is the Plaintiff's argument that the statutory cap only applies in cases where the governmental entity has injured the plaintiff by an act of negligence. This argument is tied to the

definition of "occurrence" found in the statute. While the Plaintiff makes a concrete argument, it is the court's view that the language should be read to place a cap of \$300,000 for the conduct involved here.

An injured party may sue a governmental entity for all torts, intentional and negligent. Pursuant to § 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 tort 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 Plaintiff's firm and the same Defendant at bar here.

WPM  
#2  
Pursuant to § 15-78-120(a)(1) and (2) (emphasis added):

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no 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.

(2) Except as provided in Section 15-78-120(a)(4), the 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.

The Plaintiff cites S.C. Code § 15-78-30(g) (emphasis added):

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

It is the Plaintiff's position that these sections should be read together so that the statutory damage caps only apply to causes of action for negligence. The cardinal rule of statutory

WPK  
#3

construction is to ascertain and effectuate the intent of the legislature. *Shirley's Iron Works, Inc. v. City of Union*, \_\_\_ S.C. \_\_\_, \_\_\_, 743 S.E.2d 778, 784 (2013) citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "It is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of [the South Carolina Tort Claims Act] and in accordance with the principles established herein." S.C. Code Ann. §15-78-20(a)(1986 as amended). "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. §15-78-20(f)(1986 as amended). "The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity." S.C. Code Ann. §15-78-200(1997 as amended).

Further evidence of legislative intent in enacting the SCTCA is found in the Editor's Note to the Thomson-West 2005 edition of the main volume following the "HISTORY" for §15-78-200, which statute was passed as 1997 Act No. 155, Part II, §55B, in which the editor quotes the immediately preceding section—1997 Act No. 155, Part II, §55A—as providing:

SECTION 55A. The General Assembly finds:

(1) that because of the unique nature, role, funding, and function of government, the General Assembly has never intended that the government or taxpayers would be subject to unlimited liability for tort actions against the government;

(2) that this section shall clarify any ambiguity in the General Assembly's intent that there remain reasonable limits upon recovery against the government for tort actions, and that the government is only liable for torts as expressly prescribed and authorized in the "South Carolina Tort Claims Act."

7 Code of Laws of South Carolina, *Civil Remedies and Procedures*, p. 836, §15-78-200, Ed. Note (Thomson-West 2005 Edition).

It is this court's opinion that the caps were intended to apply to torts and that the language should be read to limit recovery in this case. Citations to a case excluding the caps for a statutory whistleblower remedy do not control the situation here. The Plaintiff's recovery is in tort.

The Plaintiff also argues that, even if the cap applies, she is entitled to \$600,000. The jury awarded a verdict for Ms. Paschal on both claims for malicious prosecution and abuse of process. The Plaintiff argues that the malicious prosecution involved the Defendant's harassment, search, and arrest of Ms. Paschal without probable cause. She argues that the abuse of process was based upon the Defendant's use of the legal process to interfere with and restrict Ms. Paschal's ability to engage in civil litigation related to an estate. She recognizes that the conduct of the Defendant in both of the causes of action is intertwined, but believes that she would be entitled to the \$600,000 cap because the impact on Ms. Paschal's life was distinct and the claims were distinct.

The problem with her post-trial argument is that she admitted that the damage calculations for the causes of action were identical. At trial, the parties agreed that the damages would be the same under either theory of recovery, and they agreed to submit the case using a general verdict form for damages. The actions amounted to one occurrence.

**2. The motions for JNOV and for new trial are denied.**

The Defendant seeks to have judgment notwithstanding the verdict, failing which there are various motions for new trial. Those motions are denied.

The Defendant asserts that the Plaintiff failed to prove the requisite elements of her causes of action for Abuse of Process and Malicious Prosecution. The arguments center around

the assertion that there was insufficient competent evidence as to the elements of these offenses, and that there was insufficient evidence of damages and proximate cause.

The court disagrees with the assertion that there is insufficient evidence as to the elements of the causes of action. The court also disagrees with the Defendant's interpretation of the evidence related to damages and proximate cause, except to the extent that it concerns the assertions about the Plaintiff's inability to pursue her claims against the estate in Richland County. Insofar as the mental and emotional damages suffered by the Plaintiff, including the indignities associated with her incarceration, the court finds that there is evidence from which a reasonable juror could determine extensive damages. Further, as to her loss of earning potential as an attorney, the evidence presented would justify the jury in making a substantial award of damages.

WPA  
#5

The court does have serious concerns with the repeated focus by the Plaintiff on aspects that dealt with missing Probate Court hearings and her loss of a claim related to the estate. In the court's view, these claims were largely unproven to the extent that there was not sufficient competent evidence on that subject for the jury to consider them as being proximately caused by any wrongdoing on the part of the Defendant. Except as to a possible motive for the actions being taken against the Plaintiff, the court feels that many of the things related to the Probate Court that were discussed in testimony should have been avoided because they were irrelevant, abandoned, or barred by *res judicata*. It is concerning that the efforts to segregate issues may have been compromised. Defense counsel was placed in a very difficult situation regarding objections. When the court ruled, there were several times when it seemed that the banned issues crept back into the discussion.



The court felt that it clearly ruled that the Plaintiff settled her case with the alleged co-conspirators who were her adversaries in the Probate Court matter. She entered into a settlement agreement that was binding upon her. Nevertheless, the Plaintiff and her attorney kept bringing up things that, in the court's view, she was not allowed to pursue. For these reasons, extremely serious consideration has been given to the Motion for a New Trial under the Thirteenth Juror Doctrine.

During the interim since these post-trial motions were argued, the court has wrestled with the overall question of whether the trial was fair. The court acknowledges that it was far from a perfect trial. The court has evaluated whether there is any indication that the jury based its verdicts on improper grounds, and whether the forcefulness of asserting improper elements into the case tainted the Defendant's ability to receive a fair trial from an impartial jury.

WRP  
#6  
Considering the evidence in totality, there is considerable evidence to support substantial damages being awarded to the Plaintiff on a general verdict form. The Plaintiff is a licensed attorney. By virtue of her license, she has enhanced sensitivity to being charged with a crime. There is evidence that she is near the end of her career and that she had come through all those years without any significant brushes with law enforcement. Her alleged misconduct in Lexington County was claimed to be related to property crimes and things that did not appear to warrant an extreme sense of urgency in making an arrest. Ms. Paschal was accused of misusing or forging a power of attorney in order to purchase a handicapped-accessible van for the handicapped person with whom she lived. The evidence is certainly capable of more than one interpretation, but it can reasonably be interpreted to support the conclusion by a jury that overzealous, ill-willed, and improper prosecution was conducted by the Defendant as to the Lexington County charges. So, while the court has concerns, it has not been shown that the

verdict was the product of passion, prejudice, caprice, or any improper motive or misconduct on the part of the jury that would justify setting the verdicts aside.

As to whether the court applied the law properly, that has been the cause of some angst in evaluating the post-trial motions. Some of this relates to the proper interpretation of S.C. Code Ann. § 22-5-110 and its applicability to the evaluation of the actions of the Defendant's deputy. Some of it relates to the immunity under the SCTCA. During the trial, the court found a statute that seemed to deal with when it was appropriate for officers from one jurisdiction could proceed with investigations in another jurisdiction, and the court believed the reference to the "only" method was instructive. The attorneys for both sides seemed to disagree, stating that references to that statute in the charge were not warranted since it dealt with joint task force situations. The jury charge was modified to remove that reference, at the request of both attorneys.

Wp  
#7

The Defendant argues that § 22-5-110 is not jurisdictional and applies to the magistrates issuing warrants, not to the law enforcement officers seeking them. That was strenuously argued during trial. 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 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 was put on notice by the 11<sup>th</sup> 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 Deputy 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's investigation did not conclude that charges were warranted (though the court acknowledges that there is an argument about there being a *caveat* concerning

the Lexington County Sheriff's investigation being halted for other reasons). The jury evaluated the motive, and it was within its province to do so and to reach the conclusions it apparently did.

The court disagrees with the Defendant's argument that there is no evidence that the matter terminated in the Plaintiff's favor, which is an element for malicious prosecution. This argument is based on the fact that there is still an ongoing investigation for matters that allegedly occurred in Richland County. In the court's view, there is sufficient evidence from which the jury could determine that the Lexington County matter terminated in the Plaintiff's favor.

WPC  
#8

The court also disagrees 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. Again, the jury could have reached a different result, but there is sufficient evidence to allow the jury to draw those conclusions.

The Defendant argues that the Defendant acted in good faith in seeking the advice of the Solicitor's offices in Lexington and Richland Counties. The evidence at trial showed that this Defendant did contact the prosecutors' offices and received advice. There is a dispute as to whether there was a full and complete disclosure of all material facts, and whether the Defendant acted and relied upon such advice in good faith before seeking the arrest warrants in Lexington County.

The issues related to immunity under S.C. Code Ann. § 15-78-60(3), (4), and (5), were also raised as a ground for a new trial. Having considered the arguments presented on these defenses, the court finds that there is sufficient evidence to allow the jury to determine that these immunities did not preclude recovery in this case.

The court rejects the argument that there was no evidence from which a reasonable juror could have concluded that the damages awarded were proximately caused by any act or omission of this Defendant, with the award of damages being so grossly excessive as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence at trial. The court denies the motions for setting aside the verdict and for a new trial in this regard.

WPK  
#9

The Defendant asks the court to reduce the verdict far below the \$300,000 amount, if the verdicts are allowed to stand and if the court does not grant a new trial absolute. When a jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial *nisi*. *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 549, 716 S.E.2d 295, 300-301 (Ct. Ap. 2011), citing *Hawkins v. Greenwood Development Corporation*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. Ap. 1997). The consideration of a motion for a new trial *nisi* requires the judge to consider the adequacy of the verdict in light of the evidence presented. *Id.*

For the reasons stated above, the court declines to reduce the verdict further. The Motion for New Trial, *Nisi Remittitur*, is denied. It is the court's view that it was foreseeable that having someone arrested and placed in jail would subject that individual to the type of treatment that the Plaintiff testified as having occurred. In the court's view, there was evidence that the things that took place at the Lexington County Detention Center were the direct, natural, and proximate result of the Defendant's actions.

The more difficult decisions relate to the arguments that the verdict was somehow improperly tainted by swaying the jury based on passion, prejudice, sympathy, or some other improper influence. It was permissible for Plaintiff's Counsel to communicate the imagery of

the Plaintiff forced to be naked or wrapped in a sheet while in the Lexington County Detention Center. Far more troubling, as indicated above, were references to the Richland County Probate Court dispute with the Wallace children, and repeatedly faulting the Richland County Sheriff's Department for the Plaintiff being forced to settle her spousal share claim and renounce her claim to being David Wallace's common-law spouse. While those are troubling, the issue often came where there was no objection or with voluntary questioning that elicited the response.

The Defendant takes issue with the Richland County Deputy being accused of perjury, the alleged mischaracterization of the Lexington County Investigator's determination that there was insufficient probable cause, and the alleged mischaracterization of the dismissal of the arrest warrants at the Preliminary Hearing as being based upon lack of probable cause. In the court's view, none of those arguments warrant setting aside the verdicts, reducing the verdicts below the cap, or granting a new trial.

WPK  
#10  
There was evidence that the Richland County Lieutenant did not know the meaning of foundational words that she used in her affidavit to obtain the arrest warrant. There is evidence from which the jury could conclude that she intentionally failed to disclose to the Magistrate the fact that the Lexington County Sheriff's Department investigated the matter and declined prosecution. There is evidence that she was put on notice by the 11<sup>th</sup> Circuit Solicitor's office that there was a procedure for a courtesy summons, but did not reveal that to the Magistrate, seeking an arrest warrant where a summons would have worked fine. As to the Lexington County Sheriff's Office's investigation, there was evidence that the additional information obtained has not changed the position to stand by the initial finding of lack of probable cause.

Finally, the court has revisited the grounds for directed verdict raised during trial. The court finds nothing in those rulings that now cause it to set aside the verdicts or grant a new trial.

THEREFORE, IT IS ORDERED that the motion to impose the \$300,000 cap under the SCTCA is granted. All other post-trial motions are denied. The Plaintiff shall have judgment against the Defendant in the amount of \$300,000.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
William P. Keesley  
Circuit Judge

December 9, 2014

#11

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

KAY F. PASCHAL, )

Plaintiff, )

-vs- )

LEON LOTT, THE DULY ELECTED )  
SHERIFF OF RICHLAND COUNTY, )  
SOUTH CAROLINA, )

Defendant. )

IN THE COURT OF COMMON PLEAS

**ORIGINAL**

**ORDER DENYING MOTION  
TO ALTER OR AMEND**

Case Number: 2012-CP-32-00342

The plaintiff filed a motion to have the court reconsider and to alter or amend the order ruling on post-trial motions. Having reconsidered the matter, the court declines to alter or amend the prior order.

*WPK*  
*#1*  
Pursuant to Rule 59(f), SCRCP, the parties were notified that the court would decide this motion on written submissions. The reconsideration motion included citations of authority and arguments. The plaintiff advised the court that it did not intend to provide further submissions. The defendant filed a Return dated January 9, 2015.

The gist of the assertions in the pending motion relate to the plaintiff's belief that the monetary caps in the South Carolina Tort Claims Act only apply to negligence claims. It is the court's determination that the issues raised in the pending Rule 59 motion were fully briefed, argued, and ruled upon. The defendants have provided additional citations in the Return, which the court believes are additional supporting grounds for its prior ruling.

FILED  
2015 APR 30 A 11:10  
JETHA A. CHAIRMAN  
CLERK OF COURT  
LEXINGTON, SC

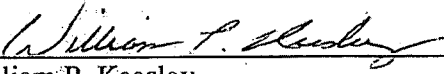
ORIGINAL

Having fully reconsidered all the issues raised in the Rule 59 motion, including the reconsidering the prior arguments made and memoranda submitted, the court finds no basis to alter or amend its previous order.

THEREFORE, IT IS ORDERED that the motion to alter or amend is denied.

AND IT IS SO ORDERED.

April 27, 2015

  
\_\_\_\_\_  
William P. Keesley  
Judge

#2

FILED  
2015 APR 30 A 11:10  
BETH A. GARRIG  
CLERK OF COURT  
LEXINGTON, SC



## FILED

STATE OF SOUTH CAROLINA 2014 JUL 22 AM 8:01  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF LEXINGTON )  
 )  
 KAY PASCHAL, )  
 )  
 Plaintiff, )  
 )  
 -vs- ) VERDICTS  
 )  
 LEON LOTT, THE DULY ) Case Number: 2012-CP-32-00342  
 ELECTED SHERIFF OF )  
 RICHLAND COUNTY, SOUTH )  
 CAROLINA, )  
 )  
 Defendant. )

I. AS TO THE CAUSE OF ACTION FOR MALICIOUS PROSECUTION

WE, THE JURY, UNANIMOUSLY FIND:

[ ☒ ] for the plaintiff, Kay Paschal.

or

[ ☐ ] for the defendant, Leon Lott, the duly elected Sheriff of Richland County.II. AS TO THE CAUSE OF ACTION FOR ABUSE OF PROCESS

WE, THE JURY, UNANIMOUSLY FIND:

[ ☒ ] for the plaintiff, Kay Paschal.

or

[ ☐ ] for the defendant, Leon Lott, the duly elected Sheriff of Richland County.

DIRECTIONS: IF YOU HAVE FOUND FOR THE PLAINTIFF, KAY PASCHAL, UNDER  
 EITHER OF THE CAUSES OF ACTION ABOVE, PLEASE GO TO SECTION III. IF YOU

JUL282014

HAVE FOUND FOR THE DEFENDANT, RICHLAND COUNTY SHERIFF'S OFFICE, ON  
BOTH OF THE CAUSES OF ACTION ABOVE, PLEASE STOP HERE AND DELIBERATE NO  
FURTHER.

III. WE UNANIMOUSLY AWARD THE PLAINTIFF THE AMOUNT OF :

\$ 1,610,000, ACTUAL DAMAGES.

July 25, 2014

Jury Foreman

Jeff Merrill

Judge: Wm. P. Keesley  
Court Reporters: Sheppard (7/21/2014 through 7/24/2014)  
Theume (7/25/2014)

**COPY**

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Kay Paschal Wallace,

Plaintiff,

vs.

Leon Lott, Heidi Scott, Jeffrey Wallace  
and Elizabeth Wallace,

Defendants.

**FILED**

IN THE COURT OF COMMON PLEAS

2017 JAN 24 P 4 36

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

**COMPLAINT**

(Jury Trial Demanded)

**2012CP3200342**

The Plaintiff Kay Paschal Wallace complaining of the Defendants Leon Lott, Heidi Scott, Jeffrey Wallace, and Elizabeth Wallace, herein alleges that:

**FOR A FIRST CAUSE OF ACTION**

1. Plaintiff is a resident and citizen of Lexington County, South Carolina.
2. Leon Lott is a resident and citizen of Richland County, South Carolina and is the sheriff of Richland County, South Carolina. Pursuant to the South Carolina Code of Laws, Leon Lott is made a Defendant in his capacity as Sheriff for Richland County, South Carolina. Upon information and belief, some of the activities of the Defendant Heidi Scott were taken within the course and scope of her authority as a Deputy Sheriff for Richland County, South Carolina and some of her activities have exceeded the scope of her authority as a Deputy for Richland County, South Carolina. Thus, the Sheriff of Richland County is a party as well as the individual employee of the Sheriff, Heidi Scott.
3. Upon information and belief, Jeffrey and Elizabeth Wallace are residents and citizens of Richland County, South Carolina or of some State of the United States other than the State of South Carolina. The exact residence of these two individuals is not specifically known

other than the fact that Elizabeth Wallace appears presently to be residing in Richland County, South Carolina.

4. Venue is appropriate in Lexington County, South Carolina as the acts complained of herein happened in whole or in part in Lexington County, South Carolina and most, if not all, of the tortious activity complained of herein took place in Lexington County, South Carolina.

5. For approximately 8 years prior to the death of David Wallace, Kay Paschal Wallace, the Plaintiff herein, resided with David Wallace as his common law wife.

6. At present, there is a Probate Court and Circuit Court action pending in order to determine the viability of Plaintiff's claim to be the common law wife of David Wallace.

7. The Defendants Jeffrey Wallace and Elizabeth Wallace are the children of David Wallace.

8. The Plaintiff administered to the needs of David Wallace throughout his dying years and did everything within her power to assist him with his business and personal needs. During this time, Jeffrey and Elizabeth Wallace had little if any contact with David while he was dying.

9. The Defendants Jeffrey Wallace and Elizabeth Wallace have a significant financial stake in the question of common law marriage and they have done everything in their power to harm the Plaintiff and to force the Plaintiff to drop her claim to be the common law spouse.

10. In an effort to render the Plaintiff destitute and in an effort to destroy the Plaintiff's ability to litigate, the Defendants Jeffrey Wallace and Elizabeth Wallace have petitioned the Court to remove the Plaintiff from the home where she was living and to even take away her ability to use her vehicle which was titled in her name.

11. The Defendants Jeffrey Wallace and Elizabeth Wallace have formed a personal relationship with Lieutenant Heidi Scott of the Richland County Sheriff's Department which is over and above the relationship which should exist between a professional law enforcement officer and a complaining person.

12. In fact, Heidi Scott is actually not an investigator for the Richland County Sheriff's Department but, rather, is a victim advocate whose job is to counsel with and provide aid to "victims" of legitimate crimes.

13. Pursuant to the South Carolina Code of Laws, neither Heidi Scott nor Leon Lott had the authority to sign warrants in Lexington County, South Carolina.

14. While David Wallace was still alive, in the late Spring of 2010, the Plaintiff assisted him in selling his vehicle and trading it in for a handicapped accessible van.

15. The transaction in question was entirely legitimate. The Plaintiff in part used a Power-of-Attorney which had been provided her by David Wallace to assist in the transaction of securing him a van and trading in his car.

16. The Plaintiff made payments out of her own funds on the vehicle which was traded in and had a financial interest in the vehicle which was traded in for the handicapped accessible van.

17. The transaction in regard to the van was known and approved by David Wallace at the time it was made. Any actions of the Plaintiff in the transaction were clearly ratified by the decedent at the time of the transaction. The Plaintiff did absolutely nothing wrong in causing the transaction regarding the van to take place.

18. In pursuit of their illegal efforts to harm the Plaintiff and to place her in a position where she would not be able to litigate the common law marriage issue, the Defendants Jeffrey

Wallace and Elizabeth Wallace began urging the Defendant Heidi Scott to cause the Plaintiff to be prosecuted for fictitious and meritless charges surrounding the van.

19. The Defendant Heidi Scott committed various "investigative acts" outside the scope of her duties as a victim assistance advocate in her efforts to assist Jeffrey Wallace and Elizabeth Wallace in harming the Plaintiff.

20. The Defendant Heidi Scott enlisted the assistance of Lexington County Sheriff's Department to investigate allegations surrounding the allegedly improper transaction with the van.

21. Agents of the Lexington County Sheriff's Department did in fact investigate the matters brought to the Sheriff's Department by Heidi Scott on behalf of Jeffrey Wallace and Elizabeth Wallace.

22. Agents of the Lexington County Sheriff's Department thoroughly investigated the transaction in question and determined there was no probable cause to believe the Plaintiff had done anything wrong. Thus, agents of the Lexington County Sheriff's Department cleared the case and refused to prosecute the Plaintiff through the criminal justice system.

23. When the matter of the van was not prosecuted by Lexington County, the Defendant Heidi Scott took it upon herself to leave her jurisdiction and to approach judicial officials in Lexington County seeking an arrest warrant against the Plaintiff for Beach of Trust and Forgery.

24. All of the conduct of Heidi Scott was done knowing there was no probable cause or knowing there was an inadequate finding of facts to give rise to a criminal prosecution.

25. In support of her efforts to harm the Plaintiff and to abuse the legal processes, Defendant Heidi Scott contacted Solicitor Dayton Riddle as to whether she had authority to

swear out a warrant for the Plaintiff. Solicitor Riddle indicated he did not know and Heidi Scott should consult with authorities other than Solicitor Riddle.

26. In her efforts to maliciously and illegally prosecute the Plaintiff and in her efforts to harm the Plaintiff so as to cause her an inability to pursue her claim for common law wife, the Defendant Heidi Scott did unlawfully swear at a preliminary hearing to facts which were untrue.

27. In support of her efforts to abuse the legal processes, the Defendant Heidi Scott did notify her co-conspirator, Elizabeth Wallace, of the existence of a preliminary hearing and did cause Elizabeth Wallace to appear at the preliminary hearing which took place in January of 2012.

28. In excess of her authority; without adequate investigation; without probable cause; and armed with nothing but baseless conclusions of law, the Defendant Heidi Scott did stray out of her jurisdiction and secure an illegal arrest warrant against the Plaintiff.

29. Pursuant to South Carolina statutes, Defendant Heidi Scott had no jurisdiction nor authority to sign an arrest warrant against the Plaintiff as she did.

30. In the Affidavit which was prepared or signed by the Defendant Heidi Scott at the insistence of Jeffrey Wallace and Elizabeth Wallace, Heidi Scott reached conclusions of law based upon statutes which she did not know and which she did not understand.

31. In furtherance of the abuse of the lawful processes, Defendant Heidi Scott did sign a warrant in November of 2011 for the arrest of the Plaintiff and as a result of the illegal warrant, the Plaintiff was arrested.

32. The purpose of the prosecution was not to prosecute the Plaintiff for any activity regarding the van transaction. The purpose was to cause the Plaintiff to be arrested so she would be incapable of appearing at a Probate Court appearance and so she would be rendered unable to

pursue her action in Probate Court regarding her legitimate claim to be the common law wife of David Wallace.

33. The Defendants have used and abused the legal processes so as to gain an unfair advantage in a civil action pending in the Courts of this State related to the issue of common law marriage.

34. The conduct set forth herein amounts to the tort of abuse of process.

35. As a direct and proximate result of the abuse of process by the Defendants, the Plaintiff has been incarcerated; the Plaintiff's liberty has been curtailed; the Plaintiff has been suspended as a member of the South Carolina Bar Association; the Plaintiff has been rendered incapable of practicing her profession; the Plaintiff has experienced great humiliation and embarrassment; the Plaintiff's name has been published in various publications as a person who has been charged with a crime; the Plaintiff has been subjected to great shock and emotional distress; the Plaintiff has incurred great expenses and had to secure the services of an attorney just to get out of jail on bond; the Plaintiff has been subjected to an unreasonably high bond based upon the conduct of the Defendants; the Plaintiff has been damaged in her personal reputation; and the Plaintiff has been otherwise damaged all to her damage both actual and punitive.

36. The claims as to punitive damages against Leon Lott are not made against him but, rather, are made against Heidi Scott for those items which were done in excess of her authority as a Deputy Sheriff of Richland County, South Carolina. There is no claim for punitive damages against Leon Lott in his capacity as Sheriff of Richland County. This action against Leon Lott is made pursuant to statutory law of South Carolina only to the extent that the Sheriff



is liable for the acts of his deputy which are done within the course and scope of the deputy's employment.

37. Plaintiff is informed and believes she is entitled to actual damages against Leon Lott in his capacity as Sheriff for Richland County, South Carolina. The Plaintiff is further informed to beliefs that she is entitled to a judgment for actual and punitive damages against the Defendants Heidi Scott, Jeffrey Wallace, and Elizabeth Wallace.

#### FOR A SECOND CAUSE OF ACTION

38. The Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

39. The signing of the warrant was without authority and was without probable cause.

40. At a preliminary hearing which took place in Lexington County in January of 2012, the charges against the Plaintiff were dismissed based upon the granting of a Motion to Dismiss for lack of probable cause.

41. The prosecution was malicious in nature and was designed to harm the Plaintiff in order to foster the unlawful designs of the Defendants.

42. Based upon the acts of malicious prosecution, the Plaintiff has sustained the damages set forth in the first cause of action.

43. Plaintiff is informed and believes that she is entitled to actual damages against Leon Lott. Further, Plaintiff is entitled to actual and punitive damages against the remaining Defendants.

#### FOR A THIRD CAUSE OF ACTION

44. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

45. The Defendants were reckless and negligent in one or more of the following particulars:

- a. In prosecuting a case outside of legal authority;
- b. In prosecuting a case in violation of South Carolina Laws;
- c. In signing a warrant outside of legitimate statutory jurisdiction;
- d. In composing a swearing to an Affidavit which was not known to be true;
- e. In swearing to an Affidavit containing legally conclusive remarks when the Defendants neither knew nor understood the nature of the words which were sworn to;
- f. In conducting an improper investigation;
- g. In causing a warrant to be taken out without probable cause;
- h. In the commission of perjury and false testimony in front of a Magistrate of Lexington County South Carolina;
- i. In concealing information from the authorities,

All of which were a direct and proximate cause of the injuries or damages set forth herein.

46. As a direct and proximate result of the aforementioned acts of negligence and recklessness, the Plaintiff has sustained the damages set forth in the first cause of action. The Plaintiff is entitled to judgment for actual damages against Leon Lott in his capacity as Sheriff for Richland County, South Carolina. The Plaintiff is entitled to actual and punitive damages against the remaining Defendants to this action.

#### FOR A FOURTH CAUSE OF ACTION

47. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

48. Pursuant to the evil designs of the Defendants and pursuant to the perjured testimony of the Defendant Heidi Scott, the Plaintiff was falsely arrested and falsely imprisoned.

49. As a result of the aforementioned false imprisonment, the Plaintiff has sustained the damages set forth in the first cause of action.

50. The Plaintiff is entitled to judgment against the Defendant Leon Lott for actual damages. The Plaintiff is further entitled to actual and punitive damages against the remaining Defendants herein.

#### FOR A FIFTH CAUSE OF ACTION

51. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

52. The Defendants Jeffrey Wallace, Elizabeth Wallace, and Heidi Scott have conspired together in an effort to harm the Plaintiff and to cause her as much trouble as humanly possible in an effort to cause Jeffrey Wallace and Elizabeth Wallace financial gain.

53. All of the conduct of Heidi Scott has been done under the auspices of an investigator of the Richland County, Sheriff's Department.

54. As part of the civil conspiracy of the Defendants herein, the Plaintiff was arrested. Further, as a result of the conspiracy set forth herein, the Plaintiff has been subjected to a search of her premises; much of the Plaintiff's property has been taken from her and held; and the Plaintiff's life has generally been disrupted.

55. As a direct and approximate result of the aforementioned civil conspiracy, the Plaintiff has sustained the damages set forth in the first cause of action.

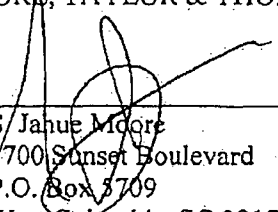
56. The Plaintiff is informed and believes she is entitled to a judgment against the Defendant Leon Lott in his capacity as Sheriff of Richland County for actual damages. The

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Plaintiff is entitled to a judgment against the remaining Defendants for actual and punitive damages.

57. WHEREFORE, the Plaintiff prays for judgment against the Defendant Leon Lott for actual damages; for judgment against the remaining Defendants for actual and punitive damages; and for such other and further relief as this Court might be just and proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Janue Moore  
1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina  
January 23, 2012

2012CP3200342

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

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IN THE COURT OF COMMON PLEAS  
OF THE ELEVENTH CIRCUIT

Civil Action No.: 2012-CP-32-00342

Kay Paschal Wallace,

Plaintiff,

-VS-

Leon Lott, the Duly Elected Sheriff  
of Richland County, South Carolina,  
Lt. Heidi Scott, Jeffrey Wallace,  
and Elizabeth Wallace,

Defendants.

ANSWER AND COUNTERCLAIM  
OF THE DEFENDANTS LEON LOTT  
SHERIFF OF THE COUNTY OF RICHLAND  
AND LT. HEIDI SCOTT, OF THE  
RICHLAND COUNTY SHERIFF'S DEPARTMENT

The Defendants Leon Lott, duly elected Sheriff of the County of Richland, State of South Carolina, and Lt. Heidi Scott, of the Richland County Sheriff's Department, subject to and reserving all rights under their pending Motion for Change of Venue, filed and served February 29, 2012, answer the Complaint of the Plaintiff, and assert their own Counterclaim against the Plaintiff as follows:

**FOR A FIRST DEFENSE**

1. This matter has been improperly filed in the County of Lexington, as proper venue is in the County of Richland, where the criminal investigation into the Plaintiff's actions originated and is currently pending, as well as the administration of the *Estate of David Wallace*, pending as estate number 2011-ES-40-00283 in the Richland County Probate Court, and the Plaintiff's own appeal to the Richland Court of Common Pleas of certain Richland County Probate Court rulings, which appeal was pending at the time of the Plaintiff's filing of the instant action as civil action number 2011-CP-40-8638. Any and all relevant acts or omissions incident to the criminal investigation of the Plaintiff, the estate administration of David Wallace's Estate, the civil appeal by

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the Plaintiff pending at the filing of this action, and the thought processes and staffings related to the matters complained of herein occurred within the County of Richland—not Lexington—and venue should be properly transferred to the County of Richland pursuant to *S.C. Code Ann. § 15-78-100(b)* (1986 as amended).

### **FOR A SECOND DEFENSE**

2. Each and every allegation of paragraph 1 of the First Defense is re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Second Defense.

3. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief can be granted, and should be dismissed.

### **FOR A THIRD DEFENSE**

4. Each and every allegation of paragraphs 1 through 3 of the First and Second Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Second Defense.

5. Each and every allegation of the Complaint not specifically admitted, qualified, nor otherwise explained, is denied.

6. These Defendants lack sufficient information to admit or deny so much of paragraph 1 of the Complaint with regard to exactly where the Plaintiff Paschal currently resides, but these Defendants affirmatively allege that at all times relevant to the allegations of the Complaint, Kay F. Paschal was a citizen and resident of the County of Richland—not Lexington. These Defendants further affirmatively allege that, throughout the course of events relevant to

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this lawsuit, the Plaintiff has been known as, and has signed her name as, "Kay F. Paschal," not "Kay Paschal Wallace," as she has captioned herself in her Complaint.

7. These Defendants admit so much of Paragraph 2 of the Complaint as alleges that the Defendant Leon Lott is a citizen and resident of the County of Richland, State of South Carolina, and is the duly elected Sheriff of the County of Richland, and that the Defendant Heidi Scott is also a citizen and resident of the County of Richland, and is a Lieutenant with the Richland County Sheriff's Department. These Defendants affirmatively allege that, as State Officials, Sheriff Lott, his officers—such as Lt. Heidi Scott—and his deputies are subject to suit under the terms, conditions, and limitations of the South Carolina Tort Claims Act, codified at *S.C. Code Ann.* §§ 15-78-10, through -220 (1986 as amended). These Defendants further affirmatively allege that Sheriff Lott, his officers—such as Lt. Heidi Scott—and his deputies, are empowered by statute and regulation with authority, duties, and responsibilities set forth by such statutes and regulations, and these Defendants do crave reference to such statutes and regulations for an accurate enumeration of these Defendants' duties and responsibilities.

8. These Defendants lack sufficient information to admit or deny the allegations of paragraph 3 of the Complaint, and therefore deny the same and demand strict proof thereof.

9. These Defendants specifically deny the allegations of paragraph 4 of the Complaint, and affirmatively allege that the actions taken by Lt. Heidi Scott, complained of by the Plaintiff herein, were incident to an extensive criminal investigation by the Richland County Sheriff's Department into a report of abuse/neglect/exploitation of a vulnerable adult, David Wallace, now deceased, by the Plaintiff, Kay F. Paschal, all of which was conducted within the confines of Richland County, with the exception of a search warrant for a vacant residence in Lexington County and the signing by Lt. Heidi Scott as affiant of an affidavit supporting the issuance of a facially valid arrest warrant by a Lexington County Magistrate. These Defendants

affirmatively allege that any and all relevant acts or omissions incident to the criminal investigation of the Plaintiff, the estate administration of David Wallace's Estate, the civil appeal by the Plaintiff Paschal pending at the filing of this action, and the thought processes and staffings related to the matters complained of herein occurred within the County of Richland—not Lexington—and venue should be properly transferred to the County of Richland pursuant to *S.C. Code Ann.* § 15-78-100(b) (1986 as amended).

10. These Defendants admit, on information and belief, the allegations of paragraph 7 of the Complaint. These Defendants further admit the allegations of paragraph 53 of the Complaint, which allege that all of the actions taken by Lt. Heidi Scott have been under the auspices of an investigator of the Richland County Sheriff's Department, and these Defendants affirmatively allege that, at all times relevant to her investigation of the Plaintiff Paschal, Lt. Heidi Scott has acted within the course and scope of her employment as a Lieutenant with the Richland County Sheriff's Department, in good faith and without malice or intent to harm.

11. These Defendants admit, on information and belief, so much of paragraphs 5, 6, and 8 of the Complaint as alleges that the Plaintiff Kay F. Paschal resided with David Wallace for some period of time prior to Mr. Wallace's death February 20, 2011, that the Plaintiff and David Wallace had a relationship that had begun as attorney-client, with the Plaintiff, a licensed attorney in the State of South Carolina, representing Mr. Wallace's personal and business interests, and that the relationship evolved over time into a personal relationship, with the Plaintiff and David Wallace eventually residing together within the County of Richland for several years. These Defendants further admit that, at the time of the filing of this lawsuit, there was then pending an action in Richland County Probate Court involving, among other issues, the Plaintiff Paschal's claim to be deemed David Wallace's common law wife for inheritance purposes, and an attempted interlocutory appeal to the Richland County Court of Common Pleas.

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by the Plaintiff of certain adverse rulings by the Richland County Probate Court. The remaining allegations of paragraphs 5, 6, and 8 are denied.

12. These Defendants are informed and believe that paragraph 10 of the Complaint alleges acts or omissions on the part of other Defendants, not these Defendants; and to the extent that such allegations may infer liability on the part of these Defendants, those allegations are denied.

13. These Defendants deny paragraphs 11, 12, and 19 of the Complaint, and affirmatively allege that Lt. Heidi Scott is not only the Victims Advocate for Richland County, but is also the investigator assigned to the financial exploitation and forgery aspects of investigations into reports of abuse, neglect, or financial exploitation of vulnerable adults, as was done with the report involving David Wallace. These Defendants further affirmatively allege that Lt. Scott only met the Defendants Wallace within the appropriate course and scope of her duties and responsibilities as the RCSD investigator assigned to the Defendants Wallace's report of suspected criminal activity on the part of the Plaintiff involving David Wallace, and has no "personal relationship" with either of the Wallaces.

14. These Defendants deny the allegations of paragraphs 14, 15, 16, and 17 of the Complaint, as alleged, and affirmatively allege that, although David Wallace was still alive when the June 18, 2010 purchase of the van took place, Mr. Wallace, then 88 years old, had suffered a serious stroke two months earlier, on April 20, 2010, and was hospitalized and lacking the capacity to manage his own affairs from the date of the stroke up to and including the time the van was purchased. These Defendants further affirmatively allege that, despite Mr. Wallace having suffered a stroke that left him hospitalized and incapacitated, the Plaintiff Paschal recorded a "Power of Attorney" of questionable validity in the office of the Richland County Registrar of Deeds only three days after the stroke, on April 23, 2010, appointing herself as

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David Wallace's attorney, enabling the Plaintiff to act on his behalf; and only then did she purchase the \$63,317.51 van, while David Wallace was still alive but impaired, getting a \$5,000 vehicle trade-in credit for a vehicle still titled in David Wallace's name, and writing a check from David Wallace's Ameritrade Account—pursuant to the newly-recorded Power of Attorney—for the remaining \$58,317.51 balance. These Defendants further affirmatively allege that review of the Power of Attorney by an independent forensic document examiner and by SLED indicated a strong probability that David Wallace did not write his initials appearing on the first two pages of the Power of Attorney, and that those pages may have been inserted at a different time from the rest of the pages in the document.

15. These Defendants deny the allegations of paragraph 18 of the Complaint, and affirmatively allege on information and belief that the Defendants Wallace first reported their concerns to the Forest Acres Police Department, in Richland County, and that the matter was only referred to the Richland County Sheriff's Department when an investigator with Forest Acres had a conflict.

16. These Defendants deny the allegations of paragraphs 20, 21, 22, 23, 24, and 25 of the Complaint as alleged, and affirmatively allege that, incident to Lt. Scott's investigation in Richland County, she discovered the afore-mentioned June 18, 2010 van purchase involving the questionable Power of Attorney, which purchase had occurred in Lexington County. After staffing the matter with the Richland County Solicitors' Office and her superiors at RCSD, Lt. Scott contacted the Lexington County Sheriff's Department (LCSD), seeking assistance with the Lexington County off-shoot of the Richland County investigation. The LCSD investigator began his investigation, but at some point, experiencing medical afflictions and realizing he would be out of the office for an extended period of time for medical treatment, the LCSD investigator contacted Lt. Scott and returned the case file to her. Lt. Scott consulted with the Lexington

County Solicitor's office and discussed whether she, as a Richland County Sheriff investigator, could sign as an affiant on a Lexington County warrant incident to a Lexington County component to a Richland County criminal investigation, and Lt. Scott was told that she could. Lt. Scott then discussed the matter with a Lexington County magistrate, who, after hearing the facts as related to him by Lt. Scott, prepared the warrant himself, and Lt. Scott signed as the affiant. The magistrate then signed the warrant, finding that the affidavit provided probable cause for the issuance of the warrant.

17. These Defendants deny the allegations of paragraphs 26, 27, 28, 29, 30, 31, and 39 of the Complaint as alleged, and affirmatively allege that, at all times relevant to her investigation of the Plaintiff Paschal, Lt. Heidi Scott has acted within the course and scope of her employment as a Lieutenant with the Richland County Sheriff's Department, in good faith and without malice or intent to harm. These Defendants further affirmatively allege that Lt. Scott did not "sign a warrant," as has been alleged by the Plaintiff in paragraphs 29, 31, and 39, but signed an affidavit, from which affidavit a Lexington County Magistrate, finding probable cause, "did sign a warrant."

18. These Defendants deny paragraph 40 of the Complaint as alleged, and affirmatively allege that the attorney for the Plaintiff Paschal, after asserting Paschal's rights in the preliminary hearing by aggressively cross-examining Lt. Scott and her presentation of the facts of her investigation, moved for dismissal of the charges on multiple grounds, including lack of probable cause and lack of jurisdiction; and the Judge, after initially denying the attorney's motion to dismiss for lack of probable cause, subsequently dismissed the charges without specifying on the record why he had done so—whether for lack of probable cause or lack of jurisdiction.

19. These Defendants deny the allegations of paragraphs 48 and 54 of the Complaint, and affirmatively allege that the arrest warrant subject of this action was a facially valid arrest warrant, signed by a Lexington County magistrate after his finding of probable cause based upon facts sworn to in an affidavit incident to an ongoing criminal investigation into the Plaintiff's own acts and "evil designs."

20. These Defendants deny the allegations of paragraphs 32, 33, 34, 35, 37, 41, 42, 43, 45, 46, 49, 50, 52, 55, and 56 of the Complaint.

21. These Defendants are informed and believe that paragraphs 36, 38, 44, 47, 51, and the prayer for relief numbered 57 require no response, but to the extent that they may be deemed to allege acts or omissions on the part of these Defendants that purport to establish liability, they are denied.

#### **FOR A FOURTH DEFENSE**

22. Each and every allegation of paragraphs 1 through 21 of the First, Second, and Third Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fourth and affirmative defense.

23. These Defendants affirmatively allege that any and all acts by Lt. Heidi Scott or any other officer or Deputy of the Richland County Sheriff's Department incident to the criminal investigation of the Plaintiff Kay F. Paschal were proper uses of the legal processes involved, in the regular conduct of such criminal investigation, and were without ulterior purpose; and these Defendants do plead such proper use of legal process and lack of ulterior purpose as an affirmative defense and complete bar to the Plaintiff's abuse of process cause of action.

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### **FOR A FIFTH DEFENSE**

24. Each and every allegation of paragraphs 1 through 23 of the First, Second, Third, and Fourth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fifth and affirmative defense.

25. These Defendants affirmatively allege that the criminal investigation of the Plaintiff Kay F. Paschal was commenced by the Richland County Sheriff's Department and its investigator Lt. Heidi Scott when the matter was referred by the Forest Acres Police Department, that the vast majority of the gravamen of the investigation has been within the County of Richland, with the June 18, 2010 van transaction in Lexington, and processes related thereto being the sole exception, and that, even though the Plaintiff has managed to have the Lexington County charges dismissed at the January 2012 preliminary hearing, the criminal investigation is still ongoing and the matter has not terminated in the Plaintiff's favor, these Defendants had no malice in instituting such proceedings but were simply following the evidence pursuant to the criminal investigation, and sufficient probable cause existed for the Lexington Magistrate to issue a facially valid arrest warrant.

26. These Defendants are informed and believe that the lack of termination of proceedings in the Plaintiff's favor, the lack of malice on the part of these Defendants in instituting such proceedings, and the facially valid arrest warrant signed by the Lexington County Magistrate afford these Defendants an affirmative defense and complete bar to the Plaintiff's malicious prosecution cause of action.

### **FOR A SIXTH DEFENSE**

27. Each and every allegation of paragraphs 1 through 26 of the First, Second, Third, Fourth, and Fifth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Sixth and affirmative defense.

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28. These Defendants are informed and believe that, if these Defendants were, in any way, negligent or reckless in any act or omission which may have proximately caused damage to the Plaintiff, which these Defendants specifically deny; then the Plaintiff herself was culpable through her own intentional and criminal acts, prompting the report of criminal activity to the Forest Acres Police Department and, in turn, to the Richland County Sheriff's Department, causing the criminal investigation to ensue, which intentional and criminal acts on the part of the Plaintiff were the more proximate cause of any damages incurred by her, to a comparatively greater degree of culpability than any negligent or reckless acts or omissions by these Defendants; and these Defendants do plead such comparatively greater culpability and more direct proximate cause attributable to intentional and criminal acts of the Plaintiff as an affirmative defense and complete bar to recovery under the Plaintiff's negligence and recklessness cause of action, or, in the alternative, for an element for the Court to apply in discounting any recovery awarded the Plaintiff.

**FOR A SEVENTH DEFENSE**

29. Each and every allegation of paragraphs 1 through 28 of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Seventh and affirmative defense.

30. These Defendants are informed and believe that the arrest warrant issued by the Lexington County magistrate was a facially valid warrant issued by a judge upon a finding of probable cause; and these Defendants do plead such facially valid warrant as an affirmative defense and complete bar to the Plaintiff's false arrest/false imprisonment cause of action.

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*[Signature]*

**FOR AN EIGHTH DEFENSE**

31. Each and every allegation of paragraphs 1 through 30 of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Eighth and affirmative defense.

32. These Defendants are informed and believe that the warrant subject of the Plaintiff's claim was supported by probable cause, and these Defendants do plead such underlying probable cause as an affirmative defense and complete bar to the Plaintiff's malicious prosecution and false arrest/false imprisonment causes of action.

**FOR A NINTH DEFENSE**

33. Each and every allegation of paragraphs 1 through 32 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Ninth and affirmative defense.

34. These Defendants affirmatively allege that there was no overt act done by these Defendants pursuant to a common design with any other Defendants for the purpose of injuring the Plaintiff that has resulted in special damage to the Plaintiff, and these Defendants do plead such lack of common design and lack of special damage as an affirmative defense and complete bar to the Plaintiff's civil conspiracy cause of action.

**FOR A TENTH DEFENSE**

35. Each and every allegation of paragraphs 1 through 34 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Tenth and affirmative defense.

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36. These Defendants are informed and believe that, as officials of the State of South Carolina, these Defendants are entitled to certain limitations, immunities, and defenses to the Plaintiff's claims under the South Carolina Tort Claims Act, codified at *S.C. Code Ann.* §§ 15-78-10 through -220 (1986 as amended), including, without limitation, immunities and defenses afforded by *S.C. Code Ann.* §15-78-60 (3), (4), (5), (6), (20), and (25); and to the extent that such immunities and defenses are available, this Defendant pleads the various defenses and immunities afforded by the South Carolina Tort Claims Act as an affirmative defense to the claims alleged by the Plaintiff.

#### **FOR AN ELEVENTH DEFENSE**

37. Each and every allegation of paragraphs 1 through 36 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Eleventh and affirmative defense.

38. These Defendants are informed and believe that, under the terms, conditions, and limitations of the South Carolina Tort Claims Act, an employee of a governmental entity who commits a tort while acting within the scope of her official duties is not individually liable therefore unless her conduct has constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, and that a person bringing an action under the Tort Claims Act shall name as a party Defendant only the governmental entity for which the employee was acting.

39. These Defendants affirmatively allege that, at all times relevant to the matters alleged in the Plaintiff Paschal's Complaint, Lt. Heidi Scott has acted within the course and scope of her official duties and employment as a Lieutenant and investigator with the Richland County Sheriff's Department, in good faith and without conduct constituting actual fraud, actual

P#12 of 15  
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malice, intent to harm, or a crime of moral turpitude; and Lt. Scott does plead *S.C. Code Ann.* §15-78-70 (1986 as amended) as an affirmative defense and complete bar to recovery against her individually.

#### **FOR A TWELFTH DEFENSE**

40. Each and every allegation of paragraphs 1 through 39 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Twelfth and affirmative defense.

41. With regard as to the Plaintiff's prayer for judgment against the Defendants for punitive damages, these Defendants are informed and believe that, under the terms, conditions, limitations, and exceptions of the South Carolina Tort Claims Act, no award for damages shall include punitive nor exemplary damages; and these Defendants are informed and believe that the Plaintiff's prayer for punitive damages against these Defendants is barred by *S.C. Code Ann.* § 15-78-120(b).

#### **FOR A THIRTEENTH DEFENSE**

42. Each and every allegation of paragraphs 1 through 41 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Thirteenth and affirmative defense

43. To the extent that the Plaintiff attempts to assert equitable claims against these Defendants, these Defendants do plead the equitable defenses of unclean hands, waiver and estoppel, and laches.

*Boyer*  
*Boyer*

**FOR A FOURTEENTH DEFENSE AND COUNTERCLAIM**

44. Each and every allegation of paragraphs 1 through 43 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fourteenth and affirmative defense.

45. These Defendants are informed and believe that the Plaintiff's filing of this lawsuit in Lexington County, when all other aspects of the case—including the residence of the Plaintiff until just recently, the residence of David Wallace prior to his death, the probate of the Estate of David Wallace in the Richland County Probate Court, the common-law wife issue raised by the Plaintiff, the appeal by the Plaintiff of adverse Probate Court rulings to the Richland County Court of Common Pleas, and virtually the entire criminal investigation of the Plaintiff by the Richland County Sheriff's Department with the exception of the June 18, 2010 Lexington County transaction—are in Richland County, was for no purpose other than to intimidate and attack these Defendants in order to quell the pending criminal investigation, and for the Plaintiff to gain advantage in her Probate Court dispute with the Defendants Wallace.

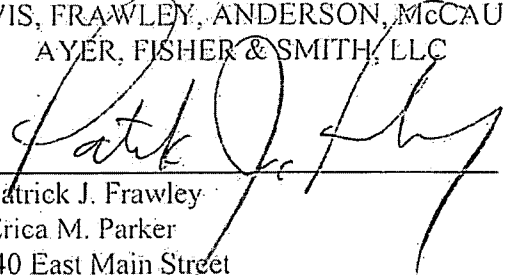
46. These Defendants are informed and believe that the Plaintiff's willful and improper use of this process in order to discourage these Defendants from pursuing the pending criminal investigation is, itself, abuse of process, proximately causing damage to these Defendants; and these Defendants do counterclaim against the Plaintiff Kay F. Paschal for such abuse of process, and pray for judgment in an appropriate amount of actual and punitive damages.

WHEREFORE, having fully answered the Complaint of the Plaintiff subject to these Defendants' pending Motion for Change of Venue, the Defendants Leon Lott, Sheriff of the County of Richland, and Lt. Heidi Scott, of the Richland County Sheriff's Department, and each

*Handwritten signature and date: 10/14/15*

of them, pray that the Plaintiff's claims be dismissed, with costs assessed to the Plaintiff, and for judgment against the Plaintiff Kay F. Paschal in an appropriate amount of actual and punitive damages on these Defendants' counterclaim of abuse of process; and for such other and further relief as the Court may deem appropriate.

DAVIS, FRAWLEY, ANDERSON, MCCAULEY,  
AYER, FISHER & SMITH, LLC

BY: 

Patrick J. Frawley

Erica M. Parker

140 East Main Street

Post Office Box 489

Lexington, South Carolina 29071

ATTORNEYS FOR THE DEFENDANTS

LEON LOTT, SHERIFF OF RICHLAND COUNTY, AND

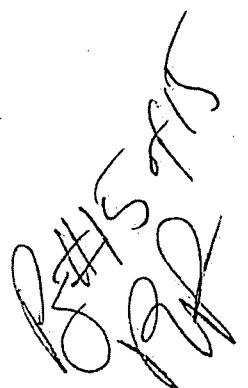
LT. HEIDI SCOTT

Lexington, South Carolina  
May 4, 2012

FILED

2012 MAY -4 P 3:08

LEON LOTT  
SHERIFF  
RICHLAND COUNTY

  
LEON LOTT  
SHERIFF  
RICHLAND COUNTY

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Kay F. Paschal,

Plaintiff,

-vs-

Leon Lott, the Duly Elected Sheriff )  
Of Richland County, South Carolina, )

Defendant. )

**FILED**

IN THE COURT OF COMMON PLEAS  
OF THE ELEVENTH CIRCUIT

2014 AUG -4 P 3:58  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

Civil Action No.: 2012-CP-32-00342

**NOTICE OF MOTION AND MOTION  
TO REDUCE VERDICT, OR, IN THE  
ALTERNATIVE, FOR A NEW TRIAL  
(NEW TRIAL NISI REMITTITUR)**

**TO: S. JAHUE MOORE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that, subject to its Motion for JNOV or, in the Alternative, for New Trial Absolute, filed herewith, the Defendant above-named hereby moves before the Honorable William P. Keesley, trial judge, for an order reducing the Plaintiff's verdict to the \$300,000.00 statutory cap under the South Carolina Tort Claims Act, or, in the alternative, granting the Defendant a new trial in the captioned matter, which was tried before a Lexington County jury July 21-25, 2014.

This motion is made on the grounds that there was no competent evidence of damages proximately caused by any act or omission of this Defendant offered by the Plaintiff or admitted at trial supporting the award; with the award being clearly excessive and based upon passion, caprice, or prejudice by the jury, or some other factor not supported by the evidence at trial.

The main thrust of the Plaintiff's damages claim throughout trial and in closing argument was 1) the repeated references by Plaintiff's Counsel to the Plaintiff being required to spend her time in the Lexington County Detention Center naked, without undergarments, clad only in a sheet, and 2) in the Plaintiff being "forced" to abandon her claim to a spousal share of the \$6,000,000.00 estate of David Wallace, pending in the Richland County Probate Court since David Wallace's death February 20, 2011, which spousal share was opposed by Wallace's adult children. Neither of these two elements of the Plaintiff's damages claim were proximately caused by this Defendant.

*[Handwritten signature]*

The wearing apparel—or lack there-of—afforded the Plaintiff during her stay at the Lexington County Detention Center the evening of November 16, 2011 was not something that the Richland County Sheriff had any say in, and was not reasonably foreseeable to the Sheriff's Department as being a natural and reasonable consequence of its actions in pursuing its criminal investigation of Kay Paschal into Lexington County. This Court charged the jury that, if the Plaintiff established liability, she would be entitled to recover damages that are the *direct, natural, and proximate result* of the Defendant's actions. (Emphasis added). Swayed by sympathy for the Plaintiff and inflamed emotionally by Plaintiff's Counsel's repeatedly revisiting the imagery of the Plaintiff naked on the floor of the Lexington County Detention Center, the jury clearly disregarded that portion of the charge and any semblance of limiting their damages award to those damages that were the direct, natural, and proximate result of the Defendant's actions.

Plaintiff's Counsel also repeatedly revisited the Richland County Probate Court dispute with the Wallace children, and repeatedly faulted the Richland County Sheriff's Department for the Plaintiff "being forced" to settle her spousal share claim and renounce her claim to being David Wallace's common-law spouse. This, despite evidence in the record that the Plaintiff, under oath, had stipulated that she was never married to David Wallace and was not the common law wife of David Wallace, relinquishing any claim she may have had to having been his common law wife. *See*, Defendant's Exhibit 18. As if that was not enough, also in the record was evidence that Paschal's entering into the settlement of the Probate Court dispute was approved by Court Order, with the parties—including Paschal—acknowledging that they had entered into the settlement and that Paschal had signed her Affidavit and Stipulation "freely and voluntarily." *See*, Defendant's Exhibit 20. Paschal, a former lawyer who testified on cross examination that she did not concern herself with "legalities," clearly disregarded her sworn affidavit, her representations to the Probate Court that she had entered into the agreement freely and voluntarily, and the Probate Court Order that found she had freely and voluntarily entered into the agreement when she repeatedly maintained throughout the trial that she was the common law spouse of David Wallace, and had been "forced" into the settlement.

In fact, there is no rational explanation for odd amount of the \$1,610,000.00 amount of the jury award being tied to any quantifiable damages evidence on the record, save one: the David Wallace Estate was valued at approximately \$6 million, and the

damages award is roughly equal to what a spousal share of the estate would have been had the Plaintiff Kay Paschal been successful in her claim for spousal share of the estate. That being the case, the jury clearly ignored the evidence of the settlement, Paschal's sworn affidavit, and the Court Order approving the settlement, and improperly based its award on matters not only outside of the record, but clearly contrary to the evidence.

The jury's passion was further inflamed by Plaintiff Counsel's continually 1) mischaracterizing Lt. Scott as having perjured herself when there was no evidence that any of Scott's affidavit supporting the arrest warrants was untrue, 2) mischaracterizing LCSD Detective Baumgardner as having concluded there was no probable cause for the arrest warrants without adding Baumgardner's persistent caveat in his testimony of no probable cause "at this time," by which Baumgardner recognized the limitations necessarily inherent in his three-and-a-half week review of the material it had taken Lt. Heidi Scott seven-and-a-half months to assemble in her Richland County criminal investigation into the charges against Paschal, and 3) mischaracterizing the January 20, 2012 dismissal of the arrest warrants at the Preliminary Hearing as being based upon lack of probable cause when there was no evidence on the record that the warrants were dismissed for that reason.

The award of damages was unduly speculative, and was nothing more than an emotionally inflamed jury arbitrarily arriving at a figure not in any way tied to evidence admitted at trial. The award should be reduced to the only quantifiable number even mentioned by the Plaintiff Paschal at trial—the \$75,000 annual salary for which she testified she would offer her services as a 72-year-old associate attorney were she to apply for an attorney position—notwithstanding her testimony that she had not practiced law since 2001, had made no attempt to have her law license reinstated since her suspension, and had applied for no such positions.

Failing that, the Defendant moves for an Order of this Court reducing the verdict to the statutory cap of \$300,000.00 imposed by S.C. Code Ann. § 15-78-120(a)(1) of the South Carolina Tort Claims Act.

Or in the alternative, the Defendant moves for a new trial.

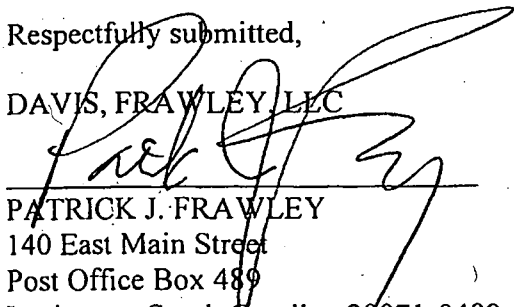
This motion is based on the pleadings in this action, the record at trial, the July 25, 2014 jury verdict, Rules of Court, statutes, case law, arguments of counsel set forth

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verbally or in writing, and such other and further authority as the Court may deem appropriate.

Respectfully submitted,

DAVIS, FRAWLEY, LLC

  
PATRICK J. FRAWLEY

140 East Main Street

Post Office Box 489

Lexington, South Carolina 29071-0489

(803)359-2512; (803)359-7478 Facsimile

ATTORNEY FOR THE DEFENDANT

Lexington, South Carolina;  
August 4, 2014.



STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON ) IN THE COURT OF COMMON PLEAS  
OF THE ELEVENTH CIRCUIT

2014 AUG -4 P 3:56

Civil Action No.: 2012-CP-32-00342

Kay F. Paschal,

Plaintiff,

-vs-

Leon Lott, the Duly Elected Sheriff )  
Of Richland County, South Carolina.)

Defendant.

BETH A. CARRICO  
CLERK OF COURT  
LEXINGTON

**NOTICE OF MOTION AND MOTION  
FOR A NEW TRIAL PURSUANT TO THE  
THIRTEENTH JUROR DOCTRINE**

**TO: S. JAHUE MOORE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that, subject to its Motion for JNOV or, in the Alternative, for New Trial Absolute, filed herewith, the Defendant above-named hereby moves before the Honorable William P. Keesley, trial judge, for an order granting a new trial in the captioned matter pursuant to the Thirteenth Juror Doctrine.

This motion is made on the grounds that the jury verdict from the July 21-25, 2014 trial in this matter is contrary to the fair preponderance of the evidence, the jury has rendered its verdict in disregard of the Court's charge on the law, and justice has not been served by the verdict.

This motion is based on the pleadings in this action, the record at trial, the July 25, 2014 jury verdict, Rules of Court, statutes, case law, arguments of counsel set forth verbally or in writing, and such other and further authority as the Court may deem appropriate.

Respectfully submitted,  
DAVIS, FRAWLEY, LLC

PATRICK J. FRAWLEY

140 East Main Street

Post Office Box 489

Lexington, South Carolina 29071-0489

(803)359-2512; (803)359-7478 Facsimile

ATTORNEY FOR THE DEFENDANT

Lexington, South Carolina;  
August 4, 2014.



STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

**FILED**

IN THE COURT OF COMMON PLEAS  
OF THE ELEVENTH CIRCUIT

2014 AUG -4 P 3: 54

Civil Action No.: 2012-CP-32-00342

Kay F. Paschal,

BETH A. CARRIGG  
CLERK OF COURT

Plaintiff,

LEXINGTON

**NOTICE OF MOTION AND MOTION  
FOR JNOV; OR, IN THE ALTERNATIVE,  
FOR A NEW TRIAL ABSOLUTE**

-vs-

Leon Lott, the Duly Elected Sheriff )  
Of Richland County, South Carolina, )

Defendant. )

**TO: S. JAHUE MOORE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that the Defendant above-named hereby moves before the Honorable William P. Keesley, trial judge, for an order granting the Defendant Judgment *Non Obstante Verdicto*; or, in the alternative, for a new trial absolute in the captioned matter, which was tried before a Lexington County jury July 21-25, 2014.

The motion for JNOV is made upon the same grounds as Counsel for the Defendant based his argument for directed verdict at the conclusion of the Plaintiff's case and at the close of all evidence at trial, those grounds being as follows:

1. That the Plaintiff failed to prove the requisite elements of her cause of action for Abuse of Process in that A) there was no evidence from which a reasonable juror could have concluded that the Richland County Sheriff's Department or any of its investigators had an ulterior purpose or bad intent in pursuing its criminal investigation of Kay Paschal into Lexington County and seeking arrest warrants; B) there was no evidence from which a reasonable juror could have concluded that the Richland County Sheriff's Department willfully used a legal process for an unlawful purpose—a purpose for which it was not meant to be used—in order to coerce or harass the Plaintiff; and C) there was no evidence from which a reasonable juror could have concluded that the Plaintiff had proven the requisite causal connection between the alleged abuse of process and her claimed damages—the main thrust of which was the Plaintiff being required to

25/10/14  
MR

spend her time in the Lexington County Detention Center naked, without undergarments, clad only in a sheet, and the Plaintiff being "forced" to abandon her claim to a spousal share of the \$6,000,000.00 estate of David Wallace, pending in the Richland County Probate Court since David Wallace's death February 20, 2011, which spousal share was opposed by Wallace's adult children.

2. That the Plaintiff failed to prove the requisite elements of her cause of action for Malicious Prosecution in that there was no evidence from which a reasonable juror could have concluded that the prosecution of the Plaintiff pursuant to the criminal investigation of the Plaintiff by the Richland County Sheriff's Department, which is still ongoing, has ended in the Plaintiff's favor, nor that the Richland County Sheriff's Department, nor any of its investigators acted with malice in instituting or continuing the proceedings, nor that the Defendant lacked probable cause in instituting or continuing the action.

3. There was no evidence from which a reasonable juror could have concluded that the Plaintiff had proven the requisite causal connection between the alleged malicious prosecution and her claimed damages—the main thrust of which was the Plaintiff being required to spend her time in the Lexington County Detention Center naked, without undergarments, clad only in a sheet, and the Plaintiff being "forced" to abandon her claim to a spousal share of the \$6,000,000.00 estate of David Wallace, pending in the Richland County Probate Court since David Wallace's death February 20, 2011, which spousal share was opposed by Wallace's adult children.

4. That evidence at trial, considering the totality of the circumstances, showed that the arrest warrants subject of this action were supported by probable cause.

5. That evidence at trial showed that the arrest warrants subject of this action were properly issued under *S.C. Code Ann.* § 22-5-110 with regard to any acts or omissions of the Richland County Sheriff's Department or any of its investigators.

*Handwritten signature and date: 2/20/14*

6. That the evidence at trial showed that this Defendant proved that its law enforcement officer and investigator had sought advice of counsel in good faith, had received such advice after a full and complete disclosure of all material facts, and had acted and relied upon such advice in good faith, before seeking the arrest warrants subject of this action.

7. That the evidence at trial established this Defendant's immunity pursuant to *S.C. Code Ann.* § 15-78-60(3), pled as an affirmative defense, with regard to this Defendant's execution, enforcement, or implementation of the orders of any court or the execution, enforcement, or lawful implementation of any process.

8. That the evidence at trial established this Defendant's immunity pursuant to *S.C. Code Ann.* § 15-78-60(4), pled as an affirmative defense, with regard to this Defendant's adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to any charter, provision, ordinance, resolution, rule, regulation, or written policies.

9. That the evidence at trial established this Defendant's discretionary immunity pursuant to *S.C. Code Ann.* § 15-78-60(5), pled as an affirmative defense, with regard to the measures Lt. Scott went to in consulting with and relying upon the advice of counsel in determining that probable cause existed prior to taking the matter to the Lexington County Magistrate, who, himself, determined that probable cause existed for issuing the warrants. *Cf., Long v. Seabrook*, 260 S.C. 562, 569, 197 S.E.2d 659, 662 (1973)(In a tort suit against a public official whose duties are discretionary, it must be shown that in the performance or non-performance of those duties the public official was guilty of corruption, bad faith, or influenced by malicious motives before recovery can be had).

10. There was no evidence from which a reasonable juror could have concluded that damages awarded were proximately caused by any act or omission of this Defendant, with the award of damages being so grossly excessive as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence at trial.

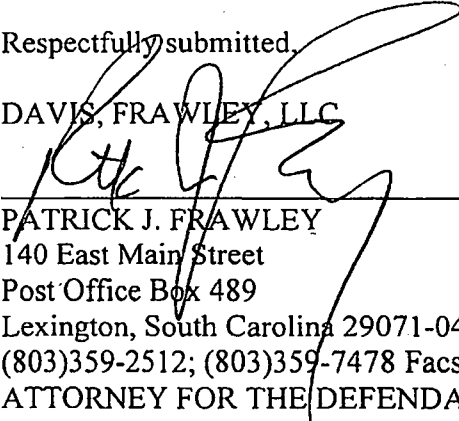
Which grounds support the Defendant's Motion for Judgment in favor of this Defendant, notwithstanding the jury's verdict.

Or, in the alternative, this Defendant moves for a new trial absolute on the same grounds set forth above.

This motion is based on the pleadings in this action, the record at trial, the July 25, 2014 jury verdict, Rules of Court, statutes, case law, arguments of counsel set forth verbally or in writing, and such other and further authority as the Court may deem appropriate.

Respectfully submitted,

DAVIS, FRAWLEY, LLC

  
PATRICK J. FRAWLEY

140 East Main Street

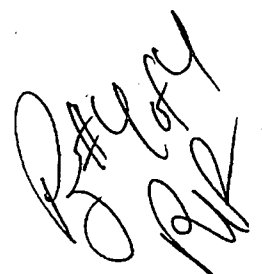
Post Office Box 489

Lexington, South Carolina 29071-0489

(803)359-2512; (803)359-7478 Facsimile

ATTORNEY FOR THE DEFENDANT

Lexington, South Carolina  
August 4, 2014



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Kay F. Paschal,

Plaintiff,

vs.

Leon Lott, the Duly Elected Sheriff  
of Richland County, South Carolina,

Defendant.

**COPY**  
**FILED**  
2014 AUG 11 P 4:32  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC  
IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
C/A No. 2012-CP-32-00342

**PLAINTIFF'S MEMORANDUM OF LAW  
IN OPPOSITION TO DEFENDANT'S  
POST-TRIAL MOTIONS**

**Introduction**

The Defendant has filed three post-trial motions: a Motion to Reduce Verdict, or in the Alternative for a New Trial Nisi (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. For the reasons set forth below, the Court should *deny* all post-trial motions.

**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 Defendant has moved for a reduction of the jury's verdict alleging the damage cap for negligent conduct in the South Carolina Tort Claims Act ("SCTCA") applies in this case. 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 defense counsel argued there was no proof of negligence. The Defendant's motion to reduce the verdict should be denied.

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 tort 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 Plaintiff’s firm and the same Defendant at bar here.

The limitation on liability provision of the SCTCA applies a cap to damages in cases of negligence only. 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 Ms. 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).

Ms. Paschal was not harmed by the Defendant'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 Defendant should not now be allowed to shield himself with a statute intended to cap damages for unintentional acts.

Because the statutory caps in section 15-78-120 do not apply to actions involving intentional torts, this Court should *deny* Defendant's motion to reduce the verdict and for new trial nisi remittitur.

- 2. Assuming the negligence damage caps do apply, the Defendant 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 counsel for Ms. Paschal does not believe the Defendant is entitled to any reduction in the jury award due to the negligence caps of section 15-78-120, even if the caps do apply, the jury rendered a verdict on two separate claims and therefore the reduction to \$600,000 would be 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 Ms. Paschal on both claims for malicious prosecution and abuse of process. The malicious prosecution involved the Defendant's harassment, search, and arrest of Ms. Paschal without probable cause. The abuse of process was based upon the Defendant's use of the legal process to interfere with and restrict Ms. Paschal's ability to engage in civil litigation. While the improper conduct of the Defendant 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 a verdict 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.

**3. The jury's verdict was supported by the evidence presented at trial.**

Lott argues he is entitled to a new trial on the ground "...there was no competent evidence of damages proximately caused by any act or omission..." of the Defendant and the jury's award was instead based upon "passion, caprice, or prejudice by the jury or some other factor not supported by the evidence presented at trial." Further, he argues he is entitled to a New Trial pursuant to the "Thirteenth Juror Doctrine" on the ground the jury's verdict is "...contrary to the fair preponderance of the evidence" presented at trial, that the jury rendered its verdict in disregard of the Court's charge on the law, and that "justice has not been served" by the verdict.

The Defendant's arguments are based on a claim a Sheriff's deputy could not foresee an arrestee could be stripped naked in a jail facility and could not foresee an arrest on the day of a scheduled Probate hearing as having an impact on the outcome of a Probate hearing. As the jury correctly determined, the Defendant knew very well the potential consequences of her actions and proceeded without just cause despite the consequences. In fact, this is precisely the point of this entire lawsuit: Lt. Scott acted without probable cause and with complete indifference to the consequences of her actions.

The Defendant claims Ms. Paschal's counsel mischaracterized the facts by saying the criminal charges were dismissed for lack of probable cause. Every credible witness present at the preliminary hearing of the criminal case correctly testified Judge Gary Morgan dismissed the

criminal charges for lack of probable cause. Pursuant to Rule 2 of the South Carolina Rules of Criminal Procedure, lack of probable cause is the only basis upon which a magistrate may dismiss a case at the preliminary hearing stage. Rule 2, S.C. R. Crim. P., was actually placed into evidence with consent of the Defendant. The jury could surely find the case was dismissed for lack of probable cause based on the testimony and Rules of Criminal Procedure.

The Defendant claims Ms. Paschal's counsel mischaracterized Lt. Scott's warrant application testimony as perjury. Pursuant to South Carolina's felony perjury statute, "[i]t is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State." S.C. Code § 16-9-10(a)(1). Lt. Scott swore to an arrest warrant to a statute using words she did not know the meaning of. Is it not misleading to swear to something using words you don't know the meaning of? Lt. Scott failed to disclose to Judge Whittle the fact that the Lexington County Sheriff's Department investigated the matter and declined prosecution. Is this not giving incomplete testimony of a material fact regarding law enforcement within the magistrates own district? Lt. Scott admitted these facts and admitted she swore to them before a magistrate judge while seeking the arrest of the Plaintiff. She further testified as to a conversation with Tim Peterson of Carolina Mobility. All conversations are recorded according to Lt. Scott. No tape was produced of the Peterson conversation and a jury could conclude Lt. Scott was not telling the truth. It is no mischaracterization to call her testimony perjury.

Defendant also claims Ms. Paschal's counsel mischaracterized Detective Baumgardner's testimony by omitting the phrase "at the time" when he said he lacked probable cause. Perhaps this would be a mischaracterization if Det. Baumgardner changed his opinion later on after he initially rejected the case, but he has not. After nearly three years of investigation, two follow-up

interviews with Tim Peterson, and all sorts of professional reviews as a result of his decision, Det. Baumgardner stands by his initial finding of lack of probable cause. The only mischaracterization under these facts would be to say he found no probable cause "at the time" while omitting "or any time since." Or, as Ms. Paschal's counsel correctly stated, Det. Baumgardner found no probable cause.

The Defendant's argues the jury's verdict was based solely on sympathy for Ms. Paschal, inflamed by her counsel. There were more than sufficient facts heard by the jury upon which they could have based a substantial verdict for her. Until her unlawful arrest by the Defendant, the Plaintiff was a 40 year member of the South Carolina Bar. She was in a Probate dispute with a meritorious claim as a common law spouse. She had dignity. She was not afraid that her local law enforcement would hound her and harass her without probable cause. She had never been to jail. She had memories taken from her in the form of family photos and of her recently deceased soul mate recorded by video, photographs, and other tangible items.

Everything in Ms. Paschal's life changed when deputies of the Richland County Sheriff's Department began a campaign of malicious prosecution and abuse of process. Any member of law enforcement knows what may happen to a person who is arrested. To protect persons like Ms. Paschal, the Constitution mandates a law enforcement officer have probable cause before signing an arrest warrant. Kay was arrested without probable cause and stripped of her dignity and her ability to make a living. Her personal property and photographs were seized by the Defendant without just cause. She was not able to fight both the Probate battle and the actions of the Sheriff's Department. She was stripped of her clothes and her dignity. She was humiliated.

Everything happened because Kay Paschal bought a handicap van for the disabled man she loved in order to take him to the doctors and on drives. The Defendant took this act of love and tried to make it a crime.

Once the Lexington County Sheriff's Department refused to pursue the matter, a Richland County deputy went outside her jurisdiction, without probable cause, and made misleading statements to a Lexington magistrate to obtain an arrest warrant. The warrant was executed the day Ms. Paschal was summoned to appear at a Probate hearing. A jury could surely find this was not a coincidence.

The Defendant searched Ms. Paschal's residence on the day she was ordered to move by the Probate Court. The jury could find this search was also not a coincidence.

There is no justification for the way the Sheriff's Department proceeded with this case. According to the witnesses from the Sheriff's Department, everything was done with the administration's knowledge and consent. The jury correctly found the Defendant's conduct amounted to a campaign of malicious prosecution and abuse of process and the jury correctly ruled in favor of Ms. Paschal based on the evidence at trial.

There was certainly more than sufficient evidence the Defendant engaged in malicious prosecution and abuse of process. There was also sufficient evidence to support the actual damages awarded by the jury. The jury was properly charged on the law. The jury was told what they were allowed to consider. The jury was properly charged not to award punitive damages. For these reasons, this Court should *deny* the Defendant's post-trial motions.

**4. The Court correctly denied Defendant's motions for directed verdict.**

Finally, the Defendant moves for JNOV, or in the alternative for a New Trial Absolute, "....on the same grounds as Counsel for the Defendant based his argument for directed verdict at

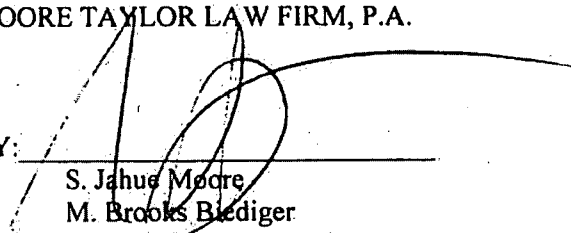
the conclusion of the Plaintiff's case and at the close of all the evidence at trial." The trial court correctly ruled on these motions when presented at trial. The Court properly and correctly denied these motions at trial and the Defendant is not entitled to an order granting him a JNOV, or in the alternative, for a New Trial absolute in the above-captioned matter.

**Conclusion**

For the reasons set forth above, the jury's verdict should not be disturbed by the Court and counsel for Ms. Paschal respectfully requests Defendant's Post Trial Motions be *denied*. Counsel for Ms. Paschal also requests the opportunity to be heard on these matters if the Court deems a hearing necessary and appropriate.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF KAY F.  
PASCHAL

West Columbia, South Carolina

August 11, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Kay Paschal,

Plaintiff,

vs.

Leon Lott, the Duly Elected Sheriff of  
Richland County, South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS  
) OF THE ELEVENTH JUDICIAL CIRCUIT  
)

) Civil Action No.: 2012-CP-32-00342  
)

) **DEFENDANT'S**  
) **MEMORANDUM IN SUPPORT OF**  
) **POST-TRIAL MOTIONS**  
)

The Defendant Leon Lott, as Richland County Sheriff, offers the following in support of his Post-Trial Motions for 1) JNOV, or in the Alternative, New Trial Absolute, 2) New Trial Pursuant to the Thirteenth Juror Doctrine, and 3) New Trial *Nisi* Remittitur, which motions were filed and served August 4, 2014 following the July 21-25, 2014 jury trial.

**I. JNOV, OR IN THE ALTERNATIVE, NEW TRIAL ABSOLUTE.**

1. The Plaintiff failed to prove the requisite elements of her cause of action for Abuse of Process in that A) there was no evidence from which a reasonable juror could have concluded that the Richland County Sheriff's Department or any of its investigators had an ulterior or improper purpose or bad intent in pursuing its still-pending Richland County criminal investigation of Kay Paschal into Lexington County and seeking arrest warrants; B) there was no evidence from which a reasonable juror could have concluded that the Richland County Sheriff's Department willfully used a legal process for an unlawful purpose—a purpose for which it was not meant to be used—in order to coerce or harass the Plaintiff; and C) there was no evidence from which a reasonable juror could have concluded that the Plaintiff had proven the requisite causal connection between the alleged abuse of process and her claimed damages—the main

*Handwritten signature and date: 8/16/17*

thrust of which was the Plaintiff being required to spend her time in the Lexington County Detention Center naked, without undergarments, clad only in a sheet, and the Plaintiff being "forced" to abandon her claim to a spousal share of the \$6,000,000.00 estate of David Wallace, pending in the Richland County Probate Court since David Wallace's death February 20, 2011, which spousal share was opposed by Wallace's adult children.

With regard to the ulterior or improper purpose, in Abuse of Process cases the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967). There is a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself. *Id.* There was no evidence of any "negotiation" between the Plaintiff and this Defendant; only that this Defendant received a report of criminal activity and acted upon it. Paschal's argument of "negotiation" or attempting to somehow gain collateral advantage such as the surrender of property or the payment of money a collateral process would have been better made against the Wallace children, who initiated the report of criminal activity to the Forest Acres Police Department, which forwarded the case on to this Defendant; because this Defendant had no collateral matter going on with the Plaintiff. Yet the Plaintiff settled with the Wallaces, and the Plaintiff's Civil Conspiracy cause of action, pursuant to which she alleged that Lt. Heidi Scott and the Sheriff's Department had conspired with the Wallaces, was dismissed.

Paschal attempted to establish evidence of ulterior purpose through her own testimony, attempting to link the Sheriff's Department with the Wallaces by lamely asserting that she saw Lt. Scott and Elizabeth Wallace "giggling" at her during one of the search warrants, and that she thought she had seen Sheriff Leon Lott at the home of someone who knew Jeffrey Wallace, years

before. Both attempts to establish evidence through innuendo were unequivocally denied by Lt. Scott and Sheriff Lott, and neither of those attempts established anything more than Paschal's own paranoia. Such misdirected attempts at inferring evidence should not be considered as evidence of ulterior purpose to survive JNOV. *Cf. Watson v. Suggs*, 313 S.C. 291, 295-96, 437 S.E.2d 172, 174 (Ct. Ap. 1993)(After noting that the trial judge had stated he disagreed with the verdict but had denied a motion for new trial because there had been "some evidence" offered, the Court of Appeals reversed and granted a new trial because the trial judge had failed to require the Plaintiff's evidence to comport with the standards enunciated in prior case law).

Even the attempt to establish ulterior motive by circumstantial evidence failed, as Paschal repeatedly testified that the Richland County Sheriff's Department was repeatedly interfering with hearing dates in the Wallace Probate matter; yet when pressed to testify as to what matters other than the November 16, 2011 hearing were involved, she could add none. Even as to the November 16 hearing, Paschal testified that she was told by Lt. Heidi Scott of the arrest warrants on the afternoon of November 15, 2011, and that she was able to contact her attorneys that day to alert them the day before the hearing. Yet she was unable—or unwilling—to testify to whether her attorneys requested a continuance of the November 16 hearing, given her unavailability.

Despite Plaintiff's relentless misinterpretation of S.C. Code Ann. § 22-5-110, there was no evidence that the process Lt. Scott pursued was improper. The statute is not jurisdictional, and applies to the magistrates issuing warrants, not to the law enforcement officers seeking them.

2. The Plaintiff failed to prove the requisite elements of her cause of action for Malicious Prosecution in that there was no evidence from which a reasonable juror could have concluded that the prosecution of the Plaintiff pursuant to the criminal investigation of the Plaintiff by the Richland County Sheriff's Department, which is still ongoing, has terminated the



matter in the Plaintiff's favor. *Cf. McKenney v. Jack Eckerd Company*, 304 S.C. 21, 402 S.E.2d 887 (1991)(an action for malicious prosecution may be maintained when the accused establishes that charges were dismissed for reasons which imply or are consistent with innocence). Nor is there evidence that the Richland County Sheriff's Department, nor any of its investigators, acted with malice in instituting or continuing the proceedings; nor that the Defendant lacked probable cause in instituting or continuing the action.

3. There was no evidence from which a reasonable juror could have concluded that the Plaintiff had proven the requisite causal connection between the alleged malicious prosecution and her claimed damages—the main thrust of which was the Plaintiff being required to spend her time in the Lexington County Detention Center naked, without undergarments, clad only in a sheet, and the Plaintiff being “forced” to abandon her claim to a spousal share of the \$6,000,000.00 estate of David Wallace, pending in the Richland County Probate Court since David Wallace's death February 20, 2011, which spousal share was opposed by Wallace's adult children.

4. The evidence at trial, considering the totality of the circumstances—including three search warrants with affidavits setting forth the factual basis for probable cause in each of those search warrants, and the fraudulent power of attorney being a common element in the affidavits supporting the search warrants and the arrest warrants. *Compare*, the supporting affidavits in the search warrants, Plaintiff's Exhibit 6, Defense Exhibits 2, 3 *with* the supporting affidavits in the arrest warrants, Plaintiff's Exhibits 8, 9, Defense Exhibits 9, 10. That totality of circumstances, including the forensic document examiners' reports, establish that the search warrants and the arrest warrants subject of this action were supported by probable cause.

5. The evidence at trial showed that the arrest warrants subject of this action were properly issued under *S.C. Code Ann.* § 22-5-110 with regard to any acts or omissions of the Richland County Sheriff's Department or any of its investigators. The statute is directed toward the Magistrate issuing the warrant, not the law enforcement officer seeking the warrant; and despite Plaintiff's Counsel's repeated argument that the statute was violated by Lt. Heidi Scott, or that the statute is jurisdictional between counties, there was no evidence indicating that it was violated in any way by the Richland County Sheriff's Department.

6. The evidence at trial showed that this Defendant proved that its law enforcement officer and investigator had sought advice of counsel in good faith, had received such advice after a full and complete disclosure of all material facts, and had acted and relied upon such advice in good faith, before seeking the arrest warrants subject of this action.

7. The evidence at trial established this Defendant's immunity pursuant to *S.C. Code Ann.* § 15-78-60(3), pled as an affirmative defense, with regard to this Defendant's execution, enforcement, or implementation of the orders of any court or the execution, enforcement, or lawful implementation of any process.

8. The evidence at trial established this Defendant's immunity pursuant to *S.C. Code Ann.* § 15-78-60(4), pled as an affirmative defense, with regard to this Defendant's adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to any charter, provision, ordinance, resolution, rule, regulation, or written policies.

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9. The evidence at trial established this Defendant's discretionary immunity pursuant to *S.C. Code Ann.* § 15-78-60(5), pled as an affirmative defense, with regard to the measures Lt. Scott went to in consulting with and relying upon the advice of counsel in determining that probable cause existed prior to taking the matter to the Lexington County Magistrate, who, himself, determined that probable cause existed for issuing the warrants. *Cf., Long v. Seabrook*, 260 S.C. 562, 569, 197 S.E.2d 659, 662 (1973)(In a tort suit against a public official whose duties are discretionary, it must be shown that in the performance or non-performance of those duties the public official was guilty of corruption, bad faith, or influenced by malicious motives before recovery can be had).

10. There was no evidence from which a reasonable juror could have concluded that damages awarded were proximately caused by any act or omission of this Defendant, with the award of damages being so grossly excessive as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence at trial.

Based upon the foregoing grounds, the Defendant Leon Lott, in his official capacity as Richland County Sheriff, respectfully requests that this Court grant him Judgment Notwithstanding the Verdict returned by the jury July 25, 2014. Failing that, in the alternative, this Defendant requests a New Trial Absolute.

## II. NEW TRIAL, THIRTEENTH JUROR DOCTRINE.

In South Carolina, a Trial Judge may grant a new trial following a jury verdict under the Thirteenth Juror Doctrine, which entitles the Judge to sit, in essence, as the thirteenth juror when he

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finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts. *Lane v. Gilbert Construction Co., Ltd.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009); *Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002); *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990). As the thirteenth juror, the Trial Judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *Id.* Under the thirteenth juror doctrine, a Trial Court may grant a new trial if the judge determines the jury's verdict is contrary to the fair preponderance of the evidence. *Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. Ap. 2011) citing *R.C. McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (2003). This is also called granting a new trial upon the facts, and the Judge is not required to give the reasons for his ruling, with the effect being the same as if the jury had failed to reach a verdict. *RFT Management Co., LLC v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 334, 732 S.E.2d 166, 172 (2012) citing *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267.

The granting of a new trial upon the facts is not the equivalent of granting a directed verdict. *RFT Management*, 399 S.C. at 334, 732 S.E.2d at 172, citing *McEntire*, 353 S.C. at 632-33, 578 S.E.2d at 748. The question of whether the evidence is legally sufficient to sustain a verdict, a question of law, is distinguishable from the question of whether a fair preponderance of the evidence supports a verdict, which is a matter involving the exercise of discretion. *Id.* Stated another way, a party's evidence might make a case one for the jury, but the evidence might be so outweighed by the countervailing evidence that, in the exercise of its discretion, a Trial Judge could choose to set aside the verdict under the thirteenth juror doctrine. *Id.*

The fair preponderance of the evidence at trial indicated that the Richland County Sheriff's Department and its investigators had no prior relationship with, nor bias for or against David Wallace, his adult children, or Kay Paschal, when it received the criminal complaint made against Kay Paschal by the Wallace children from the Forrest Acres Police Department. The evidence at

trial further indicated that in late February, 2011, shortly following the February 20, 2011 death of David Wallace, the Sheriff's Department accepted the report, performed its investigation, and followed the evidence, which indicated among other things a questionable power of attorney appointing Kay Paschal having been recorded by Kay Paschal three days after David Wallace had suffered a debilitating stroke and eight years after it was purportedly executed by Wallace, with forensic document examiners telling the Sheriff's investigators that the 12-page power of attorney was suspect because of different fonts and different paper stock used within the same 12 pages. The investigation further revealed questionable transfers of large sums of money from David Wallace's accounts, all of which investigative facts supported probable cause for the issuance of two search warrants in Richland County—see, Defendant's Exhibits 2 and 3—and one issued in Lexington County—see Plaintiff's Exhibit 6.

The evidence at trial further showed that, in pursuing the Richland County investigation, Lt. Heidi Scott discovered that the questionable power of attorney was used to purchase a van within Lexington County, and that she conferred with her superiors as to whether to pursue that component of the investigation into Lexington County. Evidence at trial further showed that Lt. Scott consulted with Assistant Solicitor Joanna McDuffie, of the 5<sup>th</sup> Judicial Circuit Solicitor's office as to whether probable cause existed for pursuing an arrest warrant in Lexington County, and Ms. McDuffie suggested turning the matter over to the Lexington County Sheriff's Department to pursue the investigation. Evidence at trial indicated that LCSD Detective Steve Baumgardner had the file for three and a half weeks before going out on medical leave, during which time he admitted he had not been able to conduct a properly thorough investigation, and had determined that there was not sufficient probable cause to pursue an arrest warrant at the time he gave the file back to Lt. Scott. Evidence at trial indicated that when Lt. Scott got the file back, she again consulted with her superiors, and called Assistant Solicitor Dayton Riddle, of the Eleventh Judicial Circuit Solicitor's

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office, discussing with Mr. Riddle the facts of her investigation and whether it could be pursued in Lexington County. Following that conversation with Mr. Riddle, and acting upon his suggestion, Lt. Scott took the matter to Lexington Magistrate Scott Whittle, identified herself as a Richland County Sheriff's Department Lieutenant, and presented the facts supporting probable cause to Judge Whittle. After hearing the facts as relayed to him by Lt. Scott, finding probable cause, Judge Whittle himself typed the affidavits and warrants, Lt. Scott signed the affidavits, and Judge Whittle issued the warrants November 15, 2011.

Evidence at trial indicated that Lt. Scott carried the arrest warrants to the Lexington County Sheriff's Department from Judge Whittle's office and left them there on November 15, then later that same day called Kay Paschal and told her there were arrest warrants at the Lexington County Sheriff's Department, and for her to arrange to turn herself in. Ms. Paschal testified at trial that she was able to call her attorneys that afternoon, and presumably acting on their advice, she turned herself into the Lexington County Sheriff's Department at 5:30 the morning of November 16, where she was processed in.

There was no competent evidence supporting the Abuse of Process cause of action—either that the Richland County Sheriff's Department had an ulterior purpose in pursuing its investigation of the Plaintiff Paschal or in pursuing the Lexington County arrest warrants after discussing the matter with two solicitors and the Lexington Magistrate who issued the warrants, or that the procedure followed by Lt. Scott was improper, regardless of how many times Plaintiff's Counsel misinterprets or mischaracterizes *S.C. Code Ann. §22-5-110*. There was no competent evidence supporting the Malicious Prosecution cause of action, because the Plaintiff has not secured a favorable termination of the proceedings against her, because, while the two Lexington County arrest warrants may have been dismissed at the January 20, 2012 Preliminary Hearing—for reasons which are not on the record or supported by competent evidence—that dismissal did not end the

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criminal investigation, which is still on-going in Richland County and for which Kay Paschal still faces prosecution, and that dismissal was not for reasons which imply or are consistent with innocence. *Cf. McKenney v. Jack Eckerd Company*, 304 S.C. 21, 402 S.E.2d 887 (1991)(an action for malicious prosecution may be maintained when the accused establishes that charges were dismissed for reasons which imply or are consistent with innocence).

The fair preponderance of evidence at trial was that the Richland County Sheriff's Department and its investigators did their jobs without bias and without ulterior motive, and this jury simply lost sight of the evidence and decided this case based upon the story they were told by Plaintiff's Counsel, the image they were given of the Plaintiff wrapped in a sheet on the floor of the Lexington County Detention Center, and the myth they were given of the love story between the Plaintiff and her deceased benefactor, none of which was remotely relevant to the issues before the jury. With all due respect for this jury and the service, time, and effort they put into hearing four days of testimony and over forty exhibits put into evidence, they were swept away with the passions and emotions stoked on the fifth day of trial, when the Plaintiff's closing arguments turned their focus away from the evidence on the record and toward the imagery.

If ever a jury verdict called for the exercise of discretion by a discriminating and dispassionate thirteenth juror, this is the one.

This Defendant respectfully requests a new trial.

### III. NEW TRIAL NISI REMITTITUR.

If the Plaintiff's verdict is allowed to stand over this Defendant's foregoing Motions for JNOV, or in the alternative, New Trial, and New Trial pursuant to the 13<sup>th</sup> Juror Doctrine, this Defendant has moved for a New Trial *Nisi* Remittitur, seeking an Order appropriately reducing the verdict amount or, in the alternative, granting a new trial.

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When the jury's verdict is inadequate or excessive, the Trial Judge has the discretionary power to grant a new trial *nisi*. *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 549, 716 S.E.2d 295, 300-301 (Ct. Ap. 2011), citing *Hawkins v. Greenwood Development Corporation*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. Ap. 1997). The consideration of a motion for a new trial nisi requires the Trial Judge to consider the adequacy of the verdict in light of the evidence presented. *Id.*

At trial, there was no competent evidence of damages proximately caused by any act or omission of this Defendant offered by the Plaintiff or admitted at trial supporting the award, with the award being clearly excessive and based upon passion, caprice, or prejudice by the jury, or some other factor not supported by the evidence at trial.

The main thrust of the Plaintiff's damages claim throughout trial and in closing argument was 1) the repeated references by Plaintiff's Counsel to the Plaintiff being required to spend her time in the Lexington County Detention Center naked, without undergarments, clad only in a sheet, and 2) in the Plaintiff being "forced" to abandon her claim to a spousal share of the \$6,000,000.00 estate of David Wallace, pending in the Richland County Probate Court since David Wallace's death February 20, 2011, which spousal share was opposed by Wallace's adult children. Neither of these two elements of the Plaintiff's damages claim were proximately caused by this Defendant.

There was no evidence indicating that the Richland County Sheriff had any knowledge of or say in the wearing apparel afforded the Plaintiff during her stay at the Lexington County Detention Center the evening of November 16, 2011, nor was there evidence that the wearing apparel issue was a natural and reasonable consequence of the Sheriff's Department's actions in pursuing its criminal investigation of Kay Paschal into Lexington County. This Court charged the jury that, if the Plaintiff established liability, she would be entitled to recover damages that

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are the *direct, natural, and proximate result* of the Defendant's actions. (Emphasis added). Swayed by sympathy for the Plaintiff and inflamed emotionally by Plaintiff's Counsel's repeatedly revisiting the imagery of the Plaintiff naked on the floor of the Lexington County Detention Center, the jury clearly disregarded that portion of the charge and any semblance of limiting their damages award to those damages that were supported by evidence and were the direct, natural, and proximate result of the Defendant's actions.

Plaintiff's Counsel also repeatedly revisited the Plaintiff's Richland County Probate Court dispute with the Wallace children, and repeatedly faulted the Richland County Sheriff's Department for the Plaintiff "being forced" to settle her spousal share claim and renounce her claim to being David Wallace's common-law spouse. This, despite clear and uncontroverted evidence in the record that the Plaintiff, under oath, had stipulated that she was never married to David Wallace and was not the common law wife of David Wallace, relinquishing any claim she may have had to having been his common law wife. *See*, Defendant's Exhibit 18. As if that was not enough, also in the record was evidence that the Plaintiff's entering into the settlement of the Probate Court dispute was approved by Court Order, with the parties—including Paschal—acknowledging that they had entered into the settlement and that Paschal had signed her Affidavit and Stipulation "freely and voluntarily." *See*, Defendant's Exhibit 20. The Plaintiff, a former lawyer who testified on cross examination that she did not concern herself with "legalities," clearly disregarded her sworn affidavit, her representations to the Probate Court that she had entered into the agreement freely and voluntarily, and the Probate Court Order that found she had freely and voluntarily entered into the agreement when she repeatedly maintained throughout the trial that she was the common law spouse of David Wallace, and had been "forced" into the settlement.

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In fact, there was no evidence at trial correlating to the verdict amount the jury arrived at, with the only quantifiable number even mentioned by the Plaintiff Paschal at trial being the \$75,000 annual salary for which she testified she would offer her services as a 72-year-old associate attorney were she to apply for an attorney position, notwithstanding her testimony that she had not practiced law since 2001, had made no attempt to have her law license reinstated since her suspension, and had applied for no such positions. There is no rational explanation for the odd-but-excessive verdict amount of \$1,610,000.00 being tied to any quantifiable damages evidence on the record, save one: the David Wallace Estate was valued at approximately \$6 million, and the damages award is roughly equal to what a spousal share of the estate would have been had the Plaintiff been successful in her claim for spousal share of the estate, which she relinquished when she settled the Probate Court dispute. That being the case, the jury clearly ignored the evidence of the settlement, Paschal's sworn affidavit, and the Court Order approving the settlement, and improperly based its award on matters not only outside of the record, but clearly contrary to the evidence.

The jury's passion was further inflamed by Plaintiff Counsel's continually 1) mischaracterizing Lt. Scott as having perjured herself when there was no evidence that any of Scott's affidavit supporting the arrest warrants was untrue, 2) mischaracterizing LCSD Detective Baumgardner as having concluded there was no probable cause for the arrest warrants without adding Baumgardner's persistent caveat in his testimony of no probable cause "at this time," by which Baumgardner recognized the limitations necessarily inherent in his three-and-a-half week review of the material it had taken Lt. Heidi Scott seven-and-a-half months to assemble in her Richland County criminal investigation into the charges against Paschal, and 3) mischaracterizing the January 20, 2012 dismissal of the arrest warrants at the Preliminary

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Hearing as being based upon lack of probable cause when there was no evidence on the record that the warrants were dismissed for that reason.

The award of damages was unduly speculative, and was nothing more than an emotionally inflamed jury, after having already chosen to ignore the evidence on liability, further exacerbating the situation by arbitrarily arriving at a wholly speculative damages figure not in any way tied to evidence admitted at trial. Considering the paucity of evidence of quantifiable damages offered by the Plaintiff that even arguably was proximately caused and naturally flowing from acts or omissions of the Defendant, remitting the damages amount to a figure well within \$150,000—which itself would at least be a multiple of the only number the Plaintiff put into evidence as damages—would be supportable.

Failing that, the Defendant moves for an Order of this Court reducing the verdict to the statutory cap of \$300,000.00 imposed by S.C. Code Ann. § 15-78-120(a)(1) of the South Carolina Tort Claims Act.

The Plaintiff argues that the \$300,000 statutory cap imposed by the South Carolina Tort Claims Act does not apply to reduce her verdict because the definition of “occurrence” in *S.C. Code Ann.* §15-78-30(g) requires an act of negligence, and since neither Abuse of Process nor Malicious Prosecution have negligence as a component, the “occurrence” component for the limitation imposed by *S.C. Code Ann.* §15-78-120(a)(1) is not met, and therefore there is no cap imposed. Using that same logic, the Defendant could argue that, since the Tort Claims Act is the sole and exclusive means for suing him in tort, and since there is no language in the Tort Claims Act expressly allowing for intentional torts without a negligence component—an omission bolstered by the same language cited in §15-78-30(g)—the Plaintiff’s claim and her verdict must fall as being beyond the scope of the Tort Claims Act. Neither argument reflects the intention of the General Assembly in enacting the South Carolina Tort Claims Act.

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The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Shirley's Iron Works, Inc. v. City of Union*, \_\_\_ S.C. \_\_\_, \_\_\_, 743 S.E.2d 778, 784 (2013) citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "It is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of [the South Carolina Tort Claims Act] and in accordance with the principles established herein." *S.C. Code Ann.* §15-78-20(a)(1986 as amended). "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." *S.C. Code Ann.* §15-78-20(f)(1986 as amended). "The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity." *S.C. Code Ann.* §15-78-200(1997 as amended). Further evidence of legislative intent in enacting the SCTCA is found in the Editor's Note to the Thomson-West 2005 edition of the main volume following the "HISTORY" for §15-78-200, which statute was passed as 1997 Act No. 155, Part II, §55B, in which the editor quotes the immediately preceding section—1997 Act No. 155, Part II, §55A—as providing:

"SECTION 55A. The General Assembly finds:

"(1) that because of the unique nature, role, funding, and function of government, the General Assembly has never intended that the government or taxpayers would be subject to unlimited liability for tort actions against the government;

"(2) that this section shall clarify any ambiguity in the General Assembly's intent that there remain reasonable limits upon recovery against the government for tort actions, and that the government is only liable for torts as expressly prescribed and authorized in the 'South Carolina Tort Claims Act.'"

7 Code of Laws of South Carolina, *Civil Remedies and Procedures*, p. 836, §15-78-200, Ed. Note (Thomson-West 2005 Edition).

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Clearly the legislative intent of the General Assembly in enacting the South Carolina Tort Claims Act was to place reasonable limits upon recovery against governmental entities for tort actions, and that the provisions of the Tort Claims Act establishing limitations on and exemptions to the liability of the governmental entity must be liberally construed in favor of limiting the liability of the governmental entity.

Whether the two surviving causes of action of the Plaintiff have a negligence component or not, Abuse of Process and Malicious prosecution are both torts. *Cf., e.g., F. P. Hubbard and R. L. Felix, The South Carolina Law of Torts*, p. 468 (3<sup>rd</sup> Ed. 2004) (“The torts of abuse of process and malicious prosecution are sometimes confused.”). The South Carolina Tort Claims Act is the sole and exclusive remedy for tort actions against the government. *Shirley’s Iron Works, Inc. v. City of Union*, \_\_\_ S.C. \_\_\_, \_\_\_, 743 S.E.2d 778, 783 (2013) citing *S.C. Code Ann.* §15-78-200. *See also, Proctor v. Dep’t of Health & Envtl. Control*, 368 S.C. 279, 290, 628 S.E.2d 496, 502 (Ct. Ap. 2006) (“The [TCA] governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees.”); *S.C. Code Ann.* §15-78-20(b)(1986 as amended) (“The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in §15-78-70(b)”).

In pursuing her tort claim against the Sheriff of Richland County in his official capacity—in effect, suing the Richland County Sheriff’s Department, a governmental entity—the Plaintiff’s sole and exclusive remedy is through the terms, conditions, and limitations of the South Carolina Tort Claims Act. Among those limitations is the statutory cap imposed by *S.C. Code Ann.* §15-78-120(a)(1), which provides:

“(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

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*Signature:* [illegible]

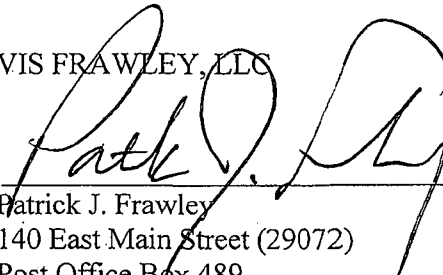
“(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.”

*S.C. Code Ann. §15-78-120(a)(1) (1986 as amended).*

The act complained of by the Plaintiff was one occurrence—the obtaining by RCSD Lt. Heidi Scott of two arrest warrants from Lexington County Magistrate Scott Whittle on November 15, 2011 for a matter that was an outgrowth of an ongoing criminal investigation of the Plaintiff in Richland County. If the jury verdict in this matter is upheld, the Plaintiff’s loss resulted from an unfolding sequence of events which proximately flowed<sup>1</sup> from that single act on November 15, 2011, and her verdict should be reduced to the \$300,000 statutory cap imposed by §15-78-120(a)(1). *See also, S.C. Code Ann. §15-78-30(g)(1986 as amended)(defining “Occurrence”).*

Accordingly, while reserving all rights incident to his foregoing Motions for JNOV, or in the alternative, New Trial Absolute, and New Trial under the 13<sup>th</sup> Juror Doctrine, this Defendant respectfully requests that the verdict be reduced to \$300,000, or in the alternative, that this Defendant be granted a new trial.

DAVIS FRAWLEY, LLC

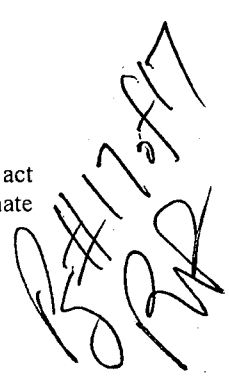
BY: 

Patrick J. Frawley  
140 East Main Street (29072)  
Post Office Box 489  
Lexington, South Carolina 29071

ATTORNEYS FOR THE DEFENDANT LEON LOTT,  
AS RICHLAND COUNTY SHERIFF

Lexington, South Carolina  
September 1, 2014

<sup>1</sup> The Defendant denies that the loss claimed by the Plaintiff naturally and proximately flowed from the act complained of, and reserves and does not waive all rights incident to that denial and his argument against proximate cause made elsewhere in this memorandum.



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Kay F. Paschal,

Plaintiff,

vs.

Leon Lott, the Duly Elected Sheriff  
of Richland County, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-32-00342

**PLAINTIFF'S MOTION TO  
RECONSIDER**

The Plaintiff Kay F. Paschal hereby moves this court to reconsider its order reducing the jury's verdict to \$300,000. Counsel for Ms. Paschal understands the court gave thorough consideration to the arguments of all parties before it ruled on the Defendant's motion to reduce the verdict. This was not an easy case for anyone involved. The court was faced with a question that appears to be an issue of first impression in this State. The court's sound deliberation on these post-trial motions is certainly appreciated. In this regard, Ms. Paschal respectfully asks the court to reconsider its ruling and deny the Defendant's motion to reduce the verdict awarded by the jury.

The Defendant moved to reduce the verdict on the basis the General Assembly intended the statutory damage caps to apply to all torts. 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, 85, 533 S.E.2d 578, 581 (2000); *In re Vincent J.*, 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. *Bass v. Isochem*, 365 S.C. 454, 470, 617 S.E.2d 369, 377 (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. *Id.* Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.e.2d 11, 14 (Ct. App. 1998).

Whether the damages caps apply in this case turns upon the plain language of the damage cap statute. There is no question the damage cap statute is triggered by an "occurrence:"

[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).

There is also no question the term "occurrence" is a specifically defined term as it applies to the South Carolina Tort Claims Act ("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).

The question then becomes whether the occurrence definition encompasses torts beyond mere negligence. According to Black's Law Dictionary, the term "tort" is defined as:

**tort (tort).** 1. A civil wrong, other than a breach of contract, for which a remedy may be obtained in the form of damages; a breach of duty that the law imposes on persons who stand in a particular relation to one another.

Black's Law Dictionary 1526 (8th ed. 2004).

The term occurrence has a clear and definite meaning within the statute. This definition of occurrence is separate and distinct from the definition of torts in general. If the General



Assembly intended an occurrence to include all torts, it would not have defined an occurrence in such narrow terms. When given its plain and ordinary meaning within the context of the statute, the term occurrence does not encompass the broad definition of all torts but rather the specific tort of negligence. Therefore, the statutory caps can only be triggered by “an unfolding sequence of events which proximately flow from a single act of negligence,” not by any tort for which the State may be held accountable.

The Defendant cites the public policy of the SCTCA in support of its claim the damage caps apply. While the public policy language of the SCTCA certainly impacts the interpretation of any ambiguous language within the statute, the definition of occurrence is not ambiguous. The General Assembly defined the term specifically to encompass negligence, and nothing more. A party simply cannot claim a statute is ambiguous when the General Assembly has defined the actual terms used in the statute. Whatever the public policy of the SCTCA may be, the court cannot overlook the inclusion of the term “negligence” in the definition statute and cannot look past the impact this definition has on the caps statute.

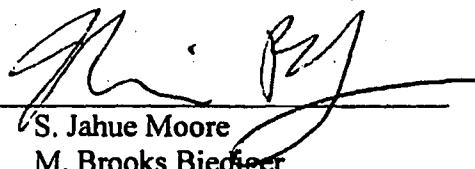
The South Carolina Supreme Court has also expressly adopted the canon of statutory construction “*expressio unius est exclusio alterius*,” which holds “to express or include one thing implies the exclusion of another.” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000). “The enumeration of exclusions from the operation of a statute indicates the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed.” *Id.* at 87, 533 S.E.2d at 582 (quoting Norman J. Singer, *Sutherland Statutory Construction* § 47.23 at 227 (5th ed. 1992) (citations omitted)).

As a general rule, the State is liable for its torts to the same extent as a private individual. S.C. Code § 15-78-40. Part of the limitation on this liability is included in the damages caps statute and the definition statute. Under the canon *expressio unius est exclusio alterius*, the inclusion of the term "negligence" as the definition of the triggering event for the damage caps implies the exclusion of all other torts as the trigger of the damage caps. In other words, because the General Assembly specifically included the term negligence, we know all other torts do not trigger the damage caps.

If the jury had returned a verdict on negligence, a statutory occurrence would have happened and the damage caps would be triggered. That is not the case with Ms. Paschal. The jury returned a verdict for Ms. Paschal on the intentional torts of malicious prosecution and abuse of process. Therefore, the damage caps were not triggered and should not be imposed by this court.

Based on the foregoing, Ms. Paschal respectfully requests this court reconsider its reduction of the jury verdict and deny the Defendant's motion to reduce the verdict. This motion for reconsideration is specifically limited to the court's order granting the reduction in verdict and does not apply to any other order of this court.

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West Columbia, South Carolina  
December 19, 2014.

1 that to the bailiff and just let me know who you  
2 want to serve as your foreperson, but don't discuss  
3 the case in any way at all.

4 All right. Follow the bailiff, please.

5 (The jury retires to the jury room.)

6 **THE COURT:** Ladies and gentlemen, if you were  
7 not selected on this jury, thank you very much. You  
8 are free to go. You're through with jury duty.

9 (The remaining jury venire was excused.)

10 **THE COURT:** All right. Are there any pretrial  
11 issues that I need to take up?

12 **MR. MOORE:** Not from the plaintiff, Your Honor.

13 **MR. FRAWLEY:** Your Honor, we have a few issues  
14 that we mentioned in our trial brief, one of which  
15 involves additional witnesses that we were provided  
16 the names of on Friday -- actually, Thursday by  
17 e-mail and Friday by a supplemental answer to  
18 interrogatories. I've mentioned that we would  
19 object to those being added pursuant to the Jumper  
20 versus Hawkins factors, that it had been added late,  
21 whether they're material, whether we're prejudiced,  
22 and we would do that.

23 We also -- one of the issues here that's going  
24 to come up is I'm going to try to avoid trying the  
25 criminal action that's pending in Richland County,

1 that's not what this case is about. This case is  
2 about the probable cause issues and what the  
3 Richland County Sheriff's Department investigators  
4 knew at the time that they pursued the Lexington  
5 County warrants and whether that pursuit was for any  
6 ulterior purpose or had any level of malice with  
7 regard to the plaintiff's causes of action.

8 So we're going to put in or attempt to put in  
9 what they were told from people who aren't here, but  
10 we're not offering that to prove the fact of the  
11 matter asserted, whether Ms. Paschal really did  
12 forge the power of attorney, whether Ms. Paschal  
13 really was guilty of exploiting, financially,  
14 Mr. Wallace, only that that was the information that  
15 was given to and received by the Richland County  
16 Sheriff's Department investigators in pursuing this  
17 investigation and in pursuing the arrest warrant  
18 when they went to the Lexington County Magistrate  
19 and got the arrest warrants.

20 So we're going to put that in and I think, at  
21 first blush, it may be looked at as being hearsay,  
22 but our position would be that it is not hearsay  
23 because we're not offering it to prove the fact of  
24 the matter asserted, only that that's the  
25 information that was provided to Richland County in

1       which they, in good faith, acted upon. So, mainly,  
2       I just wanted to alert Your Honor that we'll be  
3       doing that so if there is an objection, you'll know  
4       essentially where our argument will be.

5               There are also -- there was a collateral  
6       probate court action that was brought by  
7       Ms. Paschal. The estate -- Ms. Paschal had lived  
8       with Mr. Wallace for several years. They were  
9       companions. There's no question about that. And  
10      when Mr. Wallace died, his two adult children, who  
11      had been living out of town and apparently had not  
12      been taking care of Mr. Wallace on a day-to-day  
13      basis as Ms. Paschal had been doing, they came into  
14      town and there was a dispute over a fairly sizable  
15      estate that was litigated in probate court.

16             I say litigated. There were pleadings filed.  
17      I think it was resolved before they actually got to  
18      a merits hearing on it.

19             But that was involved, and then this lawsuit  
20      was filed January 24th of 2012 originally naming not  
21      only the current defendant, Richland County Sheriff  
22      Leon Lott, but also naming Jeffrey Wallace and  
23      Elizabeth Wallace, who were the two adult children  
24      of David Wallace, and then also naming Lieutenant  
25      Heidi Scott individually, who was the lead

1 investigator for the Richland County Sheriff's  
2 Department at that time.

3 That probate court case was ultimately settled  
4 and there was a substantial payment made to  
5 Ms. Paschal pursuant to that settlement. And there  
6 was an affidavit that Ms. Paschal had signed  
7 indicating that, as part of the settlement, that she  
8 was not the wife of David Wallace and would no  
9 longer go by Kay Paschal Wallace, which is why we've  
10 changed the name of the plaintiff.

11 We are going to attempt to cross-examine  
12 Ms. Wallace on the detail of that because it is  
13 consistent with the sheriff's department's  
14 counterclaim that this lawsuit was filed by  
15 Ms. Wallace against the sheriff, against Lieutenant  
16 Scott and against the Wallaces for purposes of  
17 gaining an advantage in the collateral actions she  
18 had going. With regard to the Wallaces, it was the  
19 probate court matter. With regard to the sheriff's  
20 department, it was the Richland County  
21 investigation, which is still an ongoing  
22 investigation, that's still going on. So I want to  
23 give Your Honor a heads up that we will be  
24 attempting to get into those documents as well.

25 Now, I understand that under the rules of

1 evidence, evidence of a compromise in settlement is  
2 normally not something that's admissible. We are  
3 going to try to get that in because it is not an  
4 offer of compromise and settlement of this lawsuit,  
5 rather it is a compromise and a settlement by  
6 Ms. Paschal of the collateral action for which we  
7 are maintaining she has improperly brought this  
8 lawsuit.

9 Your Honor, there was also a preliminary  
10 hearing that was done January 20, 2012, at which  
11 preliminary hearing, the Lexington County Sheriff's  
12 Department Investigator, Steve Bumgardner, was  
13 subpoenaed and did testify as did Lieutenant Scott.  
14 We anticipate that the plaintiff will attempt to  
15 introduce the transcript of that hearing. We would  
16 oppose the introduction of any portion of that  
17 transcript other than the very last portion where  
18 Mr. Moore, Ms. Paschal's attorney at that hearing,  
19 makes his motion for a dismissal initially for lack  
20 of probable cause and the judge rules on that, and  
21 then Mr. Moore argues another ground and then the  
22 judge ultimately dismisses it without really saying  
23 why he has dismissed it.

24 Other than that portion and also possible other  
25 portions in the event Mr. Moore needs to impeach a

1 witness, the only -- either Detective Bumgardner or  
2 Ms. Scott -- Lieutenant Scott now Lieutenant Jackson  
3 -- if he wants to use those as prior inconsistent  
4 statements and attempting to impeach, I would not  
5 oppose that, but I do oppose it being entered in  
6 total if he does in fact try to do that.

7 And we also have a recording of a telephone  
8 conversation that we will be attempting to put in  
9 through Lieutenant Jackson when she testifies,  
10 formerly Lieutenant Scott, of her Jan -- I'm sorry  
11 -- November 14, 2011, telephone conversation with  
12 Dayton Riddle of the Eleventh Judicial Circuit  
13 Solicitor's Office. We also have a transcript of  
14 that telephone conversation which we've had Southern  
15 Reporting prepare. We'll attempt to put that in,  
16 but that may be objected to by Mr. Moore. I think  
17 that's all the pretrial matters we have at this  
18 time, Your Honor.

19 **THE COURT:** Any of the issues that are raised  
20 that aren't in dispute, Mr. Moore? Anything that  
21 I'm not going to have to rule on?

22 **MR. MOORE:** I don't think there's anything that  
23 was raised that -- I would tend to believe that the  
24 conversation with Mr. Riddle, while it may not be  
25 admissible, if they want to play it, I don't have



1 any problem with it.

2 Your Honor, I do think that an official  
3 transcript of an official court proceeding is  
4 relevant evidence. So I do think that the  
5 transcript of the preliminary hearing where the  
6 judge -- so the jury can hear what the judge heard  
7 and what the judge did -- of course, in South  
8 Carolina, the only way a judge can dismiss a case at  
9 a preliminary hearing is if he finds a lack of  
10 probable cause. I do think that's admissible.

11 The witnesses which I gave Mr. Frawley last  
12 week, he provided me some responses to discovery  
13 last week with some things I don't think I have seen  
14 before. And after he provided me with his updated  
15 discovery last week, I provided him with some  
16 updated discovery last week. And I have explained  
17 to him that those additional witnesses are planned  
18 to be used if and only if he goes into certain  
19 matters which would require me to do reply  
20 testimony. So none of those witnesses would  
21 basically even be, at this time, contemplated to be  
22 put into our case in chief.

23 If I decide to call any of those folks in the  
24 case in chief, then I would -- I would, at that  
25 time, advise the Court before putting them up that

1 this is one of the new witnesses. But none of those  
2 witnesses -- I simply, as an abundance of caution,  
3 when I learned of these potential new witnesses who  
4 would be potentially reply witnesses, I provided  
5 Mr. Frawley with a response after he had provided me  
6 with some additional stuff.

7 I don't have any problem -- so I don't think we  
8 have a problem, at least not at this time, with any  
9 witnesses. Quite frankly, I don't plan to call  
10 those people unless Mr. Frawley goes into certain  
11 issues, which if he does, I will call them, but only  
12 on reply. So I don't think we have a problem with  
13 the witnesses.

14 I don't think I have any problem with -- as a  
15 matter of fact, I want Dayton Riddle's -- they  
16 recorded the Solicitor of the State without telling  
17 him, which is an interesting concept to me. I think  
18 it raises some right serious issues. I know we have  
19 serious issues in regard to I tried a case where a  
20 set of judges were recorded without their knowledge  
21 and the court has expressed serious issues with tape  
22 recording officers of the court.

23 But be that as it may, they surreptitiously  
24 recorded Mr. Riddle and I simply want to be asked  
25 about -- I want to make sure I -- as a matter of

1 fact, I want that played, so I don't have any  
2 objection to that at all.

3 In regard to the settlement documents, and I  
4 probably don't have any objection to those depending  
5 on how we move forward. There are some code  
6 section -- well, that's neither here nor there. I  
7 really don't have a lot of objection to the stuff  
8 he's talking about and probably want it placed into  
9 evidence.

10 **MR. FRAWLEY:** The code section -- what do you  
11 mean for the code sections?

12 **MR. MOORE:** There are some code sections that I  
13 am going to try to introduce, whether I can do that  
14 or not, I don't know. But I doubt seriously that I  
15 can actually introduce them, I'm planning to try,  
16 but I doubt I can place them in evidence. They may  
17 just be matters to charge. But I don't see a whole  
18 lot of issues with any of the things he's talking  
19 about.

20 **MR. FRAWLEY:** And, Your Honor, with regard to  
21 those witnesses, if they're going to be reply  
22 witnesses, I think Mr. Moore had told me in his  
23 e-mail on Thursday that they would be reply  
24 witnesses as to Ms. Paschal's relationship with  
25 Mr. Wallace. My position on this will be that her

1 relationship with Mr. Wallace is really not relevant  
2 to the issues that we're trying to limit the scope  
3 of this case on. No question she lived with him for  
4 several years and was his caretaker and his  
5 companion and we're not going to contest that. And  
6 I think whether she was or was not married to him  
7 has been taken care of with the resolution of that  
8 probate court case.

9 And as far as what we produced late, it was  
10 Lexington County Sheriff's Department records which  
11 had earlier been produced to us by Mr. Moore. So we  
12 didn't add witnesses or anything. We just wanted to  
13 make sure he had what we had.

14 **THE COURT:** Well, are there any matters I need  
15 to address in camera before we get started?

16 **MR. MOORE:** I don't think so.

17 **MR. FRAWLEY:** I don't think so. I just -- I  
18 wanted to raise those issues so Your Honor knew  
19 ahead of time that they may be issues that come up,  
20 so we weren't surprising Your Honor in front of the  
21 jury.

22 **THE COURT:** All right. It's about a quarter  
23 after 12:00. I've got a plea that we scheduled in a  
24 State Grand Jury case. It's the last of 20  
25 something pleas that we've been trying to get done.

1 It's scheduled for two o'clock. It shouldn't take  
2 more than 30 minutes. It may not take that long  
3 depending on how much the attorney general puts in  
4 his statement of the facts. So do you want me to  
5 bring the jury back at 2:30? Do you want me to --  
6 do you want to bring them back in at 1:30 and start  
7 -- do the openings?

8 **MR. FRAWLEY:** 2:30 is fine with me or whatever  
9 Mr. Moore wants to do.

10 **MR. MOORE:** The openings may take a little  
11 longer than normal.

12 **THE COURT:** Okay. Well then, let's do 2:30.  
13 That'll be chopping it up too much.

14 **MR. FRAWLEY:** Your Honor, I do have one more  
15 pretrial matter. We have raised in our -- as our  
16 affirmative defenses, I think it's our tenth  
17 affirmative defense in our answer where we raised  
18 the South Carolina Tort Claims Act defenses under  
19 section 15-78-60. One of the several subparagraphs  
20 we raised was section 15-78-60 subparagraph (25)  
21 which raises the gross negligence issue and the  
22 requirement that the plaintiff prove gross  
23 negligence. We are withdrawing that portion of the  
24 defense. We are withdrawing 15-78-60 subparagraph  
25 25.

1           **THE COURT:** Okay.

2           **MR. FRAWLEY:** And we will not be asserting it  
3 at trial. Now, the remaining 15-78-60 defenses that  
4 we've raised, including section 15-78-60  
5 subparagraph (6), we are still asserting. The only  
6 one we're withdrawing is number 25.

7           **MR. MOORE:** Might I ask what paragraph (6)  
8 says.

9           **MR. FRAWLEY:** That's the law enforcement one.

10          **THE COURT:** All right. Bring the jury back in,  
11 please.

12          (The jury returns to the courtroom.)

13          **THE COURT:** All right. The jury has selected  
14 Mr. Jeff Sherrill, juror number 173, as the Foreman  
15 of the jury. And you need to stay in that seat  
16 throughout the trial please, Mr. Sherrill. The two  
17 alternates need to stay in the end chairs. The rest  
18 of you may sit wherever you like.

19          It's a lot better if you don't try to walk  
20 across each other. It's been a long time ago, but  
21 we did have an incident at the old courthouse, which  
22 was a little bit different configuration, but a lady  
23 broke her ankle and I don't want that happening to  
24 you. So if you can, if you develop a favorite  
25 chair, sort of step to the side before you go in and

1 ask your fellow jurors to get your favorite chair.

2 (Court's Exhibit Number 1, jury note, marked  
3 for identification.)

4 **THE COURT:** All right. We're going to do a few  
5 housekeeping things and then I'm going to have you  
6 come back at 2:30. The first thing I need to do is  
7 to have you placed under a different oath, the oath  
8 of a trial jury. I need for you to please stand and  
9 raise your right hand. The clerk will administer  
10 your oath.

11 (The jury was duly sworn by the Clerk of  
12 Court at 12:18 p.m.)

13 **THE COURT:** All right. Ladies and gentlemen,  
14 you're going to be on your own for lunch and that's  
15 normally what -- how we operate, normally you'll be  
16 on your own for lunch. I need you back in the jury  
17 room at 2:30. When you come back, don't come into  
18 the courtroom, come -- the bailiff will show you  
19 where to report. There's some glass doors over  
20 here. They have to buzz you in because all this  
21 back here is a secured area. So I need you back  
22 here at 2:30.

23 And if you're one of those folks that comes  
24 early, that's fine, but just come on up. It's much  
25 better if you don't kind of stand around in the

1           **THE COURT:** Thank you, Mr. Frawley.

2           Ladies and gentlemen, I'm going to send you  
3           into the jury room to find out where we are and  
4           whether we're going to start with the witnesses  
5           today or start fresh in the morning. So if you'll  
6           follow the bailiff and go to the jury room, don't  
7           discuss the case. You won't be back there long.  
8           Just let me talk to them a minute.

9           (The jury retires to the jury room.)

10          **THE COURT:** Who's your first witness,  
11          Mr. Moore?

12          **MR. MOORE:** Heidi Scott, as an adverse witness  
13          under the rule.

14          **THE COURT:** How long do you expect that to  
15          take?

16          **MR. MOORE:** A day.

17          **MR. FRAWLEY:** Did you say a day?

18          **MR. MOORE:** A day. I would imagine -- I would  
19          imagine at least half a day. I mean --

20          **THE COURT:** So do y'all want to start now?

21          **MR. MOORE:** I would like to.

22          **MR. FRAWLEY:** We're here.

23          **THE COURT:** All right.

24          **MR. FRAWLEY:** Your Honor, could we have a  
25          bathroom break so she can use the restroom?



1           **THE COURT:** Court's in recess for five minutes.

2           **MR. MOORE:** Thank you, Your Honor.

3                   (Brief recess.)

4           **THE COURT:** Are you ready for the jury,

5           Mr. Moore?

6           **MR. MOORE:** Yes, sir.

7           **THE COURT:** Mr. Frawley, are you ready?

8           **MR. FRAWLEY:** Yes, Your Honor.

9           **MR. MOORE:** Mr. Frawley had wanted to offer two  
10           other exhibits into evidence, which I had originally  
11           objected to, I'll withdraw my objection. If he can  
12           go ahead and offer them in, we can have them  
13           admitted and be done with it.

14           **MR. FRAWLEY:** We'll offer Exhibits 4 and 5, and  
15           I've already given them to the court reporter.  
16           They're already premarked, Your Honor.

17           **THE COURT:** Mark 4 and 5 in evidence, please.

18                   (Defendant's Exhibit Number 4, supplemental  
19           report, and Defendant's Exhibit Number 5, SLED  
20           report, admitted into evidence.)

21           **THE COURT:** Bring in the jury.

22                   (The jury returns to the courtroom.)

23           **THE COURT:** All right. Ladies and gentlemen,  
24           I'm informed the first witness is expected to be  
25           lengthy, but that we need to press on, so we're

1 going to keep going for another 45 to 50 minutes.

2 We'll stop by 5:30.

3 Call your witness.

4 **MR. MOORE:** We'd call, as an adverse witness,  
5 Lieutenant Heidi Scott Jackson.

6 **THE COURT:** Come up to the clerk, please,  
7 ma'am.

8 HEIDI JACKSON,  
9 having been duly sworn, testified as follows:

10 **THE CLERK:** If you'll have a seat and state  
11 your name for the record.

12 **THE WITNESS:** My name is Lieutenant Heidi  
13 Jackson.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 **Q** And I believe you've recently gotten married;  
17 is that correct?

18 **A** Yes, sir.

19 **Q** You used to be Heidi Scott, correct?

20 **A** Yes, sir.

21 **Q** So we can agree that Lieutenant Heidi Scott and  
22 Lieutenant Heidi Jackson are the same person?

23 **A** Yes, sir.

24 **Q** Ma'am, I intend to ask you some simple and  
25 direct questions. If I do that, can you give me

1 simple and direct answers?

2 A Yes, sir.

3 Q Now, as I understand it, you are a deputy with  
4 the Richland County Sheriff's Department?

5 A Yes, sir.

6 Q How long have you been a deputy with the  
7 sheriff's department in Richland County?

8 A Fifteen years.

9 Q And that's been continuous service, correct?

10 A Yes, sir.

11 Q Now, I believe you presently hold the title of  
12 lieutenant; is that correct?

13 A Yes, sir.

14 Q How long have you been a lieutenant with the  
15 Richland County Sheriff's Department?

16 A I believe it's been about five years.

17 Q So at the time the events transpired regarding  
18 Kay Paschal, you were a lieutenant with the Richland  
19 County Sheriff's Department?

20 A Yes, sir.

21 Q Now, a lieutenant, that is an officer level  
22 rank; is that correct?

23 A I believe so. I'm not sure what you're asking.

24 Q Well, you've got a regular deputy, a patrol  
25 officer, sergeant, corporal. You, though, were in a

1 rank above a sergeant?

2 A Yes, sir.

3 Q And that would basically be an officer or  
4 management-level rank with the sheriff's department,  
5 correct?

6 A Yes, sir.

7 Q So not only were you a sheriff's deputy for  
8 Leon Lott, you were also in a management-level  
9 position?

10 A Yes, sir.

11 Q And everything that you did in this case would  
12 have been done in your capacity as a deputy for the  
13 Richland County Sheriff's Department, correct?

14 A Yes, sir.

15 Q And everything that you did in this case was  
16 actually approved by your supervisors, correct?

17 A Yes, sir.

18 Q Who were your supervisors who approved your  
19 actions on behalf of Sheriff Leon Lott?

20 A Captain Melton. At the time, her name was  
21 Captain Weeks. And Stan Smith; he's our major.

22 Q Now, you understand that you have not been  
23 named as a defendant in this case because you can't  
24 be; it has to be Sheriff Lott. You understand that?

25 MR. FRAWLEY: I object, Your Honor. She was

1        named, and we got her dismissed. There's a subtle  
2        distinction there.

3        **THE COURT:** Do you wish to be heard?

4        **MR. MOORE:** No, sir. No, sir, Your Honor.

5        **THE COURT:** Rephrase your question.

6        BY MR. MOORE:

7        **Q**     You understand this action is brought against  
8        Sheriff Lott in his official capacity?

9        **A**     Yes, sir.

10       **Q**     Based upon, primarily, your conduct and the  
11       conduct of others?

12       **A**     Yes, sir.

13       **Q**     All right. Those other people who worked with  
14       you from the Richland County Sheriff's Department in  
15       the prosecution of Kay Paschal, they were also  
16       operating pursuant to their authority as deputies of  
17       Leon Lott and Richland County, right?

18       **A**     Yes, sir.

19       **Q**     Now, I believe that you are an educated person;  
20       is that correct?

21       **A**     Yes, sir.

22       **Q**     You actually hold a master's degree from Troy  
23       University?

24       **A**     Yes, sir, I do.

25       **Q**     And your master's degree is in a subject area

1 known as criminal justice, correct?

2 A Yes, sir.

3 Q And you have been through the South Carolina  
4 Criminal Justice Academy?

5 A Yes, sir.

6 Q As a matter of fact, in order for you to become  
7 a sworn law enforcement officer, you have to go  
8 through the academy; is that correct?

9 A Yes, sir.

10 Q You can work for a short period of time on  
11 probation, but to be a full-time law enforcement  
12 officer, you have to have been trained in South  
13 Carolina law by the Criminal Justice Academy?

14 A Yes, sir.

15 Q And there they train you on things such as  
16 search warrants or warrants or probable cause and  
17 things of that nature, correct?

18 A Yes, sir.

19 Q Now, once you get certified as an officer by  
20 the criminal justice academy, you then are eligible  
21 to be hired by a particular agency, correct?

22 A No, sir. I was hired by the agency first and  
23 they sent me to the criminal justice academy.

24 Q So I believe it's, what, you can work up to a  
25 year before you go and finish the academy, correct?

1       A     I'm not sure how long that you can work for a  
2       sheriff's department. We send our people right  
3       away.

4       Q     Right. But you had a probationary period that  
5       you could work, but then you had to go to the  
6       academy?

7       A     Yes, sir.

8       Q     As a matter of fact, to go to the academy, you  
9       actually have to have an arrangement with a law  
10      enforcement agency to hire you, correct?

11      A     I believe that's true, sir.

12      Q     And your particular law enforcement agency is  
13      the Richland County Sheriff's Department, correct?

14      A     Yes, sir.

15      Q     And, of course, once you become hired by your  
16      agency, you are vested with the jurisdiction of that  
17      particular agency, right?

18      A     Yes, sir.

19      Q     Now, as I understand it, both in the criminal  
20      justice academy and in your master's training, you  
21      learned what it means for you to have jurisdiction,  
22      correct?

23      A     Yes, sir.

24      Q     And what jurisdiction basically means is the  
25      legal authority to do something, correct?

1       **A**     Yes, sir.

2       **Q**     And the Richland County Sheriff has  
3       jurisdiction in Richland County, correct?

4       **A**     Yes, sir.

5       **Q**     Now, to your knowledge, do you know of any  
6       jurisdiction that the Richland Sheriff has outside  
7       of Richland County other than hot pursuit?

8       **A**     Yes, sir, working relationships with other  
9       sheriff's departments.

10      **Q**     Well, under your dealings in Lexington County  
11      here, you weren't working under any sort of  
12      intergovernmental contract between the Sheriff of  
13      Lexington County and the Sheriff of Richland County,  
14      were you?

15      **A**     No, sir.

16      **Q**     All right. So except for intergovernmental  
17      contracts which extend jurisdiction, the sheriff's  
18      jurisdiction is limited to Richland County?

19      **A**     Yes, sir.

20      **Q**     And, of course, you can have no further  
21      jurisdiction than the sheriff has, correct?

22      **A**     Yes, sir.

23      **Q**     So you knew all along that your jurisdiction to  
24      act as a law enforcement officer was limited to the  
25      borders of Richland County?



1       **A**     No, sir, I did not know that all along.

2       **Q**     Well, you know it now, correct?

3       **A**     No, sir. I don't know fully now because I was  
4       not told that by the solicitors.

5       **Q**     Well, at any point in time in your studies at  
6       Troy University, did you ever learn that you can  
7       have more jurisdiction than the territorial limit  
8       where you work?

9               **MR. FRAWLEY:** Your Honor, I'll object to this  
10       line. He's asking for a legal conclusion that is,  
11       is something really for Your Honor's purview, not  
12       for this officer. Whether it's jurisdiction or not  
13       is a matter of law; it's not a matter of fact from  
14       this witness.

15              **THE COURT:** It can go to her intent and  
16       knowledge. I don't disagree with you necessarily,  
17       but I think he can ask these questions. Your  
18       objection is overruled.

19              **MR. FRAWLEY:** Thank you, Your Honor.

20       BY MR. MOORE:

21       **Q**     Ma'am, did you have any training anywhere that  
22       taught you that you, as a Richland County deputy,  
23       had any jurisdiction outside of the borders of  
24       Richland County?

25       **A**     No, sir.

1 Q As I understand it, the Richland County Sheriff  
2 has jurisdiction in Richland County, and the  
3 Lexington Sheriff has jurisdiction in Lexington  
4 County, correct?

5 A Yes, sir.

6 Q Do you know of the existence -- have you ever  
7 seen any mutual aid agreement which would have  
8 allowed you to prosecute any case outside of  
9 Richland County?

10 A I've seen mutual aid agreements before.

11 Q Do you know of one in this case between  
12 Richland and Lexington County which would have  
13 authorized you to do anything in this case in  
14 Lexington County?

15 A No, sir.

16 Q Now, under your conduct in this case, as I  
17 understand it, you do not claim to have acted  
18 pursuant to any mutual aid agreement, correct?

19 A Yes, sir.

20 Q That's true, right?

21 A Yes, sir.

22 Q Nobody from Lexington County ever asked you to  
23 come over here and investigate a case dealing with  
24 Kay Paschal, did they?

25 A No, sir.

1       **Q**     And the assistance of backup or the exercise of  
2       jurisdiction, no law enforcement officer from  
3       Lexington County ever asked you to do what you did,  
4       correct?

5       **A**     Yes, sir.

6       **Q**     And what you did was certainly not done in any  
7       form of hot pursuit, was it?

8       **A**     No, sir.

9       **Q**     Do you know, as we are here today, what, if  
10      any, law enforcement authority you had in Lexington  
11      County when you signed the arrest warrants against  
12      Kay Paschal?

13      **A**     Yes --

14           **MR. FRAWLEY:**  Objection, Your Honor.  She  
15      didn't sign arrest warrants.  She signed affidavits  
16      that provided probable cause for the warrant.  I'll  
17      object to the mischaracterization of the testimony.

18           **MR. MOORE:**  I'll change that, Your Honor.

19           **THE COURT:**  All right.

20      **BY MR. MOORE:**

21      **Q**     Ma'am, did you sign an affidavit that is part  
22      of a document that calls itself an arrest warrant?

23      **A**     Yes, sir.

24      **Q**     An arrest warrant, as I understand it, consists  
25      of two things:  It consists of an affidavit signed

1 by the affiant, and it consists of the order for  
2 arrest signed by the judge, correct?

3 A Yes, sir.

4 Q The judge signs the order of arrest based upon  
5 what is sworn to on the affidavit, correct?

6 A Yes, sir.

7 Q So the order for arrest that was procured in  
8 this case was done based upon an affidavit that you  
9 signed, correct?

10 A Yes, sir.

11 Q And at the time you signed the warrant which  
12 led the judge to sign the -- the time you signed the  
13 affidavit on the warrant, you were not deputized in  
14 Lexington County by our law enforcement of any type,  
15 correct?

16 A Correct.

17 Q Do you have the power to arrest in Richland  
18 County?

19 A Yes, sir.

20 Q To your knowledge, do you have the power to  
21 arrest in Lexington County?

22 A Sir, I did ask that question of solicitors --  
23 two solicitors, and I asked that question of the  
24 judge when I went to the judge. So, yes, I did  
25 believe that I did have that authority to do that.

1 Q Do you know?

2 A At that time, that's what I believed I had the  
3 authority to do.

4 Q Do you now know, ma'am, whether or not you have  
5 the power of arrest in Lexington County?

6 A Right now I would not do that.

7 Q Why not?

8 A Because this has been a lot of trouble.

9 Q Now, as I understand it, there are lots of  
10 different types of police officers, correct?

11 A Yes, sir.

12 Q You got road officers who basically patrol in  
13 their cruisers, right?

14 A Yes, sir.

15 Q You've got supervising officers who basically  
16 supervise those road officers, right?

17 A Yes, sir. Our supervisors are out on the road  
18 as well, so they're interacting with those deputies,  
19 yes, sir.

20 Q You have investigators and detectives; is that  
21 correct?

22 A Yes, sir.

23 Q Have you ever been trained as a detective?

24 A Yes, sir, as an investigator.

25 Q No, ma'am, as a detective. Have you ever been

1 trained as a detective?

2 A We do not use the term detective. We use the  
3 term investigator.

4 Q I see.

5 Now, before you became what -- are you still a  
6 victim's advocate?

7 A I'm certified as a victim's advocate, as well  
8 as an investigator and a supervisor.

9 Q Well, at the time you swore on the arrest  
10 warrant that led to the incarceration of Kay  
11 Paschal, were you working as a victim's advocate?

12 A No, sir. I was working in the capacity as an  
13 investigator on that case.

14 Q I see. Well, were you working at that time in  
15 the Victim's Advocate Services Unit for Richland  
16 County?

17 A No, sir. It's called the Victim's Services  
18 Unit. And it's composed of the victim advocates,  
19 the Special Victims Unit Project HOPE -- Helping Our  
20 Precious Elderly -- and the Chaplains Corps.

21 Q Were you working in that division at the time  
22 you signed the affidavit that led to the arrest of  
23 Kay Paschal?

24 A Yes, sir.

25 Q And I believe before you became in the Victim's

1 Services Unit for Richland County, you worked as  
2 what's called a school resource officer; is that  
3 correct?

4 A Yes, sir.

5 Q What school did you work in?

6 A I worked at Killian Elementary School, Keels  
7 Elementary School, Denny Terrace Elementary School.  
8 And -- and I would serve at other schools when  
9 someone else -- one of the other school resource  
10 officers were out.

11 Q And you're the person who swore to the  
12 affidavit in Lexington that led to the arrest of  
13 Kay; is that correct?

14 A Yes, sir.

15 Q And I believe you've been trained in how to  
16 prepare and secure a warrant; is that right?

17 A Yes, sir.

18 Q Did you assist in the preparation of the  
19 warrant?

20 A In the -- I assisted with the affidavit.

21 Q Ma'am, did you actually participate in  
22 preparing the affidavit which led to Judge Whittle  
23 signing the warrant which placed Kay Paschal in  
24 jail?

25 A \ Yes, sir. I provided Judge Whittle with

1 information about that affidavit. He typed that  
2 affidavit up himself.

3 Q Yes, ma'am, but the words for that affidavit  
4 came from whom?

5 A Yes, sir. Those were my words, sir.

6 Q So the words that are contained in the  
7 affidavit on the arrest warrant are words that you  
8 gave Judge Whittle?

9 A Yes, sir.

10 Q You told the judge what to put in the affidavit  
11 and he typed them?

12 A Yes, sir.

13 Q When you met with Judge Whittle and gave him  
14 the words for the affidavit that you swore to, did  
15 you tell him that Lexington County had done an  
16 investigation into the allegations?

17 A Yes, sir. I did tell him about Detective  
18 Baumgardner and why he couldn't finish the case.

19 Q Right. Now, do you know that under our  
20 procedure, a warrant is not to be issued unless it  
21 is sought by a law enforcement officer acting in his  
22 official capacity?

23 A Yes, sir.

24 Q Ma'am, tell me this: At the time you told  
25 Judge Whittle what to type, where were you?



1       **A**     I was at Judge Whittle's office, and I did  
2       share with him that I was a Richland County officer.

3       **Q**     So at the time you dictated the affidavit which  
4       led to Kay's arrest to the judge, you told him that  
5       you're a Richland County officer?

6       **A**     Yes, sir.

7       **Q**     Well, in Lexington County, would you tell the  
8       ladies and gentlemen of the jury what official  
9       capacity you claimed to have had when you signed the  
10      warrant?

11      **A**     Yes. I checked with the solicitor here in  
12      Lexington County, and I also ran that same thing by  
13      the solicitor in Richland County and I ran it by the  
14      judge. So that's what capacity that I believed that  
15      I could do this.

16      **Q**     No, ma'am. What official capacity did you have  
17      to act in Lexington County? I don't want to talk  
18      about who you checked with. I want to know when you  
19      signed the warrant, we know, according to the  
20      statute, that you had to have been acting in your  
21      official capacity. I want to know what official  
22      capacity you claimed to have acted in in Lexington  
23      County when you dictated the affidavit to Judge  
24      Whittle and you basically signed it?

25      **A**     I had a very large case in Richland County, and

1 all the evidence for this case was found in -- while  
2 I was working that case in Richland County. We  
3 uncovered the transaction that took place in  
4 Lexington County while I was working that case. And  
5 so that's the authority that I was working under is  
6 that I had a very large case in Richland County.

7 Q No, ma'am. I want to know about this case.  
8 I'm not talking about the Richland County case.

9 The code section here, Exhibit 20, I'm going to  
10 read this language and see if we can all agree to  
11 it: An arrest warrant may not be issued for the  
12 arrest of a person unless sought by a law  
13 enforcement officer acting in their official  
14 capacity.

15 Now, I want to know what official capacity you  
16 had or claimed in Lexington County at the time you  
17 signed the warrant, which couldn't be signed by you  
18 unless you were in your official capacity?

19 A Sir, I signed an affidavit on the warrant  
20 telling -- explaining the truth of what happened.

21 Q Yes, ma'am. But what this basically -- but  
22 you're the one who went to the judge seeking the  
23 warrant, correct?

24 A Yes, sir. The judge signed that warrant.

25 Q Yes, ma'am, because you were the one who sought

1 it. You came, you sought the warrant, you asked him  
2 to issue it, and you basically dictated the language  
3 which led to the issuance of the warrant, correct?

4 **A** I asked the -- I told the judge about what  
5 happened, and I signed the affidavit on the warrant,  
6 and the judge signed the warrant.

7 **Q** Yes, ma'am. So we now know that you sought the  
8 warrant. The language of the code, which you're  
9 sworn to uphold, says, An arrest warrant may not be  
10 issued for the arrest of a person unless sought by a  
11 law enforcement officer acting in their official  
12 capacity.

13 Now, you have told us that you're the person  
14 who sought the warrant.

15 **MR. FRAWLEY:** Your Honor, I'll object to this  
16 line of questioning on the grounds that he's asking  
17 for an interpretation of a statute with regard to  
18 jurisdictional matters that are beyond what she's  
19 competent to do. She's obviously there. She said  
20 that she had a case she was investigating in  
21 Richland County, it had poured over to Lexington  
22 County, and she's there as a Richland County law  
23 enforcement officer. This statute doesn't say  
24 anything about what county they have to be in.

25 **MR. MOORE:** Your Honor, I don't believe she

1       said any of those things, but I simply wanted to  
2       know what official capacity she claims to have had  
3       in Lexington County when she sought the warrant. So  
4       far I've heard her say none, but I'm trying to find  
5       out.

6               **MR. FRAWLEY:** She testified she had a big case  
7       in Richland County which poured over to Lexington,  
8       that's why she was in Lexington.

9               **THE COURT:** Anything else?

10              **MR. MOORE:** No, sir.

11              **MR. FRAWLEY:** No, sir.

12              **THE COURT:** Asked and answered.

13       BY MR. MOORE:

14       **Q**     Ma'am, the big case you had in Richland County  
15       that you said poured over to Lexington, there wasn't  
16       any warrant issued in that case, was it?

17       **A**     In Richland County?

18       **Q**     Right.

19       **A**     She was arrested in Richland County as well.

20       **Q**     That was much, much later, correct?

21       **A**     Yes, sir.

22       **Q**     That was after your charges were dismissed for  
23       lack of probable cause, correct?

24       **A**     No. My case was not dismissed for lack of  
25       probable cause. And, yes, it was much later.

1       **Q**     Well, ma'am, you would agree that the  
2       magistrate at the probable cause hearing dismissed  
3       the case, correct?

4       **A**     Yes, sir.

5       **Q**     And, of course, you understand that a  
6       magistrate at a probable cause hearing, if he's  
7       going to dismiss the case, is only authorized to  
8       dismiss the case for lack of probable cause. You  
9       know that?

10       **MR. FRAWLEY:** Objection. He's asking for a  
11       legal conclusion. She's not a lawyer nor a judge.

12       **THE COURT:** Do you wish to be heard?

13       **MR. MOORE:** No, sir.

14       **THE COURT:** Overruled.

15       BY MR. MOORE:

16       **Q**     Ma'am, you know the only way a magistrate can  
17       dismiss a case at a preliminary hearing is for lack  
18       of probable cause. That's the truth, isn't it?

19       **A**     No, I don't believe that's the only reason,  
20       sir.

21       **Q**     Do you know -- well, tell me this: Other than  
22       a lack of probable cause, tell me any other reason  
23       that a magistrate at a probable cause hearing can  
24       dismiss the case.

25       **A**     Sir, what he had said was that I could take it

1 to the grand jury if I wanted to. He also said that  
2 this was a different type of situation.

3 Q Ma'am, do you know of any reason a magistrate  
4 at a probable cause hearing can dismiss a case  
5 except for lack of probable cause?

6 A No, sir.

7 Q All right. So back to -- and we do know that  
8 the magistrate dismissed the case at the probable  
9 cause hearing, correct?

10 A Yes, sir.

11 Q So you testified that he didn't dismiss it for  
12 lack of probable cause. If the magistrate didn't  
13 dismiss it for the only reason he could dismiss it,  
14 which was lack of probable cause, why do you claim  
15 he dismissed it?

16 A Is that a question, sir?

17 Q Yes, ma'am.

18 A Yeah. He mentioned that this was -- he was  
19 looking on the computer and he even referred to it,  
20 that he had to keep looking on the computer because  
21 he was unsure of some aspects of this case.

22 Q Well, ma'am, you've told us that a magistrate  
23 may only dismiss a case at a probable cause hearing  
24 for lack of probable cause. You've told us that  
25 this magistrate dismissed this case at the probable

1       cause hearing, and yet you've told us he didn't  
2       dismiss it for lack of probable cause.

3               I simply want to know from you, if he didn't  
4       dismiss it for lack of probable cause, why do you  
5       claim he dismissed it?

6               **MR. FRAWLEY:** The question's been asked and  
7       answered several times. And it's also a preliminary  
8       hearing, not just a probable cause hearing.

9               **THE COURT:** Do you wish to be heard?

10              **MR. MOORE:** Your Honor, I will change the  
11       question to use the word preliminary hearing instead  
12       of probable cause hearing even though they're  
13       interchangeable.

14              **THE COURT:** The objection on asked and answered  
15       is sustained.

16       BY MR. MOORE:

17       **Q**     Well, ma'am, on May the 3rd, 2011, did you have  
18       any official capacity in Lexington County that you  
19       know of?

20       **A**     On May the 3rd is just the extension of the  
21       case flooding over from Richland County into  
22       Lexington County.

23       **Q**     I see. And, of course, there are at least two  
24       kinds of warrants. There are things called arrest  
25       warrants, which deprive people of their liberty,

1       having them locked up, and there's a thing called a  
2       search warrant, which gives law enforcement, with  
3       proper authority, the right to go and search  
4       someone's property and seize property, correct?

5       **A**     Yes, sir.

6       **Q**     Did you have any authority to seize property in  
7       Lexington County on May the 3rd, 2011?

8       **A**     Yes, sir, that -- if you're talking about the  
9       search warrant that was done at Kitty Hawk, yes,  
10      sir.

11      **Q**     All right.

12      **A**     I'm not sure of the date that that search  
13      warrant was done right off the top of my head,  
14      that's why I looked puzzled for a moment.

15      **Q**     Are you a bonded law enforcement officer of  
16      Lexington County?

17      **A**     No, sir.

18      **Q**     Ma'am, I'm going to show you what's been  
19      identified as Plaintiff's Exhibit Number 6. And if  
20      you'll excuse me, I'm going to walk around. This  
21      appears to be a search warrant that was executed for  
22      Kay's home over here in Lexington County, doesn't  
23      it?

24      **A**     Yes, sir.

25      **Q**     This warrant was executed --



1       **A**     Can I see the warrant so I can make sure it's  
2       the same warrant?

3       **Q**     Certainly, you may.

4       **A**     Okay. Yes, sir.

5       **Q**     This warrant was actually served upon Kay while  
6       she was trying to move back into her home in  
7       Lexington County, wasn't it?

8       **A**     I'm not aware of that, sir.

9       **Q**     Well --

10      **A**     This is the first time I've heard of that, sir.

11      **Q**     You were there and participated in the search  
12      warrant, weren't you?

13      **A**     Yes, sir, I did.

14      **Q**     As a matter of fact, both of the Wallace  
15      children were there at the house, too, weren't they?

16      **A**     At the Kitty Hawk search warrant, no, they were  
17      not.

18      **Q**     Who was there from the Wallace family?

19      **A**     I don't believe anyone was there from the  
20      Wallace family.

21      **Q**     Well, ma'am, on this search warrant, if we look  
22      at it, it says that the officer involved with the  
23      search warrant is Lieutenant Heidi Scott, correct?

24      **A**     Yes, sir.

25      **Q**     Well, ma'am, if you're a Richland County

1 deputy, what in the world are you doing being the  
2 investigating officer on a search warrant being  
3 executed on someone's home in Lexington County?

4 **A** Yes, sir. The case that I worked in Richland  
5 County, the -- an office of Mr. Wallace was closed  
6 downtown and he started working from his home, which  
7 was on Spring -- in Spring Lake, 205 Spring Lake.  
8 And all the office materials from the downtown  
9 office were moved to the Kitty Hawk house. So there  
10 were a lot of files that were -- and computers that  
11 were used in this case stored at the Kitty Hawk  
12 house..

13 **Q** Well, ma'am, if you're not a bonded law  
14 enforcement officer of Lexington County, what gave  
15 you the authority to search?

16 **A** That warrant, sir.

17 **Q** Yes, ma'am, but if we look at the face of the  
18 warrant -- let's read it together here so we can  
19 make sure we understand what it says. The warrant  
20 is to any bonded law enforcement of this state or  
21 county or the municipality of blank. So we know, if  
22 we look at the warrant, the person who was  
23 authorized to search was a bonded law enforcement  
24 officer of Lexington County or of the state, which  
25 would be somebody like SLED, right?

1       **A**    No, sir. I never misrepresented myself when I  
2       went to Judge Whittle --

3       **Q**    I didn't ask about --

4       **A**    -- about the search warrant.

5       **Q**    Yes, ma'am. But the search warrant, let's make  
6       sure we understand who it authorizes to do anything.  
7       You were certainly not a bonded law enforcement  
8       officer for the State of South Carolina, were you?

9       **A**    No, sir.

10      **Q**    And you weren't a bonded law enforcement  
11      officer for Lexington County, correct?

12      **A**    No, sir.

13      **Q**    And the authority for you to enter Kay  
14      Paschal's home and do anything would be based upon  
15      the search warrant, correct?

16      **A**    Sir, I did have Springdale Police Department  
17      with me when I went on that search warrant.

18      **Q**    You may have, ma'am, but the person who  
19      actually signed the affidavit for the search warrant  
20      is you, correct?

21      **A**    Yes, sir.

22      **Q**    And the person --

23           **MR. FRAWLEY:** Your Honor, may I address the  
24      Court out of the presence of the jury? I have a  
25      legal matter, please.

1           **THE COURT:** Sure.

2           Ladies and gentlemen, please step in the jury  
3 room. Don't discuss the case.

4           (The jury retires to the jury room.)

5           **MR. FRAWLEY:** Your Honor, I've cited, in my  
6 trial brief, the case of State v. Hammond. It's 242  
7 S.E.2d 411, 270 S.C. 347. That case deals with a  
8 search warrant that was acquired by an officer that  
9 was not in the jurisdiction where the material was  
10 found to be subject of the search warrant.

11           And the court in that case, on page 352,  
12 concluded that the fact that the place to be  
13 searched was outside of the officer's jurisdiction  
14 did not in and of itself render the search warrant  
15 invalid.

16           Mr. Moore is pursuing that this search warrant  
17 was invalid because a Richland County law  
18 enforcement officer has gotten a search warrant  
19 following a Richland County investigation into  
20 Lexington County and that that search warrant is  
21 somehow improper. State v. Hammond says that it is  
22 not invalid, only -- for the only reason that it's  
23 outside of the jurisdiction.

24           Now, that was a case which involved a city  
25 police officer within a county, and they were over

1 lines there, but it's comparable to this case, so I  
2 would ask Your Honor to look at page 352. That's  
3 actually the state court -- the state court page.  
4 The West page would be page 414. 242 S.E.2d 411 at  
5 page 414 under headnote one.

6 MR. MOORE: Your Honor, I'm not sure that  
7 Mr. Frawley -- I'm not sure I even understand what  
8 the objection is, but I would like to make my  
9 position on this incredibly clear as to what I'm  
10 asking this lady.

11 I don't know what the search warrant may or may  
12 not have said in any other case, but I do know this:  
13 A search warrant is a court order. And a search  
14 warrant is an order which grants particular  
15 authority to particular people to do particular  
16 things.

17 In this case, the search warrant reads as  
18 follows: To any bonded law enforcement officer of  
19 this state or county. And it's referenced to  
20 Lexington County.

21 So the search warrant has been issued to any  
22 bonded law enforcement officer of Lexington County  
23 or state. She says she wasn't a bonded officer of  
24 the state, and she says she's not a bonded officer  
25 of Lexington County. She has no right to do anymore

1       than what the arrest -- I mean, the search warrant  
2       has authorized.

3               Now, she might give this to a bonded law  
4       enforcement officer of Lexington County. This  
5       actually doesn't even give the city officers the  
6       authority to do anything because the name of the  
7       municipality is blank. The only people who have the  
8       authority to do anything under this search warrant  
9       is a bonded law enforcement officer of Lexington  
10      County.

11             I can show the Court the face of the order, but  
12      that's clearly what it says. I didn't write it, but  
13      I know that it is what it is. This search warrant  
14      gives this lady no authority to do anything in  
15      Lexington County. This search warrant also doesn't  
16      give any officer of Springdale the authority to do  
17      anything in Lexington County. The only person  
18      authorized to do any search pursuant to this warrant  
19      is a bonded law enforcement officer of Lexington  
20      County. And I can show the Court the actual  
21      language on the warrant.

22             **MR. FRAWLEY:** I'd like to see the actual  
23      language because these are all exhibits that I don't  
24      have copies of because you didn't provide any.

25             **MR. MOORE:** Well, I'm happy to. I've got a

1 whole stack for you right here.

2 And, again, I apologize for speaking directly  
3 to Mr. Frawley. It's Exhibit Number 6. And if I  
4 might show the Court the actual language I'm talking  
5 about, but it's pretty clear who it's directed to.

6 **MR. FRAWLEY:** And, Your Honor, to clarify, if  
7 Mr. Moore is confused as to the subject of my  
8 objection, I'm basing my objection on State v.  
9 Hammond and the language that says, The fact that  
10 the place to be searched was outside of the  
11 officer's jurisdiction did not in and of itself  
12 render the search warrant invalid.

13 If Mr. Moore is trying to so narrowly interpret  
14 this order as to say that it has to be a bonded law  
15 enforcement officer of this county or state, she is  
16 a law enforcement officer in the State of South  
17 Carolina, not for a South Carolina agency, but she  
18 is bonded, and she is within the State of South  
19 Carolina.

20 **MR. MOORE:** Of course, Your Honor, now we have  
21 a speaking objection with the witness on the stand,  
22 which there's no way for me to cure that. But,  
23 again, I'm not saying that the search warrant was  
24 necessarily ineffective. I'm simply saying that  
25 based on her own testimony, which has been asked and

1 answered, she has told us that she's neither a  
2 bonded law enforcement officer of the state and she  
3 has told us that she is not a bonded law enforcement  
4 officer of the county.

5 Counsel might be correct, somebody who was a  
6 bonded law enforcement officer of Lexington County  
7 may have been able to do a search, but Heidi Scott  
8 couldn't do a search and even Springdale couldn't do  
9 a search.

10 They may only do, pursuant to the constitution,  
11 what the warrant tells them they can do. And that  
12 warrant is not directed to Heidi Scott, it's not  
13 directed to the officers of Richland County, and  
14 it's not directed to anybody in Springdale. And it  
15 basically says who may conduct the search and what  
16 they're to search and what they're to do.

17 What basically happened here is -- and, again,  
18 if we were in a criminal case, as the case  
19 Mr. Frawley cites, and somebody may have done the  
20 search, it doesn't necessarily invalidate the search  
21 warrant. I'm not saying the search warrant was  
22 invalid. I'm simply saying she didn't have the  
23 authority to execute it, and she didn't have the  
24 authority to take property pursuant to that warrant  
25 either.



1           **MR. FRAWLEY:** The judge signed it, the judge  
2 gave her the authority, and she executed it  
3 appropriately.

4           **MR. MOORE:** The judge signed it, but it didn't  
5 give her the authority.

6           **THE COURT:** Y'all let me read, okay? Y'all  
7 have a seat and let me read it.

8           (Pause.)

9           **THE COURT:** I'm going to send the jury home for  
10 the day. Bring the jury in.

11           (The jury returns to the courtroom.)

12           **THE COURT:** All right. Ladies and gentlemen,  
13 I'm going to let you go home for the day. I want  
14 you back tomorrow, please, at 9:45 in the jury room.  
15 Remember what I told you about if you have some true  
16 emergency that arises, please let us know. And I  
17 hope you have a pleasant evening. I need you in the  
18 jury room at 9:45 in the morning. We're going to  
19 stay here and work a little bit, and we're going to  
20 come back a little bit before that and work on some  
21 things. Follow the bailiff, please.

22           (The jury was excused for the day.)

23           **THE COURT:** All right. Lieutenant, you may  
24 step down. Don't discuss your testimony with  
25 anyone.

1           **THE WITNESS:** Yes, sir.

2           (Witness leaves the witness stand.)

3           **THE COURT:** I've tried to review the law. I've  
4 read this Hammond case just now. In the Hammond  
5 case, it's the city officers in Greenville went to a  
6 county magistrate to obtain a search warrant. And  
7 it reads that no cases are cited nor have we  
8 discovered any which support Hammond's contention  
9 that the search warrant was improvidently granted  
10 because the area to be searched was outside of the  
11 applicant's -- that would be the person applying for  
12 the search warrant -- outside the applicant's  
13 jurisdiction. At the time Officer Parsons applied  
14 for the search warrant, he was acting in his  
15 official capacity as a peace officer having  
16 jurisdiction in the city, which is a portion of  
17 Greenville County. The issuing magistrate was  
18 empowered by statute to issue search warrants for  
19 searches to be conducted in Greenville County. We  
20 conclude that the fact that the place to be searched  
21 was outside of Officer Parsons' jurisdiction did  
22 not, in and of itself, render the search warrant  
23 invalid.

24           I tried to look at other cases that came up  
25 that cited Hammond, and I didn't find anything that

1 would be helpful to me in the brief time I've had to  
2 look. The court in Hammond's 1978 case -- the event  
3 occurred in 1976, I think -- it doesn't really flesh  
4 out a whole lot about the basis. It doesn't mention  
5 the statutes.

6 The cases I have read repeatedly talk about the  
7 deference that the courts give to the validity of  
8 search warrants. So here's what I want you to do:  
9 I want you to meet me at 9:30 in the morning, and see  
10 if you can provide me with any other authority other  
11 than the Hammond case on this issue.

12 Yes, sir.

13 **MR. MOORE:** Might I just make sure that we stay  
14 on what I'm saying. I'm not conceding that the  
15 search warrant is a valid search warrant. I'm not  
16 saying it is or isn't. What I'm saying is this:  
17 Even if we concede it to be a valid search warrant,  
18 no one is authorized to do anything under that  
19 warrant except for those people who the warrant  
20 authorizes to act.

21 So let's just assume for a moment the search  
22 warrant is perfectly valid, Heidi Scott can come  
23 from Richland County, swear out a search warrant in  
24 Lexington County, fine. The problem is the warrant  
25 is directed to bonded law enforcement officers of

1     Lexington County, which she says she's not one of.

2             So she's holding in her hand a perfectly valid  
3     warrant, but she can't do anything under that  
4     warrant without having it done by a Lexington County  
5     deputy because that's the only people authorized to  
6     act pursuant to what is arguably a valid warrant.

7             Now, I think the warrant has serious questions  
8     as to whether it's valid or invalid, but that  
9     doesn't matter. It doesn't matter in this case if  
10    that warrant was properly executed by Judge Whittle.  
11    Once it was properly executed, Heidi Scott couldn't  
12    do anything under it, neither could anybody from any  
13    municipality because the municipality is blank. The  
14    only persons that would have had the authority to  
15    search would have been the persons to whom the  
16    warrant is directed. That's got to be just textbook  
17    law. It's simple.

18            If you give me a court order to do something,  
19    Pat Frawley can't do something under that order  
20    because I'm the one directing it. Now, if Lexington  
21    County officials had said, Hey, Heidi, you go out  
22    and do this for us under our authority, maybe, but  
23    actually, the warrant is limited only to bonded law  
24    enforcements of Lexington County. It says it on its  
25    face.

1           It says, To any bonded law enforcement officer  
2       of this county -- she's not one of those -- Or this  
3       state. Well, that may be ambiguous, but she's  
4       already testified, and it's been asked and answered,  
5       Are you a bonded law enforcement officer of the  
6       state, she says, No. Or the municipality of blank.  
7       So no municipal officer was authorized to do  
8       anything on the face of the warrant.

9           So what -- there's zero -- there is zero on the  
10      face of that warrant that authorizes a bonded law  
11      enforcement officer from Richland County to do  
12      anything. And, of course, what she does is she goes  
13      out with somebody from Springdale and she seizes all  
14      this property. She files the return in Lexington  
15      County and hauls all the stuff from Lexington County  
16      over to Richland County. Then when the prosecution  
17      is over and there's zero criminal case pending, they  
18      won't give it back. It's beyond me.

19          I mean, the argument that, well, we just do it  
20      that way or that's just a form, you know, the  
21      constitution, the Fourth Amendment of the United  
22      States Constitution is part of the Bill of Rights.  
23      The search and seizure is going to be clearly  
24      dictated by what the judges say they can do based  
25      upon probable cause. The judge gave her no

1 authority to do anything in Lexington County.

2 **THE COURT:** Well, I understand your argument.

3 The problem is that they've cited a case, and --

4 **MR. MOORE:** But that case is an argument about  
5 whether the warrant's valid or not. Who cares?

6 **THE COURT:** No. It's more than that. There's  
7 a discussion in the case, if I read it correctly in  
8 the hurried time I've had to read it, there's a  
9 discussion in there about the city officials  
10 executing the search warrant. And the defendant in  
11 that case made the claim in an affidavit, he didn't  
12 take the stand, but he made a claim that none --  
13 there were no county officers there.

14 **MR. MOORE:** But --

15 **THE COURT:** Wait a minute. Let me finish.

16 **MR. MOORE:** I'm sorry.

17 **THE COURT:** And the court said that there were  
18 county officers there. It didn't say the city  
19 officers didn't participate in the search.  
20 Presumably, the city officials did participate in  
21 the search. And what I'm telling you is they've got  
22 a case. I want you to talk to me in the morning  
23 about how this case is distinguishable or not.

24 The evidence wouldn't even come in if there was  
25 a ruling from the Court that the search warrant was

1 valid and it was the right of the defendant's  
2 officer to execute it. I mean, if you go into all  
3 that that we've gone through and if there should  
4 have been a ruling in that regard or there is a  
5 ruling in that regard, then it doesn't matter what  
6 she thought, perhaps.

7 Did you have something, Mr. Frawley?

8 **MR. FRAWLEY:** Just that the language that  
9 Mr. Moore is citing that it's limited to law  
10 enforcement officers of this county, it says,  
11 literally, To any bonded law enforcement officer of  
12 this state or county or of the municipality.

13 She -- the question -- Mr. Moore keeps saying  
14 that she denied she was a bonded officer of the  
15 state. The context to that question was, You don't  
16 work for a state agency, do you?

17 Clearly, she's a Richland County officer who is  
18 bonded, and that's with the State of South Carolina.  
19 I think that's what that's -- it doesn't say state  
20 agency or a political subdivision of the state. So  
21 the argument there is kind of obtuse to what Your  
22 Honor is talking about right now.

23 **THE COURT:** Well, I think she testified she's  
24 not a bonded officer of the state. Whether she knew  
25 what she was saying or not, that's a different

1 issue.

2 MR. FRAWLEY: Yes, sir.

3 THE COURT: Whether she would fall under that  
4 classification at the beginning of the preprinted  
5 search warrant form or not, I don't know. That's  
6 why I want y'all to look at it overnight. I hate to  
7 put that on you, but I just got hit with this out of  
8 the blue, and the answer is, I don't know.

9 At the time this happened, I was in law school,  
10 Hammond. And I can't find any cases since then that  
11 deal with it presumably because there probably  
12 aren't many situations where officers from one  
13 county go into another county to authorize search  
14 warrants except -- or to execute search warrants or  
15 obtain search warrants except where there's some  
16 sort of multijurisdictional task force. I don't  
17 even know if those existed in 1976.

18 Y'all look it up. 9:30 in the morning. If you  
19 want to try to e-mail tonight, I may look at it, I  
20 may not, depending on what I find at home. But I'll  
21 talk to you in the morning at 9:30 good Lord  
22 willing.

23 MR. MOORE: Thank you, Your Honor.

24 MR. FRAWLEY: Thank you, Your Honor.

25 THE COURT: During the recess, ma'am,



1 Lieutenant, you're not permitted to discuss your  
2 testimony with anybody. You understand that?

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** Okay. You need to be back here  
5 tomorrow, please, at 9:30. Thank you.

6 **MR. FRAWLEY:** Thank you, Your Honor.

7 (The proceedings were concluded for July 21,  
8 2014.)

9 (The following proceedings were held on July  
10 22, 2014.)

11 **THE COURT:** All right. What do we need to put  
12 on the record?

13 **MR. MOORE:** Your Honor, I would simply withdraw  
14 that last question. That should resolve the legal  
15 issues, and we should be able to move forward, I  
16 would hope.

17 **THE COURT:** Mr. Frawley?

18 **MR. FRAWLEY:** Your Honor, I got that e-mail  
19 last night as well. And I'm fine with that.

20 Your Honor had sent a follow-up e-mail  
21 inquiring into whether the same issue may come up  
22 later on with regard to other issues or with regard  
23 to a charge. We obviously have raised, as one of  
24 our defenses, the State v. Hammond issue with regard  
25 to whether the arrest warrant is valid, and we're

1       trying to argue by inference that the search  
2       warrants may apply to that, so that may be something  
3       that comes up.

4       The research I did last night, the only thing I  
5       could find was State v. Herring, which I sent to  
6       Your Honor and I copied Jahue with that. I'm not  
7       going to argue it now, but we are continuing to look  
8       to see if we could find something more on point.  
9       State v. Herring is, I think, loosely, by analogy,  
10      applicable, but, at this point, we're fine with  
11      this, but I am taking the position that this may  
12      come up again when it comes to the charge on the  
13      arrest warrant. So, to that extent, we are still  
14      looking for something more on point than State v.  
15      Herring and something more recent than State v.  
16      Hammond.

17           **MR. MOORE:** Your Honor, I agree we'll probably  
18      be talking about this later, but we have found State  
19      versus White, which is 272 S.E. 800, and we have  
20      found State versus Davis, which is 354 S.C. 348, 580  
21      S.E.2d 778, both of which we think basically tend in  
22      our favor on this. But we really would just like to  
23      withdraw the question and move forward, and we can  
24      talk about this hopefully at another time.

25           **MR. FRAWLEY:** And we're, obviously, fine with

1       that.

2               **THE COURT:** All right. The only thing that I  
3       want to say is it seems to me that the issue of  
4       whether the search warrant is valid, whether the  
5       execution of the search warrant is valid, those  
6       would be issues for the Court.

7               **MR. FRAWLEY:** Yes, sir.

8               **THE COURT:** And the reading that I did  
9       yesterday before I left on that Hammond case seems  
10      to indicate that they put a caveat in there about --  
11      something like in and of itself, which seems to me  
12      would require me to have much more of a  
13      fact-specific inquiry in camera before I could make  
14      any such ruling. The only thing I would know at  
15      this point is the language about -- in many --  
16      that's cited in many cases, the language about the  
17      search warrant being facially valid. But if it's  
18      not an issue, it's not an issue.

19              All right. Are we ready for the jury?

20              **MR. FRAWLEY:** The defendant's ready, Your  
21      Honor.

22              **THE COURT:** Are you ready, Mr. Moore?

23              **MR. MOORE:** Yes, sir.

24              **THE COURT:** Are all the jurors here yet?

25              **THE BAILIFF:** I think so. Let me check.

1 (Pause.)

2 **THE BAILIFF:** No, sir. We're lacking two.

3 **MR. FRAWLEY:** Your Honor, do you want  
4 Lieutenant Jackson on the stand before they come in  
5 or do you want her to wait?

6 **THE COURT:** I want her on the stand before they  
7 come in, but they're not here yet, so.

8 **MR. FRAWLEY:** Okay.

9 **THE COURT:** I don't know where she's more  
10 comfortable.

11 **MR. FRAWLEY:** I believe she's okay on the  
12 stand, Your Honor, so she'll come up.

13 **THE COURT:** All right. You're still under  
14 oath, Lieutenant.

15 **THE WITNESS:** Yes, sir.

16 (Witness resumes the witness stand.)

17 **THE COURT:** Bring in the jury.

18 (The jury returns to the courtroom at 9:50  
19 a.m.)

20 **THE COURT:** The question that prompted the  
21 objection is withdrawn.

22 You may continue, Mr. Moore.

23 **MR. MOORE:** May it please, Your Honor. Thank  
24 you.

25 **THE COURT:** Yes, sir.

1 BY MR. MOORE:

2 Q Lieutenant Jackson, yesterday when we broke, I  
3 was asking you a few questions about this search  
4 warrant that you signed the affidavit on. Do you  
5 remember that?

6 A Yes, sir.

7 Q So you signed an affidavit to get a search  
8 warrant in Lexington County and, thereafter, you  
9 signed an affidavit to get two arrest warrants in  
10 Lexington County, correct?

11 A Yes, sir.

12 Q And not only did you sign the affidavits to get  
13 the search warrant in Lexington County for Kay's  
14 home, I believe that you actually participated in  
15 the search of her residence, correct?

16 A Yes, sir.

17 Q And you testified yesterday that at the time  
18 you came to Lexington County and signed the  
19 affidavit for the search warrant, that you were a  
20 bonded law enforcement officer, correct?

21 A Yes, sir.

22 Q What company actually issues your bond?

23 A Sir, I'm not sure. I could not tell you what  
24 company issued the bond. I'm a certified law  
25 enforcement officer, certified by the State of South

1 Carolina, from the South Carolina Criminal Justice  
2 Academy. I'm employed by Richland County, and  
3 they're bonded.

4 Q Well, no, ma'am. I want to know about your  
5 bond. You testified that you were a bonded officer,  
6 and I understand Richland County may have a bond,  
7 but you testified yesterday that you were a bonded  
8 officer. And I simply want to know what bonding  
9 company is it that actually issued you your bond?

10 MR. FRAWLEY: Your Honor, I'll object. I'm not  
11 sure what relevance the identity of the bonding  
12 company that is bonding the Richland County  
13 Sheriff's Department for which she is employed,  
14 whether that's relevant. I'll object to it on the  
15 grounds of relevancy.

16 THE COURT: Do you wish to be heard?

17 MR. MOORE: No, sir.

18 THE COURT: The objection's sustained.

19 BY MR. MOORE:

20 Q Ma'am, have you ever seen the bond that  
21 allegedly applies to you?

22 A No, sir.

23 Q I would ask, please, ma'am, that you read  
24 something for me -- do I have that search warrant?  
25 Did I place that on the table for you?

1           **A**     Yes, sir.

2           **Q**     Yes.  If you would just -- let's publish a  
3           portion of the search warrant.

4           **A**     I'm sorry, I didn't hear you.

5           **Q**     I said, Let's publish.  Let's read for the jury  
6           at least a portion of the search warrant that you ,  
7           obtained.

8                   **MR. FRAWLEY:**  Your Honor, for the record, I  
9           believe that's Plaintiff's Exhibit 6; is that  
10          correct?

11                   **MR. MOORE:**  I don't have the exhibit sticker.

12          BY MR. MOORE:

13          **Q**     Ma'am, would that be Exhibit 6?

14          **A**     Yes, sir.

15                   **MR. FRAWLEY:**  Thank you, Your Honor.

16          BY MR. MOORE:

17          **Q**     The first page appears to be -- it's a search  
18          warrant, State of South Carolina, County of  
19          Lexington, right?

20          **A**     Yes, sir.

21          **Q**     And then on the next page, it's got -- or on  
22          that page, it's got, May 3rd, 2011.

23                   Now, as I understand it, on May 3rd, 2011, you  
24          had not signed the affidavits on the arrest warrants  
25          yet, correct?

1       **A**   No, sir, that's the date I typed it.

2       **Q**   Oh, did you type the search warrant?

3       **A**   Yeah. This first page I did type, sir.

4       **Q**   Did you type the language on the search warrant  
5       about the residence and the affidavit?

6       **A**   Yes, sir.

7       **Q**   Oh, so then this search warrant wasn't prepared  
8       by a judge, it was prepared by you?

9       **A**   Yes, sir. I never stated that this search  
10       warrant was prepared by the judge. The arrest  
11       warrant was but not the search warrant.

12       **Q**   Well, where were you when you prepared the  
13       search warrant?

14       **A**   I was in my office, sir.

15       **Q**   In Richland County?

16       **A**   Yes, sir.

17       **Q**   And after you prepared the search warrant, then  
18       you brought it over and got Judge Whittle to sign  
19       it?

20       **A**   Yes, sir. I brought it to Judge Whittle to  
21       look it over and let me know if he would sign it or  
22       not.

23       **Q**   All right. So the first thing on the second  
24       page there, it says, State of South Carolina, County  
25       of Lexington, correct?



1       A     Yes, sir.

2       Q     And then it says, Search Warrant?

3       A     Yes, sir.

4       Q     And then it says these words, To any bonded law  
5       enforcement officer of this state or county or of  
6       the municipality of blank, correct?

7       A     Yes, sir.

8       Q     So it doesn't list any particular municipality  
9       that it's supposed to apply to?

10      A     Correct.

11      Q     And it says, It appearing, from the attached  
12      affidavit, that there are reasonable grounds to  
13      believe that certain property subject to seizure  
14      under provisions of section 17-13-140 Code of Laws  
15      of South Carolina is located on the following  
16      premises. And then it lists the premises, right?

17      A     Yes, sir.

18      Q     Then it says, Now, therefore, you are hereby  
19      authorized to search the subject premises for the  
20      property described below and to seize such property  
21      if found, correct?

22      A     Yes, sir.

23      Q     All right. Now, since you typed it, you know  
24      what you meant by what you typed, correct?

25      A     Okay. Yes, sir.

1 Q And where it says, Now, therefore, you are  
2 hereby authorized, that would apply to the words, To  
3 any bonded law enforcement officer of the state or  
4 Lexington County, right?

5 A Yes, sir.

6 Q So if we read English the way you typed it, the  
7 search warrant is directed to any bonded law  
8 enforcement officer of the state or Lexington  
9 County, correct?

10 A Yes, sir.

11 Q All right. Now, this bond that you think you  
12 have or say you have, does it extend to your  
13 activities when you are outside of your  
14 jurisdiction?

15 A I believe it does, sir. I'm covered under the  
16 Richland County Sheriff's Department. They're my  
17 employer.

18 Q Do you know if this bond that you've never seen  
19 extends to your activities outside of Richland  
20 County?

21 A Sir, that's not a question I ever asked of my  
22 employer.

23 Q My question wasn't, did you ask of your  
24 employer? My question is, do you know?

25 A No, I don't know.

1 Q And these other officers that went with you to  
2 do the search of Kay's home, do you know if any of  
3 them were bonded?

4 A I would assume that they are because the ones  
5 that work for Richland County Sheriff's Department,  
6 we work under the same conditions. And then the  
7 officer that accompanied us from the police  
8 department also in the jurisdiction that we were in,  
9 I would assume that all the law enforcement officers  
10 in our area are bonded, yes, sir.

11 Q And I appreciate the assumption, but my  
12 question isn't really what do you assume. Do you  
13 know if any of those other officers were bonded?

14 A I've never asked that question of our employer.

15 Q So the answer would be no?

16 A Yes, the answer's no.

17 Q All right. Now, you were asked yesterday if,  
18 when you went to the home to conduct the search back  
19 in May of 2011, if either of the Wallace children or  
20 both of the Wallace children were at Kay's home. Do  
21 you know?

22 A Yes, sir. I was there, and they were not  
23 there.

24 Q They were not there. So you can testify as a  
25 fact that the Wallace children were not there when

1 you came to take the property out of Kay's home?

2 **A** Yes, sir.

3 **Q** Was it just a coincidence that you arrived to  
4 search this woman's home the day she was trying to  
5 move back in after being evicted from her home by  
6 the probate court in Richland County? Was that just  
7 a coincidence?

8 **A** Yes --

9 **MR. FRAWLEY:** Object to that on the grounds  
10 that it assumes facts not in evidence.

11 **THE COURT:** Lay a foundation, please.

12 BY MR. MOORE:

13 **Q** Ma'am, you know you worked closely with the  
14 Wallace children in this case, haven't you?

15 **A** They did provide information. They're the  
16 original complainants on the report.

17 **Q** It would be fair to say that you worked closely  
18 with them, wouldn't it?

19 **MR. FRAWLEY:** The question's been asked and  
20 answered, Your Honor.

21 **THE COURT:** Overruled. You may answer the  
22 question.

23 BY MR. MOORE:

24 **Q** It would be fair to say that you worked closely  
25 with them?

1       **A**     I worked with them as I do anybody who makes a  
2       complaint at the police department. We're required  
3       to communicate with them.

4       **Q**     Well, ma'am, as a matter of fact, you have  
5       actually had handwriting experts review documents in  
6       the Richland County Sheriff's Department, and you  
7       had Elizabeth Wallace with you when the expert was  
8       actually reviewing the documents, haven't you?

9       **A**     I've had -- no, not while they were being  
10      reviewed. We had a meeting together with attorneys  
11      and with the individuals who were -- I'm sorry --  
12      we've had meetings together with all the attorneys  
13      present and with Mr. Dawson. Yes, they have been  
14      part of that.

15      **Q**     Well, let's take a look at Mr. Dawson's report.  
16      You have Mr. Dawson's report there, don't you?

17      **A**     I do, sir.

18      **Q**     Go to the second page under Q/4.

19           **MR. FRAWLEY:** For the record, Your Honor,  
20      that's Defendant's Exhibit Number 4.

21           **THE COURT:** Thank you.

22      BY MR. MOORE:

23      **Q**     The language reads as follows: Exhibit Q/4 was  
24      examined at the Richland County Sheriff's Department  
25      substation on June 8, 2011, in the presence of

1 Richland County Sheriff Lieutenant Heidi Scott and  
2 Ms. Elizabeth Wallace.

3 Now, ma'am, the report that your side has  
4 placed into evidence indicates that the document was  
5 examined on June 8, 2011, in the presence of you and  
6 Elizabeth Wallace. Now, is that true or is that not  
7 true?

8 **A** Yes, sir, that's true. We had two original  
9 power of attorneys.

10 **Q** So we know then that the truth is that you have  
11 actually had examinations by experts and have had  
12 Elizabeth Wallace with you at the time the documents  
13 were being examined?

14 **A** She was present for the one that she had in her  
15 possession, yes, sir.

16 **Q** It would be fair to say you've worked fairly  
17 closely with her if she's basically with you when  
18 the experts are doing their jobs, right?

19 **A** Yes, sir. I work with all my complainants on  
20 the incident reports.

21 **Q** And if you look at Exhibit Number 4 from  
22 Mr. Dawson, the report he issues isn't issued to the  
23 Richland County Sheriff's Department, it's actually  
24 issued to Elizabeth G. Wallace, correct?

25 **A** Yes, sir. They privately paid for Mr. Dawson

1 to do a handwriting analysis, although we use the  
2 State to do our handwriting analysis, yes.

3 Q Oh, so then basically, from what you're telling  
4 us, they hired an expert, paid an expert to help you  
5 investigate the case?

6 A They hired an expert because they wanted to  
7 hire an expert because they wanted to know if that  
8 power of attorney was true or not. We did have that  
9 power of attorney also going to SLED.

10 Q Yes, ma'am. And examining that expert and  
11 working with that expert was part of the  
12 investigation in the case, wasn't it?

13 A Yes, sir.

14 Q So if Ms. Wallace basically hired the expert,  
15 was there when the expert was examining the  
16 documents, there's no question but that Ms. Wallace  
17 was helping you in the investigation of the case,  
18 correct?

19 A Ms. Wallace was providing me with any  
20 information that she had because she's the  
21 complainant on the incident report.

22 Q Well, yes, ma'am. But if the expert witnesses  
23 are issuing reports to Ms. Wallace and if she's  
24 present when the expert witnesses were being talked  
25 to by the sheriff's department, it's pretty clear

1 that Ms. Wallace is not just acting as a victim,  
2 she's acting as an investigator.

3 **MR. FRAWLEY:** Object to the question being  
4 argumentative, Your Honor.

5 **THE COURT:** Do you wish to be heard?

6 **MR. MOORE:** Your Honor, it's true, that's what  
7 she's doing. This lady --

8 **THE COURT:** I don't know that it's true.  
9 That's not for me to decide.

10 **MR. MOORE:** Your Honor, the question is the  
11 degree of which these people worked together closely  
12 is a relevant issue in the case. The question is  
13 perfectly legitimate and it's perfectly relevant and  
14 it's not argumentative.

15 **MR. FRAWLEY:** I disagree.

16 **THE COURT:** I do, too. Rephrase your question.  
17 I disagree that it's not argumentative.

18 **MR. MOORE:** Thank you, sir.

19 **THE COURT:** All right.

20 BY MR. MOORE:

21 **Q** Ma'am, isn't it true that, at least to the  
22 extent of these handwriting people, Ms. Wallace was  
23 actually working with you as part of the  
24 investigative team on the case?

25 **A** Sir, everyone who's a complainant in an



1 incident report, they provide me with information on  
2 what happened. And Ms. Wallace was only doing what  
3 any other complainant would do is try to show that  
4 if there was something wrong.

5 Q Ma'am, I'm not asking you about anybody else.  
6 I'm asking you about what Elizabeth Wallace and you  
7 did together.

8 As I understand it, part of the investigation  
9 was to deal with a man named Dawson?

10 A Yes, sir.

11 Q Mr. Dawson was actually selected as an  
12 investigator or expert in the case by Ms. Wallace,  
13 right?

14 A Yes, sir.

15 Q Ms. Wallace and you got together and met with  
16 the expert witness that Ms. Wallace had chosen at  
17 the Richland County Sheriff's Department, correct?

18 A I wouldn't have called him an expert witness.  
19 He was a forensic document examiner.

20 Q Well, ma'am, if he's a forensic document  
21 examiner, the purpose of the forensic document  
22 examination that y'all set up was to get an expert  
23 opinion as to the power of attorney, wasn't it?

24 A Yes, sir. We wanted to know if portions of the  
25 power of attorney were forged or if they were, in

1 fact, Mr. Wallace's signature on them.

2 Q You say, We wanted to know?

3 A Yes.

4 Q That "we" would include you as well as  
5 Ms. Wallace?

6 A And every other investigator involved in it,  
7 yes.

8 Q So the investigators involved would be you, the  
9 other Richland County deputies, and Ms. Wallace?

10 A Yes, and Ms. Paschal, if she would have spoken  
11 to me, too.

12 Q And Ms. Paschal told you she would speak to  
13 you, but only in the presence of her attorney?

14 A Yes, sir, she said that. And when we called  
15 your office, you said that she would not be speaking  
16 to us.

17 Q Right. Now -- without some explanation of what  
18 it is she was accused of having done, correct? We  
19 told you that we would talk to you, but only if you  
20 would tell us what it is she was alleged to have  
21 done wrong, and you didn't tell us that, right?

22 MR. FRAWLEY: Your Honor, I would object to the  
23 hearsay unless Mr. Moore is going to put himself up  
24 as a witness in this case.

25 THE COURT: Well, he can ask the question.

1 BY MR. MOORE:

2 Q The only -- you were told that Ms. Wallace  
3 would -- or Ms. Paschal would talk to you, but only  
4 if you would give us some idea of what it is you  
5 were claiming she had done wrong?

6 A No, sir, because I would have given you any  
7 information.

8 Q Well, when is it that you and Ms. Wallace, as  
9 part of the criminal investigation in this matter,  
10 met with Mr. Marvin H. Dawson?

11 A Can you repeat your question, please?

12 Q When is it that -- we know that you and  
13 Elizabeth Wallace were engaged in the investigation  
14 of the power of attorney, correct? You've already  
15 told us that.

16 A Yes. We were independently. I mean, what she  
17 did on her own, I wouldn't have told her to do it or  
18 not to do it.

19 Q Well, if you were working independently, why is  
20 it that you met together to go over the document  
21 with the alleged expert, Mr. Dawson?

22 MR. FRAWLEY: Objection. That's about the  
23 third time that same question has been asked. Asked  
24 and answered.

25 MR. MOORE: I haven't asked that question, Your

1 Honor.

2 MR. FRAWLEY: He's asked it three different  
3 ways, that she met, why did you meet with her.

4 THE COURT: He's on cross. Overruled.

5 BY MR. MOORE:

6 Q You've told us you were working independently.  
7 My question is if you were working independently,  
8 why in the world would you make the decision to meet  
9 with the man together?

10 A Mr. Dawson had requested to see the power of  
11 attorney that I had so he could take a look at it  
12 and compare it to the one that he had.

13 Q I see. Well, who made the arrangements?

14 A I invited him to our office.

15 Q I see. Well, look at the report, if you would,  
16 and tell me anywhere on there that Mr. Dawson, as  
17 the forensic document examiner, concludes that the  
18 power of attorney is fraudulent.

19 A Oh, sir, we're going to have to go each page  
20 one by one. There were two documents. Each of  
21 them, I believe, are 12 pages long. And then there  
22 were two additional front pages.

23 In the way that they're numbered here, it would  
24 be -- we'd have to lay it all out on a table and  
25 show everything from the staple marks to the fonts

1 to any typing errors. It would -- we would really  
2 need to lay it all out. And then, on the document  
3 where it says things like -- if it says, for  
4 example --

5 Q I'm just asking you, ma'am, where the word  
6 fraud appears anywhere in --

7 MR. FRAWLEY: I would ask that she be allowed  
8 to finish her answer. She was looking at the  
9 document to finish that answer.

10 THE COURT: Had you finished your answer?

11 THE WITNESS: No, sir.

12 THE COURT: Go ahead.

13 THE WITNESS: Like it's talking about different  
14 exhibits, K/1, K/2, Q/1, 2, 3, 4, and there's  
15 different places on this actual report where it  
16 refers to specific pages. And so we'd need to match  
17 up those pages and show which ones were recognized  
18 as his D.W. signature -- initials and which one that  
19 was not recognized as his D.W. initials..

20 BY MR. MOORE:

21 Q No, ma'am. My question is this, very  
22 specifically: Where in this document does  
23 Mr. Dawson reach a -- reach the conclusion and use  
24 the word fraud?

25 A I don't believe that Mr. Dawson used the word

1 fraud anywhere. I mean, I can read it through and  
2 see if the word fraud is used, but that's not, I  
3 don't think, a term that the forensic examiners use  
4 on documents is to call it a fraud.

5 Q Take a look at the document, ma'am, and show me  
6 anywhere in there where Mr. Dawson has used the word  
7 fraud to say that the power of attorney is fraud.  
8 If those words are anywhere, show it to me.

9 A I don't believe the word fraud is on here, but  
10 I know for sure that it -- it does say that about  
11 the D.W. initials not being his on two of the pages.

12 Q Sure.

13 A Uh-huh.

14 Q And you're aware, are you not, that there are  
15 many ways that a document can be changed and it not  
16 be a fraudulent change, correct? Documents are  
17 changed all the time without fraud, aren't they?

18 A Sure, yes.

19 Q All right. So there are many ways that a  
20 document can be changed or modified or ratified and  
21 the document not be fraudulent, correct?

22 A Yes, there are ways you can modify a document.

23 Q So Mr. Dawson concluded that the document had  
24 some changes on it, but nowhere in his report does  
25 he indicate those changes are fraudulent, correct?

1       **A**     He doesn't specifically call them fraudulent,  
2       but he does acknowledge that two -- in two places,  
3       that on the first pages that were placed in the  
4       power of attorney afterwards, that those initials  
5       were not written by him. It's in here.

6       **Q**     Sure. But he never concludes that the power of  
7       attorneys or the way it was changed or modified was  
8       fraudulent at all. Those words were never in his  
9       report, are they?

10      **A**     No. I don't believe that that's what's asked  
11      of a forensic document examiner. They're to examine  
12      each page of the document for what's true.

13      **Q**     Well, let's take a look at the SLED report. I  
14      don't know what number that is, but I put it up  
15      there for you.

16            **MR. FRAWLEY:** It's Exhibit 5, I believe, Your  
17      Honor. Defendant's Exhibit 5.

18      BY MR. MOORE:

19      **Q**     Now, this report is actually directed to you at  
20      the Richland County Sheriff's Office, right?

21      **A**     Yes, sir.

22      **Q**     Did you share that report with Elizabeth  
23      Wallace?

24      **A**     I don't believe that I shared the report with  
25      Elizabeth Wallace. She might have been made aware

1 of what it says in the report because she is the --  
2 considered the victim of a crime, so.

3 Q Ma'am, you gave her a copy of the report and  
4 that's how she had it in the probate court, isn't  
5 it?

6 A I don't know how she -- she may have requested  
7 a copy. Our files are not something that we don't  
8 share.

9 Q Well, ma'am, it's an active investigative file.  
10 As a matter of fact, the policy of the Richland  
11 County Sheriff's Department is you don't disclose  
12 the contents of those files even with the Freedom of  
13 Information Act request if the case is ongoing.  
14 That's the county policy, isn't it?

15 A If it's requested for another court hearing,  
16 I'm sure that she would have been able to get it.

17 Q All right. Ma'am, you don't deny that you gave  
18 a copy of this SLED report to the Wallace -- one or  
19 both of the Wallace children or their attorneys, do  
20 you?

21 A I did not give them a copy of it. If they got  
22 it from SLED or they got it from the sheriff's  
23 department or a supervisor, there's a lot of people  
24 that had access to it, but I had no reason to give  
25 them a copy of my report.



1       **Q**     In this report from the forensic services  
2       laboratory done by Gaile Heath, a forensic  
3       scientist, does it use the word fraud anywhere?

4       **A**     I don't believe fraud is a term that a document  
5       examiner uses, so I don't recall seeing the word  
6       fraud in here.

7       **Q**     As a matter of fact, on the last page, page 5  
8       of 6, it says, In order to complete this  
9       examination, it will be necessary to obtain 25 exact  
10      text standards of the D.W. initials from Kay  
11      Paschal, right?

12      **A**     Yes, sir. And I can explain that. What that  
13      means is that they knew that D.W. was not David  
14      Wallace's initials on the first two pages that were,  
15      on those power of attorneys that Kay was using;  
16      however, in order to prove that D.W. would have been  
17      Kay's writing, they would have needed samples.

18             We did do a search warrant to get the samples,  
19      which was approved; however, she did not respond to  
20      it and come. And we did not follow up after that  
21      when she did not give us the handwriting samples.

22      **Q**     Yes, ma'am. So, basically, is there any  
23      conclusion from either of the examiners that the  
24      word fraud was used in either report?

25      **A**     I don't -- I really don't recall the word fraud

1 being in this report, but I don't believe that's a  
2 term that the forensic laboratory examiners would  
3 use.

4 Q Ma'am, in the search warrant that you have  
5 there, on this affidavit that you've typed -- I know  
6 this might take a little time, but I think it's  
7 important -- would you read the affidavit that you  
8 signed and prepared for the Lexington judge on May  
9 the 4th, 2011?

10 A Sure. From top to bottom?

11 Q Yes, ma'am, read everything you see.

12 MR. FRAWLEY: Your Honor, for the record, I  
13 believe it's Plaintiff's Exhibit 6 she'll be reading  
14 from.

15 THE WITNESS: Yes, sir.

16 South Carolina, County of Lexington, Affidavit.  
17 BY MR. MOORE:

18 Q No, just the affidavit portion that you -- the  
19 things you swore to in order to get the Lexington  
20 judge to issue the warrant for Kay's home.

21 A So -- okay. I have the affidavit, and where I  
22 started was where it was -- so --

23 Q It starts -- it says, Reason for affiant's  
24 belief.

25 A Oh, just the bottom few lines of it?

1 Q No, actually on the next page, too.

2 A Okay. The reason for affiant's belief that the  
3 property sought is on the subject premises. On  
4 4/20/2010, Mr. David Wallace suffered a stroke  
5 following carotid {sic} artery surgery. Following  
6 the stroke, Mr. Wallace developed paralysis and  
7 difficulty speaking, conditions which confined him  
8 to a bed. Following his hospital stay, Mr. Wallace  
9 was admitted to HealthSouth and inpatient  
10 rehabilitation and treatment center in Columbia.

11 Kay Paschal, an employee of Mr. Wallace,  
12 provided live-in care for Mr. Wallace while managing  
13 his personal and business finances. On 2/15/2011,  
14 Mr. Wallace's son, Jeffrey, came to the home and  
15 found his father gravely ill and suffering. Jeffrey  
16 Wallace contacted his father's physician, Dr.  
17 Jeffrey Hooks, who responded to the home.

18 After a brief examination, Dr. Hooks contacted  
19 EMS, and Mr. Wallace was transported to Providence  
20 Hospital. Mr. Wallace was admitted in serious  
21 condition, suffering from malnutrition, pneumonia,  
22 and other medical complications associated with  
23 decubiti ulcers -- I know I'm saying that wrong, but  
24 it's bed sores.

25 On 2/20/2011, Mr. Wallace died while at the

1 hospital. His death was noted as pneumonia,  
2 malnutrition, sepsis, and anemia. Since Mr.  
3 Wallace's death, it has been discovered that a  
4 significant amount of money, in excess of a million  
5 dollars, is unaccounted for and is effectively  
6 missing from Mr. Wallace's financial accounts.

7 Ms. Kay Paschal, an attorney, has served as  
8 Mr. Wallace's power of attorney and has had access  
9 to all of Mr. Wallace's computers, accounts, and  
10 financial records for an extended period of time.

11 On 2/13/2011, family members reported these  
12 suspicious activities to the Forest Acres Police  
13 Department, who began an investigation. On  
14 3/2/2011, the Richland County Sheriff's Department  
15 assumed the investigation into the events  
16 surrounding Mr. Wallace's death and the  
17 circumstances surrounding the financial loss. The  
18 subsequent investigation has revealed that several  
19 withdrawals have been made from various accounts in  
20 excess of tens of thousands of dollars at a time  
21 several times over the months leading up to  
22 Mr. Wallace's death.

23 Ms. Paschal has held herself out to be the  
24 common-law spouse of Mr. Wallace. The existence of  
25 a common-law spousal relationship between

1 Mr. Wallace and Ms. Paschal has been contested by  
2 both family members and others familiar with the  
3 situation. It has also been alleged that  
4 Ms. Paschal altered a power of attorney and drafted  
5 several codicils to Mr. Wallace's last will and  
6 testament. It has been alleged that Ms. Paschal  
7 drafted the power of attorney, codicils, and  
8 accessed financial institutions on a home computer.

9 Kay Paschal's home, located at 1103 Kitty Hawk  
10 Drive, West Columbia, South Carolina, served as a  
11 storage location for home and office supplies. It  
12 is believed that computers and printers located at  
13 that address will -- I'm sorry -- it is believed  
14 that computers and printers located at this address  
15 would provide information pertaining to the power of  
16 attorney, codicils, and financial documents that are  
17 needed to further this investigation.

18 The affiant submits that this described  
19 extensive and thorough search is needed to further  
20 the investigation of this elderly abuse slash  
21 neglect and financial exploitation case and is  
22 warranted by the totality of the facts known to the  
23 affiant at the time of the preparation of this  
24 affidavit. Based --

25 Q That's fine.

1       **A**     Okay.

2       **Q**     Now, ma'am, the man died, according to your  
3       affidavit that was sworn to on February 20 of 2011,  
4       correct?

5       **A**     Yes, sir.

6       **Q**     This affidavit was signed May 4th, 2011,  
7       correct?

8       **A**     Yes.

9       **Q**     So it did not take very long for us to go from  
10      date of death to you signing a search warrant, did  
11      it? Ten weeks?

12      **A**     We had already done another search warrant in  
13      Richland County, and we were still looking for the  
14      computers that had -- if, in fact, she changed the  
15      power of attorney, we were looking for those  
16      computers and when we knew that this was a storage  
17      site for her equipment. So, yeah, I think it was a  
18      reasonable -- ten weeks was a reasonable amount of  
19      time to pass in the investigation.

20      **Q**     The first warrant was actually done March the  
21      8th, 2011, as is shown by Exhibit Number 2; is that  
22      correct?

23      **A**     Yes. March the 8th, 2011, that's true.

24      **Q**     So he died February 20th, and you're over at  
25      the home Kay was living in in March, March the 8th,

1 right?

2 A In March 8th, we -- yeah. It was 205 Spring  
3 Lake Road in Forest Acres.

4 Q And that was Kay's home. That's where Kay had  
5 lived for about ten years, right?

6 A Yeah. That's where Kay was living at the time.

7 Q So we went from date of death to you being  
8 ransacking Kay's house within about three weeks?

9 A No, sir. We did not ransack anyone's house.

10 Q Well, going through Kay's house pursuant to a  
11 search warrant. It took you about three weeks to go  
12 from date of death to Richland County being --  
13 examining her home?

14 A That was the home of David Wallace. I don't  
15 know -- she was living there, she was residing  
16 there, and you're referring to it as her home, but  
17 she was residing in that home. She did not own the  
18 home.

19 Q Yes, ma'am. As a matter of fact, you said in  
20 your affidavit that she had been providing live-in  
21 care for a long time, what you said.

22 A Yes, sir.

23 Q And you actually refer in your affidavit, for  
24 the Lexington County warrant, to all this litigation  
25 that was going on in probate court, correct?

1       **A**     I'm sorry?

2       **Q**     You basically say that, Held herself out as  
3       common-law spouse, the existence of common-law  
4       spouse relationship between Wallace and Paschal has  
5       been contested by both family members and others  
6       familiar with the situation.

7       **A**     I wasn't referring to any other court  
8       proceedings. I was referring to what I had been  
9       told in the investigation asking about what their  
10      relationship was.

11      **Q**     Well, who had told you about all of that?

12      **A**     I asked neighbors. I investigated more than  
13      just listening to what one party says. I'm an  
14      investigator. I'm going to look at the situation  
15      from any side.

16      **Q**     Right. As a matter of fact, your position is  
17      you had done a total and complete investigation  
18      before you ever signed the arrest warrants?

19      **A**     No, sir. I never did a total and complete  
20      investigation before I signed any arrest warrant.  
21      The case, like I said, was still active when it was  
22      taken from me and given to another investigator  
23      because of the situation.

24      **Q**     I see. You say it's been alleged that  
25      Ms. Paschal altered a power of attorney and drafted



1 several codicils to Mr. Wallace's last will and  
2 testament. Who alleged that she drafted the power  
3 of attorney?

4 **A** She had the power of attorney in her  
5 possession. She was the one who did his legal  
6 documents. So, yes, I believe that we have enough  
7 proof to establish that her presenting that power of  
8 attorney --

9 **Q** No, that wasn't my question. I want to know  
10 who it was alleging that Ms. Paschal had drafted the  
11 power of attorney. You say in your affidavit, and  
12 you swear to that in the court --

13 **A** Yes, sir.

14 **Q** -- it's been alleged that Kay Paschal drafted  
15 the power of attorney. Who made the allegations?

16 **A** Those would be my allegations, sir, as the  
17 investigator.

18 **Q** No. It says, It's been alleged. It doesn't  
19 say that you did them. It says, It has been  
20 alleged. So my question is who alleged it to you?  
21 You're saying -- you're telling the judge, it's been  
22 alleged to me by somebody. My question is who made  
23 the allegations?

24 **A** Originally, the allegations were made by  
25 Jeffrey, Elizabeth Wallace, and Ellen Shore, a niece

1 of the victim of David Wallace.

2 Q Now, you say here, as an affidavit, not that  
3 it's been reported to you, but you say as an  
4 affirmative fact, Kay Paschal's home at 1013 Kitty  
5 Wake {sic} Drive in West Columbia, South Carolina,  
6 served as a storage location for home and office  
7 supplies. You see that?

8 A (Witness reviewing document.)

9 Q Right there in your affidavit.

10 A Yeah. I was just looking to make sure the  
11 address you recited was, in fact, the right address.  
12 It's 1103. I think you just said ten-something.

13 Q I'm sorry. 1103, that's correct.

14 A Okay.

15 Q Now, did you have first-hand knowledge that was  
16 true?

17 A I was told, yes, that that's when the office  
18 closed down downtown, that the -- all the paperwork  
19 and computers were taken to the Kitty Hawk address  
20 and that was used as a storage facility. I was  
21 told, yes, sir.

22 Q There's a difference between you being told  
23 something, knowing it by hearsay, and knowing  
24 something firsthand, correct?

25 A I did not see them move the stuff from the

1       downtown office. I didn't even know them at that  
2       time, so I couldn't have seen it firsthand, but  
3       that's what I was told.

4       **Q**     Yes, ma'am. That's not what you told the  
5       judge. You told the judge in your affidavit that  
6       you typed that that was, in fact, true; that you  
7       knew that of your own personal knowledge. You  
8       didn't know that of your own personal knowledge;  
9       somebody had told you that, right?

10      **A**     I'm sorry. Can you point out where it says I  
11      knew it of my own personal knowledge? That's what I  
12      was told. That was part of my investigation. I  
13      knew that files were stored there.

14      **Q**     Ma'am, you'd been trained in preparing  
15      warrants, that if you are saying something in --  
16      based on hearsay that somebody's told you, that you  
17      have to make that distinction for the court. You  
18      know that, don't you?

19      **A**     Sir, my whole investigation is interviewing  
20      people and hearing what they have to say, so that's  
21      how I learn, that's how I figure out what's the  
22      answer to a case.

23      **Q**     Ma'am, when you swore that Kay Paschal's home,  
24      located at 1103 Kitty Hawk Drive in West Columbia,  
25      served as a storage location, did you know that of

1       your own senses or had somebody told you that?

2               **MR. FRAWLEY:** The question has been asked and  
3 answered. I object.

4               **THE COURT:** Wish to be heard?

5               **MR. MOORE:** Your Honor, I think the question is  
6 relevant in light of the hedging which has been done  
7 in the first question.

8               **MR. FRAWLEY:** I'm objecting in that he's  
9 already asked it, and it's been answered twice.  
10 Someone else told her.

11               **MR. MOORE:** All she has to do is say it, Your  
12 Honor.

13               **MR. FRAWLEY:** She did, twice.

14               **THE COURT:** Well, she -- sustained. Sustained.  
15 I'm not rule -- he didn't object on relevance. He  
16 objected on it's been asked, it's been answered, and  
17 it's time to move on.

18               **MR. MOORE:** Thank you, sir.

19 BY MR. MOORE:

20       **Q**     Now, ma'am, when this warrant was issued in  
21 Lexington County for the search of the home in West  
22 Columbia, there's also something called a return; is  
23 that correct?

24       **A**     Yes, sir.

25       **Q**     The officer doing the search -- when a search

1 warrant's been issued, the officer doing the search  
2 has to file something called a return; is that  
3 correct?

4 A Yes, sir. )

5 Q And the return is basically given to the court  
6 so the court knows what's been taken, right?

7 A Yes, sir.

8 Q If we look at the last page, who is the officer  
9 that filled out the return?

10 A It is me. And, also, the handwriting on there  
11 is John Talkish, Investigator Talkish, who is one of  
12 the investigators. He was the scribe for the  
13 return. We call it the scribe.

14 Q Well, the scribe, is he also a Richland County  
15 deputy?

16 A He was, sir. He had a stroke, and he's since  
17 gone out on extended medical leave. And I believe  
18 he's retired medically now.

19 Q How many Richland County deputies did y'all  
20 have that went through Kay Paschal's home in West  
21 Columbia, South Carolina?

22 A I have -- let's see, the inventory was made in  
23 the presence of me and Investigator Talkish and  
24 Corporal McMillan from the Springdale Police.  
25 However, I have to look back at my notes because I

1 believe Investigator Bolding was there. I have to  
2 look back at my notes to find out exactly who else  
3 would have been there because we usually take quite  
4 a few people to just make it happen quickly so we're  
5 not in anyone's home too long.

6 Q Well, give the jury an estimate as to how many  
7 law enforcement officers wound up at Kay's house  
8 that morning to do this search for the computers.

9 A I would say for sure it was three, and it may  
10 have been four of us, and then, in addition, the  
11 Springdale police officer. So a total of five  
12 officers.

13 Q Why don't you tell the jury what it is of Kay's  
14 property that you took?

15 A Yes, sir. He has horrible handwriting. Okay.  
16 One Deskjet 1220 printer and one Hewlett-Packard  
17 Pavilion Tower. And there are serial numbers  
18 associated with each of these. The desktop -- okay,  
19 so those are the serial numbers associated.

20 One -- another Hewlett Officejet printer with  
21 another serial number, three boxes of printer  
22 cartridges, one box was -- okay, and then it's a  
23 description of that box -- one box was Vivera and  
24 one box was Tri-color HP Invent and the other box  
25 was HP Tri-color. So he's just giving specific

1 information pertaining to those. All the above  
2 items were found in the bedroom.

3 One Photosmart, it's got a serial number  
4 associated with that as well; and two boxes of  
5 printer cartridges, HP 23 and HP 45; and also one PC  
6 unit, and it's got a serial number associated with  
7 that. And it tells where they were found. And then  
8 one model, and it tells the model number of a copier  
9 that was found in an outbuilding, and assorted  
10 three-and-a-half-inch disks, and a paper tray with  
11 paper in it that was found in the bedroom. Yes,  
12 sir.

13 Q Who actually searched the lady's bedroom?

14 A They don't really have it on here. We were all  
15 throughout the house, each one of us. We all --  
16 when we go into the different rooms, we follow  
17 behind each other and make sure that, you know, that  
18 we've done a proper search. It says Investigator  
19 Talkish found some items in the bedroom.

20 Q Ma'am, let me ask you this question: We know  
21 that you seized this property in Lexington County.  
22 Does the returns tell the judge where you took it?

23 A I don't believe it does. Let me see. Let me  
24 just read the top part to see.

25 No, it doesn't list that. I mean, there's

1 nothing on the form that says where it's supposed to  
2 be taken or where it was taken.

3 Q Well, where did you take it?

4 A We took it to Richland County Evidence Room.

5 Q Now, what in the world gave you the authority  
6 to take property found in Lexington County over to  
7 Richland County Evidence Room? What gave you the  
8 authority to haul this stuff out of the county?

9 A This search warrant, sir. The judge knew I was  
10 from Richland County and, of course, I would not go  
11 store things that I needed to look into and have  
12 analyzed at Lexington County. They needed to be  
13 analyzed.

14 Q Why wouldn't you store them at Lexington  
15 County?

16 A Because the case -- the whole entire, big,  
17 larger picture of this case is in Richland County.

18 Q Because you didn't have permission to store  
19 them in Lexington County, did you?

20 A I didn't ask for permission to store them  
21 there.

22 Q And you didn't ask permission of the Lexington  
23 County Sheriff before you got a warrant in Lexington  
24 County, did you?

25 A I talked to the --



1           **MR. FRAWLEY:** Your Honor, I'll object --

2           **THE COURT:** Hold on just a moment.

3           Yes.

4           **MR. FRAWLEY:** -- at this point to this line of  
5           questioning. We've let it go for a while because it  
6           is in evidence, but the gravamen of this lawsuit is  
7           two arrest warrants that were issued in November of  
8           2011, and we're spending all this time over property  
9           that was taken incident to a search warrant.

10           Now, if Mr. Moore is setting the ground for a  
11           Rule 15 motion to amend later on, this isn't in the  
12           current pleadings. And I want to voice my objection  
13           to that at this point if there is a later motion  
14           made to recover this property, which is subject to a  
15           criminal investigation in Richland County.

16           So, right now, I'm objecting on relevance.  
17           We're way beyond the scope of the pleadings in this  
18           case.

19           **MR. MOORE:** We really aren't, Your Honor. I  
20           don't care to argue this, but I mean, I can show the  
21           Court paragraph 19 of the complaint. There are --  
22           all of this stuff is actually even mentioned in the  
23           complaint.

24           **THE COURT:** The difficulty that I have, and we  
25           may need to discuss this outside the presence of the

1 jury, but what I told you all this morning. The  
2 legality of these things seems to be a question for  
3 the Court, for me to decide, and I don't have the  
4 information to make the decision. I'm perfectly  
5 willing to hear whatever I need, but there are  
6 continuing questions about the validity of a search  
7 warrant, the validity of a -- of the actions  
8 pursuant to the search warrant, and I don't see how  
9 a jury can decide that.

10 MR. MOORE: I'll move on, Your Honor.

11 THE COURT: I mean, I'm going to have to tell  
12 them whether it's legal or not legal if that's an  
13 issue. If it's not legal, then they may have some  
14 inquiry. If it's legal, then the jury doesn't get  
15 involved in it.

16 MR. MOORE: Thank you, sir.

17 THE COURT: Go ahead.

18 BY MR. MOORE:

19 Q Ma'am, we know, do we not, that the criminal  
20 charges pending in Lexington County were dismissed  
21 January 20th of 2012, do we not?

22 A I'm just looking to see if that was, in fact,  
23 the court date. Yeah. Preliminary hearing, yes,  
24 sir. Can we open the document so I can read it?

25 MR. MOORE: Your Honor, I'd like to offer the

1 preliminary hearing transcript into evidence so the  
2 jury can actually see it.

3 **MR. FRAWLEY:** And as I indicated yesterday, I  
4 will object to that, and we probably need to address  
5 that out of the presence of the jury.

6 **MR. MOORE:** I won't offer it at this time.  
7 I'll do it later. I want to move on, Your Honor.

8 **THE COURT:** All right. I mean, they've been  
9 out here close to an hour. So in about 10, 15  
10 minutes, we're going to stop regardless to take a  
11 break, but go ahead.

12 BY MR. MOORE:

13 **Q** Ma'am, the preliminary hearing dismissed the  
14 charges from January 20, 2012, correct?

15 **A** Yes, sir.

16 **Q** And the Lexington County Grand Jury never saw  
17 fit to indict the case, did they?

18 **A** We did not take it to the grand jury, sir.

19 **Q** The answer is no?

20 **A** Right, because we did not take it there.

21 **Q** And, actually, what happened after that is a  
22 significant period of time passed until new charges  
23 of some sort were filed over in Richland County; is  
24 that right?

25 **A** Yes, sir. And I can explain, the lapse of time

1 had to do with I was taken off of the case because.  
2 of the civil trial, so it had to go to another  
3 investigator who basically had to learn the whole  
4 case and start from the beginning again.

5 Q Ma'am, the new case was not filed until  
6 December 6, 2013, by virtue of a warrant in Richland  
7 County, correct?

8 A Sir, you're handing me something that I haven't  
9 seen before. And I haven't even been in  
10 communication with the officer who took over the  
11 trial -- or the case because of this civil case.

12 Q Well, ma'am, let me ask you this: How long did  
13 you stay on the case officially as an investigator  
14 after the magistrate judge in Lexington County  
15 dismissed it for lack of probable cause?

16 MR. FRAWLEY: Objection; facts not in evidence.  
17 It was dismissed, but that's not the basis.

18 MR. MOORE: Your Honor, that's the only way she  
19 can dismiss it. She's already testified it was  
20 dismissed for lack of probable cause because she  
21 said that's the only way a magistrate can dismiss  
22 it.

23 THE WITNESS: I think you asked me --

24 THE COURT: Hold on a second, please.

25 Evidence doesn't come in the form of the

1 question. Evidence comes from the statements of the  
2 witnesses. I'm not permitted to sit up here and  
3 comment about statements of the witnesses. Rephrase  
4 your question.

5 MR. MOORE: Certainly.

6 BY MR. MOORE:

7 Q Ma'am, how long did you remain an investigator  
8 in this case after the case was dismissed by the  
9 magistrate?

10 A Until -- as soon as the civil case started,  
11 that it was filed with our sheriff's department,  
12 then I was asked to pass the case to another  
13 investigator.

14 Q Well, if we look at the civil case, it appears  
15 to have been filed January 24th, 2012; is that  
16 correct?

17 A Yeah. January 24th, 2012, it was -- it looks  
18 like it was filed. I don't know when it was served  
19 on the sheriff's department, and I don't know when  
20 he notified me of -- that it had been served, so.

21 THE COURT: When y'all are talking about a  
22 civil case, are y'all talking about this case?

23 MR. MOORE: This case.

24 THE COURT: All right.

25 MR. FRAWLEY: We'll stipulate this case was

1 filed January 24 of 2012.

2 **THE COURT:** Go ahead.

3 BY MR. MOORE:

4 **Q** Ma'am, to this day, to the best of your  
5 knowledge, has Kay Wallace's property that you took  
6 from Lexington County ever been returned to her?

7 **A** I'm not aware that -- like I said, I had  
8 nothing else to do with the investigation once I  
9 briefed and informed the other new investigator of  
10 everything.

11 **Q** From the time this property was taken from her,  
12 May 4th of 2011, until you got off the case in  
13 January of 2012, what did you do with her property?

14 **MR. FRAWLEY:** Your Honor, again, I'm going to  
15 object to questions about the property for purposes  
16 of making sure I don't get boxed into a Rule 15  
17 motion later on. So I object to the relevance on  
18 the questions about the property as being beyond the  
19 scope of the pleadings and the suit.

20 **THE COURT:** Hold on just a second, please.

21 (Pause.)

22 **THE COURT:** The objection's overruled. You may  
23 answer the question, if you recall it.

24 BY MR. MOORE:

25 **Q** Ma'am, what did you do with her items? You

1       took them to the evidence room. From there, what  
2       did you do with them?

3       **A**     Sure. I put in a request to have the computers  
4       analyzed.

5       **Q**     Were they analyzed?

6       **A**     It was a process, a very long process. So the  
7       end of the analyzation of all the computers, I'm not  
8       positive that it had been finished by the time that  
9       I was removed from the case. I had not received a  
10      report of where the documents that we were looking  
11      for, what computers they turned up on, so I did not  
12      receive that final report.

13      **Q**     Well, when the judge dismissed the case, who  
14      made the decision not to return Kay's property to  
15      her?

16      **A**     I don't think a decision was made not to return  
17      her property. Her property was part of a larger  
18      investigation. The search warrant wasn't only about  
19      the Lexington County portion of any case. It was  
20      about the entire case. All the paperwork that had  
21      been stored in Kitty Hawk was of interest for the  
22      entire larger case.

23      **Q**     Well, ma'am, when the case was dismissed, there  
24      was no active case, right?

25      **A**     There was an active case we were investigating,

1       yes, sir.

2       **Q**     There were no active charges?

3       **A**     No, there were no active charges at the time.

4       It was an open investigation.

5       **Q**     So by virtue of an open investigation, y'all  
6       just kept the stuff?

7       **A**     The stuff is stored. We're not keeping it.

8       It's stored in our evidence room and it was being  
9       analyzed.

10      **Q**     Well, while it was being stored -- it certainly  
11      was computer-type equipment, correct?

12      **A**     Yes, sir, there was computer-type equipment.

13      **Q**     How was Kay Pařchal supposed to be able to make  
14      use of the information on her computer in order to  
15      defend herself from the criminal case or in order to  
16      defend herself in the probate case?

17      **A**     Sir, I had a meeting -- they did -- your office  
18      did ask to be able to see the documents and the  
19      things that were in evidence. And I had a meeting,  
20      I had investigators there, and we lined the table,  
21      and everything she wanted to see, we let come  
22      through, and everybody could see it. And anything  
23      they wanted a copy of, I gave them a copy of to  
24      Mr. Fuller, who served as someone in the middle.

25      **Q**     Who is Mr. Fuller?



1           **A**     Mr. Fuller, he was an attorney.

2           **Q**     Who did he work for?

3           **A**     I'm not sure who he worked for. He was  
4           supposed to serve as someone who was impartial, not,  
5           I guess, working for any -- I guess, he was  
6           appointed by the State.

7           **Q**     Actually, Allan -- Mr. Fuller is not  
8           Mr. Fuller. You're talking about Allan Fulmer, Jr.?

9           **A**     Okay. Yes, sir. I might have got his name  
10          wrong.

11          **Q**     Who was the personal representative appointed  
12          by the probate court in the probate matter, correct?

13               **MR. FRAWLEY:** I'll object on the grounds of  
14          relevance, no foundation, and Mr. Fulmer having  
15          nothing to do with this case.

16               **THE COURT:** Overruled.

17               **MR. FRAWLEY:** Thank you, Your Honor.

18          BY MR. MOORE:

19          **Q**     Ma'am --

20               **THE COURT:** He's on cross, as far as  
21          foundation. Go ahead.

22          BY MR. MOORE:

23          **Q**     Are you telling me that you gave documents off  
24          of Kay Paschal's computer to Mr. Allan Fulmer, the  
25          attorney representing the estate in the probate

1 matter?

2 **A** Sir, the meeting was with all the attorneys.  
3 All of you all wanted it. It had nothing to do with  
4 our case, but you all wanted to see our evidence.  
5 So I brought the evidence. I let you go through it.  
6 You attorneys agreed that I should make one copy,  
7 give it to him, and he would distribute it to all of  
8 you. That was your all decision. I was just being  
9 accommodating, taking a whole day to let you all go  
10 through it with my investigator sitting there  
11 watching so none of the items got disturbed. So  
12 that's what you wanted.

13 **Q** The evidence that you turned over to Mr. Allan  
14 Fulmer was not giving Kay Paschal the use of her  
15 computers, it was delivering to Mr. Fulmer what you  
16 deemed to be the evidence pulled off of the computer  
17 in the criminal case, right?

18 **A** Sir, any documents -- that's what you all  
19 requested was to see all the documents. You did not  
20 request to have everything in computers given to  
21 you. That request was never made. And then I guess  
22 we would have had to figure out how to handle that  
23 if there was something on there that you needed, but  
24 you never made that request of us.

25 **Q** Well, so then nothing that was on the computer

1 was made available to Mr. Fulmer?

2 **A** Some documents that might be on the computer  
3 that were printed out as documents were. All the  
4 documents were available for all of you.

5 **Q** When did you finally get the analysis of what  
6 was on the computers finished?

7 **A** I don't know when an analysis of all the  
8 computers was finished. The case got taken away  
9 from me, and the investigator, Investigator Captain  
10 Hughes, was put on the case.

11 **Q** Ma'am, according to the return that you filed  
12 with the magistrate in Richland County, there  
13 weren't any documents seized. The only thing that  
14 was seized was computer and computer-related  
15 equipment.

16 **A** I filed the return with Lexington County.

17 **Q** I know that. My question is --

18 **A** Oh, you just said Richland County.

19 **MR. FRAWLEY:** I would like for her to be able  
20 to finish her answer, Your Honor.

21 **THE COURT:** Did you finish your answer?

22 **THE WITNESS:** The way I understood what you  
23 just said is, when I filed the search warrant return  
24 with Richland County. I filed the search warrant  
25 return with Lexington County.

1 BY MR. MOORE:

2 Q Yes, ma'am. Where on your return does it show  
3 that you seized any documents from Kay?

4 A Well, sir, we seized the documents from the 205  
5 Spring Lake Road. We -- a lot of documents from  
6 there.

7 Q Y'all still have them?

8 A I don't know. I was taken off the case.

9 Q When you were taken off the case, did y'all  
10 still have them?

11 A When I was taken off the case, it's my  
12 understanding that everything was still in evidence,  
13 yes, sir.

14 THE COURT: Let me know when you get to a  
15 stopping point.

16 MR. MOORE: I might be at a decent stopping  
17 point, Your Honor, for a break.

18 THE COURT: Ladies and gentlemen, we'll take a  
19 break, about ten minutes. Don't discuss the case.  
20 Thank you.

21 (The jury retires to the jury room.)

22 THE COURT: Ma'am, during the break, you're not  
23 permitted to discuss your testimony with anyone.

24 Court's at ease for ten minutes.

25 (Brief recess.)

1           **THE COURT:** Are you ready for the jury,  
2 Mr. Moore?

3           **MR. MOORE:** Yes, Your Honor.

4           **THE COURT:** Mr. Frawley?

5           **MR. FRAWLEY:** Yes, Your Honor.

6           **THE COURT:** Bring in the jury.

7           (The jury returns to the courtroom.)

8           **THE COURT:** You may continue.

9           **MR. MOORE:** May it please. Thank you, Your  
10 Honor.

11 BY MR. MOORE:

12       **Q**   Ma'am, you understand that this lawsuit  
13 presently exists against Leon Lott in his official  
14 capacity as the Sheriff of Richland County, correct?

15       **A**   I understand, yes.

16       **Q**   Now, you've been shown the date that this  
17 lawsuit was filed against Leon Lott in his capacity  
18 as Sheriff of Richland County, correct?

19       **A**   Yes, you showed me on the front.

20       **Q**   At the date this action was filed against Leon  
21 Lott in his official capacity as Sheriff of Richland  
22 County, were there any active criminal charges  
23 against Kay Paschal? Was there an active warrant  
24 anywhere?

25       **A**   I wouldn't know the answer to that question. I

1 didn't run her criminal history after that at that  
2 point. I did not have any other active charges on  
3 her.

4 Q I'll change the question.

5 A Okay.

6 Q To your knowledge, on the date this lawsuit was  
7 filed against Leon Lott, in his official capacity as  
8 Sheriff for Richland County, to your knowledge, were  
9 there any active criminal charges pending against  
10 Kay Paschal?

11 A There might have been. There was an open case,  
12 so I can't tell you one way or another. There was  
13 an open case at that time, yes, sir.

14 Q I simply asked, to your knowledge, was there  
15 any active, pending warrants against Kay Paschal  
16 that you know of on the date the lawsuit was filed?

17 A There were none that I know of, active warrants  
18 yet.

19 Q Well, do you know who made the decision to sue  
20 Kay Paschal for filing this suit?

21 A I don't know what you're talking about, sir.

22 Q Well, did you know that Leon Lott, in his  
23 official capacity as Sheriff for Richland County,  
24 has filed a countersuit claiming that Kay Paschal  
25 somehow abused the process?

1       **A**     I heard that when I was -- yes. When you did  
2       your opening statement, I heard you say that.

3       **Q**     Do you know who made the decision to file that  
4       suit against Kay?

5       **A**     Of course, I don't know that.

6       **MR. FRAWLEY:** Your Honor, I'll object to that.  
7       That's a decision that is an attorney-client issue,  
8       and it's -- I'm the attorney who signed that. I'll  
9       take the hit on that. I'm the attorney who filed  
10      the abuse of process counterclaim. That was a legal  
11      decision that I made as their attorney.

12      **THE COURT:** She's already answered the  
13      question. It's overruled. Go ahead.

14      BY MR. MOORE:

15      **Q**     Ma'am, do you know of any damages that Leon  
16      Lott has sustained in his official capacity as  
17      Sheriff for Richland County?

18      **A**     Sir, I think I'm a good investigator. And I  
19      think when they took me off the case, I think that,  
20      I think that, yes, that would make a difference in,  
21      potentially, the outcome of what would happen. I  
22      knew this case very well.

23      **Q**     Do you know of any damages he sustained?

24      **A**     I don't know of any damages that might have  
25      happened as a result of it. I don't.

1 Q Okay. Now, June 18, 2010 -- let me back up a  
2 minute. I believe that we've already established  
3 that David Wallace had two children, right?

4 A Yes.

5 Q Jeffrey and Elizabeth?

6 A Yes.

7 Q And at the time he died, their mother had been  
8 dead for many, many years.

9 A I'm not sure how many years, sir. I know that  
10 their mother, Minna, had passed away.

11 Q The June 18, 2010, date is the date that the  
12 handicapped van was purchased; is that right?

13 A I'm not sure. I know a handicapped van was  
14 purchased, and I know that it was after he had his  
15 stroke.

16 Q I'll show you Exhibit Number 6, which appears  
17 to be the check that was written to buy the  
18 handicapped van for David Wallace. Does that date  
19 look right?

20 A Excuse me. June 18th, 2010, yes.

21 Q Right. June 18, 2010 --

22 A Yes, sir.

23 Q -- appears to be the date that the van was  
24 purchased for Mr. Wallace, right?

25 A Yes, sir.



1 Q Now, as -- you've done a thorough investigation  
2 in this case?

3 A Sir, I have not done a thorough investigation  
4 of the whole entire totality of the case that we  
5 have. These were two charges that were made as part  
6 of the larger case, yes, sir.

7 Q Well, I'm going to ask you not what you think  
8 but what you know, all right?

9 A Yes, sir.

10 Q As of June 18, 2010, the day the handicapped  
11 van was purchased, which gave rise to these charges  
12 against Kay, do you know of any doctor who had  
13 declared David Wallace to be mentally incompetent?

14 A Sir, the doctors' records all reflect that he  
15 was very ill and the communication that he was  
16 paralyzed that -- so, yes, sir.

17 Q No, ma'am. I don't ask about being very ill.  
18 I'm talking about mentally incompetent. Do you know  
19 of any doctor who had declared him, as of June 18,  
20 2010, to be mentally incompetent?

21 A Sir, I don't know that -- I think the court  
22 declares someone incompetent, right, and a medical  
23 staff would tell you what condition they're in; is  
24 that correct?

25 Q Ma'am, you know that the way that starts is a

1 medical doctor determines incompetency and then a  
2 court, basically, approves it. You understand that  
3 because you've done elderly abuse cases many times  
4 in your career, right?

5 A I've worked many vulnerable adult cases, yes,  
6 sir.

7 Q And you know that the way those things start is  
8 that a medical doctor issues an opinion that the  
9 patient is mentally incompetent. That's the way it  
10 starts, isn't it?

11 A I didn't -- I did not see any words that said  
12 incompetent; however, he had a stroke, a major  
13 stroke.

14 Q That's the way it starts, isn't it? That was  
15 my question. The doctor finds the man to be  
16 mentally incompetent, correct?

17 A I don't know that the doctors use that word  
18 incompetent. That's a court term.

19 Q Well, do you -- have you seen any piece of  
20 paper or talked to any doctor -- now, I'm not  
21 talking about physically. I know he had a stroke.  
22 I know he's very sick. But as of June 18, 2010,  
23 have you seen any medical opinion from anybody that  
24 the man did not have the ability to function  
25 mentally?

1       **A**     Yes, sir. I have seen paperwork that told  
2       about his diminished mental capacity, yes, sir.

3       **Q**     As of June 18, 2010?

4       **A**     After a stroke, sir.

5       **Q**     No, ma'am. I'm talking about as of June 18,  
6       2010. We know he had a stroke, but we knew he was  
7       in a rehabilitation clinic recovering from the  
8       stroke. Could he talk?

9               **MR. FRAWLEY:** I'll object to that. There's  
10       been no evidence that he's been in a rehab clinic.  
11       That's been argued, but it's not been in evidence  
12       yet. Facts not in evidence.

13              **THE COURT:** Again, the question is not  
14       evidence, ladies and gentlemen.

15       BY MR. MOORE:

16       **Q**     Ma'am, on the day the van was purchased, have  
17       you seen anybody -- any doctor anywhere that said  
18       the man did not have the mental faculties available  
19       to carry on a business transaction?

20       **A**     I have not seen anything dated June 18th, 2010,  
21       that specifically, on that date, says that he's  
22       incompetent.

23       **Q**     Had you seen anywhere, prior to June 18 of  
24       2010, where any physician had declared him to be a  
25       vulnerable elderly adult?

1       **A**     Well, he meets the statute of a vulnerable  
2       elderly adult. He could not function without  
3       someone else being there to take care of him, and  
4       that's one of the elements of a vulnerable adult.

5       **Q**     Of course, that wasn't my question to you, was  
6       it? That wasn't my question, was it?

7       **A**     I don't know that a doctor uses the words  
8       vulnerable adult. I know that that's a -- more of a  
9       legal term.

10      **Q**     That wasn't my question, was it?

11      **A**     Okay.

12      **Q**     My question very simply, very simply: Prior to  
13      June 18, 2010, have you seen where any physician had  
14      declared Mr. Wallace to be a vulnerable elderly  
15      adult?

16      **A**     No, sir, I did not see any physician write the  
17      words vulnerable adult.

18      **Q**     Prior to June 18, 2010, have there been any  
19      court order where any court had declared him to be a  
20      vulnerable elderly adult?

21      **A**     No, sir. I don't know that he had any court  
22      hearings between the time he had his stroke and June  
23      18th. I do not know that.

24      **Q**     Prior to June 18, 2010, had any competent court  
25      declared him to be mentally incompetent?

1       **A**     I'm not aware that he had any court hearings to  
2       declare him incompetent.

3       **Q**     Prior to June 18, 2010, had any court appointed  
4       a guardian for him?

5       **A**     No, sir, not that I'm aware of.

6       **Q**     And, actually, he was being cared for and his  
7       business affairs were being managed by Kay, correct?

8       **A**     They were by the authority of that power of  
9       attorney, sir.

10      **Q**     Right. Now, before November the 11th -- I'm  
11      sorry -- November of 2011, did you ever speak to any  
12      of his medical doctors, actually talk to any of his  
13      medical doctors about his mental functionality?

14      **A**     No, sir. I have reviewed mounds and mounds of  
15      paperwork from the search warrant on all the medical  
16      paperwork. The person that was -- Sergeant  
17      Isenhoward was in charge of the medical aspect, and  
18      I was looking into the financial exploitation  
19      portion of the case.

20      **Q**     Before November of 2011, did you actually  
21      subpoena the medical records from the hospital?

22      **A**     We already had them. The coroner's office had  
23      all the medical records, so I just reviewed them  
24      with the coroner.

25      **Q**     On June 18, 2010, who was he living with? Who

1 was David Wallace living with?

2 **A** He should have been living in his home then. I  
3 think -- I think he was checked out from rehab early  
4 is what I understand, that he didn't finish it there  
5 and he was brought back home.

6 **Q** Who was he living with?

7 **A** Kay Paschal would have been in the home living  
8 with him.

9 **Q** Do you have any idea when they actually began  
10 living together?

11 **A** I'm not sure exactly when. I believe it's been  
12 eight years.

13 **Q** So as far as you know, they had actually lived  
14 together in the same house for, approximately, eight  
15 years?

16 **A** That's what I understand, that she moved in to  
17 take care of the cats and the business was being run  
18 out of the house, so she had her own room in the  
19 house.

20 **Q** So he trusted her with his business affairs and  
21 with his cats?

22 **MR. FRAWLEY:** Objection. She can't testify to  
23 whether he trusted her or not.

24 **MR. MOORE:** I'll change the question, Your  
25 Honor.

1           **THE COURT:** All right.

2           BY MR. MOORE:

3           **Q**    After he got sick until he died, who was his  
4           primary caregiver?

5           **A**    Kay Paschal was.

6           **Q**    Can you tell me the sorts of things you know  
7           she did for him?

8           **A**    I can -- I would only have to speculate on some  
9           of the things that she did for him, that any  
10          caregiver would do. I know that she hired a couple  
11          other caregivers to help provide care as well.

12          **Q**    Who procured the wheelchair for him?

13          **A**    I could not tell you who procured the  
14          wheelchair.

15          **Q**    Did he need a handicapped van?

16          **A**    Yes, he did.

17          **Q**    Why would he have needed this handicapped van?

18          **A**    He suffered from paralysis.

19          **Q**    Do you know when it is that Mr. Wallace got to  
20          a point where he needed a caregiver?

21          **A**    On April 20th, after his major stroke.

22          **Q**    And have you seen a marriage license  
23          application that was made for Kay and David to have  
24          a formalized wedding?

25          **MR. FRAWLEY:** Your Honor, I object to any

1 questions about the wedding or marriage or marriage  
2 license on the grounds that Ms. Paschal has already  
3 signed an affidavit, a court document, indicating  
4 that they were not married and she was not his wife.  
5 I'll object on the grounds of relevance and being  
6 judicially estopped from doing that.

7 **THE COURT:** Do you wish to be heard?

8 **MR. MOORE:** Your Honor, I simply think that the  
9 fact that there was a application for a wedding  
10 license pending at the time he had his stroke would  
11 clearly go to show the closeness of the relationship  
12 between Kay Paschal and David Wallace.

13 **MR. FRAWLEY:** Your Honor, we're not contesting  
14 that they were close and that she lived with him for  
15 eight years and took care of him. We're contesting  
16 that they were married, and we're asserting that  
17 Ms. Paschal has specifically said in court that they  
18 were not married.

19 **MR. MOORE:** Well, if they're not contesting it,  
20 Your Honor, that would basically mean the evidence  
21 is relevant and any further evidence that would  
22 basically further that point of proof would be  
23 relevant to the case. I'm not sure I know what the  
24 objection is.

25 **THE COURT:** I'm not sure I understood what you



1       said.

2               **MR. MOORE:** Your Honor, counsel, apparently,  
3 stipulates that the question is relevant to the  
4 case. It's relevant to an issue in the case. The  
5 fact that they may stipulate something to be  
6 factually true doesn't mean that I can't elicit  
7 testimony in that regard with the relevant  
8 witnesses.

9               **THE COURT:** Ladies and gentlemen, please step  
10 in the jury room. Don't discuss the case.

11               (The jury retires to the jury room.)

12               **MR. FRAWLEY:** Your Honor, does Your Honor want  
13 me to clarify what my objection was, to restate it?

14               **THE COURT:** I'd be happy to hear from either of  
15 you.

16               **MR. FRAWLEY:** Your Honor, my objection is that  
17 the issue of whether they had planned to get  
18 married, whether there's a marriage license, any of  
19 that is not relevant to this case because she has  
20 said in a court document that they weren't married.  
21 I think the fact that they -- that she lived with  
22 him for eight years, that there's evidence that they  
23 cared -- that she cared for him, we're not  
24 contesting that. We've never contested it.

25               But by not contesting that, that doesn't make a

1 marriage license that was never executed or was  
2 never finished relevant to this case, and I'll  
3 object to it based on that. And the line of  
4 questioning that may go on for the next ten minutes  
5 on that topic, that's not relevant.

6 **THE COURT:** What would be the answer to that  
7 question? Do you remember the question? Have you  
8 seen a marriage license application?

9 **THE WITNESS:** Yes. I was looking into seeing  
10 if they were married, that was part of the  
11 investigation. So I went to Kershaw County and  
12 asked them, and they said that they had -- that an  
13 application had been taken, but nothing had been  
14 returned and that they weren't.

15 **THE COURT:** All right. I'm going to overrule  
16 the objection, but I'm getting really concerned that  
17 there's a whole lot of things being asked that I  
18 have serious concerns about confusion of the issues.  
19 So even if it is relevant, if it confuses the issues  
20 that the jury's going to have to decide, then I have  
21 some real concerns about it.

22 We've spent almost half a day now talking about  
23 warrants that were issued that are presumed to be,  
24 basically, presumed to be valid and no ruling from  
25 the Court as to whether they were valid or invalid.

1 And so the jury hears all of these things about  
2 she's from Richland, the warrant was obtained in  
3 Lexington. You know, whether it's unusual to do  
4 that or not, I can understand how that would be  
5 relevant. Whether it's legal or not, I understand  
6 how that can be relevant, but at the rate we're  
7 going, we'll be here three weeks from now. And I'm  
8 not sure that it's just not a whole, big, confusing  
9 ball right now.

10 She was the investigator. She's been accused  
11 of inappropriately investigating because of some  
12 relationship that she had with the children of  
13 Mr. Wallace. There hadn't been a single question  
14 about that that I know about, maybe there was one  
15 early on.

16 She can be asked if she knew about an  
17 application for a marriage license. It's hearsay,  
18 but everything that we've talked about for a large  
19 part has been hearsay.

20 Anything else y'all need to put on the record?

21 **MR. MOORE:** No, sir.

22 **MR. FRAWLEY:** No, sir, other than when it gets  
23 to the point where I can make a motion as to the  
24 validity of the warrants, I'll do that. I just  
25 don't -- I think me doing that now is premature. I

1 think he's entitled to put what he feels he needs to  
2 put into evidence at this point.

3 **THE COURT:** Well, y'all know the case far  
4 better than I do. I understand that.

5 All right. Bring the jury in.

6 I'm just telling you that I'm hearing it for  
7 the first time just like the jury's hearing it for  
8 the first time, and I just don't know where we're  
9 going.

10 (The jury returns to the courtroom.)

11 **THE COURT:** The objection's overruled.

12 You may continue, Mr. Moore. State your  
13 question again.

14 BY MR. MOORE:

15 **Q** Ma'am, you do know there was a marriage license  
16 application pending between David Wallace and Kay  
17 Paschal in Kershaw County, correct?

18 **A** There was an application, not a license.

19 **Q** You've seen an application for a marriage  
20 license, correct?

21 **A** Yes.

22 **Q** Do you happen to recall the date that  
23 application was made?

24 **A** I know it was very shortly before his -- when  
25 he was having his surgery.

1 Q It was almost immediately before his surgery,  
2 correct?

3 A Yes, sir.

4 Q And June 18, 2010, the van was purchased. When  
5 did he die?

6 A He died February the 20th of 2011.

7 Q Between the time that Kay started living with  
8 the man until his death, while David Wallace was  
9 alive and could speak for himself, did he ever make  
10 any complaint about anything that Kay Paschal had  
11 done for him?

12 A Sir, you said that he could speak for himself,  
13 and from what I understand, he could not communicate  
14 very well. So -- and I'm not aware of who he would  
15 have made complaints to. He did not call the  
16 sheriff's department. If that's what you're asking,  
17 he did not call the sheriff's department. But I  
18 don't know what his complaints were.

19 Q Ma'am, at any time before his death, did he  
20 complain to anybody about any -- that you know of --  
21 about anything that Kay had done for him?

22 MR. FRAWLEY: Objection. That's hearsay, that  
23 the absence of him saying something would be the  
24 same as him saying something, and I would object to  
25 that being hearsay.

1           **THE COURT:** Do you wish to be heard?

2           **MR. MOORE:** No, sir, Your Honor.

3           **THE COURT:** I think the question has already  
4           been answered. Objection sustained.

5           BY MR. MOORE:

6           **Q**     Now, ma'am, at some point, you turned this  
7           investigation over to the Lexington County Sheriff's  
8           Department?

9           **A**     Yes, sir.

10          **Q**     Why did you do that?

11          **A**     A portion of the investigation was turned over  
12          to the Lexington County Sheriff's Department.

13          **Q**     Well, why was it seen fit to turn a portion of  
14          the case to the Lexington County Sheriff's  
15          Department?

16          **A**     Two of the transactions took place in Lexington  
17          County.

18          **Q**     Well, why did that matter? Why did you give  
19          the case to the Lexington County Sheriff's  
20          Department for those things that had happened in  
21          Lexington County?

22          **A**     Because Lexington County could investigate that  
23          as well.

24          **Q**     Well, if you had the ability to investigate and  
25          you had the authority to investigate and it was part

1 of a larger case that was spilling over into  
2 Lexington County, who made the decision that you  
3 ought to turn the Lexington County allegations over  
4 to the Lexington County authorities?

5 A Joanna McDuffie. When I ran the case by her,  
6 she suggested that I turn those transactions over to  
7 Lexington County.

8 Q Now, Ms. McDuffie, what is her position?

9 A She's a solicitor with Richland County.

10 Q All right. And as a result of -- and a  
11 solicitor -- she's actually not -- she's an  
12 assistant solicitor in Richland County, right?

13 A Okay. Yes, sir.

14 Q She works for the Solicitor?

15 A Yes, sir.

16 Q As a matter of fact, before you signed the  
17 arrest warrants for Kay Paschal, you testified that  
18 you spoke to the Lexington County Solicitor; is that  
19 correct?

20 A Yes, sir.

21 Q The Lexington County Solicitor is Donald V.  
22 Myers, correct?

23 A Sir -- no, I spoke to Mr. Riddle, an assistant  
24 solicitor.

25 Q Well, my question is, the Lexington County

1 Solicitor is Donald V. Myers, correct?

2 **A** I don't know who the Lexington County Solicitor  
3 is.

4 **MR. FRAWLEY:** Your Honor, we'll stipulate that  
5 Donnie Myers is the Lexington County Solicitor.

6 BY MR. MOORE:

7 **Q** All right. Well, ma'am, it's now been  
8 stipulated through the attorney for the sheriff's  
9 department that Donnie Myers is the Lexington County  
10 Solicitor, even though you didn't know that. You've  
11 been a law enforcement officer how long?

12 **A** Fifteen years, sir.

13 **Q** And in 15 years working in Richland County,  
14 your testimony is you didn't know Donnie Myers was  
15 the Solicitor in Lexington County?

16 **MR. FRAWLEY:** I'll object to that on relevance,  
17 being argumentative. It has nothing to do with this  
18 case.

19 **MR. MOORE:** It has to do with credibility, Your  
20 Honor.

21 **MR. FRAWLEY:** No, it does not. I'll object to  
22 it.

23 **THE COURT:** It is not relevant.

24 **MR. MOORE:** Your Honor, it goes directly to  
25 credibility.



1           **THE COURT:** How do I know whether she knew  
2           Donnie -- I've ruled.

3           **MR. MOORE:** Thank you, Your Honor.

4           BY MR. MOORE:

5           **Q**     Well, ma'am, you testified some time ago that  
6           you had a conversation with the solicitor for  
7           Lexington County before you did what you did in  
8           getting these warrants.. If you didn't know who the  
9           solicitor was until this morning, how was it  
10          possible that you can tell this jury you talked to  
11          the solicitor for Lexington County?

12          **A**     Sir, we refer to solicitors as all the  
13          solicitors, whether assistant or they're reg -- if I  
14          say I'm going to call the solicitor, I'm talking  
15          about the Solicitor's Office and the solicitor that  
16          I'm able to get in touch with. That's how we --  
17          that's how -- our terminology.

18          **Q**     So the case dealing with the transactions in  
19          Lexington County was investigated by Steve  
20          Baumgardner; is that right?

21          **A**     The case was turned over to Detective Steve  
22          Baumgardner with Lexington County.

23          **Q**     And how long did Detective Baumgardner have the  
24          case before it was taken back from him?

25          **A**     A couple weeks.

1 Q Who took the case back from him?

2 A Okay. How the case got back to him --

3 Q No, ma'am. The person's name. Who took the  
4 case back from him?

5 A He gave me the case back.

6 Q That would be you got the case back from him?

7 A Yes, sir.

8 Q All right. So the Richland County Solicitor's  
9 Office recommended that you turn the Lexington  
10 portion of the case for investigation to Lexington  
11 County, right?

12 A Yes, sir.

13 Q The Lexington County detective had it for two  
14 weeks, right?

15 A Yes, sir.

16 Q Then the case was given back to you?

17 A Yes, sir.

18 Q Now, the case is in Lexington County, the  
19 criminal charges you made in Lexington County have  
20 to do with the purchase of this handicapped van; is  
21 that correct?

22 A Those charges are in Richland County.

23 Q And the van --

24 A I mean -- I'm sorry, I need to correct that --  
25 were in Lexington County. I said Richland County,

1 but I meant Lexington.

2 Q And the check for the van is signed David  
3 Wallace, correct?

4 A Yes, sir.

5 Q And you know that Kay Paschal signed that check  
6 for him, correct?

7 A Yes, sir.

8 Q Do you know, after talking with the owner of  
9 Carolina Mobility, that David Wallace approved the  
10 signing of that check for that van?

11 A No, sir.

12 Q Timothy J. Peterson is the owner of Carolina  
13 Mobility, correct?

14 A I know that he was the salesperson. I believe  
15 he was the owner as well.

16 Q Have you ever seen Exhibit Number 5?

17 MR. FRAWLEY: Is that plaintiff's or  
18 defendant's, Your Honor?

19 MR. MOORE: This is Plaintiff's Exhibit 5, Your  
20 Honor.

21 MR. FRAWLEY: Thank you.

22 THE WITNESS: Yes, sir, I've seen this.

23 BY MR. MOORE:

24 Q Did you see that before or after the warrant  
25 was sworn to by you?

1       **A**     I saw that before.

2       **Q**     Would you read that letter?

3       **A**     October 23rd, 2011, To whom it may concern: In  
4       early June of 2010, Kay Paschal phoned Carolina  
5       Mobility Sales to inquire about a handicapped van  
6       for David Wallace. Kay then visited Carolina  
7       Mobility Sales at 2546 Leaphart Road, West Columbia,  
8       South Carolina --

9               **THE COURT:** Slow down a little bit.

10          **THE WITNESS:** I'm sorry.

11          **THE COURT:** She has to take down what you're  
12       saying.

13          **THE WITNESS:** Okay. I'm sorry.

14               To look at a new Toyota van and agreed to  
15       purchase the van and trade a 2002 Cadillac DeVille.  
16       On June 18th, 2010, Kay Paschal returned to Carolina  
17       Mobility with a power of attorney and the title for  
18       a 2002 Cadillac DeVille DTS, serial number -- and --  
19       would you like me to read the serial number?

20       BY MR. MOORE:

21       **Q**     If you'd read the document please, ma'am.

22       **A**     Okay. Serial number 1G6KF579X2U287628 and  
23       purchased a 2010 Toyota Sienna Limited BraunAbility  
24       van, serial number 57DYK4CC3AS334905, for  
25       \$58,317.51. Sincerely, Timothy J. Peterson.

1 Q And, of course, Plaintiff's Exhibit 4 is a copy  
2 of the check where the van was paid for, correct?

3 A Yes, sir.

4 Q And Exhibit 3 -- Plaintiff's Exhibit 3 is the  
5 bill of sale where the vehicle was transferred,  
6 correct?

7 A Yes, sir.

8 Q And the van was titled in the name of David  
9 Wallace or Kay Paschal, right?

10 A Yes, sir.

11 Q And Exhibit Number 14 appears to be an unsigned  
12 statement that you took at some point, I believe  
13 November the 30th, from Mr. Peterson; is that  
14 correct?

15 A Yes, sir, but I have a signed copy of this  
16 statement.

17 Q Well, we --

18 A I don't know. This one's not signed, but my  
19 statement is signed, yes, sir.

20 Q Well, we certainly asked for the documents, and  
21 I think we're just seeing them, but that's okay.  
22 Why don't you read what the statement says that you  
23 took?

24 A Okay. Let me make sure it's the same one since  
25 the one I have is signed.

1 Q That's what they gave us.

2 A All right. I do statements in question/answer  
3 form, so Q would be me, Lieutenant Heidi Scott; A,  
4 Timothy Peterson.

5 So Q: Did you provide Lexington County with a  
6 statement that you wrote concerning Kay Paschal and  
7 transactions that she made at Carolina Mobility  
8 Sales?

9 A: Yes.

10 Question: Did Kay Paschal trade in a 2002  
11 Cadillac DeVille DTS titled in the name of David  
12 Wallace on 6/18/10?

13 Answer: Yes.

14 Did Kay Paschal purchase a 2010 Toyota Sienna  
15 Limited for \$58,317.51?

16 Yes.

17 Was David Wallace with Kay Paschal when she  
18 made these transactions?

19 No.

20 Did Kay Paschal present a power of attorney to  
21 you in order to make the transactions?

22 Yes.

23 Do you have a copy of the power of attorney  
24 that Kay Paschal presented to you?

25 Yes.

1 Did Kay Paschal sign David Wallace's name on  
2 the paperwork?

3 Yes.

4 Was anyone else present when the transaction  
5 took place?

6 No.

7 Was -- what is the location that the  
8 transaction took place?

9 Here at the dealership.

10 How did Kay Paschal pay for the Toyota Sienna?

11 She wrote me a check.

12 Question: Did you see Kay Paschal write out a  
13 check for \$58,317.51?

14 Yes.

15 Is there anything else that you would like to  
16 tell me about this transaction?

17 No. It seemed like a normal transaction with a  
18 power of attorney.

19 Q Ma'am, did you meet with the seller?

20 A Did I meet with Timothy Peterson?

21 Q Hold on. Did you meet with Timothy Peterson  
22 before the warrants were signed?

23 A Yes, sir.

24 Q Did you meet with him after the warrants were  
25 signed?

1       **A**     Yes, sir. I had a conversation with Timothy  
2       Peterson before the warrants were signed by phone.  
3       That was our meeting before the warrants. And then  
4       afterwards, I brought this statement, which he told  
5       me over the phone, for him to sign it, yes, sir.

6       **Q**     Well, you signed an affidavit in this case  
7       which purports to be an affidavit of Lieutenant  
8       Heidi Scott in support of a motion for change of  
9       venue. You just told the jury that you met with  
10      Mr. Peterson or talked to Mr. Peterson before  
11      signing the warrant.

12             Read, if you would, what you said right here  
13      where it says that -- it says, Some time -- it  
14      begins, Some time. Yeah, right here {indicating}.  
15      Some time after the issuance.

16             **MR. FRAWLEY:** Your Honor, he's referring to  
17      Plaintiff's Exhibit Number 19, and I would ask what  
18      paragraph he's referring to.

19             **MR. MOORE:** Paragraph six.

20      BY MR. MOORE:

21      **Q**     Read that line for me.

22      **A**     Some time after the issuance of the warrants, I  
23      met with the gentleman who sold the van to  
24      Ms. Paschal and got a written statement from him on  
25      November 30th, 2011. And then I later appeared at



1 the preliminary hearing that he had requested --  
2 that had been requested by Ms. Paschal.

3 Q Is that true?

4 A Yes.

5 Q So according to the affidavit that you signed  
6 with this court under oath; you did not actually  
7 meet with the seller of this vehicle and take a  
8 statement from him until after you have already  
9 signed the warrants; is that correct?

10 A I had spoken with him. We had a conversation  
11 on the phone where he told me -- he answered all  
12 those questions and we typed it out. And then I  
13 brought it over to him and then he signed it. So I  
14 had had a conversation with him, sir.

15 Q My question was, meet with him.

16 A No. I had a phone conversation before and then  
17 after I took him the documents to sign.

18 Q My question was, meet with him.

19 A Yes, sir.

20 MR. FRAWLEY: Your Honor, she's answered that  
21 question. And I object to the asking --

22 MR. MOORE: The problem, Your Honor, is that  
23 she begins -- she answers the question and then  
24 begins telling me all about all kinds of things that  
25 I have not asked her about. And she's doing that

1 over and over again --

2 MR. FRAWLEY: No, she's not.

3 MR. MOORE: I would ask the Court's -- I would  
4 ask the Court's assistance in asking the lady simply  
5 to be responsive to my question.

6 MR. FRAWLEY: Your Honor, he's  
7 mischaracterizing the language out of that  
8 affidavit.

9 THE COURT: Step in the jury room, please.  
10 Don't discuss the case.

11 (The jury retires to the jury room.)

12 THE COURT: How is what she said in this  
13 untrue?

14 MR. MOORE: It simply goes to show, Your Honor,  
15 that she did not even meet with the people. It  
16 shows the --

17 THE COURT: She states, Some time after the  
18 issuance of the warrant, I met with the gentleman  
19 who sold the van. How is that untrue?

20 MR. MOORE: It isn't untrue.

21 THE COURT: Well, then why are you trying to  
22 make it sound like it is?

23 MR. MOORE: Well, first of all, because she  
24 said something that made it sound like that it was  
25 different.

1           **THE COURT:** Not to me.

2           **MR. MOORE:** Well, to me, and it may be to the  
3 jury. But the judge is not supposed to be the  
4 conclusion of what the testimony actually means.  
5 It's supposed to be relevance. To me, it sounds  
6 like it's untrue. To them --

7           **THE COURT:** Well, how did it sound untrue?  
8 That was my question to you. You want to answer my  
9 question?

10          **MR. MOORE:** Because what she's trying to do,  
11 Your Honor, what she's trying to do is to make it  
12 look like there was a full and complete  
13 investigation of this case before she signed the  
14 warrant. And what she's telling the jury that she's  
15 done is that she's done the investigation, that  
16 she's met with the witnesses, she's talked to  
17 witness. What she did was this, what she did was  
18 this --

19          **THE COURT:** You're not answering my question.

20          **MR. MOORE:** It basically shows that there was a  
21 totally incomplete examination of an incomplete  
22 file, which was there before she ever signed --

23          **THE COURT:** She said she talked to the man on  
24 the phone beforehand. She said that she met with  
25 the man afterwards.

1           **MR. MOORE:** That's correct.

2           **THE COURT:** I don't understand why you are  
3 going into this over and over again. It makes no  
4 sense to me. I am not the judge of the facts. I  
5 will not be the judge of the facts. I have no  
6 intention of being the judge of the facts.

7           We'll be in recess for five minutes. Do not  
8 discuss the case with anybody.

9           (Brief recess.)

10          **THE COURT:** What was I asked to rule on?

11          **MR. FRAWLEY:** Your Honor, I had objected on the  
12 grounds that it was asked and answered and that he  
13 was mischaracterizing the affidavit.

14          **THE COURT:** It is asked and answered.

15               I have no problem with the way the witness is  
16 answering the questions. I'm not going to instruct  
17 her to answer them differently than she's answering  
18 them.

19               Bring the jury in.

20               (The jury returns to the courtroom.)

21          **THE COURT:** The question's asked and answered.

22               Ask your next question, please.

23          BY MR. MOORE:

24          **Q**     Ma'am, do you now know that Officer Baumgardner  
25 investigated and found no probable cause?

1       **A**     No, that's not what I understand. I understand  
2       that he did so because he didn't finish his case.

3       **Q**     Yes, ma'am.

4             I'm going to hand you Defendant's Exhibit  
5       Number 11, which is in evidence, which purports to  
6       be a report from Officer Baumgardner. Would you  
7       read that for me, please, ma'am?

8       **A**     Okay. This is not my report. This is a  
9       Lexington County Sheriff's Department report. It's  
10      a case supplemental report is what it's called. And  
11      they have a different case number listed, 11032000.  
12      It says when it was printed, January 17th, 2012.  
13      Lexington County Sheriff's Department.

14            The information below is confidential for use  
15      by authorized personnel only.

16            Case status: Exceptionally cleared.

17            Case management status: Exceptionally cleared.

18            Occurred: 6/18/2010.

19            Offense: Counterfeiting slash forgery.

20            Investigator Baumgardner, Steven E.

21            Date and time is 11/4/2011, 15:40:14, Friday.

22            Supervisor Prestigiacomo -- I'm sorry, do you  
23      need me to spell that out?

24       **Q**     That's okay.

25       **A**     Okay. Edward Del is his first and middle name,

1 I guess.

2 Supervisor review date and time: 11/5/2011,  
3 9:50:10, Saturday.

4 Reference: Investigative supplemental.

5 11-4-2011, Lieutenant Heidi Scott, RCSD,  
6 contacted Baumgardner with LCSD. Lieutenant Scott  
7 is investigating a case in Richland County dealing  
8 with a large family estate. The parties cannot  
9 agree and the deceased party, David Wallace's  
10 family, has alleged that the suspect, Kay Paschal  
11 Wallace, who claims to be the common-law wife of  
12 David Wallace, has taken the assets of David  
13 Wallace. RCSD is investigating the claim of  
14 vulnerable adult.

15 Kay Paschal did purchase a van in Lexington  
16 County and used a check to pay for this van. There  
17 is a dispute as to if Kay Paschal had a power of  
18 attorney to do so. There was a POA, however,  
19 Elizabeth Wallace, daughter of David Wallace,  
20 deceased, alleges to have been forged by Paschal.  
21 The POA was sent to a private handwriting expert,  
22 Marvin H. Dawson, and to SLED for analysis.

23 Baumgardner started to investigate this case.  
24 It was found that a marriage license was purchased  
25 by David Wallace in Kershaw County; however, the

1 license was never returned.

2 Baumgardner spoke with Tim Peterson, who sold  
3 the van to Kay Paschal. Mr. Peterson stated that a  
4 POA was presented and that Kay gave a check to  
5 purchase the van. Mr. Peterson stated that  
6 Mr. Wallace inspected the van while he was alive and  
7 it met with his approval.

8 Baumgardner had been in contact with Elizabeth  
9 Wallace via phone. Ms. Elizabeth Wallace stated  
10 that she wanted Lexington County to obtain a warrant  
11 for forgery of the check used to pay for the van  
12 before RCSD did any charges. I explained that there  
13 were several concerns that I had and wanted to find  
14 out what documentations were used to prove that Kay  
15 Paschal changed her name to Kay Wallace.

16 I also expressed some concern over additional  
17 issues that I wanted to clarify before I sought any  
18 charges. Ms. Elizabeth stated that she understood,  
19 as she was an attorney and her brother was with the  
20 CIA.

21 Lieutenant Heidi Scott called me on 11-4-2011  
22 and asked that I transfer this case back to her.  
23 Lieutenant Scott stated that she had sought counsel  
24 through her department and that -- and that RCSD  
25 will make the charges of forgery. Baumgardner

1       agreed to TOT the case -- I guess turn over the case  
2       -- Back to RCSD. The case will be in Baumgardner's  
3       office. Lieutenant Scott stated that she would have  
4       the case picked up within a week.

5       Because this case will be sent back to RCSD at  
6       their request, Baumgardner will close this case  
7       ex-cleared, no prosecution in Lexington County.  
8       Ex-cleared, TOT, Richland County Sheriff's  
9       Department.

10       End of report, 11/4/2011, 16:09, BAUMS, 314,  
11       LCSD.

12       Q     Do you know what that means when it says, No  
13       prosecution in Lexington County?

14       A     I do understand, but this is Baumgardner's case  
15       supplemental report. It's the first time I've seen  
16       it, and he's...

17       Q     Yes, ma'am.

18       There was a Cadillac traded in for the van; is  
19       that correct?

20       A     Yes, sir.

21       Q     Do you know if Kay Paschal had any money  
22       invested in that Cadillac?

23       A     I know that Kay Paschal had tried to purchase  
24       the Cadillac, but she didn't make the payments as  
25       she was supposed to. And the Cadillac was in David



1 Wallace's name. That's what I know from the  
2 investigation.

3 Q Now, as I understand it, there was a probate  
4 court scheduled to take place, according to the  
5 record, on the 16th day of November; is that  
6 correct?

7 A I'm sorry. I don't know when the probate court  
8 dates were.

9 Q All right. Ma'am, would you please take a look  
10 at Plaintiff's Exhibit Number 7. This appears to be  
11 a notification from the Richland County Probate  
12 Court indicating that a hearing is scheduled to  
13 remove the personal representative. What date was  
14 that scheduled?

15 A The date, on November 16th, 2011.

16 Q All right. So then, according to the documents  
17 in the record now, there was a probate court case  
18 scheduled to take place November the 16th, 2011?

19 A That's what I see here, yes, sir.

20 Q Now, what date was Kay Paschal arrested  
21 pursuant to the warrants on which you had signed the  
22 affidavit?

23 A (Witness reviewing documents.)

24 Q You can look at the warrants, Defendant's  
25 Exhibit 9 and Defendant's Exhibit Number 10, if you

1 can just tell me the dates that she was arrested.

2 A I don't know the date exactly that she was  
3 arrested. I know that the warrants were taken out  
4 on 6/8 -- no, excuse me...

5 Q The date they were signed would be right here.

6 A Okay, yes. On November 15th, 2011, yes, that's  
7 the date that the warrants were signed. That's the  
8 date I called her and just told her she could just  
9 turn herself in. I don't know what date she turned  
10 herself in.

11 Q Yes, ma'am. I just want to make positive we  
12 understand that November 15th, the day you signed  
13 the warrant, is the day before the probate court  
14 hearing was scheduled, right?

15 A Yes, sir. I see now that there was a hearing  
16 then. I did not know that at the time.

17 Q The warrant that you signed was the day before  
18 the probate case was scheduled, right?

19 A Yes, sir.

20 MR. FRAWLEY: Your Honor, we'll stipulate that  
21 November 15th is the day before November 16th.

22 THE COURT: He can ask the question.

23 BY MR. MOORE:

24 Q Ma'am, and upon signing the affidavit,  
25 dictating the affidavit to the judge, you then got

1 the warrant, the warrant was issued, and you called  
2 Kay Paschal and told her there was a warrant and to  
3 turn herself in?

4 **A** Yes, sir. I told her there was a warrant and  
5 she could turn herself in, yes, sir.

6 **Q** What time did you tell her to turn herself in?

7 **A** I didn't tell her a time to turn herself in. I  
8 just let her know that there was a warrant there,  
9 that she could turn herself in.

10 **Q** Right. And the warrant actually --

11 **MR. FRAWLEY:** Your Honor, I'll object to the  
12 right, the editorial comment after that, and I'll  
13 ask that it be stricken. The tone of it is  
14 improper.

15 **THE COURT:** Statements of the attorney are not  
16 evidence, ladies and gentlemen. Go ahead.

17 BY MR. MOORE:

18 **Q** Ma'am, the warrant actually has on it the date  
19 it was served upon Kay Paschal, and that date would  
20 be what?

21 **A** It says 11/16/11. And it was served, I guess,  
22 when she turned herself in.

23 **Q** So the warrant then would have been served upon  
24 Kay Paschal, and she would have been arrested,  
25 according to the file, November the 16th, 2011; is

1 that correct?

2 A Yes, sir.

3 Q So is it just a coincidence that she was  
4 arrested pursuant to the warrant on which you had  
5 signed the affidavit the exact same date that the  
6 probate court case was scheduled?

7 A Sir, she could have turned herself in that same  
8 day. She could turn herself in whenever she wanted  
9 to. There was just a warrant there for her. So --  
10 I did not keep up with the probate court, so I  
11 didn't know when their hearings were.

12 Q Was it just a coincidence that she was arrested  
13 the exact same date as the probate court case?

14 A Absolutely, yes.

15 Q What day is it that you called Kay and told her  
16 there was an outstanding warrant for her arrest  
17 pending in Lexington County?

18 A I told her on the day that I got it signed.  
19 The date that the judge signed it is what we just  
20 discussed.

21 Q Can you tell me approximately what time on the  
22 15th you called the lady and told her there were two  
23 outstanding warrants for her arrest?

24 A It would have been right after I went there and  
25 spoke to the judge, so -- my days are 8:30 to 5:00,

1 so some time within that time period.

2 Q Did you tell her anything about when she should  
3 report in order to be released?

4 A Oh, no, sir.

5 Q Did you tell her anything about when she should  
6 report in order to have a bond set?

7 A No, sir. It was very simple. I just told her  
8 that the warrants were there and she could turn  
9 herself in. And she said, thank you. And that was  
10 the end of the conversation.

11 Q Ma'am, I'm going to show you what's been marked  
12 as Exhibit Number 10 from the Lexington County  
13 Sheriff's Department. It appears to be, on its  
14 face, a victim notification information checklist.

15 MR. FRAWLEY: It's Plaintiff's 10 for the  
16 record, Your Honor.

17 BY MR. MOORE:

18 Q If you would read for me under the comment  
19 section what is written there.

20 A Okay. Under the comment section, it says, Left  
21 messages with both victim contacts listed, but no  
22 contact was made.

23 Q All right. Now, under comments, read who it is  
24 that is supposed to be contacted in regard to the  
25 matter.

1       **A**     Comments: Please notify the affiant as  
2       follows: Lieutenant Heidi Scott, Richland County  
3       Sheriff's Department, 5623 Two Notch Road, Columbia,  
4       South Carolina, 29223. And then my phone number is  
5       (803) 576-3113 or my e-mail is hscott@rcsd.net.

6       **Q**     Do you have any idea how your contact  
7       information came to be listed on the victim's sheet  
8       at the Lexington County Sheriff's Department?

9       **A**     Yes, sir. They asked me to write my contact  
10      information there in case they needed to get in  
11      contact with me. They specifically asked me to do  
12      that.

13      **Q**     When?

14      **A**     When I took the paperwork to the -- Lexington  
15      County after I got it signed from the magistrate.

16      **Q**     Wait a minute. I want to make sure I  
17      understand now what you're telling me. After the --  
18      after you dictated to the judge the affidavit to be  
19      on the arrest warrants and after the judge signed  
20      the warrants ordering the incarceration of Kay  
21      Paschal, are you telling me that you took possession  
22      of the warrants and yourself took them to the  
23      Lexington County Sheriff's Department?

24      **A**     Yes, sir.

25      **Q**     Now, ma'am, in your entire career as a police

1 officer, have you ever done that out of your county?

2 A No, sir.

3 Q Well, why was it so important that you get in  
4 your Richland County patrol car and drive that  
5 warrant to Lexington County?

6 A I believe that was the process. That's what I  
7 was told to do. And I was trying to do everything  
8 exactly right, exactly what I was told.

9 Q Who told you that it was up to you to take the  
10 warrants to the Lexington County Sheriff's  
11 Department?

12 A The judge let me know that was the next step.  
13 I wouldn't have known where to go if he hadn't told  
14 me.

15 Q Well, ma'am, why didn't you just go arrest Kay?

16 A Because --

17 MR. FRAWLEY: Objection; relevance. It didn't  
18 happen. It's speculation. Objection.

19 THE COURT: Overruled.

20 BY MR. MOORE:

21 Q Why didn't you just go arrest Kay?

22 A That's not the normal procedure I do anytime.  
23 If we get an arrest warrant, we turn it in and let  
24 the warrant division or whomever is supposed to  
25 serve it serve it.

1       **Q**     All right. Well now, why would you have been  
2       the person to be contacted on the victim's  
3       statement?

4       **A**     I don't know why they wanted me to write it on  
5       the victim notification information checklist, but  
6       they wanted my contact information, and I said,  
7       Sure, where would you like me to write it? And they  
8       handed me that and said, Write it down here under  
9       comments. So that's why I wrote it on there.

10      **Q**     Well, ma'am, my understanding is that Elizabeth  
11      Wallace showed up at the bond hearing for Kay before  
12      the magistrate. Do you know how she knew to be  
13      there?

14      **A**     Yes, sir. When I got the arrest warrants, I --  
15      after I talked to Kay, I notified Elizabeth Wallace  
16      that there were two warrants.

17      **Q**     Well, how did she know when the bond hearing  
18      was to take place?

19      **A**     I suppose she called the jail because I  
20      wouldn't have known when Kay turned herself in, so I  
21      wouldn't have known that at that time.

22      **Q**     Now, do you know that a magistrate set a bond  
23      on Kay, a surety bond?

24      **A**     I never followed up on what kind of bond she  
25      had, but I assume that that's normal procedure.



1 Q And do you know that, that there was another  
2 bond hearing before Judge Knox McMahon?

3 A Sir, I didn't follow up on the bond hearings.  
4 I was concerned about the case not the bond  
5 hearings.

6 Q Well, I'm going to show you Plaintiff's Exhibit  
7 Number 11, which appears to be a court order signed  
8 by Circuit Judge Knox McMahon on the 17th day of  
9 November, which is the day after the probate hearing  
10 was scheduled. And if you will just read that order  
11 to the jury so they can hear what Judge McMahon had  
12 to say.

13 A Sure. I'll read --

14 MR. FRAWLEY: Your Honor, I'm not sure -- this  
15 is, obviously, in evidence. I've consented to it  
16 coming in, but I'm not sure this witness is the  
17 person who ought to be publishing this. So I'll  
18 object to it based on that, but we have consented to  
19 it coming into evidence.

20 THE COURT: It's in evidence. She can read it.  
21 Overruled. Go ahead.

22 THE WITNESS: I'll read it. This is the first  
23 time I've seen this document, so -- there's a lot of  
24 file stamps on it.

25 It says, The State of South Carolina, County of

1 Lexington. State of South Carolina versus Kay  
2 Paschal, defendant. The Court of General Sessions,  
3 Warrant Numbers J830942 and J830943, Order.

4 A bond modification hearing was held at 2:30  
5 p.m. on November 17th, 2011, at the Lexington County  
6 Judicial Center. The alleged victim, Elizabeth  
7 Wallace, was notified and did not appear. This  
8 matter is before me pursuant to two criminal charges  
9 against Kay F. Paschal, the first being forgery in  
10 the value of \$10,000 or more, and the second being  
11 breach of trust.

12 These charges arise by two Lexington County  
13 arrest warrants. The warrants appear to be signed  
14 by a Richland County Sheriff's Department lieutenant  
15 who was apparently functioning in Lexington County.  
16 There is no indication on either warrant that anyone  
17 from Lexington County law enforcement approved of  
18 these warrants.

19 The Court has reviewed the affidavits in the  
20 arrest warrants which have significant questions  
21 upon their face, both legal and procedural. The  
22 Court does not know the alleged victim claim -- I'm  
23 sorry -- The Court does note the alleged victim  
24 claims to be Elizabeth Wallace, which was placed on  
25 record.

1 I find and conclude that the defendant, Kay F.  
2 Paschal, is a member in good standing in both the  
3 South Carolina and Lexington County Bar  
4 Associations. I find that Ms. Paschal has no  
5 criminal background. I find that Ms. Paschal  
6 presents no risk of flight and presents no danger to  
7 the community. Ms. Paschal turned herself in when  
8 she learned of the allegations, and there is simply  
9 no danger to the community and no risk of flight to  
10 be found anywhere under these circumstances.

11 Based on the foregoing, I find and conclude  
12 that a personal recognizance bond is required, and I  
13 now set a \$10,000 personal recognizance bond on each  
14 count. The only condition, other than the standard  
15 conditions on her bond, shall be that she have no  
16 contact with the alleged victim, Elizabeth Wallace.

17 A copy of this order shall be delivered to the  
18 Lexington County Bond Court which shall prepare both  
19 bond papers in the standard form immediately and  
20 immediately discharge the defendant from custody.  
21 It is so ordered, the Honorable R. Knox McMahon,  
22 Chief Administrative Judge for the Eleventh Circuit,  
23 Lexington County, November 17, 2011.

24 BY MR. MOORE:

25 Q Let's go back to the arrest warrants which led

1 ultimately to Judge McMahon's comments. You've been  
2 trained to prepare these warrants, and you know that  
3 a warrant can either be on hearsay or based upon  
4 first-hand knowledge, correct? An affidavit is  
5 either hearsay or first-hand knowledge?

6 **A** The affi -- yeah. The affidavit is based on  
7 the investigation, yes, sir, and the facts of the  
8 case.

9 **Q** All right. And if it's going to be based upon  
10 hearsay not on first-hand knowledge, you're supposed  
11 to put in the affidavit that it's based upon  
12 hearsay, right?

13 **A** No, sir. It's based on the facts of the  
14 investigation, the facts of the case. I've never  
15 been told, Label this hearsay or label this direct  
16 -- that you heard directly in a situation. It's the  
17 facts of the case.

18 **Q** Well, we know, according to you, that the words  
19 in the warrant are your words in regard to the  
20 affidavit, so look at Plaintiff's Exhibit Number 9,  
21 which is the forgery warrant that you swore to.

22 **A** Okay. Yes, sir.

23 **Q** Would you please read to the jury what you  
24 swore to as being true?

25 **A** Okay. That, on or about June 18th, 2010, while

1 at 2546 Leaphart Road in the West Columbia area of  
2 Lexington County, one Kay Paschal did commit the  
3 crime of forgery. It is believed the defendant  
4 committed the crime because she used a fraudulent  
5 power of attorney in order to purchase a 2010 Toyota  
6 Sienna van, VIN Number 5TDYK4CC3AS334905 for  
7 \$58,317.51. The defendant's name was fraudulently  
8 placed on the title of the vehicle, along with the  
9 victim's name. The victim was considered a  
10 vulnerable adult at this time.

11 Q Ma'am, you'll recall that at the preliminary  
12 hearing, I was asking you about the term fraud and  
13 asked you to define it, and you didn't know what  
14 that meant?

15 A Yes, sir. I wasn't about to attempt to try to  
16 define it, you know, specifically like dictionary  
17 define the term fraud for you. I know where to find  
18 the term fraud in our law books.

19 Q Yes, ma'am, but I asked you at the preliminary  
20 hearing to define the term fraud for me and you  
21 couldn't do it, right?

22 A Yes, sir. I could not give you an exact  
23 definition of the term fraud that would hold up in a  
24 court of law.

25 Q Ma'am, if you didn't know the definition of the

1 word fraud, how was it possible for you to have  
2 sworn before a magistrate that Kay Paschal did  
3 anything fraudulent?

4 **A** Sir, at that time, I did know that she  
5 presented a power of attorney, that I had proof that  
6 was a -- that was fraudulent, that was not  
7 representing the true power of attorney.

8 **Q** Ma'am, you didn't even know what the word fraud  
9 meant, and yet you swore before a magistrate that  
10 Kay Paschal had engaged in fraud, correct?

11 **A** Sir, I do know the definition of what fraud is;  
12 however, I need to look it up to give you the exact  
13 court-appropriate definition. I can look that up if  
14 you'd like me to.

15 **Q** Well, ma'am, at the time of the preliminary  
16 hearing in this case when you were asked, What does  
17 fraud mean, you basically indicated you didn't know,  
18 right?

19 **MR. FRAWLEY:** Question's been asked and  
20 answered. Objection.

21 **THE COURT:** Do you wish to be heard?

22 **MR. MOORE:** Your Honor, this is in a different  
23 context.

24 **THE COURT:** She's already answered the  
25 question. She said that -- what she said at the

1 preliminary hearing.

2 BY MR. MOORE:

3 Q Well, ma'am, so we know that you didn't know  
4 what fraud meant at the time of the preliminary  
5 hearing. Before the preliminary hearing, when you  
6 swore to Judge Whittle, did you know what fraud  
7 meant?

8 A Sir, I understand the term fraud. To do -- to  
9 be able to recite the definition appropriate for  
10 court, I would like to look that up, okay. But what  
11 I -- what's here in the affidavit is what I told  
12 Judge Whittle, yes, sir.

13 Q Yes, ma'am. You told the judge that she'd been  
14 guilty of fraud and you didn't know what fraud meant  
15 at the time. That's correct, isn't it?

16 A No, sir.

17 Q How, ma'am, can you swear that someone's guilty  
18 of fraud when you don't even know what fraud means?

19 MR. FRAWLEY: Your Honor, he's arguing with my  
20 witness. I'll object to that.

21 MR. MOORE: It's -- I'm sorry.

22 THE COURT: Do you wish to be heard?

23 MR. MOORE: It's a legitimate question, Your  
24 Honor. She testified at the prelim she didn't know  
25 what fraud meant. My question is, how in the world

1 can you swear to something you don't know?

2 **THE COURT:** You already asked her that.

3 **MR. MOORE:** That's the question that's before  
4 the Court. That's the question before the witness,  
5 how can you swear to something that's true when you  
6 don't know what it means?

7 **THE COURT:** You're arguing with the witness. I  
8 agree. Sustained.

9 **MR. MOORE:** Thank you, Your Honor. I  
10 apologize.

11 BY MR. MOORE:

12 **Q** Ma'am, do you know that just because a power of  
13 attorney may have been changed, that doesn't make it  
14 fraudulent?

15 **A** I know there are conditions where someone can  
16 change a power of attorney that would still make it  
17 valid, yes, sir.

18 **Q** Do you know if a power of attorney is changed  
19 and the person who grants it, knows it and approves  
20 it, the use of it's perfectly all right?

21 **A** If they are the one to change the power of  
22 attorney, if they're the one to initial it, yeah,  
23 sure.

24 **Q** Well, even if they're not, if they authorize  
25 someone to sign their name or to change it, as long



1 as they authorize its use, it's okay; did you know  
2 that?

3 **A** Sir, I've never heard it being okay for someone  
4 to sign someone else's initials as they're their  
5 own, no, sir.

6 **Q** Well, you didn't know that if a person  
7 authorizes someone to make a change or sign an  
8 initial and then authorizes the use of the document,  
9 that's okay by virtue of something known as  
10 ratification? You didn't know that?

11 **MR. FRAWLEY:** Your Honor, I'll object. There's  
12 no evidence that there was ratification or anybody  
13 authorized any writing of other initials. I'll  
14 object to the question as assuming facts not in  
15 evidence.

16 **THE COURT:** Do you anticipate any evidence in  
17 this regard?

18 **MR. MOORE:** Yes, sir.

19 **THE COURT:** From who?

20 **MR. MOORE:** From Kay Paschal. She'll say she  
21 didn't forge anything or know that it was changed.

22 **MR. FRAWLEY:** That would be hearsay if she's  
23 trying to say that the deceased, Mr. David Wallace,  
24 authorized --

25 **THE COURT:** Well, that wouldn't be a

1       ratification.

2               **MR. MOORE:** If it was -- she was just given the  
3       thing by David, and certainly David authorized its  
4       usage. I mean, she's alleging all kinds of things  
5       here, and she has no idea what the facts were.  
6       That's the problem.

7               **MR. FRAWLEY:** That's not true.

8               **THE COURT:** Your question's about ratification.  
9       What you just told me is you anticipate your witness  
10      to testify that she didn't know about any change to  
11      the power of attorney.

12              **MR. MOORE:** Right.

13              **THE COURT:** What evidence do you have that  
14      Mr. Wallace ratified the power of attorney?

15              **MR. MOORE:** My understanding is Mr. Peterson is  
16      going to say that he knew full well that David --  
17      that he knew full well that -- Mr. Wallace knew full  
18      well that Kay was using the power of attorney. And  
19      in the actual police report that she's drawn up,  
20      she's already testified that for years Kay was  
21      managing his affairs using the power of attorney.  
22      That's in the actual search warrant that she put in  
23      evidence.

24              So if David for years was letting her operate  
25      his affairs using the power of attorney, as she

1 swore to, that would clearly be proof of  
2 ratification and no fraudulent activity.

3 **MR. FRAWLEY:** This power of attorney was dated  
4 May 17, 2002. It was never filed until almost 14  
5 years later.

6 **THE COURT:** If you have evidence of  
7 ratification at some point in this trial, you may  
8 call this witness back up. Right now, I sustain the  
9 objection.

10 **MR. FRAWLEY:** Thank you, Your Honor.

11 BY MR. MOORE:

12 **Q** Well, ma'am, when you signed these warrants,  
13 you had proof that Kay used a power of attorney that  
14 had her name on it, right?

15 **A** Yes, sir. When I signed as the affiant -- I  
16 didn't sign the warrant. I signed as an affiant,  
17 yes, sir.

18 **Q** What evidence did you have that Kay Paschal  
19 knew there was anything wrong with that power of  
20 attorney when she bought that van for this disabled  
21 man?

22 **A** I'm sorry. It sounds as though you're asking  
23 me what do I know that Kay knew?

24 **Q** Sure. You charged her with forgery, that's a  
25 specific intent crime. What evidence did you have

1       that this woman had any intent to defraud anybody?

2       **A**     She was using a power of attorney that had been  
3       altered.

4       **Q**     Well, did you have any evidence that she knew  
5       it had been altered?

6       **A**     Sir, she was using it.

7       **Q**     Did you have any evidence that she knew it had  
8       been altered?

9       **A**     Sir, I don't know what Kay Paschal knows up in  
10      her head, however -- how I can prove what she knows,  
11      but what I do know is that she did present a power  
12      of attorney that had been changed and altered and  
13      doctored.

14      **Q**     Ma'am, fraud and obtaining goods by false  
15      pretenses involves an intent. I want to know what  
16      evidence you had. All you had was evidence that she  
17      used the power of attorney.

18             **MR. FRAWLEY:** I'll object to Mr. Moore stating  
19      what the law is on this, Your Honor, in the  
20      question.

21             **MR. MOORE:** I'll withdraw the question.

22             **THE COURT:** It's overruled --

23             **MR. MOORE:** Ma'am, did you --

24             **THE COURT:** -- all right. It's withdrawn.

25             **BY MR. MOORE:**

1 Q -- have any evidence, when Kay used the power  
2 of attorney, that she was doing it to steal?

3 A When she used the power of attorney, by putting  
4 her name on that vehicle, essentially, that vehicle  
5 would get turned over to her. It's a survivor  
6 benefit if David Wallace passed away because her  
7 name was on the title.

8 Q What evidence did you have -- again, I'm going  
9 to ask the question and this is the last time I'm  
10 going to ask the question. When you signed the  
11 affidavit, what evidence did you have that Kay knew  
12 there was anything wrong with the power of attorney?

13 A Sir, I had -- the evidence that I had dealt  
14 with the actual power of attorney, that it had been  
15 changed.

16 Q Okay. Let's just assume it had been changed.  
17 What evidence did you have that Kay knew it had been  
18 changed?

19 A The evidence that the initials on the front  
20 were not -- were not David Wallace's.

21 Q You didn't have any evidence they were hers  
22 either, did you?

23 A No, sir.

24 Q All right. Well, my question is in regard to  
25 Kay, what evidence did you have when you signed

1       these two criminal warrants, that Kay had done  
2       anything wrong in either preparing or using the  
3       power of attorney?

4       **A**     The evidence that I have is that she presented  
5       a power of attorney that I could show was not valid,  
6       it was not true, it was falsified.

7       **Q**     Well, maybe it was changed, but did you have  
8       any evidence that Kay had changed it?

9       **A**     No, sir. I did not have evidence other than  
10      what was in the computer showing that she had, in  
11      the past, worked with that power of attorney. It  
12      was in her computers.

13      **Q**     That's in the computers she had when she was  
14      working for David?

15      **A**     Yes, sir.

16      **Q**     All right. Well, do you know if David is the  
17      one who changed it?

18      **A**     No, sir. He wasn't the one who did the  
19      paperwork. Kay was his attorney.

20      **Q**     Do you know if David is the one who had it  
21      changed?

22      **A**     No, sir. I never got to speak to David. He  
23      was -- he passed away before I got a chance to speak  
24      to him.

25      **Q**     You charged her with the crime of forgery,

1       okay. What is it that you claim she forged?

2       **A**     Sir, she presented a document that had been  
3       altered. And that charge, if you'll look at the  
4       statute, that charge was appropriate for forgery. I  
5       was advised by two solicitors that that would be the  
6       appropriate charge for someone who presents a  
7       document that's been altered.

8       **Q**     Well, what is it that you claim she forged?

9       **A**     That she -- when she put her signature on any  
10      of that paperwork in her name on that title, that  
11      she had no authority to do that because she  
12      presented a document that was untrue.

13      **Q**     Well, did you ask Mr. Peterson if David Wallace  
14      knew what had happened?

15      **A**     No, sir. I asked if he was there, if he was  
16      part of this transaction. No, he was not.

17      **Q**     All right. The next thing you charged her with  
18      is something called breach of trust. Okay. Do you  
19      see that?

20      **A**     Yes, sir.

21      **Q**     Now, what item was Kay Paschal entrusted with  
22      that she breached the trust?

23      **A**     Kay Paschal, working as his attorney, that's  
24      where the breach of trust, that -- it was not her  
25      car. It was not her Cadillac to trade in. She

1       traded in a Cadillac with David Wallace's name, and  
2       she benefitted by getting the 5,000 dollar trade-in  
3       allowance.

4       **Q**     I thought you testified that she was supposed  
5       to be buying that Cadillac and it was hers?

6       **A**     No. At one point, she wanted to buy the  
7       Cadillac. And from what I understand, she did not  
8       make payments on it. It was still in David  
9       Wallace's name, registered to David Wallace when it  
10      was turned in.

11      **Q**     And you charged her there with obtaining goods  
12      under false pretenses, and you say she did it  
13      because she used a fraudulent power of attorney in  
14      order to trade a 2000 Cadillac for the van, right?

15      **A**     Yes, sir.

16      **Q**     And then you say that the defendant's name was  
17      fraudulently placed on the title. Explain to me  
18      what facts you had that would prove that Kay Paschal  
19      prepared a title.

20      **A**     I never said that Kay Paschal prepared a title.  
21      Obviously, she wouldn't sit there and prepare a  
22      title to a vehicle.

23      **Q**     Do you know if Mr. Peterson had talked to  
24      Mr. Wallace before the title was prepared?

25      **A**     No, sir. Mr. Wallace passed away before I ever



1 got a chance to interview him.

2 Q Well, Mr. Peterson hadn't. Do you know if  
3 Mr. Peterson had talked to Mr. Wallace before the  
4 title was prepared?

5 A No, sir.

6 Q Well, what evidence did you have that Kay  
7 committed any fraud in having the title prepared if  
8 she didn't prepare the title?

9 A Well, she had a fraudulent power of attorney  
10 that she presented, and then she had her name placed  
11 on it, on the actual title.

12 Q When you swore out -- when you swore on the  
13 affidavit, on this warrant, on November 15, 2011,  
14 did you have any first-hand knowledge as to why her  
15 name was placed on the title?

16 A Sir, I did know that she presented a power of  
17 attorney.

18 Q No. My question was, when you swore that she  
19 was guilty of this fraud and forgery -- on November  
20 the 15th, when you swore that she engaged in  
21 fraudulent conduct, did you have any first-hand  
22 knowledge as to why her name was placed on the title  
23 along with David's?

24 A The answer to why would she do that, no, I  
25 wasn't able to communicate with her.

1 Q Well, if you didn't know why that was done and  
2 didn't know if it was legitimately there or not and  
3 didn't know whose idea it was to place her name on  
4 the title in the first place, how was it possible  
5 that you could swear as a fact that it was  
6 improperly placed on the title?

7 A Sir, when someone commits a crime, I don't  
8 always have to know why. If someone hits someone in  
9 the face, I don't have to know why did you hit him,  
10 just the fact that you hit him.

11 In this situation, she presented a document  
12 that had been altered and placed her name on the  
13 title. That's what I know. Those are the facts.

14 Q In your warrant, you used the words, The victim  
15 was considered a vulnerable elderly adult. Those  
16 were your words that you put in the affidavit you  
17 dictated to the judge, right?

18 A It says, The victim was considered a vulnerable  
19 adult at that time.

20 Q Considered by whom?

21 A He met all the qualifications to be a  
22 vulnerable adult. He needed someone to take a  
23 hundred percent care of him.

24 Q Yes, ma'am. Well, you didn't say he meets the  
25 qualifications. You basically said that the victim

1 was considered a vulnerable adult. That's what you  
2 swore to to get the warrant.

3 Who -- who -- by whom? We know no court had  
4 declared it, no doctor had declared it. By whom was  
5 David Wallace considered a vulnerable elderly adult?

6 **A** I can prove, at that time, that he was a  
7 vulnerable adult. And in the court -- when it was  
8 time for the court hearing, if that came up, I would  
9 be able to prove it.

10 **Q** That wasn't my question. You used these words,  
11 At the time, the victim was considered a vulnerable  
12 elderly adult. My question is by whom was he  
13 considered a vulnerable elderly adult?

14 **MR. FRAWLEY:** Your Honor, I'll object. I think  
15 we've covered the vulnerable adult definition about  
16 10 o'clock today. And it's been asked and answered.  
17 I'll object to that.

18 **THE COURT:** Do you wish to be heard?

19 **MR. MOORE:** Your Honor, the question isn't  
20 whether he was or was not a vulnerable elderly  
21 adult.

22 **THE COURT:** Where does the elderly come in? I  
23 don't understand. Go ahead.

24 **MR. MOORE:** There's a specific statute dealing  
25 with vulnerable elderly adults.

1           **THE COURT:** Go ahead.

2           **MR. MOORE:** And she has not said in her warrant  
3 that he meets the definition of a vulnerable elderly  
4 adult. She used these words, He was considered a  
5 vulnerable elderly adult.

6           **THE COURT:** All right. Ask your question and  
7 let's move on.

8           **BY MR. MOORE:**

9           **Q** By whom, by whom was he considered a vulnerable  
10 elderly adult other than you?

11          **A** I made the decision to use those terms because  
12 I could prove that he was. So it was my decision to  
13 choose to write in this -- to tell the affidavit  
14 saying the victim was considered a vulnerable adult  
15 at that time.

16          **Q** All right. When we did the preliminary  
17 hearing, you recall that I asked you what forgery  
18 was and you were not able to define that for me,  
19 correct?

20          **A** Yes, sir. The same -- the same, like I had  
21 mentioned before when we talked about fraud, you  
22 asked me to recite the definition of forgery.

23          **Q** So if you didn't know what forgery was at the  
24 preliminary hearing, you would not have known what  
25 forgery was at the time you signed the affidavit,

1 correct?

2 **MR. FRAWLEY:** Objection. We've covered this 30  
3 minutes ago. Asked and answered.

4 **MR. MOORE:** We talked --

5 **THE COURT:** He's asking about forgery now, not  
6 fraud.

7 You may answer the question, if you recall it.

8 BY MR. MOORE:

9 **Q** Ma'am, we know you didn't know what forgery was  
10 when you were asked about it at the preliminary  
11 hearing. That would mean you didn't know what  
12 forgery was at the time you signed the affidavit on  
13 the warrant, correct?

14 **A** Sir, I understand what forgery means. To  
15 actually state a definition off the top of my head  
16 to be accurate in court, no, I did not do that. The  
17 same as fraud; it's the exact same answers that  
18 you're going to ask me now is the same example for  
19 the fraud. They're the exact same thing.

20 **Q** Ma'am, if you didn't know what the legal  
21 definition was for forgery at the time you signed  
22 the affidavit, how were you able to swear that Kay  
23 Wallace was guilty of forgery?

24 **A** Sir, I understood. When I prepared the  
25 affidavit, I checked to make sure that it was the

1 correct charge using the exact verbiage, and the  
2 solicitor confirmed that it was the verbiage that I  
3 should use.

4 Q You do know, do you not, that there were times  
5 that Kay used that power of attorney in David's,  
6 presence? You know that's true?

7 A When she -- something at the hospital I  
8 understand that she's been in his presence.  
9 However, he was a vulnerable adult at that time, and  
10 whether he had knowledge that she was presenting  
11 that power of attorney, I do not know.

12 Q She actually used the power of attorney to sign  
13 him into the hospital and to HealthSouth, didn't  
14 she?

15 A Yes, sir.

16 Q And when she signed him into the hospital using  
17 the power of attorney, he hadn't had his stroke yet,  
18 had he?

19 A No, sir. I don't believe that she used the  
20 power of attorney to sign him in. She said -- it  
21 said the paperwork by POA, but there was no evidence  
22 that she had presented a power of attorney to the  
23 hospital. She just claimed to be the personal  
24 representative.

25 Q Right. When she signed him into the hospital,

1 he had not yet had his stroke, and yet, she signed  
2 him into the hospital as power of attorney, correct?

3 A She signed the word, By POA, but no power of  
4 attorney existed. As far as I'm concerned, that's a  
5 lie when you do that. She did not register it with  
6 the court until after his stroke.

7 Q When she signed David in, before he had had his  
8 stroke, the person who actually signed David into  
9 the hospital for his surgery was Kay Wallace as  
10 power of attorney, correct?

11 A I'd have to look at whether she used the word  
12 Wallace or Paschal --

13 Q Kay Paschal as power of attorney, right?

14 A She wrote on the paper, Kay Paschal by POA.

15 Q Right. And, of course, David Wallace would  
16 have been full aware at that time that Kay was  
17 signing him into the hospital?

18 MR. FRAWLEY: Objection. She can't testify to  
19 what Mr. Wallace was aware of.

20 THE COURT: Do you wish to be heard?

21 MR. MOORE: I'll withdraw and rephrase it.

22 BY MR. MOORE:

23 Q Do you know if Mr. Wallace was with Kay when he  
24 signed her in -- signed him into the hospital for  
25 his surgery?

1       **A**     I would assume that they would have come  
2       together, yes, because she was there; however, I  
3       don't know if they were sitting together. I don't  
4       know what the circumstances around that are.

5       **Q**     Was there anything fraudulent done by Kay when  
6       she used the power of attorney to sign him into the  
7       hospital?

8       **A**     Well, I don't know that she actually used a  
9       power of attorney. She said, By POA, on there, but  
10      there was no -- when we asked for a power of  
11      attorney, they could never present one that had  
12      actually been presented.

13      **Q**     She simply told them that she was the power of  
14      attorney and signed him into the hospital and they  
15      accepted it, right?

16      **A**     That's what I understand, yes, sir.

17      **Q**     And David accepted the benefit of that by being  
18      admitted into the hospital and having the surgery,  
19      right?

20      **A**     Well, I'm sure that he could admit himself to  
21      the surgery. He was just getting heart surgery. He  
22      hadn't had the stroke yet.

23      **Q**     Sure. He could have admitted himself, but he  
24      relied upon Kay to do it and she signed him in as  
25      power of attorney?



1       **A**    She did write the word, By POA.  If that's what  
2       you're asking, she did.

3       **Q**    Anything fraudulent or forged about that?

4       **A**    I'm not sure.  I'm not even sure what to call  
5       that when you just write something down.  I'm not  
6       even sure what to call that.

7       **Q**    And, as a matter of fact, the children  
8       recognized the validity of her health care authority  
9       under the power of attorney because they left his  
10      day-to-day care up to Kay, didn't they?

11           **MR. FRAWLEY:**  Objection.  She can't testify to  
12      what they recognized.

13           **MR. MOORE:**  That's fine, Your Honor.  I'll  
14      withdraw that.

15      BY MR. MOORE:

16      **Q**    Did Kay pay his bills for him?

17      **A**    Some bills were paid, and there were a lot of  
18      bills that weren't paid.  That was a lot of what we  
19      were looking into, yes, sir.

20      **Q**    A lot of bills that weren't paid?

21      **A**    Oh, yes, sir.

22      **Q**    So you think Kay should have paid those bills  
23      that weren't paid?

24      **A**    I'm not sure what their arrangements were to  
25      pay their household bills.  I'm not sure what they

1       were, but I know that their -- when we did the  
2       search warrant, we found a lot of notices of past  
3       due amounts.

4       **Q**     So now you fault her for signing his name and  
5       for not signing his name. Which way is it?

6       **A**     Well, she served as his attorney, so, of  
7       course, she was supposed to do work for him, yes,  
8       sir.

9       **Q**     Well, ma'am, right. She served also as his  
10      attorney, as well as his power of attorney. So was  
11      it wrong for her not to sign his name on the bills  
12      or was it wrong for her to sign his name on the  
13      bills or was it wrong for her to do both?

14      **MR. FRAWLEY:** Objection; relevance.

15      **THE COURT:** Do you wish to be heard?

16      **MR. MOORE:** Your Honor, I think it's relevant.  
17      The witness has said that, apparently, she found  
18      some kind of fault in Kay for not signing some  
19      checks, yet she's talking about the power of  
20      attorney as being something that Kay shouldn't have  
21      used. It doesn't make any sense to me, and I'm  
22      asking her to explain.

23      **THE COURT:** What's your objection?

24      **MR. FRAWLEY:** My objection is that he's  
25      following a rabbit trail that has nothing to do with

1 this case. That she didn't pay bills, that has  
2 nothing to do with this case. And this is -- it's  
3 going on. It just gets broader and broader. It's  
4 not relevant to the issues before this case, which  
5 are abuse of process, malicious prosecution and the  
6 validity of these two arrest warrants. We're way  
7 beyond that now. Object on the grounds of  
8 relevance.

9 THE COURT: Do you have anything else,  
10 Mr. Moore?

11 MR. MOORE: No, sir, Your Honor.

12 THE COURT: It's not relevant. And if it is  
13 relevant, it's confusing under Rule 403. The  
14 objection is sustained.

15 BY MR. MOORE:

16 Q Did anyone complain about Kay's use of the  
17 power of attorney until after David Wallace had  
18 died?

19 A I don't know who people complained to. I know  
20 that when it was brought -- the incident report was  
21 made by me, there were complaints that they believed  
22 that it had been forged.

23 Q My question is: To your knowledge, had anyone  
24 ever complained about Kay's usage of the power of  
25 attorney until after David died?

1       A     To my knowledge, yes. To my knowledge, the  
2       children had a problem with it because they were  
3       very unhappy with some of the medical decisions that  
4       were being made for their father. And I can go into  
5       that if you'd like.

6       Q     Well, if they were unhappy with it, why didn't  
7       they question it?

8       A     I think that they did question it, sir.

9       Q     How do you know that?

10      A     Well, because she eventually resigned as power  
11      of attorney before he passed away.

12      Q     Now, do you know Dayton Riddle?

13      A     Who?

14      Q     Dayton Riddle.

15      A     Yes. Dayton Riddle, uh-huh. I spoke to him on  
16      the phone.

17      Q     Dayton Riddle used to work as a lawyer in the  
18      Solicitor's Office in Lexington County, correct?

19      A     Yes, sir, that's what I understand.

20      Q     Dayton Riddle never had the case of Kay Paschal  
21      assigned to him, did he?

22      A     No, sir, not that I'm aware of.

23      Q     Dayton Riddle is not the Solicitor for  
24      Lexington County, correct?

25      A     He's the assistant solicitor.

1 Q He is a lawyer who works as an assistant in the  
2 Solicitor's Office, correct?

3 A Yes, sir.

4 Q Now, before you went to see Judge Whittle to  
5 sign the affidavits that you prepared on the arrest  
6 warrant, did you call Mr. Riddle?

7 A Yes, sir, I did.

8 Q Did you tape a telephone conversation with him?

9 A All of our conversations from the sheriff's  
10 department, when we call on our sheriff's department  
11 phones, are recorded. And at the time, I didn't  
12 think anything of it. I was making a normal call.

13 Q Is the answer to my question yes?

14 A Yes. I didn't tape it, but it was taped.

15 Q When you had Mr. Riddle on the telephone, did  
16 you tell him, Hey, Dayton, I'm taping or having this  
17 conversation taped?

18 A Oh, no, sir. I didn't even think about it  
19 being taped at the time. We just record all our  
20 phone calls.

21 Q And as an attorney, you recognize Mr. Riddle  
22 was an officer of the court?

23 A He was an assistant solicitor.

24 Q And as such, an officer of the court?

25 A I don't know how you define that, but, yes, he

1 was an assistant solicitor.

2 Q Why didn't you tell Assistant Solicitor Riddle  
3 that his conversation with you was being taped?

4 A We're never required to do that. All our phone  
5 calls are -- it's standard procedure, standard  
6 practice.

7 Q All right. So that Mr. Riddle, when you called  
8 him -- before you called him, he knew nothing about  
9 this case, right?

10 A I believe that Major Smith had called him and  
11 let him know that I would be calling him to speak  
12 with him because he knew my name when I called him.

13 Q You didn't believe that Mr. Riddle had the  
14 authority to tell you to do something you couldn't  
15 do, did you?

16 A I believe he's a lawyer and he's going to  
17 inform me on what's legal to do, yes, sir.

18 Q Well, he wasn't even assigned to the case,  
19 correct?

20 A No, sir, he was not assigned to the case.

21 Q Do you know of any authority he had to make  
22 decisions on cases that were not assigned to him?

23 A I believe that because he is an assistant  
24 solicitor in Lexington County, that he has authority  
25 to say what's legal in Lexington County or not.

1 legal, that he can advise me on that.

2 Q The case, when you called him, had never been  
3 reviewed by him, correct?

4 A Yes, sir.

5 Q He had never seen your investigative notes?

6 A No, sir.

7 Q He had never seen Mr. Baumgardner's notes?

8 A No, sir.

9 Q You didn't show him the powers of attorney?

10 A No, sir.

11 Q As a matter of fact, you didn't even meet with  
12 him in person?

13 A No, sir. I called him on the phone.

14 Q Did you tell him that Mr. Baumgardner had had  
15 the case for several weeks and had given it back to  
16 you noting no dismissal -- no prosecution in  
17 Lexington County?

18 A No, sir. First of all, I didn't know  
19 Mr. Baumgardner had, you know, that he wrote  
20 something in his own notes that said, No prosecution  
21 in Lexington County. I had no idea of that. But,  
22 no, I didn't talk to him about the fact that  
23 Detective Baumgardner had the case for a couple  
24 weeks, no, I did not.

25 Q Did you tell him that you had not yet met with

1 Mr. Peterson who had sold the van?

2 A No. I had talked to Mr. Peterson on the phone,  
3 so I was comfortable with the fact that -- what he  
4 told me.

5 Q Did you tell him that you didn't have any  
6 evidence that Kay knew the POA, the power of  
7 attorney, had been modified?

8 A No, sir, because I don't -- I never claimed to  
9 know what Kay knows up in her head.

10 Q Well, you knew what evidence you had and didn't  
11 have?

12 A Yes, sir. I knew what evidence I did have.

13 Q And you knew you had no evidence to demonstrate  
14 that she knew it had been modified?

15 A I know she presented a forged power of  
16 attorney. That's what I know.

17 Q But you had no evidence to prove that she knew  
18 it had been changed?

19 MR. FRAWLEY: Your Honor, I'll object that the  
20 fact that she presented it is circumstantial  
21 evidence that she knew it, so that is some evidence.  
22 I'll object to his mischaracterizing the question.

23 THE COURT: Do you wish to be heard?

24 MR. MOORE: No, sir, I'll move on. I'm trying  
25 to get this thing done as quickly as I can, Your



1 Honor.

2 THE COURT: The objection's sustained.

3 BY MR. MOORE:

4 Q Did you tell him about your involvement in the  
5 Lexington County search warrant?

6 A No, sir, I don't -- I don't believe I did.

7 Q Did you tell him that you didn't know the legal  
8 definition of forgery?

9 A Of course, I didn't tell him that.

10 Q Did you tell him you didn't know the legal  
11 definition of breach of trust or obtaining property  
12 under false pretenses?

13 A Sir, he gave me those words to use. He's the  
14 one who told me those would be the appropriate  
15 charges.

16 Q Did you tell him you'd seen medical records?

17 A Yes, I had seen medical records. I'm not sure  
18 if I told him that, but, yes, I had seen medical  
19 records at that time.

20 Q What Dayton basically told you, that it was all  
21 right by him, but you needed to discuss the matter  
22 with Judge Whittle?

23 A Correct, yes, sir.

24 Q Did you tape the conversation you had with  
25 Judge Whittle?

1       **A**     No, sir. I was not -- I took Investigator  
2       Talkish with me, so I wasn't alone. But, no, I  
3       didn't -- I didn't walk around with a tape recorder  
4       to tape a conversation with the judge, no, I did  
5       not.

6       **Q**     Why did you call Mr. Riddle?

7       **A**     I called him because I had a question.

8       **Q**     What was your question?

9       **A**     My question was I wanted to find out if I had a  
10      large case in Richland County and part of it starts  
11      to bleed over into Lexington County, if I could go  
12      serve as the affiant on a warrant in Lexington  
13      County. That's what I asked him very specifically.

14      **Q**     Yes, ma'am. I want to know about this  
15      bleed-over jurisdiction, that if you're  
16      investigating a case that has some things happen in  
17      Richland and some things happen in Lexington, where  
18      can I go to see this bleed-over jurisdiction that  
19      you claim to have? Is there a rule or a statute or  
20      something that gives you bleed-over jurisdiction?

21      **A**     I just used that word. I just used the word  
22      because some things started to happen that I could  
23      find in Lexington County. I used the word.

24      **Q**     What authority at all do you know of that gives  
25      you any bleed-over jurisdiction to prosecute a case

1       like this in Lexington County?

2       **A**     I didn't know until I called Dayton Riddle, and  
3       Dayton Riddle, as an attorney, told me that it would  
4       be fine with him, check with Judge Whittle. I  
5       checked with Judge Whittle. Judge Whittle signed  
6       the warrant. So under that authority, I didn't know  
7       until I called and asked him.

8       **Q**     So the authority you rely upon to have signed  
9       the warrant in the first place is the Dayton Riddle  
10      authority?

11      **A**     And Joanna McDuffie, our solicitor. I spoke to  
12      her, too, before I actually took it to Judge  
13      Whittle, and she didn't see a problem with it  
14      either. She didn't see anything specific in the law  
15      that said I couldn't do that.

16      **Q**     And, yes, ma'am. The truth of the matter is,  
17      too -- let me ask you this question: Before relying  
18      upon a legal opinion in a case, why wouldn't you at  
19      least have the case assigned to the solicitor so  
20      that he can be familiar with it and give you more  
21      than just an off-the-cuff opinion?

22      **A**     It's common procedure. If we have a question  
23      about the law, we call the solicitors. And in this  
24      case, I called the appropriate solicitor, what I  
25      believed first, which would be to ask about this

1       Lexington County issue, and then I called our  
2       solicitor in Richland County to follow up. So  
3       that's normal. If we have a question about the law,  
4       we call an attorney, and the solicitors are  
5       attorneys.

6       Q     Did you discuss your concerns about whether you  
7       could sign the affidavit with Judge Whittle?

8       A     Yes, I did.

9       Q     What did you tell him about what you were  
10      concerned about?

11      A     Well, I told him that I was a Richland County  
12      police officer, certified in Richland County, and he  
13      was well aware of that. I stood in front of him.  
14      He knew I was a Class I deputy, certified through  
15      the State of South Carolina from the Criminal  
16      Justice Academy, hired and employed by Richland  
17      County. He was well aware of everything.

18      Q     Did you tell him that Lexington County had also  
19      done the investigation?

20      A     No, I did not tell him that Investigator  
21      Baumgardner had the case for a couple weeks.

22      Q     Now, if it's a Lexington County case and  
23      Lexington County had investigated and you're trying  
24      to do the right thing with Judge Whittle, why didn't  
25      you tell him that the Lexington County authorities

1 were also involved in the case?

2 **A** I didn't tell him because Investigator  
3 Baumgardner did not do a complete investigation. He  
4 was leaving on medical leave, and he said it would  
5 be quite some time before he could come back and  
6 work on the case. He expressed there was no one  
7 else that could take over the case in Lexington  
8 County, otherwise I would have left it.

9 **Q** When Mr. Riddle talked to you in that taped  
10 telephone conversation -- you've heard that taped  
11 telephone conversation before testifying here today,  
12 haven't you?

13 **A** Yes, sir.

14 **Q** You've heard it more than one time, too,  
15 haven't you?

16 **A** I heard it right back in the beginning when --  
17 after we spoke, and then I heard it yesterday again.

18 **Q** Mr. Riddle expressed concern about the  
19 application of South Carolina Code 22-5-110,  
20 correct?

21 **A** I don't remember exactly what he expressed  
22 concern. He said something like that, yes, sir.

23 **Q** He expressed concern about the fact that an  
24 arrest warrant may not be issued for the arrest of  
25 the person unless sought by a law enforcement

1 officer acting in their official capacity, correct?

2 **A** I'm not sure that I know what that statute is  
3 without looking at it. I'd have to look at it.

4 **Q** He basically told you that if an arrest warrant  
5 is going to be by someone other than a  
6 duly-authorized law enforcement officer, the court  
7 has to issue a summons not a warrant, right?

8 **A** Yeah, we had that conversation, yes, sir.

9 **Q** Did you bring that statute to the attention of  
10 Judge Whittle?

11 **A** No, sir. I mean, I didn't know -- Dayton  
12 Riddle gave me the okay to go run it by Judge  
13 Whittle, and I gave the same information to Judge  
14 Whittle that I gave to Dayton Riddle.

15 **Q** Well, Dayton Riddle, though, had given you the  
16 heads-up, You better make sure you do this in  
17 compliance with the code section. You knew -- and  
18 what he said was, Make sure that Judge Whittle  
19 knows, but if it's okay with him, it's okay with me,  
20 right?

21 **MR. FRAWLEY:** Your Honor, I'll object to the  
22 question as a mischaracterization of what was said,  
23 and we'll defer to the tape when it gets played  
24 later tomorrow or today.

25 **THE COURT:** That's asking me to comment on the

1 facts. I can't comment on the facts.

2 BY MR. MOORE:

3 Q Ma'am, that's what he basically said is you  
4 better know about this code section and you make  
5 sure you run it by Judge Whittle, and if it's okay  
6 with him, it's okay with me, correct?

7 A I think when he -- when he -- he wasn't  
8 specifically talking about the code section. I  
9 believe he was talking about the whole situation,  
10 run it by Judge Whittle.

11 Q Right. And one of the things he'd talked about  
12 in the whole situation was this code section which  
13 says, Unless you're an authorized police officer,  
14 you can't take out -- you can't swear out a warrant.  
15 He told you about that, right?

16 A Is it okay if we just listen to it on the CD,  
17 because that'll be exactly word for word? They'll  
18 hear exactly the truth of what it was.

19 Q If I had the ability to play it right now, I  
20 would.

21 MR. MOORE: Madame Court Reporter, do you have  
22 the ability to play a CD?

23 THE COURT: It's ten minutes to 1:00. We're  
24 not going to play a CD right now. We're going to  
25 break for lunch.

1           **MR. MOORE:** Can we break for lunch?

2           **THE COURT:** Yes.

3           **MR. MOORE:** And, Your Honor, the good news is  
4 I'm getting close.

5           **THE COURT:** Ladies and gentlemen, we're going  
6 to break for lunch. I need you back in the jury  
7 room at 2:30, please. Don't discuss the case.

8           (The jury was excused for lunch.)

9           **THE COURT:** During the break, you're not to  
10 discuss your testimony with anyone. You understand?

11          **THE WITNESS:** Yes, sir.

12          **THE COURT:** Thank you. You may step down.

13          Folks, be careful as you leave, that you don't  
14 have contact with jurors. They usually take a few  
15 minutes to clear out.

16          We're at ease till two o'clock and 2:30 on this  
17 case.

18          (Whereupon, there was a luncheon recess.)

19          **THE COURT:** Are you ready?

20          **MR. MOORE:** Yes, sir, Your Honor.

21          **MR. FRAWLEY:** The defendant's ready, Your  
22 Honor.

23          **THE COURT:** Lieutenant.

24          (Witness resumes the witness stand.)

25          **THE COURT:** Bring the jury in.



1 (The jury returns to the courtroom.)

2 **THE COURT:** You may continue, Mr. Moore.

3 **MR. MOORE:** Your Honor, I believe we have now  
4 made arrangements to play the recorded tape of  
5 Mr. Dayton Riddle. If I might ask for some  
6 assistance. Technically, if we could -- this is in  
7 evidence already, if we might play this tape for the  
8 benefit of the jury.

9 **THE COURT:** All right.

10 **MR. FRAWLEY:** Your Honor, this is Defendant's  
11 Exhibit Number 7.

12 (Whereupon, Defendant's Exhibit Number 7 was  
13 played for the jury.)

14 **MR. MOORE:** May it please, Your Honor.

15 **THE COURT:** Yes, sir.

16 BY MR. MOORE:

17 **Q** Ma'am, you now have heard that tape recording  
18 that was made of your conversation with Mr. Riddle?

19 **A** Yes, sir.

20 **Q** Did you know the conversation was being taped  
21 when it was made?

22 **A** I know that all our phone calls are recorded  
23 from the sheriff's department.

24 **Q** So would the answer be yes?

25 **A** Yes.

1 Q Now, you told Mr. Riddle that she traded in the  
2 Cadillac and got \$5,000 for it. Did you hear  
3 yourself tell Mr. Riddle that?

4 A Yes, a 5,000 dollar credit.

5 Q That's not what you said. On the tape --  
6 correct me if I'm wrong, we just listened to it --  
7 you told Mr. Riddle that Kay traded in the Cadillac  
8 and she got \$5,000 for it. That's what you said.  
9 Did you hear that?

10 A I would have to listen to it again because I  
11 think we talked about it a couple times there, but I  
12 don't think that I've ever said anything that she  
13 got \$5,000 cash. It was a credit towards the other  
14 vehicle, and I explained that when I said the  
15 \$63,000 minus the 5,000 dollar credit.

16 Q Well, I wrote it down when it was said, and it  
17 basically said she got \$5,000 for it. Did you not  
18 hear that?

19 A I'm sure that it said that as well. And like I  
20 said, I tried to explain so that it was understood  
21 correctly.

22 Q Did Kay ever get \$5,000 in her pocket from the  
23 trade of the Cadillac?

24 A No, sir.

25 Q Now, Mr. Riddle, who was not assigned to the

1 case, he did not have a case file in front of him,  
2 did he?

3 A No, sir.

4 Q But he mentioned Mr. Steve Baumgardner, right?

5 A Yes, sir. I think I mentioned Steve  
6 Baumgardner.

7 Q Right. Well, Mr. Baumgardner was mentioned,  
8 and what you said is, He was going to work with me  
9 on the case, but he's going into the hospital,  
10 right?

11 A Yes, sir.

12 Q Well, the truth of the matter is he had had the  
13 case for several weeks as the Lexington County  
14 investigator, correct?

15 A Yes, he had it for a couple weeks, yes.

16 Q Did you actually tell Mr. Riddle, when  
17 Mr. Baumgardner came up, that, in fact, Lexington  
18 County deputies had done work investigating the  
19 file?

20 A No, sir, because Steve Baumgardner didn't do  
21 anything or come up with any information that I  
22 didn't already know.

23 Q I see. Well, you certainly didn't tell  
24 Mr. Riddle, however, that, Hey, Mr. Baumgardner has  
25 worked on the file already?

1       **A**     I didn't have any information from  
2       Mr. Baumgardner. It was the same file that I gave  
3       him I got in return.

4       **Q**     Do you recall the date that you made the  
5       telephone call to Dayton Riddle that we've just  
6       listened to?

7       **A**     It was the day before I went and saw Judge  
8       Whittle.

9       **Q**     That was two days then before the probate court  
10      hearing?

11      **A**     Yes. We talked about this already.

12      **Q**     Well, we talked about when the warrant was  
13      issued, but this conversation with Dayton would have  
14      been about two days before the probate court  
15      hearing, which we know was scheduled on the 16th?

16      **A**     I know it now. I did not know it at the time.

17      **Q**     Did you hear Dayton tell you these words,  
18      Either way, call Jackie Brothers at West Columbia  
19      first?

20      **A**     I heard him say that I can do this or I can do  
21      that, yes, sir.

22      **Q**     Well, you heard him say, Either way, call  
23      Jackie Brothers at West Columbia first, correct?

24      **A**     He probably said that.

25      **Q**     Well, he did say it because we heard it on the

1 tape, right?

2 A Okay. Okay. I'm not denying it.

3 Q All right. So one of the things that you were  
4 told to do first was to call Jackie Brothers at West  
5 Columbia, correct?

6 A Yes, sir. The conversation kept moving along  
7 for me to try to serve this, you know, till he came  
8 to a conclusion, yes, sir.

9 Q Did you do what Mr. Riddle told you to do in  
10 regard to calling Jackie Brothers?

11 A No. I don't know who Jackie Brothers is, and I  
12 did not call Jackie Brothers.

13 Q So you did not do what Dayton told you to do?

14 MR. FRAWLEY: Your Honor, I'll object to his  
15 characterizing what was said in this conversation,  
16 which this jury has just heard, as being directions  
17 from Mr. Riddle as to what she should do next.  
18 They've heard the conversation, a transcript of the  
19 conversation is in evidence as Defendant's Exhibit  
20 Number 8, so they can read it when they get in  
21 there. And I object to his mischaracterizing that  
22 and requiring this witness to reconstruct what she  
23 just heard in a conversation that's over two years  
24 old.

25 THE COURT: I can't get into facts and he can

1 ask her questions. She can answer the questions --

2 MR. FRAWLEY: Thank you.

3 THE COURT: -- as best she can.

4 BY MR. MOORE:

5 Q Did you make any effort to find who Jackie  
6 Brothers at West Columbia was?

7 A No, sir.

8 Q Did you ever tell Mr. Riddle, I'm not going to  
9 go see Jackie Brothers first; I'm just going to go  
10 straight to the magistrate?

11 A I believe in the end when I said that I was  
12 going to go see Judge Whittle.

13 And you see Riddle, right? You said, did I  
14 ever tell --

15 Q Whittle.

16 A Judge Whittle?

17 Q No. Did you ever tell Mr. Riddle?

18 A Mr. Riddle. No. I just told him at the end  
19 that I would probably go see Judge Whittle because  
20 he was already familiar with the situation.

21 Q Ma'am, did you hear on that tape Mr. Dayton  
22 Riddle ask you, The van is now hers? And you said,  
23 Yes, but the probate court is going to look at the  
24 van also. Did you hear that?

25 A They always do. Yes, sir, I did hear that, and

1       that's normal. Probate looks at everything. So  
2       before I could totally declare that it would be hers  
3       in the future, probate, I'm sure, is going to be  
4       involved.

5       Q     How did you know that the probate court was  
6       going to look into the issue of the van ownership?

7       A     Because David Wallace's name was on the van as  
8       well. It was David Wallace or Kay Paschal, and  
9       that's normal. If someone dies, when someone's name  
10      is on something, probate looks into it as well. So  
11      I didn't want to make Mr. Riddle think I was telling  
12      him something that wasn't true. I wanted him to  
13      know the truth.

14     Q     Did you hear Mr. Riddle basically say that he  
15     had no problem with -- he had no problem with you  
16     signing the affidavit as long as the magistrate had  
17     no problem with it?

18     A     Yes, sir.

19     Q     But then he referred to that statute. He  
20     basically said he hadn't looked at that statute in a  
21     while and asked if you were familiar with it.

22     Remember that?

23     A     Yes.

24     Q     And you said, Yes, I am familiar with it?

25     A     I think I said, Okay. Because when he asked

1 me, I was like, Okay. I was listening to what he  
2 was saying.

3 Q All right. Well, you certainly didn't say, I  
4 have no idea what you're talking about, did you?

5 A No, I just was listening to him. I said, Okay.

6 Q And he brought up to you the possible  
7 applicability of code section 22-5-110, correct?

8 A He mentioned it, yes, sir.

9 Q Then he also told you that he hadn't looked at  
10 that in a while, right?

11 A Yes, sir.

12 Q So you were relying on what he said even  
13 knowing that he hadn't had a fresh knowledge of what  
14 the code section said?

15 A Yes, sir.

16 Q Ma'am, if it wasn't Dayton Riddle's case, if he  
17 hadn't reviewed everything that you had seen, if he  
18 didn't have the benefit of seeing the Lexington  
19 County investigative reports, if he hadn't even seen  
20 the power of attorney, if he had no formal  
21 relationship with the case at all, why in the world  
22 would you call Dayton Riddle to get some sort of an  
23 opinion that you would rely on?

24 A There's several reasons why I called Dayton  
25 Riddle. The first is when I told my major, Major



1 Smith, that it looks like Steve Baumgardner's going  
2 to be gone for some time, then Major Smith is the  
3 one who suggested to me, Why don't you talk to a  
4 solicitor in Lexington County and see if they'll  
5 allow you to be the affiant on a warrant in  
6 Lexington County. And that's exactly what I did.

7 Q Ma'am, you also said -- we've talked a lot  
8 about this search warrant which you say that Judge  
9 Whittle executed for you. You used these words, and  
10 correct me if I'm wrong, I did a search warrant on  
11 her in West Columbia. Do you recall on the tape  
12 saying, I did a search warrant on her?

13 A Yes. I believe I said something to those  
14 words, yeah, that I did a search warrant. And I  
15 believe that he understood because I mentioned her  
16 home. Of course, I didn't search her body, if  
17 that's...

18 Q Well, when you said, I did a search warrant on  
19 her, what did you mean by that?

20 A On her home at the Kitty Hawk address.

21 Q Well, you did the search warrant?

22 A No. He knows that I'm not a judge. He knows I  
23 can't sign a search warrant. I was the affiant on  
24 the warrant. He knows that.

25 Q Ma'am, you don't know what he knows, do you?

1       **A**     I know that he knows I'm not a judge.

2       **Q**     Sure. You told him that, I did a search  
3       warrant on her home in West Columbia, right towards  
4       the end of that tape, didn't you?

5       **A**     That's common law enforcement talk. Of course,  
6       I can't sign the warrant. I signed it as the  
7       affiant. He's a lawyer. He knows that.

8       **Q**     Is what you told him true?

9       **A**     Yes, what I told him was true.

10      **Q**     Now, you basically were telling him a lot about  
11      this power of attorney and authority and all sorts  
12      of stuff. Did you mean to imply to Dayton Riddle  
13      that you had evidence that Kay Paschal had forged  
14      the document?

15      **A**     Yes, she did present a forged power of  
16      attorney. I do have evidence of that.

17      **Q**     Now, there's a difference between that she had  
18      forged a document and that she had presented an  
19      altered power of attorney. Do you mean to imply to  
20      Dayton Riddle that you had evidence that Kay Paschal  
21      had actually forged a document?

22      **A**     I do have some evidence for the fact that those  
23      power of attorneys are located on the computers that  
24      we took in the search warrant. So, yes, I do have  
25      some. And what I was directly referring to was that

1 the power of attorneys were not -- they were not  
2 original. They were changed.

3 Q Yes, ma'am. But you didn't tell Dayton, I have  
4 some evidence. You told him that she had forged a  
5 power of attorney, didn't you?

6 A I feel comfortable that I could have proven  
7 that in a court of law.

8 Q But you didn't tell Dayton that you feel  
9 comfortable you could prove it. You told him it's a  
10 fact that she had forged a document. That's what  
11 you said as a fact, correct?

12 A Yes, sir, I did say that.

13 Q You didn't say, I have reason to believe, I  
14 have evidence that shows --

15 MR. FRAWLEY: Objection; the question's been  
16 asked and answered twice, maybe three times, same  
17 question.

18 THE COURT: Do you wish to be heard?

19 MR. MOORE: That question wasn't asked, Your  
20 Honor.

21 THE COURT: Go ahead.

22 BY MR. MOORE:

23 Q You didn't say, I have reason to believe that  
24 she was -- had forged a document, did you?

25 A I said that -- no. I did say that it was a

1       forged document, and I believe I can prove it was a  
2       forged document. The whole time I had evidence that  
3       it was.

4       Q     Let me ask you this question: In Lexington  
5       County, South Carolina, after the transaction with  
6       the van was done and they took the van home, did Kay  
7       ever borrow any money on the van?

8       A     I would not know that. I don't know. I don't  
9       believe so. It was paid for, so.

10      Q     Did she ever sell the van?

11      A     Not that I'm aware of.

12      Q     In the entire transaction upon which you  
13      accused her of all of these things, did Kay Paschal  
14      ever take one nickel of cash money?

15      A     I don't believe the transaction entailed any  
16      cash whatsoever other than the check that she wrote.

17      Q     Did she ever take any cash out of the van in  
18      any way?

19      A     I don't believe so, no.

20      Q     Do you have any concrete proof that Kay Paschal  
21      ever stole a dollar from the man?

22      A     I have evidence that -- well, I had evidence,  
23      until I turned the file over to Captain Howard  
24      Hughes, of what transactions were made. I told you  
25      it was a lot of money that we were looking into, and

1 we found a lot of very large withdrawals, especially  
2 very shortly after he was hospitalized and so forth,  
3 so.

4 Q Sure. When he went into the hospital, they had  
5 to hire help around the clock or at least  
6 significant help. They had huge expenses in  
7 changing the house around --

8 THE COURT: Hold on a second.

9 Yes.

10 MR. FRAWLEY: Objection; assuming facts not in  
11 evidence.

12 MR. MOORE: I was asking aren't these true.  
13 I'll change the question.

14 BY MR. MOORE:

15 Q Isn't it true that they had huge amounts of  
16 changes that they had to pay for in the house to  
17 make the house wheelchair accessible?

18 A Sir, I passed this case along to another  
19 investigator, and I believe that's part of his open  
20 criminal investigation. He would be the most  
21 appropriate person to ask now about how different  
22 money was spent. I had to give this case to him.

23 Q Ma'am, how long were you the chief investigator  
24 on this file?

25 A I was until we went to the preliminary hearings

1 after that.

2 Q That would be roughly nine months to a year?

3 A Yes, sir. It was a long time.

4 Q During that nine months to a year worth of  
5 investigation, did you ever find any proof that Kay  
6 Paschal stole one dollar from this man?

7 A I found a lot of proof that she withdrew money  
8 and used it for her own purposes, yes, sir.

9 Q All right. And even though you found that, you  
10 never once took out a warrant against her in  
11 Richland County to support what you say happened,  
12 correct?

13 A That's correct, sir. I wasn't finished with  
14 the case. It was an open case.

15 Q Do you recall that there was a warrant issued  
16 for the house where Kay and David lived in Columbia?

17 A I don't understand that question. A warrant  
18 issued?

19 Q A search warrant.

20 A Oh, a search warrant at the 205 Spring Lake --

21 Q Right.

22 A -- address. Yes, there was a search warrant.

23 Q And did you participate in that?

24 A Yes, I did.

25 Q And that search warrant indicated that all of

1 the electronics were supposed to be taken and the  
2 whole house was to be searched, correct?

3 A I don't know that all of the electronics were  
4 supposed to be taken, but I know that some  
5 electronics could be taken. I'd have to review the  
6 actual search warrant. It was written by Sergeant  
7 Isenhoward.

8 Q If you might review Plaintiff's Exhibit Number  
9 12.

10 A Yes, sir.  
11 Okay. Yes, sir.

12 Q The electronics in the house were supposed to  
13 have been seized, correct?

14 A I can read you the description of the property  
15 that was supposed to be taken if you would like. I  
16 don't know that every electronic in the home was  
17 supposed to be taken, if that's what you're asking.

18 Q I'm simply asking you were all the electronics  
19 ordered to be taken?

20 A You're asking me were all the electronics in  
21 the home ordered to be taken?

22 Q Sure. That's what I was asking, yes, ma'am.

23 A No. I don't believe all the electronics in the  
24 home were ordered to be taken. Let me sit here and  
25 read this, and I can read it out loud if you want to

1 hear. But I don't recall in any search warrants we  
2 say all electronics because that would include alarm  
3 clocks, that would include ridiculous things that we  
4 probably wouldn't need in an investigation. We  
5 don't want to fill up our evidence room with stuff  
6 we don't need.

7 Q All of the computers were to be seized,  
8 correct?

9 A Okay. All of the computers could be seized. I  
10 don't know if they all were.

11 Q As a matter of fact, the entire home there was  
12 searched except the room where Elizabeth Wallace was  
13 staying, correct?

14 A No. I think all the rooms were searched.

15 Q And every computer in the house was taken  
16 except for the computer belonging to Elizabeth  
17 Wallace; isn't that correct?

18 A I'm not sure. I couldn't tell you. Did she  
19 have a laptop? Did she have a desk computer? I  
20 have no idea.

21 Q Well, ma'am, you were there, and you  
22 participated in the search. Are you telling us you  
23 just don't recall what was seized?

24 A No, it's not that I don't recall what was  
25 seized. I only had a small portion in that search



1 warrant. I did not do the whole search warrant by  
2 myself, in which case I probably would remember.

3 Q Do you recall the day that we went over to  
4 review the documents that you told us about?

5 A Yes, sir. I remem -- I don't -- you weren't  
6 there, sir, but you sent someone there.

7 Q Yes, ma'am. You recall that happening, though,  
8 right?

9 A I do recall a meeting with all the attorneys  
10 where y'all wanted to see the documents, yes, sir.

11 Q Was Elizabeth Wallace there?

12 A I know her attorney was and I believe she was,  
13 but I couldn't say for sure. I'd have to look back  
14 on my notes for that.

15 Q Do you know why she was there?

16 A If, in fact, she was there, I assume it's  
17 because she wanted to review the documents, too,  
18 like all the attorneys and everyone else involved in  
19 the matter.

20 Q Do you recall sitting closely with Ms. Wallace  
21 there and whispering back and forth looking at Kay  
22 Wallace and giggling?

23 A Oh, no, sir. No, sir. I remember Kay Paschal  
24 there, but, no, there's -- I would not do that. I  
25 had two other investigators in the room with me, so

1 if you have any questions about my behavior in that  
2 room, you can ask them.

3 Q You don't recall that your behavior in the room  
4 that day, along with Elizabeth Wallace, was  
5 basically ridiculing of Kay Paschal?

6 A Absolutely not, no.

7 Q There was nothing you would have done that she  
8 could have taken offense to?

9 A No, sir. I was professional in that room. I  
10 brought all the documents everyone requested, and I  
11 sat there and monitored everyone else looking at  
12 them. It was for your all purpose not for my  
13 purpose to do that.

14 Q And when they were there that day, were they  
15 ever even able to turn the computers on?

16 A I don't believe we had any computers in the  
17 room. It was boxes of documents.

18 Q We've talked a moment about Mr. Steve  
19 Baumgardner. Were you present at the preliminary  
20 hearing to hear him testify?

21 A Yes, I was.

22 Q After his testimony, did anybody from Richland  
23 County Sheriff's Department contact anybody from the  
24 Lexington County Sheriff's Department about the  
25 substance of his testimony?

1       **A**     Not that I'm aware of. I know nothing about  
2       it. It wasn't me, if that's what you're asking, if  
3       someone contacted him. Certainly I did not.

4               **MR. MOORE:** Thank you.

5               Your Honor, that would be all the questions  
6       that we have of this witness, and I thank you for  
7       your patience.

8               **THE COURT:** All right. Ladies and gentlemen,  
9       we'll take a ten-minute break -- do you want to ask  
10      the witness questions at this point?

11              **MR. FRAWLEY:** I'm good with ten minutes, Your  
12      Honor.

13              **THE COURT:** All right. We'll take a ten-minute  
14      break. Don't discuss the case.

15              (The jury retires to the jury room.)

16              **THE COURT:** You may step down, if you'd like.  
17      You cannot discuss your testimony with anyone during  
18      the break.

19              **THE WITNESS:** Yes, sir.

20              **THE COURT:** Court's in recess for ten minutes.

21              (Brief recess.)

22              **THE COURT:** Ready for the jury, Mr. Frawley?

23              **MR. FRAWLEY:** I am, Your Honor.

24              **THE COURT:** Mr. Moore?

25              **MR. MOORE:** Yes, sir.

1           **THE COURT:** Bring in the jury.

2           (The jury returns to the courtroom.)

3           **THE COURT:** All right. Mr. Frawley, you can  
4 question the witness.

5           **MR. FRAWLEY:** May it please the Court..

6           **THE COURT:** Yes.

7                           CROSS-EXAMINATION

8           BY MR. FRAWLEY:

9           **Q** Lieutenant Jackson, we've pretty much  
10 established that you were formerly Lieutenant Heidi  
11 Scott, correct?

12          **A** Yes, sir.

13          **Q** You're now remarried and your name is now  
14 Lieutenant Jackson, correct?

15          **A** Yes, sir.

16          **Q** All right. You're employed by the Richland  
17 County Sheriff's Department?

18          **A** Yes, sir.

19          **Q** As a lieutenant?

20          **A** Yes, sir.

21          **Q** And you are in the victim's assistance service,  
22 but you also do work as a vulnerable adult  
23 investigator?

24          **A** Yes, sir.

25          **Q** And the reason for that is because there are

1 not sufficient vulnerable adult cases to warrant an  
2 independent investigator for that?

3 A Yes, sir.

4 Q But when they come up, they were assigned to  
5 you back in 2011, correct?

6 A Yes, sir.

7 Q Are your job duties any different now than they  
8 were back in 2011?

9 A No, sir.

10 Q Okay. Can you explain to the jury, in your own  
11 words, how this case came to be assigned to you in  
12 early March of 2011?

13 A Yes. In early March of 2011, my captain,  
14 Captain Weeks, told me that I would be looking into  
15 a case because -- how it was explained to me is that  
16 it was originally reported to Forest Acres, and then  
17 there was some type of conflict of interest and  
18 Major Smith had asked me -- or Captain Weeks to  
19 assign it to me.

20 Q All right. And when it was assigned to you,  
21 what did you first do on the file?

22 A The first thing I did after -- the first thing  
23 I did is make a call to Jeffery Wallace.

24 Q Why Jeffery Wallace?

25 A He was the complainant on the report.

1 Q Okay. And you got that information from Forest  
2 Acres?

3 A Yes. I got that information from Captain  
4 Weeks, actually, from Forest Acres, yes, sir.

5 Q All right. And you called Mr. Wallace, Jeffery  
6 Wallace, on March 1st, 2011, at about 10 o'clock in  
7 the morning, didn't you?

8 A Yes, sir.

9 Q Okay. And what was the purpose of that call?

10 A The purpose was to see if they wanted to come  
11 in to a meeting so we could discuss what was going  
12 on.

13 Q All right. What did you next do on that case?

14 A I met with them that same day.

15 Q About one o'clock p.m. on March 1st, 2011, you  
16 met with Captain Weeks, Elizabeth Wallace, Jeffrey  
17 Wallace, and Ellen Shore, correct?

18 A That's correct.

19 Q All right. What was discussed at that meeting?

20 A There were a lot of things discussed. The  
21 first thing that was discussed is they talked about  
22 the situation that their father had passed away on  
23 April 20th. They started by explaining to me the  
24 relationship of who Kay Paschal was and the  
25 relationship with their father, as far as he was --

1 she was his attorney and family friend and that they  
2 had known each other for a very long time.

3 They explained to me also their concerns with  
4 why they were coming in to talk to me. They  
5 believed that after their father had suffered from  
6 his stroke, they started getting concerned -- this  
7 is what they explained to me -- they started getting  
8 concerned because they believed that Kay Paschal was  
9 limiting their contact with their father and other  
10 friends' contact with their father, and they were  
11 concerned about -- that's what the first concern  
12 was.

13 And then after that, they expressed that they  
14 weren't sure if the power of attorney was really  
15 legitimate. And the reason is because Elizabeth  
16 Wallace explained -- and Jeffrey and Ellen -- that  
17 they were always told that Elizabeth Wallace would  
18 be the power of attorney since 2002. And over all  
19 these years, they never heard any differently.

20 And then they also explained to me that a few  
21 days after he suffered from his stroke, that Kay put  
22 two power of attorneys registered with Richland  
23 County, and they were supposedly the 2002 power of  
24 attorneys that Elizabeth believed that she was  
25 supposed to be power of attorney.

1 Q All right. Let me stop you there a minute.

2 A Yes, sir.

3 Q They come in and they explain these facts to  
4 you that they have concerns, their access to their  
5 father has supposedly been limited, and Elizabeth  
6 Wallace mentions a power of attorney, correct?

7 A Yes, sir.

8 Q Did she have the power of attorney with her?

9 A No, sir.

10 Q Okay. Did that cause you any concern that  
11 she's in there complaining about a power of attorney  
12 and maybe something's been substituted for it, but  
13 she didn't have that with her?

14 A It didn't cause me concern. I knew that was  
15 something that I needed to look into.

16 Q Okay. That would have been something that you  
17 would have investigated after that initial meeting?

18 A Yes, sir.

19 Q Okay. Go on, please. I interrupted you.

20 A Okay. So they explain a problem -- their  
21 concerns about the power of attorney. And then they  
22 began to explain to me some concerns -- real  
23 concerns that they had about the care that their  
24 father received. They believed that Kay Paschal,  
25 taking care of their father, contributed -- the



1        quality of care that she provided contributed to a  
2        painful death of their father.

3                They talked about the bed sores that he had,  
4        the mal -- when he went into the hospital, the  
5        malnutrition, things like that. They went and  
6        explained that Jeff -- because of their concern,  
7        they went to a visit -- to visit their father, I  
8        believe it was February 13th, but it was  
9        mid-February, if I've got the date a little off, and  
10       Jeffery Wallace went to visit his father. And when  
11       he got there, he saw his father. He was concerned  
12       about the condition his father was in, so,  
13       therefore, he filed the report with Forest Acres.  
14       And then DSS was notified at that time, Adult  
15       Protective Services --

16       Q        Okay. Hold on a second there. Did you notify  
17       DSS or had DSS already been notified by the time you  
18       had this March 1st conversation with Jeffery Wallace  
19       and Elizabeth Wallace?

20       A        Yes. DSS Adult Protective Services had already  
21       been notified.

22       Q        By whom, if you know?

23       A        I believe it was the Forest Acres Police  
24       notified Adult Protective Services.

25       Q        All right. Now, let me ask you this: Are you

1 familiar with the term -- and you work at Adult  
2 Protective Services -- are you familiar with the  
3 term mandated reporter?

4 A Yes, sir.

5 Q Explain to the jury what a mandated reporter  
6 is.

7 A A mandated reporter would be anyone who had  
8 legal responsibility to report it to a law  
9 enforcement agency or the appropriate -- DSS and law  
10 enforcement are both considered mandated reporters.

11 Q Okay. So if a law enforcement agent has  
12 received a report indicating that someone is a  
13 vulnerable adult who is either being neglected or  
14 abused, what, if any, obligation, as a mandated  
15 reporter, would that law enforcement officer have?

16 A Yes. They would get Adult Protective Services  
17 involved by making a report.

18 Q Okay. What about DSS? Would they report it to  
19 DSS?

20 A Yes. Adult Protective Services is a section of  
21 DSS. It's the adult portion.

22 Q That would be APS versus CPS, which is Child  
23 Protective Services for DSS, correct?

24 A Yes, sir.

25 Q All right. So by the time you ever got

1 involved in this case, the facts had already been  
2 given to Forest Acres, and Forest Acres had already  
3 made a report to DSS about Mr. Wallace being a  
4 vulnerable adult, correct?

5 A Yes, sir.

6 Q All right. Go on. I interrupted you.

7 A So the reports had been made to Forest Acres  
8 and DSS. And then Jeffery Wallace called Dr. Hook,  
9 that was one of David Wallace's doctors, and he  
10 asked, Is there any way you can come take a look at  
11 my dad?

12 So Mr. Wallace -- I'm sorry -- so Dr. Hook  
13 actually stopped by the home. And when he stopped  
14 by the home to check on David Wallace, he  
15 immediately called EMS and had EMS transport him to  
16 the hospital at that time.

17 Q Okay. Now, this is back in or around  
18 mid-February before Mr. Wallace has died, correct?

19 A Yes, sir.

20 Q All right. And Jeffrey is relaying this to you  
21 in the March 1st meeting, correct?

22 A Yes. That's what I learned at the March 1st  
23 meeting.

24 Q All right. Mr. Wallace died February 20th,  
25 correct?

1       A     Yes, sir.

2       Q     All right. Now, let me ask you this: Before  
3       that March 1st meeting and before the March 1st call  
4       to Jeffrey Wallace in the morning setting up the  
5       meeting, had you ever met Jeffrey Wallace before?

6       A     No, sir.

7       Q     Did you know Jeffrey Wallace or know of him  
8       from some other means?

9       A     No, never heard his name.

10      Q     How about Elizabeth Wallace? Did you know  
11      Elizabeth Wallace?

12      A     No, sir.

13      Q     Did you know her of any other means?

14      A     No, sir.

15      Q     How about Ellen Shore?

16      A     No, sir.

17      Q     Had you ever heard of David Wallace?

18      A     No, sir.

19      Q     Did you have any reason to be particularly  
20      close to any of those people?

21      A     No, sir.

22      Q     Did you know Kay Paschal?

23      A     No, sir.

24      Q     Did you know her as an attorney from Lexington  
25      County?

1       **A**     No, sir.

2       **Q**     Did you have any reason to bear malice for Kay  
3       Paschal?

4       **A**     No, sir.

5       **Q**     Do you know if any of these people were friends  
6       or enemies of the Richland County Sheriff's  
7       Department at or prior to the March 1st meeting that  
8       you had with them?

9       **A**     No, sir.

10      **Q**     Did you prepare -- well, let me ask you this:  
11      Explain to the jury, for Richland County Sheriff's  
12      Department, and I guess other sheriff's departments,  
13      what is an incident report?

14      **A**     An incident report is the first report that we  
15      take. It's the information that a complainant  
16      brings to us, we write down in the incident report.

17      **Q**     Okay. Did you prepare an incident report for  
18      this first meeting?

19      **A**     Yes, sir, I did.

20      **Q**     All right. I'm going to hand you Defendant's  
21      Exhibit Number 1, which is already in evidence. Put  
22      your reading glasses on, and tell me if you  
23      recognize that document as the incident report you  
24      prepared following that March 1st meeting.

25      **A**     It is the incident report.

1 Q Okay. Now, this is actually dated the day  
2 after, correct?

3 A Yes, sir.

4 Q All right. Is that unusual for you to do an  
5 incident report the day after you've actually done  
6 something?

7 A No, sir.

8 Q Okay. And in this incident report, which for  
9 the jury's reference is Defendant's Exhibit Number  
10 1, we have in the very top part in the left-hand  
11 side, Incident Type. Do you see that?

12 A Yes, sir.

13 Q And there are two entries listed there,  
14 correct?

15 A Yes, sir.

16 Q Will you read those for the jury, please?

17 A Exploitation/vulnerable adult, breach of trust.

18 Q All right. What is -- what do you put in  
19 there? Why do you do that?

20 A We put them so that we know what type of  
21 incidents that we're going to start looking into.

22 Q All right. Upper right-hand corner, there's a  
23 block for a case number and then a several digit  
24 number typed in there. What is that?

25 A Yeah, that's the case number that's assigned to

1 Richland County.

2 Q Okay. Each case that comes in that generates  
3 an incident report has a separate case number?

4 A Yes.

5 Q Okay. As far as incident date in the event  
6 portion, which is on the top here, there's a block  
7 there for incident date. And the incident date says  
8 4/20/2010. Why is that?

9 A That's the date that David Wallace became a  
10 vulnerable adult.

11 Q Why is that?

12 A Because of the major stroke that he suffered.

13 Q Okay. And you got this information from the  
14 Wallaces on March 1st?

15 A Yes, sir.

16 Q Then there's a portion down here that says,  
17 Narrative, where there's several lines and there's  
18 material typed in. Do you see that?

19 A Yes, sir.

20 Q Could you read that for the jury, please?

21 Well, tell me this first: What is that? What is  
22 the narrative?

23 A The narrative is a brief explanation of what  
24 was reported.

25 Q Okay. And who composes that? Who types that

1 up?

2 **A** I type the narrative.

3 **Q** All right. Please read that for the jury.

4 **A** Complainant requested that the Richland County  
5 Sheriff's Department investigate a situation in  
6 which his father was the victim of exploitation of a  
7 vulnerable adult and physical neglect. The victim  
8 had previously reported this incident to Forest  
9 Acres on 2/13/11, case number 02110239. Detective  
10 Bails, the case investigator at Forest Acres,  
11 provided responding officer with his file -- case  
12 file and transferred the case to RCSD.

13 The complainant reported to responding officer  
14 that Ms. Paschal neglected to provide proper medical  
15 care for his father, who was a vulnerable adult.  
16 The complainant further reported that Ms. Paschal  
17 inappropriately used Mr. Wallace's money for her own  
18 benefit and purposes while neglecting to pay  
19 Mr. Wallace's own expenses while serving as his  
20 power of attorney.

21 **Q** Okay. Now, there have been some discussion and  
22 questions from Mr. Moore to you about whether bills  
23 were not paid or if there were past due notices  
24 there. Is that what -- that that latter portion  
25 about neglecting to pay for Mr. Wallace's own



1 expenses, is that what that refers to?

2 A Yes, sir.

3 Q All right. Let me ask you this: Where it  
4 says, Further reported that Ms. Paschal had  
5 inappropriately used Mr. Wallace's money for her own  
6 benefit, if I go to the Richland County Sheriff's  
7 Department and I say that my brother-in-law is  
8 inappropriately spending my money, are you going to  
9 generate an incident report over that?

10 A Yes, sir.

11 Q Okay. Is there any veracity to my saying that?  
12 Are you just going to take my word or is there  
13 something you're going to check into to see if he  
14 really is taking my money or if I'm just angry with  
15 my brother-in-law?

16 A Yes, sir, I would definitely check into it.

17 Q Is that what you did here?

18 A Yes, sir.

19 Q And did you find something that indicated that  
20 money had been misappropriated?

21 A Yes, sir.

22 Q Back on this document in front of you,  
23 Defendant's Exhibit Number 1, the incident report,  
24 there's an entry for victim number 1 there, correct?

25 A Yes, sir.

1 Q And that victim here is listed as David  
2 Wallace, correct?

3 A Yes, sir.

4 Q And there's an entry right below that for  
5 subject number 1, correct?

6 A Yes, sir.

7 Q What is a subject in an incident report?

8 A The subject is the person that we're looking  
9 into as far as being perhaps a suspect in the case.

10 Q Okay. And who's listed on that incident report  
11 for that?

12 A Kay Paschal.

13 Q All right. After the incident report, what did  
14 you next do that you can recall?

15 A One of the next things after receiving the  
16 complaint that I did, was I was -- Major Smith got  
17 in touch with us and said that Sergeant Isenhoward  
18 would be working on this case as well because this  
19 case seemed very complex, very big.

20 Q Okay. Now, this would be Sergeant Kevin  
21 Isenhoward?

22 A Yes, sir.

23 Q All right. I spent six months calling him  
24 Eisenhower like our former President, but it's  
25 actually spelled differently, isn't it?

- 1       A     Yes, it has a D on the end.
- 2       Q     Okay. You haven't been saying the D, have you?
- 3       A     I don't know. Might be my accent.
- 4       Q     All right. So Sergeant Isenhoward was to get
- 5       involved to what extent?
- 6       A     He was going to look into the medical portion,
- 7       any type of medical neglect.
- 8       Q     All right. And that would free you to look
- 9       into what?
- 10      A     The financial exploitation aspect.
- 11      Q     All right. Is that what y'all did?
- 12      A     Yes, sir.
- 13      Q     All right. Did Sergeant Isenhoward pursue a
- 14      search warrant of the 205 Spring Lake Road address
- 15      on or about March 8th of 2011?
- 16      A     Yes, sir, he did.
- 17      Q     Okay. I'm going to show you Defendant's
- 18      Exhibit Number 2, which is in evidence. I'll ask
- 19      you to look that over and tell me what that is.
- 20      A     This is the search warrant that Sergeant
- 21      Isenhoward prepared.
- 22      Q     Okay. If you look to -- this is a four-page
- 23      document. If you look to page 3 of the four-page
- 24      document. Do you see it?
- 25      A     Uh-huh. Yes, sir..

1 Q All right. If -- the signature on there for  
2 affiant, do you recognize that signature?

3 A Yeah. Affiant, that's Kevin Isenhoward.

4 Q All right. And the signature on the fourth  
5 page, is that also his signature?

6 A Yes, sir.

7 Q All right. And on pages 3 and 4 -- let's look  
8 at page 4. The top of the page says, Affidavit.  
9 And right below there, it says, Reason for affiant's  
10 belief that property sought is on the subject  
11 premises. Correct?

12 A Yes, sir.

13 Q All right. And is that the substance of  
14 Sergeant Isenhoward's affidavit presented to the  
15 magistrate?

16 A Yes, sir.

17 Q All right. And this sets forth the facts that  
18 constitute probable cause?

19 A Yes, sir.

20 Q And this search warrant was issued by the  
21 magistrate based on those facts?

22 A Yes, sir.

23 Q And the signature of the judge is on pages 2  
24 and 3 of this document, correct?

25 A Yes, sir.

1       Q     All right. The jury can read this themselves,  
2       so we won't go into it. But in your review of it,  
3       are these facts consistent with what you and  
4       Sergeant Isenhoward had with regard to the Richland  
5       County Sheriff's Department investigation as of  
6       March 8th, 2011?

7       A     Yes, sir.

8       Q     What do you recall next doing after the search  
9       warrant?

10      A     I was calling different banks and financial  
11      institutions to find out where David Wallace or Kay  
12      Paschal may have accounts and safety deposit boxes  
13      and investments.

14      Q     All right. Did you make a call to the South  
15      Carolina Department of Health and Environmental  
16      Control, DHEC?

17      A     Yes, I did. I made a call to them as well.

18      Q     That would have been on March 10th of 2011?

19      A     Yes, sir.

20      Q     Why did you call them?

21      A     I called them to find out what type of  
22      medications had been dispensed to David Wallace.

23      Q     Okay. Why do you care about that?

24      A     I was doing that because the family had made a  
25      complaint that they believed that their father was

1 in a lot of unnecessary pain because perhaps he  
2 wasn't being given the right amounts of pain  
3 medications.

4 Q Now, let me ask you this, because this was  
5 raised in opening statement: These two adult  
6 children -- now, when we say adult children, these  
7 aren't 21-year-old kids, are they?

8 A No, sir.

9 Q In fact, Mr. Wallace, David Wallace, was 88  
10 years old at his death, correct?

11 A Yes, sir.

12 Q So these two Wallace children, that they've  
13 been referred to as, are basically in their late 40s  
14 or early 50s or older, correct?

15 A Yes, sir.

16 Q All right. Did they tell you that, you know,  
17 this is happening to daddy and things are bad? And  
18 did they give you an explanation as to why they  
19 weren't over there turning him in his bed so he  
20 didn't get pressure sores?

21 A Well, they -- yeah, they lived out of town.  
22 They weren't able to do that.

23 Q Okay. Mr. Jeffrey Wallace, who is reputed to  
24 be with the CIA, do you know what city he lived in?

25 A I don't recall what city he lived in.

1 Q Was it Columbia?

2 A No, sir.

3 Q Was he even a South Carolina resident, if you  
4 know?

5 A No, sir.

6 Q No, you don't know or, no, he wasn't a South  
7 Carolina resident?

8 A No, he wasn't a South Carolina resident.

9 Q How about Elizabeth Wallace? Where did she  
10 live?

11 A She lived out of the state as well.

12 Q Okay. So these are both adult children of  
13 88-year-old Mr. Wallace who don't even live in the  
14 state and they find out there's an issue, they come  
15 in town and that's their explanation as to why  
16 they're not monitoring their father's physical  
17 condition, correct?

18 A Yes, sir.

19 Q And they indicated to you that Ms. Wallace had  
20 been doing it -- or Ms. Paschal had been doing it  
21 for some period of time, correct?

22 A Yes, sir.

23 Q Which I think you testified in direct your best  
24 recollection was eight years?

25 A Yes, sir.

1 Q Did you -- well, you did the calls to  
2 Ameritrade. How did you find out about the  
3 different banks that Mr. Wallace may have had  
4 accounts or safety deposit boxes at? How did you  
5 find that out?

6 A I had to make a lot of phone calls to start  
7 with. I also found some information as a result of  
8 the search warrant that we did at 205 Spring Lake  
9 Road, and that's where I found a lot of information  
10 about where I could find his accounts.

11 Q All right. Is there any other way you could  
12 have found out about these accounts without that  
13 search warrant to find out past books or safety  
14 deposit box keys or bank statements?

15 A No, that stuff's usually very private.

16 Q I'm going to hand you Defendant's Exhibit  
17 Number 3, which is already in evidence. Look that  
18 over and tell me what it is, please.

19 A (Witness reviewing document.)

20 Q Ma'am?

21 A Yes, sir.

22 Q What is it?

23 A It's a search warrant for Ameritrade.

24 Q Okay. And it's dated what?

25 A 3/20/2011.



1 Q All right. And this search warrant, if you  
2 turn to page 3 of it, there's a signature block in  
3 the lower right-hand corner on page 3 and a  
4 signature block on the lower right-hand corner of  
5 page 4. Whose signature is that?

6 A That's my signature as the affiant.

7 Q Okay. And both of those signatures have notary  
8 boxes just to the left that are filled out. Do you  
9 see those?

10 A Yes, sir.

11 Q All right. That means that what you're saying  
12 here is under oath, correct?

13 A Yes, sir.

14 Q That's what an affidavit is, isn't it?

15 A Yes, sir.

16 Q All right. The affidavit that appears on the  
17 bottom of page 3 and carrying over to page 4, is  
18 that your setting out the factual basis for your  
19 seeking this search warrant?

20 A Yes, sir.

21 Q Okay. Was it true and correct when you set it?

22 A Yes, sir.

23 Q Did you believe in good faith that those facts  
24 as relayed in this affidavit were true and correct?

25 A Yes, sir.

1 Q Do you still believe them to be true and  
2 correct?

3 A Yes, sir.

4 Q Now, this is for Ameritrade Bank, correct?

5 A Yes, sir.

6 Q All right. Were there other similar affidavits  
7 and warrants that you acquired for other banks  
8 besides Ameritrade?

9 A Yes, sir.

10 Q All right. There was some testimony that, at  
11 some point, you met with a Mr. Dawson. Do you  
12 remember meeting with him initially?

13 A Yes, sir.

14 Q That was April 25th of 2011, wasn't it?

15 A Yes, sir.

16 Q And your purpose for meeting with Mr. Dawson  
17 was for him to be a forensic document examiner to  
18 look at these supposed bogus powers of attorney,  
19 correct?

20 A Yes, sir.

21 Q All right. By that time, you apparently had  
22 the powers of attorney, correct?

23 A Yes, sir.

24 Q All right. I'm going to hand you Plaintiff's  
25 Exhibits 1 and 2, which Mr. Moore discussed at least

1 one of those with you earlier. Do you recognize  
2 those?

3 A Yes, sir.

4 Q All right. Now, Exhibit 1 is a 12-page  
5 document; is that right?

6 A Yes, it is.

7 Q All right. If you look in the middle of the  
8 first page, it says page 1 of 12, correct?

9 A Yes, sir.

10 Q And then page 2 of 12, page 3 of 12, up through  
11 12 of 12, right?

12 A Yes, sir.

13 Q All right. And in the right-hand -- lower  
14 right-hand corner, there's a block with a  
15 handwritten initial or initials, correct?

16 A Yes, sir.

17 Q And those initials are what?

18 A D.W.

19 Q All right. And those initials are right above  
20 what appears to be a date, correct?

21 A Yes, sir.

22 Q Read to the jury what that date is.

23 A 5/17/02.

24 Q Okay. Now, the upper right-hand corner of this  
25 document says, Power of attorney. And, again, we're

1 referring to Plaintiff's Exhibit Number 1. What is  
2 that upper right-hand corner stamp?

3 A That's a stamp where it was registered to the  
4 court.

5 Q Okay. Recorded in the Register of Deeds Office  
6 for Richland County, correct?

7 A Yes, sir.

8 Q All right. And there's an entry for a book  
9 number and then it's got, Book 1601 dash 1444,  
10 correct?

11 A Yes, sir.

12 Q Do you know what that means?

13 A That's where they can find this power of  
14 attorney.

15 Q I can go to Richland County at the Register of  
16 Deeds and look in Book 1601 on page 1444 and I can  
17 find this document, right?

18 A Yes, sir.

19 Q Okay. And right below that, there's what  
20 appears to be a date, 04/23/2010. Do you see that?

21 A Yes, sir.

22 Q What is that?

23 A That's the date that it was taken up to be  
24 registered.

25 Q Okay. So it was recorded April 23rd, 2010,

- 1 correct?
- 2 A Yes, sir.
- 3 Q Notwithstanding the date in the lower
- 4 right-hand corner of each page which says 5/17/02?
- 5 A Yes.
- 6 Q And notwithstanding, if you look at page 11 of
- 7 12, the probate block on the bottom, there's a date
- 8 there above the notary block, correct?
- 9 A Yes, sir.
- 10 Q And that date is, Sworn to, before me this --
- 11 A Twenty --
- 12 Q -- typed in, 17th day of May 2002, correct?
- 13 A Yes, sir.
- 14 Q All right. And is there a cross-out?
- 15 A Yes, sir.
- 16 Q And something's handwritten in?
- 17 A Yes, sir.
- 18 Q What is handwritten in?
- 19 A 20th.
- 20 Q Okay. So according to this, this document was
- 21 executed May 20 of 2002, correct?
- 22 A Yes, sir.
- 23 Q And according to the front page, it was
- 24 recorded almost eight years later?
- 25 A Yes, sir.

1       **Q**     Now, in the first paragraph of that document,  
2       again, Plaintiff's Exhibit Number 1, can you read  
3       that for me?

4       **A**     Yes.

5             Know all men by these presents that as  
6       principal (The "Principal"). I, David Wallace, a  
7       resident of the State and County aforesaid, have  
8       made, constituted, and appointed and by these  
9       presents do make, constitute, and appoint Kay F.  
10      Paschal, my true and lawful attorney ("Attorney")  
11      for the purpose hereinafter set forth.

12      **Q**     Okay. What that paragraph does is Mr. Wallace  
13      appoints Kay F. Paschal as his true and lawful  
14      attorney. Is that your understanding?

15      **A**     Yes, sir.

16      **Q**     The second paragraph, read that.

17      **A**     Subject to the limitations set forth in this  
18      paragraph, I have also made, constituted, and  
19      appointed and by these presents -- presents do make,  
20      constitute, and appoint as my true and lawful  
21      attorney, Elizabeth G. Wallace, for the purposes  
22      hereinafter set forth. So long as the limitations  
23      described below shall apply to Elizabeth G. Wallace,  
24      she or such of her to whom such limitations apply  
25      shall be referred to herein as my "Standby

1 Attorney." The term "Attorney" as used herein shall  
2 apply to any Standby Attorney at such time as the  
3 limitations described below no longer apply.

4 Q Okay. Then below there, there's an (a) and  
5 then a subdivision under the (a), which is small  
6 (i), and it says, In no event is Elizabeth G.  
7 Wallace authorized to act hereunder so long as Kay  
8 F. Paschal is living. That's what it says, correct?

9 A Yes, sir.

10 Q All right. So what he basically says here is  
11 Kay Paschal is the primary attorney, and in the  
12 event she can't act, Elizabeth Wallace will be the  
13 standby attorney, correct?

14 A Yes, sir.

15 Q All right. If you could look at Plaintiff's  
16 Exhibit Number 2, please. Do you have that with  
17 you?

18 A No, I don't have the plaintiff's. I just have  
19 yours.

20 Q Okay. Let me see 1. Okay. We've been talking  
21 about Plaintiff's Exhibit Number 2. That's what we  
22 just finished reading.

23 A Okay. Yes, sir.

24 Q Now, I'm handing you Plaintiff's Exhibit Number  
25 1.

1       A     Okay.  Yes, sir.

2       Q     Tell me what Plaintiff's Exhibit Number 1 is.

3       A     Plaintiff's Exhibit Number 1 is also a power of  
4     attorney.

5       Q     Well, it's the first two pages of a 12-page  
6     power of attorney, isn't it?  Look at the bottom.

7       A     Yes, sir.  It is only the first two pages.

8       Q     Compare Plaintiff's Exhibit 1 that you've got  
9     now with Plaintiff's Exhibit Number 2, which we've  
10    just discussed, and tell me the differences.

11    A     The difference is that in the second one that  
12    you handed me, Plaintiff Exhibit number 1, Elizabeth  
13    Wallace is named as the primary power of attorney  
14    and Kay Paschal is the one who has limitations, that  
15    only if Elizabeth can't serve.  So they're opposite.

16    Q     Okay.  So Plaintiff's Exhibit Number 1, which  
17    is the first two pages of a 12-page power of  
18    attorney, appoints Elizabeth Wallace as the primary  
19    with Kay Paschal as the standby, correct?

20    A     Yes, sir.

21    Q     All right.  In the lower right-hand corner,  
22    does there still appear to be the initials D.W.  
23    written?

24    A     Yes, sir.

25    Q     Those initials are still written above the date



1 05/17/02, correct?

2 A Yes, sir.

3 Q Okay. You'd been given these documents by the  
4 time you met with Mr. Dawson, haven't you?

5 A Yes, sir.

6 Q Now, I asked earlier when you were describing  
7 what was discussed in that first meeting with the  
8 Wallaces, these people come in and they say that  
9 there's some squirrely issues with regard to these  
10 powers of attorney and you were given nothing at  
11 that point, between that first meeting and the May  
12 -- sorry -- the April 25th meeting with Mr. Dawson,  
13 you received Plaintiff's Exhibits 1 and 2, didn't  
14 you?

15 A Yes, sir.

16 Q All right. Both of which appeared to be dated  
17 May 17, 2002, correct?

18 A Yes, sir.

19 Q And one of which appointed Kay Paschal as the  
20 primary with Elizabeth Wallace as the secondary, and  
21 the other which has the converse, Wallace as the  
22 primary and Kay Paschal as the secondary, correct?

23 A Yes, sir.

24 Q With no explanation for the two, correct?

25 A Yes, sir.

1 Q And an eight-year gap between when they were  
2 drafted and purportedly signed and when the one was  
3 recorded?

4 A Yes, sir.

5 Q All right. And it was recorded three days  
6 after Mr. Wallace's stroke?

7 A Yes, sir.

8 Q Never recorded in the years up to Mr. Wallace's  
9 stroke, but three days after his stroke?

10 A Yes, sir.

11 Q All right. Were those questionable facts in  
12 your mind?

13 A Yes, sir.

14 Q Mr. Moore asked you what evidence did you have  
15 that there was fraud or forgery or any kind of  
16 improper acts done with regard to these powers of  
17 attorney. Explain to the jury the difference  
18 between direct evidence and circumstantial evidence  
19 as you understand it.

20 A Direct evidence would be evidence that I have  
21 in my hand that I can show you. Circumstantial  
22 would be talking about more of a situation.

23 Q All right. A situation such as two identical  
24 powers of attorney that are eight years old, but  
25 markedly different with regard to who the attorney

1 is, the attorney who's appointed is the person who's  
2 writing checks for Mr. Wallace, has been caring for  
3 him for eight years, when the quality of that care  
4 has been suspect, and an eight-year gap between the  
5 execution of that document and its recording. Those  
6 would be circumstances, correct?

7 A Yes, sir.

8 Q That's circumstantial evidence, isn't it?

9 A Yes, sir.

10 Q Recording it three days after a debilitating  
11 stroke, that's circumstantial evidence, isn't it?

12 A Yes, sir.

13 Q I'm handing you two documents that are  
14 Defendant's Exhibit Number 4 and Defendant's Exhibit  
15 Number 5, which are in evidence. Do you recognize  
16 those two documents?

17 A Yes, I do.

18 Q All right. Let's just identify them for the  
19 record first. What is Defendant's Exhibit Number 4?

20 A It is a forensic -- it was a forensic document  
21 report.

22 Q All right. That's a July 6, 2011, supplemental  
23 report by this Mickey {phonetic} Dawson, correct?

24 A Yes, sir.

25 Q That's the forensic document examiner that you

1 met with?

2 **A** Yes, sir.

3 **Q** All right. Now, Mr. Moore had asked you  
4 questions on direct about where this Mr. --

5 Mr. Dawson used the word fraud in here or forged.

6 And he doesn't use that word in here, does he?

7 **A** No, sir.

8 **Q** Okay. And when Mr. Moore asked you how you  
9 could explain that you derived fraud from  
10 Mr. Dawson's document, you kind of gave him the  
11 caveat, Well, we'll have to spread stuff all over  
12 the floor here and different documents. And  
13 Mr. Dawson makes reference to holes from staples  
14 that were removed and the quality of paper stock and  
15 different things in here, doesn't he?

16 **A** Yes, sir.

17 **Q** All right. Without going into that much detail  
18 with it, if you could turn to page 4 of that  
19 five-page document.

20 **A** (Witness complies.)

21 **Q** In that top portion, beginning with, The writer  
22 of the K slash 1 specimen writings, David Wallace  
23 prepared all, in italics, D.W. initials with the  
24 exception of, colon. And then he lists three that,  
25 in his opinion, are not written by David Wallace,

1 correct?

2 A Yes, sir.

3 Q Is that usual or unusual with regard to a power  
4 of attorney that was purportedly executed by  
5 Mr. Wallace eight years before it was recorded?

6 A That's unusual.

7 Q Is that evidence circumstantial evidence that  
8 you factored in?

9 A Yes, sir.

10 Q Let's look at the next heading, Four defects --  
11 I'm sorry -- Font defects noted. He's going into  
12 the font of the computer or the printer, isn't he?

13 A Yes, sir.

14 Q All right. He says, Number 1: Exhibit Q slash  
15 1, pages 2 through 6, exhibits font defects. What  
16 in the world does that mean?

17 A Means that there was something different about  
18 the fonts that was consistent in page 2 through 6.

19 Q Printed on a different printer?

20 A Uh-huh.

21 Q The answer to that is yes?

22 A Yes.

23 Q The court reporter will go crazy if you say  
24 uh-huh or huh-huh.

25 A Yes, sir.

1       **Q**     Affirmative or negative.

2             All right. Number 2: Exhibit Q/2, page 1,  
3     exhibit font defects, correct?

4       **A**     Yes, sir.

5       **Q**     Number 3: Exhibit Q/3, page 1, exhibit font  
6     defects, correct?

7       **A**     Yes, sir.

8       **Q**     Then Exhibit 4 -- or Number 4: Exhibit Q/4,  
9     pages 2 through 6 exhibits font defects?

10      **A**     Yes, sir.

11      **Q**     Is it usual or unusual for a fully-integrated  
12     12-page power of attorney, signed by Mr. Wallace  
13     eight years before it was recorded, to have  
14     differences in the fonts among the 12 pages? Is  
15     that usual or unusual?

16      **A**     It's unusual.

17      **Q**     And the fact that it's unusual, was that  
18     evidence that you considered?

19      **A**     Yes, sir.

20      **Q**     Then findings, at the bottom of page of 4 of 5,  
21     Number 1: A different paper stock was used to  
22     prepare page 1 of Exhibits Q/1 and Q/4 than was used  
23     for the preparation of subsequent pages 2 through 6.  
24     Then, in italics, Page 1 of Q/2 and Q/3 are  
25     consistent with paper stock used for page 2 dash 6

1 of Exhibits Q/1 and Q/4. What does that mean?

2 A That means that a different stock of paper was  
3 used for the first page and then a different -- 2  
4 through 6 were the same.

5 Q Okay. Is it usual or unusual for a  
6 fully-integrated 12-page power of attorney that was  
7 executed by David Wallace eight years before it was  
8 recorded to have different paper stock within those  
9 12 pages?

10 A It's unusual.

11 Q Okay. Was that something that you factored  
12 into your investigation?

13 A Yes.

14 Q And whether you know the meaning of forgery or  
15 fraud or not, were those facts that you considered  
16 to label this power of attorney fraudulent or  
17 squirrely or flaky or whatever word you want to put  
18 on it, that it was improper?

19 A Yes, sir.

20 Q And that substantiated the report you got from  
21 the Wallaces, didn't it?

22 A Yes, sir.

23 Q Now, did you just take Mr. Dawson's report  
24 whole cloth and believe him because he puts himself  
25 out there as a forensic document examiner?

1       **A**     No, sir.

2       **Q**     No. You got Exhibit 5 in your hand there.

3       What is that?

4       **A**     This is a South Carolina Law Enforcement  
5       Division Forensic Service Laboratory Report.

6       **Q**     Okay. South Carolina Law Enforcement Division,  
7       colloquially, we call that SLED, right?

8       **A**     Yes, sir.

9       **Q**     All right. And on the back page of Defendant's  
10      Exhibit Number 5 -- I'm sorry -- the third page,  
11      there's a lady named Gaile, that's G-a-i-l-e, Heath,  
12      H-e-a-t-h, correct?

13      **A**     Yes, sir.

14      **Q**     That's who signs it, right?

15      **A**     Yes, sir. But you said it was page 3? Okay,  
16      there we go. Page 5 of 6.

17      **Q**     I'm sorry. Page 5.

18      **A**     Yes, sir.

19      **Q**     I was an English major, not math.

20             Gaile Heath, she puts herself out as a forensic  
21      scientist for SLED, correct?

22      **A**     Yes, sir.

23      **Q**     All right. And she's issued a report here,  
24      hasn't she?

25      **A**     Yes, sir.



1       **Q**     And she goes into pretty great detail about  
2       what's in there, doesn't she?

3       **A**     Yes, sir.

4       **Q**     And the jury can read this. We're not going to  
5       go into it. But, basically, her report, she may  
6       indicate that there's additional stuff she needs,  
7       for instance, a writing specimen from Ms. Paschal,  
8       but she also raises red flags about the accuracy or  
9       the validity of this power of attorney, doesn't she?

10      **A**     Yes, sir.

11      **Q**     Is that something that you factored into the  
12      mix in determining whether you had sufficient facts  
13      for the power of attorney being fraud or forged or  
14      whatever it was?

15      **A**     Yes, sir.

16           **THE COURT:** Let me know when you get to a good  
17      stopping point.

18           **MR. FRAWLEY:** I'm good now, Your Honor.

19           **THE COURT:** Ladies and gentlemen, we'll take a  
20      ten-minute break. Don't discuss the case.

21                   (The jury retires to the jury room.)

22           **THE COURT:** All right. Lieutenant, you know  
23      you can't discuss your testimony during the break?

24           **THE WITNESS:** Yes, sir.

25           **THE COURT:** We're at ease for ten minutes.

1 (Brief recess.)

2 THE COURT: Are you ready for the jury?

3 MR. FRAWLEY: I'm ready when you are, Your  
4 Honor.

5 THE COURT: Mr. Moore, are you ready?

6 MR. MOORE: Yes, sir.

7 THE COURT: Bring them in.

8 (The jury returns to the courtroom.)

9 THE COURT: All right. You may continue,  
10 Mr. Frawley.

11 MR. FRAWLEY: May it please the Court.

12 THE COURT: Yes, sir.

13 BY MR. FRAWLEY:

14 Q Lieutenant Jackson, when we stopped, it was  
15 right after your April 25th, 2011, meeting with  
16 Mr. Dawson, then we went into Dawson's report, then  
17 we went into Ms. Heath's report. Do you remember  
18 that?

19 A Yes, sir.

20 Q Okay. Mr. Moore asked you questions on direct  
21 about a search warrant for the Lexington County home  
22 of Ms. Paschal, which was issued May 3rd of 2011.  
23 Do you remember that?

24 A Yes, sir.

25 Q I'm not going to go into that again because it

1 was covered enough on direct. But the next thing  
2 you did after meeting with Mr. Dawson was to conduct  
3 a search of the Lexington County property of  
4 Ms. Paschal, correct?

5 A Yes, sir.

6 Q All right. And you got what material you  
7 needed to further your investigation into the  
8 alleged fraudulent act, changing of a power of  
9 attorney, correct?

10 A Yes, sir.

11 Q Did you receive Rite Aid Pharmacy material back  
12 from a subpoena with regard to what medication  
13 Mr. Wallace was on?

14 A Yes, sir.

15 Q That was part of your investigation, too,  
16 wasn't it?

17 A Yes, sir.

18 Q On July 26, 2011, did you meet with a lady  
19 named Joanna McDuffie?

20 A Yes, sir.

21 Q Tell the jury who Joanna McDuffie is.

22 A Joanna McDuffie is one of the assistant  
23 solicitors for Richland County.

24 Q And what did you talk to Ms. McDuffie about?

25 A I talked to her about what we found in the case

1 so far, especially, specifically, the Lexington  
2 County portion of it where we found the  
3 transactions.

4 Q All right. Did you ask Ms. McDuffie what, if  
5 anything, should you do about the Lexington County  
6 component or bleed over or spillover, whatever you  
7 want to call it, component of your investigation?

8 A Yes, sir.

9 Q All right. And what did she tell you?

10 MR. MOORE: Object to the hearsay, please, Your  
11 Honor.

12 MR. FRAWLEY: Your Honor, I'm not offering it  
13 to prove the fact of the matter asserted, only what  
14 her mindset was having received that information  
15 from Ms. McDuffie.

16 THE COURT: Do you wish to be heard?

17 MR. MOORE: No, sir, Your Honor. I think it's  
18 hearsay.

19 MR. FRAWLEY: Again, we're not offering it to  
20 prove the fact of the matter asserted.

21 THE COURT: All right. Throughout the trial,  
22 she's been asked what she was told by various  
23 people. Almost all of that is hearsay. There is an  
24 exception to the hearsay rule, or, actually, it's in  
25 the definition of the hearsay rule, that if

1 something is not offered for the truth of the  
2 hearsay statement but offered to show something  
3 else, like reliance or state of mind or things like  
4 that, that it's admissible.

5 So, folks, I'm allowing it -- I'm allowing it  
6 in, members of the jury. It's not offered for  
7 whether or not the statement itself is true, but  
8 it's offered as to what this lady was told or  
9 understood at the time.

10 But the whole trial is replete with hearsay.  
11 Because she's an investigator, she's been talking  
12 the whole time about what she was told. Go ahead.

13 BY MR. FRAWLEY:

14 Q After your conversation with Ms. McDuffie, what  
15 did you next do with regard to your investigation  
16 and the Lexington County component of that  
17 investigation?

18 A I turned the -- I turned that portion of the  
19 case over to Steve Baumgardner.

20 Q All right. Now, Mr. Baumgardner got the file  
21 October 14th?

22 A Yes, sir.

23 Q Okay. Now, when you gave it to  
24 Mr. Baumgardner, Detective Baumgardner -- he's not a  
25 mister, he's a detective -- were you aware that he

1 had a young son who was in the military and was  
2 fixing to come back from Afghanistan?

3 A Yes, sir, he told me that.

4 Q And that was something that was within that  
5 mid-October to early November timeframe, wasn't it?

6 A Yes, sir.

7 Q Okay. And I know, if my kid was coming back  
8 from Afghanistan, there may be other things I'm  
9 going to spend my time on.

10 A Yes, sir.

11 Q Were you also brought aware that Detective  
12 Baumgardner had some health concerns?

13 A Yes, sir.

14 Q And that he was fixing to have some  
15 hospitalization?

16 A Yes, sir.

17 Q Okay. Was Detective Baumgardner able to  
18 complete his investigation into the Lexington County  
19 component of your investigation?

20 A No, sir.

21 Q Okay. Because he was hospitalized?

22 A Yes, sir.

23 Q So when we have this document that  
24 Mr. Baumgardner had filled out, this supplemental  
25 case report that indicates that the case is

1       exceptionally closed, it was exceptionally closed  
2       because he was not able to complete his  
3       investigation; isn't that your understanding?

4       **A**     Yes, sir.

5       **Q**     That's why you got the file back, isn't it?

6       **A**     Yes, sir.

7       **Q**     And we'll refer the jury to Plaintiff's Exhibit  
8       Number 16, which I'll hand you. And it indicates  
9       November 4th, 2011. It's already been read, so they  
10      can read it later on. But at the bottom, it says,  
11      Ex-cleared. Do you see that?

12      **A**     Yes, sir.

13      **Q**     The last paragraph there said, Because this  
14      case will be sent back to RCSD at their request,  
15      Baumgardner will close this case as ex-cleared slash  
16      no prosecution in Lexington County. That's what it  
17      says, correct?

18      **A**     Yes, sir.

19      **Q**     It doesn't say it's ex-cleared because there's  
20      no probable cause, does it?

21      **A**     No, sir.

22      **Q**     Doesn't say that he's completed the  
23      investigation, does it?

24      **A**     No, sir.

25      **Q**     It says because he's giving it back to you?

1           **A**     Yes, sir.

2           **MR. MOORE:**  Objection, please, Your Honor.

3           **THE COURT:**  Yes, sir.

4           **MR. MOORE:**  The form of the question.  That's  
5     not -- it doesn't say it's cleared because he's  
6     giving it back to her.  It says it's ex-cleared  
7     because of no prosecution in Lexington County.  I  
8     think the same objection that he made; you're  
9     stating what the document actually says.

10          **MR. FRAWLEY:**  I'll rephrase the question, Your  
11     Honor.

12          **THE COURT:**  All right.  Rephrase it.  I can't  
13     get into what -- I can't get into facts.  It's  
14     leading.  Go ahead.

15     BY MR. FRAWLEY:

16     **Q**     Read for the jury that paragraph beginning  
17     there.

18     **A**     Because this case will be sent back to RCSD at  
19     their request, Baumgardner will close this case as  
20     ex-cleared/no prosecution in Lexington County.

21     **Q**     Okay.  Who else besides you with RCSD got that  
22     file back from Mr. Baumgardner?

23     **A**     I got that file.

24     **Q**     Thank you.

25           Now, on October 31, 2011, you testified to a



1 meeting among the Wallaces and attorneys and so  
2 forth. Do you recall having that meeting at the  
3 Richland County Sheriff's Department?

4 A Yes, sir.

5 Q All right. Who was at that meeting again?

6 A There were numerous attorneys. And there were  
7 the attorneys for Jeffrey Wallace, Elizabeth  
8 Wallace, estate attorneys, and his -- Kay Paschal  
9 was there with her attorney from their firm.

10 Q A young man named Brooks Biediger, do you  
11 recognize that name?

12 A Yes, sir. He was there.

13 Q And Mr. Biediger is an associate with  
14 Mr. Moore's law firm, correct?

15 A Yes, sir.

16 Q So he was there on behalf of Kay Paschal, with  
17 Kay Paschal?

18 A Yes, sir.

19 Q Who is also an attorney?

20 A Yes, sir.

21 Q And you testified on direct that the purpose of  
22 that meeting was to show the documents and whoever  
23 wanted copies could get copies?

24 A Yes, sir.

25 Q Now, you remember a guy named Fuller, but we

1 were corrected that it's a gentleman named Allan  
2 Fulmer; is that correct?

3 A Yes, sir.

4 Q Did you know what his role was in this case?

5 A I knew that he wasn't supposed to be for  
6 anyone. He was supposed to be -- I'm -- that's the  
7 best I can describe it, that he was supposed to be a  
8 party who was independent.

9 Q Okay. Part of it was independent, and they all  
10 seemed to have lawyers. There was no civil lawsuit  
11 in this court at that time, was there?

12 A No, sir.

13 Q Were you aware of a probate court lawsuit?

14 A No, sir. I knew that they had to go to probate  
15 court because someone died.

16 Q Because somebody died, right?

17 A Yes, sir.

18 Q Okay. And we've got all these people that have  
19 shown up, all of whom are lawyered up. Do you know  
20 what those lawyers represented them in?

21 A No, sir. I know that there were just a lot of  
22 lawyers in the room that wanted access to all the  
23 papers.

24 Q At some point, you became aware that there was  
25 a dispute between the Wallace children and

1 Ms. Paschal over whether Ms. Paschal was or was not  
2 a spouse of David Wallace for purposes of  
3 distribution of the probate assets, correct?

4 A Yes, sir.

5 Q All right. Do you remember when you found that  
6 out?

7 A I think right from the very beginning of the --  
8 when it was provide -- the information was provided  
9 to me, I already knew that someone had to -- said  
10 that there was a dispute.

11 Q Okay. And they told you that Ms. Wallace was  
12 claiming to be the spouse, had been with him for  
13 eight years and taking care of him, and that they  
14 were disputing that for purposes of the estate,  
15 correct?

16 A Ms. Paschal, yes.

17 Q Okay. I keep calling her Ms. Wallace. In  
18 fact, she called herself Ms. Wallace at some point,  
19 didn't she?

20 A Yes, sir.

21 Q But did you know at that time that there were  
22 probate court filings, complaints, answers,  
23 counterclaims going back and forth in Richland  
24 County Probate Court? Did you know that then?

25 A I knew that they had a probate court hearing

1 that was probably going to take place, but I don't  
2 know any specifics. I stayed out of all the  
3 specifics about that.

4 Q Do you know if Allan Fulmer was related or  
5 somehow played a role in that probate court matter?

6 A I know that he was something. He was something  
7 intermediate, that he was no side. That's all I  
8 understood when he explained who he was to me.

9 Q Okay. Did you know anything about the details  
10 of the probate court issues between Kay Paschal and  
11 the Wallaces?

12 A No, sir.

13 Q Did you know anything about hearing notices or  
14 dates of hearing or counterclaims or answers,  
15 anything like that?

16 A No, sir.

17 Q All right. And at that meeting on October 31st  
18 with Kay Paschal there, represented by counsel, they  
19 had the opportunity to get what documents they  
20 needed for the probate court, whatever they had  
21 going, correct?

22 A Yes, sir.

23 Q And those documents were to be funneled to  
24 everybody through Mr. Fulmer?

25 A Yes, sir.

1 Q Who was supposed to be the independent guy?

2 A Yes, sir.

3 Q All right. I'm going to show you Defendant's

4 Exhibits 9 and 10 -- well, let me back up a step.

5 We've heard Defendant's Exhibit Number 7, the

6 15-minute recording.

7 A Yes, sir.

8 Q Okay. I'm handing you Defendant's Exhibit

9 Number 8, which is the typed transcript of that

10 recording that's in evidence.

11 A Yes, sir.

12 Q Okay. Now, there's a question that was asked

13 of you, Did you tell Mr. Riddle that Ms. Paschal

14 received \$5,000? That was a question that was

15 asked. And your response was, I think I told him it

16 was credited to the car, and that was a dispute on

17 there. But do you remember that exchange?

18 A Yes, sir.

19 Q All right. Can you turn to page 7 of Exhibit

20 8?

21 A Yes, sir.

22 Q And go to line 2 at the top.

23 A Yes, sir.

24 Q Do you see it?

25 A Yes, sir.

1 Q All right. I would like you to read lines 2  
2 through 8 for the record.

3 A Okay.

4 Lieutenant Scott: Is when she traded in the  
5 Cadillac, they gave her \$5,000 for the Cadillac, and  
6 it -- and that was his Cadillac. And then the total  
7 price of the transaction for the new vehicle was  
8 \$63,000; however, when you take away the \$5,000, it  
9 was 58,000-something. Would I go.

10 Q And then Mr. Riddle says what?

11 A Did you say \$58,000 for a van?

12 Q Okay. So while you may have said they gave her  
13 \$5,000 for the Cadillac, the full context of that  
14 exchange is that it's a 63-something-thousand-dollar  
15 purchase of which five is given for the Cadillac,  
16 and she wrote a check for \$58,000, correct?

17 A Yes, sir.

18 Q All right. That's a trade-in of 5,000, isn't  
19 it?

20 A Yes, sir.

21 Q That was the exchange between you and  
22 Mr. Riddle, wasn't it?

23 A Yes, sir.

24 Q And the jury can listen to Exhibit 7 however  
25 many times they want to.

1           Could you turn to page 14 of Exhibit 8,  
2 Defendant's Exhibit 8?

3       **A**     (Witness complies.)

4       **Q**     Are you there?

5       **A**     Yes, sir.

6       **Q**     All right. Look at page -- I'm sorry. Page.  
7 14, line 15. And could you read -- there's a  
8 question and exchange that went on about whether you  
9 were told or you told that there was a probate court  
10 matter going on. And there was some question about  
11 -- I think you said, I thought it was some -- a dead  
12 guy and his stuff is going to be distributed and  
13 that's usually through probate. Do you remember  
14 that?

15       **A**     Yes, sir. I think I'm on the wrong page. Did  
16 you say page 14?

17       **Q**     Page 14.

18       **A**     Okay.

19       **Q**     Are you there?

20       **A**     Yes, sir.

21       **Q**     All right. Look at line 15 in the middle.

22       **A**     Okay. Yes, sir.

23       **Q**     All right. Beginning with, You're Lieutenant  
24 Scott, and what you said, go ahead and read that  
25 down through line 21.

1           **A**     Okay.

2                   Lieutenant Scott: It --

3                   Mr. Riddle: Yeah.

4                   Lieutenant Scott: It's not her van.

5                   Mr. Riddle: Okay.

6                   Lieutenant Scott: Well, probate is going to,

7     you know, take a look at that also.

8           **Q**     Then Mr. Riddle says, Right?

9           **A**     Right.

10          **Q**     You don't say the probate court. You say

11     probate, correct?

12          **A**     Yes, sir.

13          **Q**     And the context of you're saying there is we

14     have a dead gentleman with assets and that typically

15     gets probated, correct?

16          **A**     Yes, sir.

17          **Q**     And in South Carolina, we call that probate

18     court, right?

19          **A**     Yes, sir.

20          **Q**     But you're not talking about a specific probate

21     court action going on right then, are you?

22          **A**     No, sir.

23          **Q**     Could you turn to page 17, please?

24          **A**     (Witness complies.)

25          **Q**     There was a question about the search warrant,



1       whether you did a search warrant on Ms. Paschal and  
2       her person. Could you begin on line 9 and read down  
3       to line 25, please.

4       **A**       Yes, sir.

5               Lieutenant Scott: When I -- I did a search  
6       warrant on her, she has a home there.

7               Mr. Riddle: Uh-huh.

8               Lieutenant Scott: In West Columbia, too, and  
9       I -- and I just found a judge up at the courthouse  
10      when I went to get the search warrant signed, but  
11      I --

12              Mr. Riddle: Okay.

13              Lieutenant Scott: -- need to see which judge  
14      that was.

15              Mr. Riddle: If it was at the courthouse, it  
16      was probably -- well, I'll be darned, the  
17      magistrates are not listed in the sheriff's  
18      directory.

19              Lieutenant Scott: Uh-huh. They don't make it  
20      easy.

21              Mr. Riddle: No, they don't.

22              Lieutenant Scott: Hang on. Okay. Wait.  
23      Kitty Hawk. I got that search warrant right here.  
24      I used -- let's see. Oh, my goodness, there's no  
25      way I could read this judge's signature. It is just

1 a --

2 Q Little criss-cross, correct?

3 A Yes, sir.

4 Q And then you eventually called it Whipple or  
5 whatever it was and arrived at Scott Whittle as the  
6 magistrate judge, correct?

7 A Yes, sir.

8 Q All right. So there was discussion there with  
9 Mr. Riddle that you had gotten a search warrant and  
10 you had gotten a Lexington County magistrate to get  
11 that search warrant, correct?

12 A Yes, sir.

13 Q All right. And the jury can read Exhibit 8 or  
14 they can listen to Exhibit 7.

15 Now, let's look at Defendant's Exhibits 9 and  
16 10, which are also Plaintiff's Exhibits 8 and 9.  
17 These are the arrest warrants, aren't they?

18 A Yes, sir.

19 Q Okay. Without going into reading it, since  
20 it's already been done, the affidavits supporting  
21 those arrest warrants, are the facts that you stated  
22 in there true and correct?

23 A Yes, sir.

24 Q Did you put those out in good faith?

25 A Yes, sir.

1 Q Did you believe them to be true at that time?

2 A Yes, sir.

3 Q Do you believe them to be true now?

4 A Yes, sir.

5 Q Judge Whittle, did he have any follow-up  
6 questions that day?

7 A No, sir. He said -- he asked if I spoke to the  
8 solicitor, the assistant solicitor in Lexington  
9 County, and I told him I had.

10 Q Did you go to Judge Whittle's office after  
11 talking to Dayton Riddle of the Eleventh Judicial  
12 Circuit Solicitor's Office, after talking to Joanna  
13 McDuffie of the Fifth Judicial Circuit Solicitor's  
14 Office, after attempting to get it investigated by  
15 Detective Baumgardner of the Lexington County  
16 Sheriff's Department, did you go to Judge Whittle in  
17 good faith, attempting to pursue your Richland  
18 County investigation that had spilled over into  
19 Lexington County?

20 A Yes, I did.

21 Q Did you do it for any purpose bearing malice  
22 against Ms. Paschal?

23 A No, I did not.

24 Q Did you do it for any ulterior motive to try  
25 and gain leverage in some other process your

1 Richland County Sheriff's Department was involved  
2 in?

3 A No, I did not.

4 Q Were you just doing your job?

5 A I was doing my job.

6 Q And based on what you told Judge Whittle, Judge  
7 Whittle issued two arrest warrants, didn't he?

8 A Yes, sir.

9 Q I'm handing you Plaintiff's Exhibit Number 20.  
10 There was mention in the recorded conversation of  
11 that statute, but no statute was ever cited as far  
12 as them identifying the number, was it? Or do you  
13 remember?

14 A No, sir.

15 Q And the jury can listen to the tape and read  
16 Exhibit 8, Defendant's Exhibit 8. But what I've  
17 given you, Plaintiff's Exhibit Number 20, this is  
18 South Carolina Code Annotated Section 22-5-110,  
19 correct?

20 A Yes, sir.

21 Q All right. And this is -- the heading is,  
22 Arrest, Examination, and Commitment or Punishment;  
23 Warrant; Courtesy Summons. That's what it says,  
24 correct?

25 A Yes, sir.

1 Q Starting with (A), we've had bits and pieces of  
2 this read. Let's read the whole thing with (A).  
3 Begin that, please.

4 A (A), The magistrates shall, (1) --

5 Q Let's stop there a minute.

6 A Okay.

7 Q Does it say law enforcement officers?

8 A No, sir.

9 Q Does it say private citizens?

10 A No, sir.

11 Q It says magistrates, doesn't it?

12 A Yes, sir.

13 Q So whatever follows that is going to be  
14 directed to magistrates, isn't it?

15 A Yes, sir.

16 Q All right. Read it, please.

17 A Magistrates shall: (1) cause to be arrested  
18 all persons found within their counties charged with  
19 any offense and persons who, after committing any  
20 offense within the county, flee out of the county,  
21 semicolon.

22 (2) examine into treasons, felonies, grand  
23 larcenies, high crimes, and misdemeanors;

24 (3) commit or bind over for trial those who  
25 appear to be guilty of crimes or offenses not within

1 their jurisdiction, and

2 (4) punish those guilty of such offenses within  
3 their jurisdictions.

4 Q Okay. That's part (A), correct?

5 A Yes, sir.

6 Q All right. Read part (B), please.

7 A Part (B), Number (1): An arrest warrant may  
8 not be issued for the arrest of a person unless  
9 sought by a law enforcement officer acting in their  
10 official capacity.

11 Q Stop there. Does it say law enforcement  
12 officer in the same county in which the magistrate  
13 is located?

14 A No, sir.

15 Q Does it say law enforcement officer -- does it  
16 have any qualification on law enforcement officer  
17 other than saying it has to be a law enforcement  
18 officer?

19 A No, sir.

20 Q All right. Read (2), please.

21 A (2) If an arrest warrant is sought by someone  
22 other than a law enforcement officer, the court must  
23 issue a courtesy summons.

24 Q Okay. And then what is (3), please?

25 A (3) If a defendant named in a courtesy summons

1 fails to appear before the court pursuant to the  
2 summons, the court must issue an arrest warrant for  
3 the underlying offense based upon the original sworn  
4 statement of the affiant who sought the courtesy  
5 summons, provided the sworn statement establishes  
6 probable cause that the underlying offense was  
7 committed.

8 Q All right. Let's focus on (B). (B)(1) says,  
9 An arrest warrant may not be issued for the arrest  
10 of a person unless sought by a law enforcement  
11 officer acting in their official capacity.

12 When you went to Judge Whittle's office, were  
13 you a law enforcement officer?

14 A Yes, sir.

15 Q Did you tell them you were a law enforcement  
16 officer?

17 A Yes, sir.

18 Q Did you tell them you were a Richland County  
19 law enforcement officer?

20 A Yes, sir.

21 Q Okay. Were you there in your official  
22 capacity?

23 A Yes, sir.

24 Q Were you wearing your law enforcement clothes?

25 A I had a badge on, yes, sir, and my gun on, yes,

1 sir.

2 Q All right. Did it appear to you that Judge  
3 Whittle understood that you were a law enforcement  
4 officer?

5 A Yes, sir.

6 MR. MOORE: Objection, please, Your Honor, as  
7 to conjecture on her part. What appeared to her  
8 about his understanding would be simply speculation.

9 MR. FRAWLEY: It's how it appears to her. She  
10 can tell what he appeared to.

11 THE COURT: No. I think you're asking her what  
12 somebody else thought. The objection's sustained.

13 BY MR. FRAWLEY:

14 Q Did you tell Judge Whittle that you were a  
15 Richland County law enforcement officer?

16 A Yes, sir.

17 Q Okay. Number (2), if an arrest warrant is  
18 sought by someone other than a law enforcement  
19 officer, the court must issue a courtesy summons.  
20 Correct?

21 A Yes, sir.

22 Q All right. So if you were there in your law  
23 enforcement clothes, with your badge and your gun,  
24 and the judge decided that he wasn't going to treat  
25 you as a law enforcement officer because your venue



1 is over across the river, then a courtesy summons  
2 would have to be issued, correct?

3 A Yes, sir.

4 Q All right. But that's not your call, is it?  
5 Isn't that the magistrate's call, according to the  
6 statute?

7 A Yes, sir.

8 Q That's within his discretion, isn't it?

9 A Yes, sir.

10 Q And this magistrate chose to issue a warrant,  
11 didn't he?

12 A Yes, sir.

13 Q Two warrants?

14 A Yes, sir.

15 Q Did you tell him, I don't want a courtesy  
16 summons; I want two warrants? Did you tell them  
17 that?

18 A No, sir.

19 Q Let me ask you this: One of their causes of  
20 action against the Richland County Sheriff's  
21 Department is for malicious prosecution. Do you  
22 understand that?

23 A Yes, I understand.

24 Q These two warrants are signed by a judge,  
25 aren't they?

1       A     Yes, sir.

2       Q     Okay.  At least, initially, that indicates that  
3       judge deemed that there was probable cause, correct?

4       A     Yes, sir.

5       Q     And even though those warrants were dismissed  
6       in the preliminary hearing January 20, 2012, four  
7       days before this lawsuit was filed, the Richland  
8       County investigation, which was open at that time,  
9       continued against Ms. Paschal, didn't it?

10      A     Yes, sir.

11      Q     It continues to this day, doesn't it?

12      A     Yes, sir.

13      Q     There's been two other arrest warrants issued  
14      for Ms. Paschal in Richland County, hasn't it?

15      A     I believe so.  I stopped paying --

16      Q     We've been through all that.  So if there have  
17      been, they got copies, great.

18      A     Yes, sir.

19      Q     But as far as you know, there is an ongoing  
20      criminal investigation in Richland County for Kay  
21      Paschal and that continued and survived the  
22      dismissal of these two Lexington County warrants,  
23      correct?

24      A     Yes, sir.

25      Q     It goes on today as far as you know?

1       **A**     Yes, sir.

2       **Q**     So there hasn't been any termination in her  
3       favor, has there?

4       **A**     No, sir.

5       **Q**     Do you bear any malice toward Kay Paschal?

6       **A**     No, sir.

7       **Q**     Did you bear any malice toward Kay Paschal when  
8       you were doing your job in pursuing the evidence?

9       **A**     No, sir.

10      **Q**     Did you bear any malice for her when you  
11      consulted with everybody you needed to consult with  
12      and then went to Judge Whittle to pursue these  
13      arrest warrants?

14      **A**     No, sir.

15      **Q**     Which that judge issued?

16      **A**     Yes, sir, the judge issued.

17           **MR. FRAWLEY:** No further questions. Thank you,  
18      ma'am.

19           **THE COURT:** Do you have further questions of  
20      the witness, Mr. Moore?

21                           REDIRECT EXAMINATION

22      **BY MR. MOORE:**

23      **Q**     Ma'am, you say that you -- that the charges  
24      have not terminated in her favor, correct? That's  
25      what you just told --

1       **A**     Yes, sir, the charges have not terminated.

2       **Q**     Well, if you don't know what charges there are.  
3       in Richland County, how do you know the present  
4       charges in Richland County are the same charges that  
5       you brought?

6       **A**     I don't understand your question. I know that  
7       they are pursuing the case. I'm just no longer part  
8       of that case, sir.

9       **Q**     Well, you know that Richland County is pursuing  
10      a case, correct?

11      **A**     Yes. They have an open case.

12      **Q**     But you cannot tell the jury, since you don't  
13      know, that they're pursuing the case that you  
14      pursued in Lexington County, can you?

15      **A**     No, sir. They're pursuing the whole big case  
16      still in Richland County.

17      **Q**     Well, do you know if they're pursuing a case  
18      for fraud based upon the van?

19      **A**     I don't know. We were told we could go to the  
20      grand jury, but I don't know if Captain Hughes will  
21      do that or not. I don't know.

22      **Q**     Ma'am, the charges in Richland County which are  
23      presently pending, do you know if that is a charge  
24      for forgery based upon the van?

25      **A**     No. I do not know what the charges that are

1 pending right now in Richland County. I  
2 disassociated myself with the case.

3 Q Do you know if the charges in Richland County  
4 are for a breach of trust or receiving goods under  
5 false pretenses dealing with the van in Lexington  
6 County?

7 A Sir, I do not know what those charges are.

8 Q And since you don't know what those charges  
9 are, how is it possible for you to tell this jury  
10 that the cases have not been terminated in Lexington  
11 County?

12 A I don't understand when I said that the  
13 cases -- anything about the cases in Lexington  
14 County of the such.

15 Q Mr. Frawley asked you, I believe is the last  
16 question, those cases have not been concluded in her  
17 favor because they're still going on in Richland  
18 County.

19 A Right. The case is still open in Richland  
20 County.

21 Q Yes, ma'am. But since you don't know what part  
22 of the case is still under charges, warrants,  
23 indictments or whatever, you don't know if the cases  
24 you brought in Lexington County have been concluded  
25 or not, do you?

1       **A**     I don't know what part -- how they're using  
2       that information in the present case.

3       **Q**     Well then, my question, ma'am, is this: Since  
4       you don't know, how is it possible for you to have  
5       just sworn that the cases are still ongoing?

6       **A**     I know that the case was still open in Richland  
7       County because I gave it to another captain.

8       **Q**     When you say open, you mean there still is an  
9       investigation, correct?

10      **A**     I believe there's still an investigation. I  
11      have no reason to not believe there is.

12      **Q**     And like you told the jury, you don't know  
13      what, if any, charges are presently pending against  
14      Kay in Richland County, correct?

15      **A**     Correct. I don't know what any specific  
16      charges are. I just know that there was still an  
17      open case and an investigation. And I understood  
18      that Captain Hughes has made some type of charges.

19      **Q**     Well, let's make positive that we know what you  
20      do know about the charges we're talking about here,  
21      the ones in Lexington County dealing with the van.  
22      As far as you know, those cases were concluded when  
23      the magistrate dismissed the case at the preliminary  
24      hearing, correct?

25      **A**     What I know is those -- that I did not pursue

1 the Lexington case any further once it was dismissed  
2 in the preliminary hearing. I don't know if that  
3 information is still going to be used in any part of  
4 the Richland County case. I can't tell you that.

5 Q As far as we know, the cases that you made in  
6 Lexington County dealing with the van have been  
7 concluded and they're over in Kay's favor, correct?

8 A Yes, sir. Any charges that I made, yes, sir.

9 MR. MOORE: Thank you. Nothing further, Your  
10 Honor.

11 THE COURT: Anything further of the witness,  
12 Mr. Frawley?

13 MR. FRAWLEY: No, sir. Thank you.

14 THE COURT: Thank you. You may step down.  
15 Who's your next witness, Mr. Moore?

16 MR. MOORE: Your Honor, I had talked to  
17 Mr. Frawley, and he had indicated that he felt that  
18 this witness would take the balance of the day. My  
19 next witness would be Steve Baumgardner. And I have  
20 -- I'm making arrangements for him to be here first  
21 thing in the morning. It's five o'clock. If we  
22 might ask the Court to do our evening recess, it  
23 would be appreciated.

24 MR. FRAWLEY: I did tell him that, Your Honor.  
25 I may have underestimated.

1           **THE COURT:** Thank you.

2           Ladies and gentlemen, we'll plan to start  
3 tomorrow at 9:30. Please be in the courtroom --  
4 excuse me -- in the jury room at 9:30 in the  
5 morning. I hope you have a pleasant evening.  
6 You're free to go.

7           (The jury was excused for the day.)

8           **THE COURT:** Be careful as you leave that you  
9 don't have contact with the jurors. It's best if  
10 you wait a few minutes and let them clear out.

11          Court's in recess till 9:30 in the morning.

12          **MR. MOORE:** Thank you, Your Honor.

13          **MR. FRAWLEY:** Thank you, Your Honor.

14          (The proceedings were concluded for July 22,  
15 2014.)

16          (The following proceedings were held on July  
17 23, 2014.)

18          **THE COURT:** Plaintiff ready for the jury?

19          **MR. MOORE:** Yes, sir, Your Honor.

20          **THE COURT:** Defense?

21          **MR. FRAWLEY:** Defendant's ready, Your Honor.

22          **THE COURT:** Bring in the jury.

23          (The jury enters the courtroom at 9:30 a.m.)

24          **THE COURT:** Call your next witness.

25          **MR. MOORE:** Your Honor, we'd call Detective



1 Steven Baumgardner, Lexington County Sheriff's  
2 Department.

3 **THE COURT:** Come around, please.

4 STEVE BAUMGARDNER,  
5 having been duly sworn, testified as follows:

6 **THE CLERK:** If you'll have a seat and state  
7 your name for the record.

8 **THE WITNESS:** My name is Detective Steve  
9 Baumgardner. I'm employed by the Lexington County  
10 Sheriff's...

11 DIRECT EXAMINATION

12 BY MR. MOORE:

13 **Q** Detective Baumgardner, how long have you worked  
14 for the sheriff's department?

15 **A** Counselor, I believe this is my 18th year, I  
16 believe.

17 **Q** How long have you been a law enforcement  
18 officer?

19 **A** Eighteen years, sir.

20 **Q** So you've worked for the Lexington County  
21 Sheriff's Department as long as you've been in law  
22 enforcement?

23 **A** For my entire career, yes, sir.

24 **Q** As a detective in Lexington County, do you have  
25 any jurisdiction in Richland County?

1       **A**     There's only one statute that I'm aware of,  
2       Mr. Moore, that I can actually branch into another  
3       county, and that deals with the financial crime  
4       statute, and that's it, though.

5       **Q**     All right. But generally speaking, on cases  
6       like this, you have no authority in Richland County?

7       **A**     I do not.

8               **MR. FRAWLEY:** Your Honor, I'll object to this  
9       gentleman rendering an opinion on that. Obviously,  
10      he's got a lot of experience, but he's not elicited  
11      as an expert witness to render an opinion, and I  
12      would object to his rendering that.

13             **THE COURT:** Do you wish to be heard?

14             **MR. MOORE:** I'll withdraw the question, Your  
15      Honor.

16             **THE COURT:** All right.

17      BY MR. MOORE:

18      **Q**     During the relevant timeframe that we're  
19      talking about here when the allegations were made  
20      against Kay Paschal, were you a detective for  
21      Lexington County?

22      **A**     I was, sir. I was assigned as a -- at the  
23      time, I was a -- specifically, a white collar crime  
24      detective. I was working under a federal grant at  
25      that time.

1       Q     And at some point in time, in your official  
2       duties working for Lexington County, was a case  
3       assigned to you to investigate dealing with Kay  
4       Pascal and the purchase of a van?

5       A     It was, sir.

6       Q     Can you give me the approximate time that case  
7       was assigned to you?

8       A     Actually, Mr. Moore, we received a telephone  
9       call asking us to examine a case. I got the package  
10      in -- the packet that was delivered to us, opened it  
11      up. And we didn't have a -- at the time, we didn't  
12      have a Lexington County incident report that had  
13      been completed. So we completed a report. Best of  
14      my recollection, it was in the latter part of  
15      October, mid-October, I believe.

16      Q     The file that came to you from Richland County,  
17      did it have a thorough investigation having been  
18      done by Richland County?

19      A     It had been investigated, had quite a few  
20      documents and some other items in the packet that I  
21      would normally get during the course of an  
22      investigation.

23      Q     When you got the packet from Richland County,  
24      did you deem there enough information in the file to  
25      bring any type of an arrest warrant?

1       **A**     Whenever I received the case -- and I do  
2       receive cases from other jurisdictions -- I  
3       basically start back over. I start dissecting the  
4       case. I start looking at the documents, trying to  
5       determine what other documents I would need.

6             And in this case -- I did the same in this case  
7       as I would any case. I didn't feel like, at that  
8       time, that -- I was not comfortable trying to seek  
9       any type of warrants without doing an investigation  
10      myself.

11      **Q**     And did you do an investigation yourself?

12      **A**     Yes, 'sir, I did.

13      **Q**     Would you explain to the jury, in your capacity  
14      as a detective in Lexington County, what that  
15      investigation actually consisted of?

16      **A**     As I said, when I first got the case, I opened  
17      it up, broke it down, looked at the documents that I  
18      had. My first action was I went to Carolina  
19      Mobility on Leaphart Road, that was the address that  
20      I thought that they were at. When I arrived at the  
21      building, I found out that they had moved to  
22      Fernandina Road.

23             So I went to Fernandina Road, went into  
24      Carolina Mobility, walked in. I was greeted by a  
25      gentleman that I later learned to be Mr. Tim

1        Peterson. Mr. Peterson is the general manager and  
2        is also a salesman for Carolina Mobility.

3        I explained to Mr. Peterson who I was and the  
4        reason for my visit. We retired to Mr. Peterson's  
5        office where I conducted an interview of  
6        Mr. Peterson of the events or surrounding the  
7        purchase of this particular van.

8        Q     All right. Can you tell me that, in your  
9        interview with Mr. Peterson, did you find enough  
10       information to establish probable cause to sign a  
11       warrant to arrest Kay Paschal?

12       A     Not at that time,, Mr. Moore. It was -- I  
13       did -- Mr. Peterson was very, very cooperative, very  
14       forthcoming. That was only part of it, though. I  
15       wouldn't have been finished at that point anyway,  
16       but that was a -- that was a very large part of my  
17       investigation was an eyewitness interview as it  
18       were.

19       Q     At any time during your investigation, did you  
20       cover any facts of wrongdoing against Kay Paschal  
21       sufficient enough to establish, in your mind,  
22       probable cause for an arrest in Lexington County?

23       A     I did not, Mr. Moore.

24       Q     Now, not for purposes of what the truth is, but  
25       basically to come to what was in your mind, give me

1 a description of what Mr. Peterson described to you  
2 about how the transaction had transpired with the  
3 purchase of the van.

4 **A** Yes, sir. I actually asked Mr. Peterson pretty  
5 much the same thing that you just asked me, to tell  
6 me how the purchase of this van started.  
7 Mr. Peterson -- as you know, Mr. Wallace was  
8 incapacitated. He had a stroke, had a severe  
9 stroke, and he was limited to a wheelchair. Prior  
10 to that, I'd learned during the investigation, that  
11 they were using a Cadillac to transport him back and  
12 forth.

13 And so Mr. Peterson and I were talking. He  
14 said that he had dealt with Mr. Wallace and  
15 Ms. Paschal in the realm of they had come there to  
16 look at a van, to purchase a handicap van, a  
17 specialty van, as it were, that would accept a  
18 wheelchair, would be modified to -- really for  
19 wheelchair use.

20 **Q** All right. So they had come together to look  
21 at a van?

22 **A** I'm not sure if they were together or not, but  
23 I do recall Mr. Peterson and I talking, that  
24 Mr. Wallace was at a rehab facility, a health  
25 facility. Mr. Peterson picked Mr. Wallace up and

1 transported him to his home in Forest Acres where  
2 Ms. Paschal was at the time.

3 They examined -- Ms. Paschal and Mr. Wallace  
4 examined the van. Mr. Wallace had some concerns,  
5 that Mr. Peterson was telling me, that had something  
6 to do with the incline of the ramp and the height of  
7 the carriage of the van not being exactly what he  
8 wanted, and then there were some modifications on  
9 the inside of the van that they wanted changed also.  
10 And, of course, when you're buying a vehicle like  
11 that, I would think you'd want that.

12 But Mr. Wallace and Mr. Peterson --  
13 Mr. Peterson said that they had communicated and  
14 those changes were expressed to him. So he  
15 understood that. And they ultimately ended up  
16 purchasing a -- purchasing a van that met those  
17 particular qualifications.

18 Q Based upon your investigation then with  
19 Mr. Peterson, did you understand that Mr. Wallace  
20 wanted the transaction to take place?

21 MR. FRAWLEY: Object to the leading, Your  
22 Honor. He can ask him an open-ended question, but  
23 he's leading, and I'll object to that.

24 MR. MOORE: I'll rephrase.

25 BY MR. MOORE:

1       **Q**     What, if anything, did you learn was  
2       Mr. Wallace's desire in regard to purchasing the van  
3       or not?

4       **A**     I asked Mr. Peterson specifically, in his  
5       thoughts, in his mind, did Mr. Wallace participate,  
6       have knowledge of the transaction of this particular  
7       vehicle? And you have to understand -- and I never  
8       had a chance to interview Mr. Wallace, he passed  
9       away, and I never had a chance; Mr. Peterson did,  
10      and he said that it was clear to him that  
11      Mr. Wallace participated in the transaction of this  
12      van, which would be for his use.

13      **Q**     Based upon the discussion you had with  
14      Mr. Peterson, did you conclude that Mr. Wallace had  
15      or had not authorized Ms. Paschal to do the  
16      transaction?

17      **A**     Mr. Peterson was very clear, he -- Mr. Wallace  
18      authorized the purchase of that van. Ms. Paschal  
19      was there with him at the time.

20      **Q**     Did you find anything criminal wrong or  
21      probable cause to believe something was wrong by  
22      virtue of the fact that Ms. Paschal signed the check  
23      for him and helped execute the documents?

24      **A**     I did not, Counselor. And I guess I looked at  
25      that from my own standpoint. Being married 31



1 years, my wife, many times, has signed a check for  
2 me based on the fact that --

3 **MR. FRAWLEY:** I'll object to this. This has  
4 nothing to do with this case, what he and his wife  
5 did over a 31-year period.

6 **MR. MOORE:** I think, Your Honor, he wasn't  
7 offering the example of his wife as truth of the  
8 matter asserted, but for his understanding as to how  
9 the transaction would have taken place legitimately.

10 **MR. FRAWLEY:** And that doesn't mean that  
11 everybody does that with everybody's wife, Your  
12 Honor.

13 **THE COURT:** It's not hearsay, so truth of the  
14 matter asserted doesn't apply. The objection's over  
15 -- the objection's sustained. Ask your next  
16 question.

17 BY MR. MOORE:

18 **Q** Did you find anything at all wrong with Kay  
19 having signed the documents on his behalf?

20 **A** I did not.

21 **Q** And -- now, how long did you have the file for  
22 investigation?

23 **A** Counselor, I was scheduled to have some major  
24 surgery and had major surgery on November the 11th.  
25 I was going to take a few days as annual leave

1 before that date. So my last day that I was in the  
2 office, the day that I communicated with the folks  
3 at Richland County, was November the 4th of 2011.

4 Q By the time you had left the office, had you  
5 reached any conclusions about whether there was  
6 probable cause to prosecute or not?

7 A I did not feel that there was sufficient  
8 evidence, probable cause to request that a warrant  
9 be issued.

10 Q Were there any other things you needed to do  
11 just to follow up and document your file?

12 A Of course, I did my follow-up. I let my  
13 supervisors know what steps, what actions I had  
14 taken. I had been in contact with officials at  
15 Richland County, and they had asked me if they could  
16 get -- if they could get their case file back.

17 Q Well, by that time, had you already concluded  
18 there was no probable cause to prosecute?

19 A I had not -- I had not found probable cause at  
20 that moment.

21 Q All right. Now, you say, at some point in  
22 time, you had received a call from Richland County  
23 wanting their case file back. Before that, did you  
24 receive a telephone call from an Elizabeth Wallace?

25 A I did, Your Honor -- or, Counselor.

1       **Q**     How long was it after you received the call  
2       from Elizabeth Wallace that you got a call from  
3       Richland County wanting the case file back?

4       **A**     Probably a couple of weeks. I had talked to  
5       Ms. -- I believe it's Elizabeth Wallace fairly  
6       early, and after receiving -- I believe it was right  
7       after I received the case file originally. And I  
8       had spoken with Ms. Elizabeth Wallace two or three  
9       times during the course of my investigation.

10      **Q**     Did you call Richland County asking them to  
11      come pick up the file or did Richland County call  
12      you wanting to come get the file?

13      **A**     They contacted me, Counselor. I had --  
14      obviously, knowing that I was going to be out of the  
15      office for an extended period of time, I was  
16      prepared to leave the case suspended at that point  
17      and look back and start investigation on the case  
18      when I returned, but I was contacted and asked if  
19      they could get the case file back. And I made  
20      copies of everything in the case file that -- both  
21      that they had gathered and what I had gathered over  
22      my investigation. I kept the copies and gave them  
23      the original -- well, I didn't give them to them,  
24      actually. I told them that they would be on a  
25      credenza in my office in the corner.

1 I marked the envelope, the manila envelope,  
2 with their name on the outside, and told the  
3 administrative assistant in our North Region sub --  
4 or our substation that someone, and I didn't know  
5 who, but someone from Richland County would be  
6 coming by to pick that up.

7 Q Who was the person that made the call wanting  
8 the file back?

9 A Lieutenant Scott's the person who called me and  
10 asked me if she could have the case file back.

11 Q When she called you, what, if any, suggestions  
12 did she make to you about signing a warrant?

13 A She asked me -- we had talked about what I had  
14 found during my investigation and that I didn't feel  
15 like I had sufficient probable cause at the time to  
16 request that a warrant be issued.

17 Q Where were you when you told Lieutenant Scott  
18 that you didn't feel you had sufficient probable  
19 cause for the warrant to be issued? Where were you?

20 A You mean physically or --

21 Q Yeah.

22 A I was in my office at North Region, which is on  
23 Lincreek Drive.

24 Q All right. When you told Lieutenant Scott,  
25 when she was wanting the warrant, that you didn't

1       feel there was probable cause, what was her reaction  
2       to that?

3       **A**     I don't think she agreed with my findings. I  
4       felt -- I felt as if I was being asked to go ahead  
5       and pursue warrants, but I don't do that, Counselor.  
6       I don't do that on any case. I make sure that I do  
7       a thorough investigation before I seek a warrant.

8       **Q**     Who was asking you to go ahead and pursue  
9       warrants even though you weren't comfortable with  
10      it?

11      **A**     At one point, Elizabeth Wallace and I had  
12      talked in general terms. She was -- she had  
13      suggested that Richland County had done a complete  
14      investigation and that I should go ahead and seek  
15      warrants. And I believe Lieutenant Scott had also  
16      kind of alluded to that, but again, I don't operate  
17      that way.

18      **Q**     There was a discussion you mentioned about that  
19      Richland County had done a full investigation. When  
20      the file came to you, did you perceive the  
21      investigation, which had been done by Richland  
22      County, to be a full investigation?

23      **A**     I wasn't comfortable with everything that was  
24      enclosed in the case file. They had some great --  
25      they had some great documents in their case file,

1       some documents that, ultimately, it saved me some  
2       time from having to get, but I still felt like I  
3       needed more documents. I wanted to talk to  
4       Mr. Peterson. I wanted to do some follow-up. Of  
5       course, I didn't know Mr. Peterson at that time, but  
6       I wanted to talk to the employees of Carolina  
7       Mobility, and I did not see anything in the case  
8       file at that time.

9       **Q**     Now, can you give me an approximate date when  
10      you told Heidi Scott that you did not find  
11      sufficient evidence in your investigation to make  
12      charges against Kay Paschal? Approximately, when  
13      would that have been?

14      **A**     I believe that it was November the 4th, 2011, I  
15      believe, Counselor. We just -- we talked in general  
16      terms about the case.

17      **Q**     All right. When you were talking in general  
18      terms about the case, did you explain to her why you  
19      did not feel there was probable cause to issue an  
20      arrest warrant for Kay Paschal?

21      **A**     I don't recall actually having that discussion  
22      with her. I just alluded to that I was going to  
23      have to suspend the investigation on this case  
24      because I didn't have sufficient evidence at the  
25      time, but I would -- as soon as I returned from sick

1 leave, that I would pick the case back up, and I  
2 would start investigation of the case again.

3 Q And you were scheduled to be out about two  
4 months?

5 A Yes, sir. I had very major surgery during that  
6 time.

7 Q The file had been opened by that time how many  
8 months?

9 A With me or with Richland County?

10 Q With Richland County.

11 A Quite some time, as I recall.

12 Q Was there any urgency that you could see to do  
13 something with the file?

14 A The nice thing about white collar crime  
15 investigations, Counselor, are that records are  
16 generally available for a longer period of time  
17 versus a crime where records or evidence is lost or  
18 destroyed in a very short period of time.

19 I say that in that I felt like those records  
20 would still be there when I came back. And I think  
21 I returned in early January, I believe.

22 Q All right. Did Heidi Scott ask for the file  
23 back before or after you told her you didn't have  
24 sufficient evidence to get a warrant?

25 A It was after. It was after. I will say,

1 Counselor, for me to tell her direct that -- I never  
2 told her direct, I'm not going to get a warrant for  
3 this case based on lack of probable cause. My  
4 suggestion was that I had not found probable cause  
5 at that point and would continue to investigate the  
6 case and try to establish probable cause.

7 Q And I believe that -- make sure I get these in  
8 the proper order.

9 As a result of the conversation that you had  
10 with --

11 MR. MOORE: Your Honor, I'm going to remove  
12 this copy, which was somehow attached to Exhibit 16,  
13 if I might.

14 Q I'm going to show you a report. I believe it  
15 is dated November the 4th, 2011. Would this be the  
16 report that you generated after the conversation  
17 with Lieutenant Scott when you told her there was  
18 not probable cause found to prosecute?

19 MR. FRAWLEY: Your Honor, may I ask what  
20 exhibit that is?

21 BY MR. MOORE:

22 Q What's the number on that exhibit?

23 A That's number 16.

24 Q All right. Could you please --

25 MR. FRAWLEY: Plaintiff's 16. Thank you, Your



1 Honor.

2 BY MR. MOORE:

3 Q Could you just read that for us?

4 A The entire report, Counselor?

5 Q Yes.

6 A This is -- this is a report called a case  
7 supplemental report. And what this is is it's a  
8 narrative of my findings. This is -- how we close  
9 cases at Lexington County, we write many reports  
10 during the course of an investigation. This is the  
11 report that I wrote to conclude and close that case.

12 It's dated November the 4th, 2011, and states  
13 that: Lieutenant Heidi Scott, Richland County  
14 Sheriff's Department, contacted Baumgardner with  
15 LCSD, Lexington County Sheriff's Department.  
16 Lieutenant Scott is investigating a case in Richland  
17 County dealing with a large family estate. The  
18 parties cannot agree, and the deceased party, David  
19 Wallace's family, has alleged that the suspect, Kay  
20 Paschal Wallace, who claims to be the common-law  
21 wife of David Wallace, had taken the assets of David  
22 Wallace. Richland County Sheriff's Department is  
23 investigating a claim of vulnerable adult.

24 Kay Paschal did purchase a van in Lexington  
25 County and used a check to pay for this van.

1 There's a dispute as to if Paschal had power of  
2 attorney to do so. There was a POA, or power of  
3 attorney; however, Elizabeth Wallace, daughter of  
4 David Wallace, who is deceased, alleges to have been  
5 forged by Paschal. The power of attorney was sent  
6 to a private handwriting expert, Marvin H. Dawson,  
7 and to SLED for analysis.

8 Next paragraph: Baumgardner started to  
9 investigate this case. It was found that a marriage  
10 license -- which later it turned to be an  
11 application, but I put marriage license -- was  
12 purchased by David Wallace in Kershaw County;  
13 however, the license was never returned.

14 Baumgardner spoke with Tim Peterson, who sold the  
15 van to Kay Paschal. Mr. Peterson stated that a  
16 power of attorney was presented and that Kay gave a  
17 check to purchase the van. Mr. Peterson stated that  
18 Mr. Wallace inspected the van while he was alive and  
19 it met with his approval.

20 Next paragraph: Baumgardner had been in  
21 contact with Elizabeth Wallace via telephone.  
22 Ms. Wallace stated that she wanted Lexington County  
23 to obtain a warrant for forgery of the check used to  
24 pay for the van before Richland County did any  
25 charges. I explained that there were several

1 concerns that I had and wanted to find out what  
2 documents were used to prove that Kay Paschal  
3 changed her name to Kay Wallace. I also expressed  
4 there were some concerns over additional issues that  
5 I wanted to clarify before I sought any warrants.  
6 Ms. Elizabeth stated that she understood, as she was  
7 an attorney, and her brother was with the CIA.

8 Lieutenant Scott called me on 11/4/2011 and  
9 asked that I transfer this case back to her.  
10 Lieutenant Scott stated that she had sought counsel  
11 through her department and that Richland County will  
12 make the charge of forgery. Baumgardner agreed  
13 to -- it says TOT; it stands for turn over to -- the  
14 case back to Richland County Sheriff's Department.  
15 The case will be in Baumgardner's office.  
16 Lieutenant Scott stated she would have the case  
17 picked up within a week.

18 Last lines are: Because this case will be sent  
19 back to Richland County at the sheriff's department  
20 at their request, Baumgardner will close this case  
21 as ex-cleared, no prosecution in Lexington County.  
22 It's closed as ex-clear, turned over to Richland  
23 County Sheriff's Department. And this was dated on  
24 the 4th of November.

25 Q What does ex-clear mean?

1       **A**     There are five -- when we close a case  
2       ex-clear, we can close a case in a subsection of  
3       five headings to make a case ex-cleared. One of  
4       those would be the offender death, which that didn't  
5       happen here. The other one would be no prosecution.  
6       We were not going to seek prosecution in the case.

7       **Q**     All right. So when you turned it back over to  
8       Richland County, did you understand they were going  
9       to try to prosecute it in Lexington County?

10      **A**     It was my understanding they were going to try  
11      it prosecute it through Richland County. I did not  
12      understand it to be in Lexington County.

13      **Q**     When you ex-cleared it, what was your  
14      understanding about whether there would or would not  
15      be a prosecution in Lexington County?

16      **A**     I did not think that there would be a  
17      prosecution in Lexington County. They had expressed  
18      to me, as I read, that they were going to -- they  
19      had sought counsel and were going to try to execute  
20      a warrant or obtain a warrant in Richland.

21      **Q**     When they got your file back, would this  
22      exhibit you just read from, would that have been in  
23      the file they picked up?

24      **A**     Counselor, I don't know if I wrote this -- I  
25      know I wrote it on that day. I don't remember if I

1 put that particular report in there. Generally,  
2 we'll include everything, but I just can't remember.  
3 That's been almost three years now.

4 Q When you had your conversation with Lieutenant  
5 Scott, did you leave it with the understanding there  
6 would be no prosecution of this case in Lexington  
7 County?

8 A I left it with the understanding that, at that  
9 time, November the 4th, I had not found enough  
10 probable cause to request a warrant. However, if  
11 the case had not be requested to be sent back, I was  
12 prepared to suspend the investigation at that time  
13 and then resume investigating the case as soon as I  
14 returned, but Richland County officials asked to  
15 have the case returned back to them.

16 Q All right. I believe Exhibit Number 15 is a  
17 notation to one of your superiors; is that correct?

18 A It is, Counselor. Edward Prestigiacomo is my  
19 sergeant, my direct supervisor.

20 Q And had he made contact with you about what was  
21 going on?

22 A He had, sir. It came through a chain of  
23 command as it were. Other officials with the  
24 Lexington County Sheriff's Department wanted to know  
25 the status --

1           **MR. FRAWLEY:** Object to what anybody else,  
2 unless they're going to testify, passed down to him  
3 from the Lexington County Sheriff's Department, Your  
4 Honor. It's hearsay.

5 BY MR. MOORE:

6           **Q** Did you respond to Presti --

7           **A** I did, sir. I was requested to have a written  
8 summary of the case.

9           **Q** And did you give that to him?

10          **A** I did, sir.

11          **Q** And in that, did you tell him there wasn't  
12 enough yet to prosecute anybody?

13          **A** I've outlined it in this e-mail correctly to  
14 him.

15          **Q** Now, Mr. Baumgardner, I believe that, at some  
16 point in time, you testified at a preliminary  
17 hearing in the case, correct?

18          **A** Yes, sir. I was subpoenaed to testify before  
19 a -- before a judge, a magistrate, as I'm under  
20 subpoena today.

21          **Q** At a preliminary hearing, what happens to a  
22 case?

23          **A** It is a -- a preliminary hearing is what's  
24 commonly known as a probable cause hearing. It's  
25 was there probable cause issued or was there

1       probable cause to be able to issue a warrant?

2       It's -- both sides have to defend whether it was or  
3       wasn't.

4       Q     And if probable cause is found, what happens?

5       A     If probable cause is found, it's bound over for  
6       grand jury.

7       Q     If probable cause is not found, what happens to  
8       the case?

9       A     If probable cause -- if the judge does not find  
10      probable cause, the case is dismissed at that time.

11      Q     And did you testify at the preliminary hearing  
12      consistent with what you've testified here to today?

13      A     I believe so, yes, sir.

14      Q     At the probable cause hearing or the  
15      preliminary hearing, what, if anything, was done  
16      with the two charges which are the subject of this  
17      lawsuit?

18      A     Judge Gary Morgan dismissed both charges at  
19      that time and said that they were --

20            MR. FRAWLEY: Object to what was --

21            MR. MOORE: You can't say what he said --

22            MR. FRAWLEY: They've got the order if they  
23      want to put it in, Your Honor.

24            THE WITNESS: It was -- my under- --

25      BY MR. MOORE:

1 Q Were they dismissed?

2 A They were dismissed, yes, sir.

3 Q And as a result of the testimony at the  
4 preliminary hearing, did you testify truthfully at  
5 the preliminary?

6 A Counselor, I testify truthfully every time I'm  
7 before a court, so, yes, I did.

8 Q Did you particularly enjoy the preliminary  
9 hearing?

10 A No, sir, I did not. I'm not -- I wish I  
11 weren't here right now to be honest. But, no, sir,  
12 I did not enjoy testifying at the preliminary  
13 hearing.

14 Q Are you here on your own free will today or by  
15 virtue of a subpoena?

16 A I am here under subpoena, Counselor.

17 Q Now, as a result of your testimony before the  
18 magistrate where the case was dismissed for lack of  
19 probable cause, were you ultimately kind of called  
20 onto the carpet by your superiors?

21 MR. FRAWLEY: Objection. This is hearsay, Your  
22 Honor, if that did or did not happen. I object to  
23 it. That's hearsay.

24 MR. MOORE: Well, I'll ask it another way.

25 BY MR. MOORE:



1       **Q**     Were you asked to -- were you asked for an  
2       explanation as to what had gone on with the case at  
3       the preliminary?

4       **MR. FRAWLEY:** Same objection. Unless they've  
5       got somebody from Lexington County Sheriff's  
6       Department who's going to come in here and testify  
7       that they asked this detective to explain himself,  
8       whether he had to or not, that's hearsay, and I  
9       would object to it.

10       **MR. MOORE:** Your Honor, I'll withdraw that  
11       question. It's all right. It's fine. It's fine.

12       **THE COURT:** All right.

13       BY MR. MOORE:

14       **Q**     Exhibit Number 18 is in evidence, Steve. Would  
15       you look at this for me, please? Tell me what this  
16       is. Is that something you prepared?

17       **A**     This is a document that I created also,  
18       Counselor.

19       **Q**     Would this document have been created before or  
20       after the preliminary hearing?

21       **A**     It was created after the preliminary hearing, I  
22       believe, sir.

23       **Q**     Who did you address the document to?

24       **A**     This was -- is the same as -- this is a  
25       supplemental case file report that documents, in my

1 narrative, what occurred. And this deals with the  
2 events that occurred at the preliminary hearing and  
3 events that were after we were dismissed.

4 Q All right. And who have you addressed that to?

5 A Well, this would have been approved by my  
6 sergeant, Edward Prestigiacomo. And once it was  
7 approved, it would be added to my case file as a  
8 permanent record.

9 Q Would you just read for us what you wrote?

10 A Yes, sir. It's rather lengthy, as many of mine  
11 are. Again, this is a case file supplemental  
12 report, which was generated by me on the 31st of  
13 January 2012.

14 And it reads: Baumgardner was sent a subpoena  
15 from Moore, Taylor, and Thomas, PA, to produce all  
16 documents related to case 11 2012. Baumgardner sent  
17 all documents to Major John Tate, Lexington County  
18 Sheriff's Department legal counsel. Baumgardner was  
19 contacted by Major Tate on January 20th, 2012 via  
20 telephone. Major Tate advised that his office had  
21 received a subpoena to compel me to appear at the  
22 January 20th, 2012, preliminary hearing on that date  
23 for Moore, Taylor, and Thomas. Major Tate  
24 instructed me to be available for the court.

25 Next paragraph: I appeared in court and spoke

1 with Lieutenant H. Scott, Richland County Sheriff's  
2 Department. I gave Lieutenant Scott copies of the  
3 subpoena that I had received and advised her that I  
4 was instructed to be in court on this day. I was  
5 called to testify in a preliminary hearing. I was  
6 questioned by Mr. Jahue Moore about my findings in  
7 Lexington County Sheriff's Department's case  
8 10032000. Kay Paschal was the subject of this  
9 investigation. I did not find probable cause in  
10 this case for an arrest warrant.

11 Lieutenant Scott had contacted Baumgardner late  
12 in 2011 to ask that I send the case back to Richland  
13 County Sheriff's Department. I packed the case into  
14 an envelope and placed the package on a stand for  
15 pick up by Richland County Sheriff's Department. I  
16 went on sick leave 11/6/2012. I closed case  
17 11032000 on 11/4/2011 based on the facts that I  
18 could not find probable cause and that Lieutenant  
19 Scott advised that Richland County Sheriff's  
20 Department would take over -- take over.

21 Lieutenant Scott presented her case for  
22 probable cause for warrants that Richland County had  
23 obtained for the arrest of Kay Paschal. After  
24 hearing arguments from Jahue Moore, Lieutenant Scott  
25 and my testimony under oath, Judge G. Morgan did not

1 find there to be probable cause and did not bind the  
2 warrant over for grand jury consideration.

3 Next paragraph: Lieutenant Frier saw me as I  
4 was leaving Lexington County Sheriff's Department  
5 headquarters. Lieutenant Frier asked me what had  
6 happened in court. I explained the issues and left.  
7 Lieutenant Frier called me two or three additional  
8 times over the next week to ask me about the details  
9 of this preliminary and my case.

10 On 1/24/2012, I stopped at Carolina Mobility  
11 and Company to speak with Tim Peterson, general  
12 manager. I had interviewed Mr. Peterson early in my  
13 investigation of case 11032000. Based on the facts  
14 of my interview with Mr. Peterson, along with the  
15 additional evidence which I discovered, I did not  
16 seek a warrant for the arrest of Kay Paschal.

17 Mr. Peterson's statement to me was that he had  
18 picked Mr. Wallace up at a rehab facility.  
19 Mr. Peterson took Mr. Wallace to his home in Forest  
20 Acres, in Richland County. Mr. Peterson was in a  
21 demo handicap van. Once Kay Paschal and Mr. Wallace  
22 saw how the van would allow Mr. Wallace to be  
23 transported, Mr. Peterson was instructed to order a  
24 van for Mr. Wallace's benefit.

25 Next paragraph: On 1/24/2012, I re-interviewed

1 Mr. Peterson, and his events of the purchase of the  
2 van were the same as when I interviewed him in  
3 October 2011. Mr. Peterson let me read a statement,  
4 which he gave to Lieutenant Scott on 11/30/2012. I  
5 read the document, but did not ask for a copy.

6 Next paragraph: On 1/25/2012, I was asked to  
7 meet with Robert Elam and Dayton Riddle of the  
8 Lexington County Solicitor's Office. The purpose of  
9 this meeting was to discuss my findings -- my  
10 findings of my interview. This meeting began about  
11 1430 hours, which would have been 2:30 in the  
12 afternoon, and ended about 1700 hours, which would  
13 have been about five o'clock. I relayed the issue  
14 of the Richland County statement. Mr. Robert Elam,  
15 if I could -- if I could secure a copy of this  
16 statement, as it was not documented in my case file.  
17 I told him that I would ask to get a copy of this  
18 statement.

19 On 1/30/2012, I responded to Carolina Mobility  
20 and spoke with Tim Peterson. I asked if I could  
21 have a copy of the statement he gave to Lieutenant  
22 Scott. He said that I could. Mr. Peterson has been  
23 cooperative in the course of this investigation. We  
24 once again spoke of this case. Mr. Peterson stated  
25 to me again that when he was present, Kay Paschal

1 was taking care of Mr. Wallace. Mr. Peterson stated  
2 that Kay Paschal changed David Wallace's adult  
3 undergarments, fed him -- fed and prepared his food,  
4 and acted as his wife. I thanked Mr. Peterson for  
5 his time and cooperation, and I left the business.

6 Next paragraph: On 1/31/2012, I scanned the  
7 Richland County Sheriff's Department statement and  
8 attached the statement to my case file. I also  
9 completed an additional supplemental report to  
10 reflect the issues that have arisen since I closed  
11 this case on 11/4/2011.

12 And that report ended on that particular day  
13 and was approved by Sergeant Edward Prestigiacomo.

14 Q And I believe there was also an e-mail that was  
15 generated. Might I refer you to Exhibit Number 17,  
16 Detective Baumgardner, and ask you if this is  
17 something that you created.

18 A I generated this e-mail, yes, sir, too.

19 Q When was that e-mail generated?

20 A This was generated on Tuesday, January 31st,  
21 2012, at 3:10 in the afternoon.

22 Q And who was it directed to?

23 A It's directed to Lieutenant Scotty Frier.

24 Q I'm not going to ask you what Lieutenant Scotty  
25 Frier may have asked you, that would be hearsay, but

1 I would like you just to -- and I've got you reading  
2 a lot; would you like some water?

3 A I -- thank you. I have just a little bit.

4 Q I believe that you've had how many heart  
5 procedures in the last couple of years?

6 A I just had two just in April, Counselor, but I  
7 think I've had five heart procedures in the last  
8 four years.

9 Q So you take your time. If you would just,  
10 please, Detective Baumgardner, read for me the  
11 e-mail you sent to Lieutenant Scotty Frier, which is  
12 in evidence.

13 A Yes, sir.

14 MR. FRAWLEY: Your Honor, I'd ask again: Is  
15 this Plaintiff's Exhibit 17?

16 MR. MOORE: 17.

17 THE WITNESS: It is.

18 MR. FRAWLEY: Thank you.

19 THE WITNESS: I apologize.

20 Again, this is an e-mail that I generated on  
21 January 31st, 2012, at 3:10 p.m., afternoon, and it  
22 was sent to Lieutenant Scotty Frier with the  
23 Lexington County Sheriff's Department. The subject  
24 is Kay Paschal.

25 And it reads: Lieutenant Frier, per our

1 telephone conversation of today, I am sending this  
2 e-mail to you per your request. You asked that I  
3 focus on the meeting with Dayton Riddle, Robert Elam  
4 and myself. This meeting took place at the  
5 Lexington County Solicitor's Office on Wednesday, 25  
6 January 2012, at approximately 1445 hours.

7 The meeting was held in Dayton Riddle's office.  
8 Robert Elam was present and took some notes during  
9 the meeting. I did not take any notes during the  
10 meeting. The following is a summary of the meeting.  
11 Should you have any additional questions, please let  
12 me know.

13 Bullet point one: Mr. Riddle asked me to  
14 summarize my case investigation with Kay Paschal as  
15 the subject. I told Mr. Riddle how I'd interviewed  
16 Mr. Tim Peterson, manager of Carolina Mobility.  
17 Mr. Peterson picked Mr. Wallace up from a rehab  
18 center, drove Mr. Wallace to his home in Forest  
19 Acres. The demo van was inspected by Kay Paschal  
20 and Mr. David Wallace. The van met with their  
21 approval, and Mr. Peterson ordered a van through  
22 Brawn Corporation.

23 Mr. Peterson stated that Kay Paschal responded  
24 to the dealership with a power of attorney. Paschal  
25 traded a Cadillac automobile in toward the purchase



1 price and signed a check on David Wallace's TD Bank  
2 account for payment of the van. Mr. Peterson stated  
3 that the power of attorney seemed to be in order and  
4 that he knew that the van was being purchased for  
5 the benefit and use of David Wallace. That  
6 concludes that bullet point.

7 Next bullet point: I informed Mr. Riddle that  
8 this case was sent to me from Richland County  
9 Sheriff's Department, and I was asked to examine the  
10 facts to ascertain if criminal -- if a criminal act  
11 had been violated within Lexington County. I told  
12 Mr. Riddle that I had several conversations with  
13 Lieutenant Scott via telephone and that I advised  
14 Lieutenant Scott that I was leaving early in  
15 November for surgery.

16 In late October, I was contacted by Lieutenant  
17 Scott and asked to turn the documents back over to  
18 Richland County Sheriff's Department as Richland  
19 County Sheriff's Department was going to seek a  
20 warrant. I packaged the documents in an envelope,  
21 and they were placed -- and they were picked up  
22 after I left for sick leave. I told Mr. Riddle that  
23 based on the interview with Mr. Tim Peterson, I  
24 could not find probable cause for a warrant as  
25 Mr. Wallace was present and involved with the

1 approval of the vehicle.

2 Next bullet point: I had several conversations  
3 with Elizabeth Wallace, daughter of deceased David  
4 Wallace. I told Mr. Riddle how Mr. {sic} Wallace  
5 had told me that she was an attorney and that her  
6 brother worked for the CIA. I informed Mr. Riddle  
7 that Ms. Wallace had contacted Sheriff Metts' office  
8 as she did not feel as if the case investigation was  
9 getting the proper attention it needed. I advised  
10 Mr. Riddle that I had addressed these issues with  
11 Captain Lee Marshall. I advised Mr. Riddle that I  
12 had written Captain Marshall an overview of this  
13 case, however, I did not have the case file with me  
14 on this particular day. Next point -- or, I'm sorry  
15 -- on that day.

16 Next bullet point: Mr. Riddle stated that he  
17 did -- that he met with Lieutenant Scott with  
18 Richland County Sheriff's Department at the request  
19 of Captain Stan Smith with Richland County Sheriff's  
20 Department. Mr. Riddle stated that he -- that only  
21 he and Ms. Scott -- Ms. Scott were present during  
22 the conversation. Mr. Riddle stated that Lieutenant  
23 Scott told him of the details of her case.  
24 Mr. Riddle stated that he did not direct Lieutenant  
25 Scott to obtain a warrant, but rather Mr. Riddle

1       stated that he directed Lieutenant Scott to speak  
2       with a magistrate to ascertain the validity of  
3       Richland County Sheriff's Department signing a  
4       warrant in Lexington County.

5             Mr. Riddle also went on to state that he  
6       advised Lieutenant Scott to speak with her chain of  
7       command personnel with Richland County Sheriff's  
8       Department dealing with these issues. Mr. Riddle  
9       stated to me that he did not tell Lieutenant Scott  
10      to obtain a warrant based on his recommendations.

11            Next bullet point: I discussed the issue as to  
12      why I was served with a subpoena for documents and  
13      to appear in the preliminary court on 01/20/2012.

14      Mr. Riddle did not ask me -- ask what questions were  
15      asked, but rather an overview of my testimony.

16      Mr. Riddle stated that he had spoken with Mr. Jahue  
17      Moore, Esquire, and that Mr. Moore -- that Moore,  
18      Taylor and Thomas was going to give Mr. Riddle a  
19      copy of the court transcripts. I asked Mr. Riddle  
20      for a copy if he received the transcripts, and he  
21      stated that he would advise me if he received one.

22            Next paragraph: Our meeting ended, and I  
23      retired to Robert Elam's office to discuss a  
24      separate case. I advised Mr. Elam that I was going  
25      to get the 11/30/2011 statement that Lieutenant

1 Scott obtained from Tim Peterson. Mr. Elam stated  
2 that if I did get this statement, he wanted to  
3 include a copy in their case file. I told him that  
4 I would supply a copy if I received the statement.  
5 I left Mr. Elam's office. It was approximately 1715  
6 hours.

7 Again, should you have additional questions,  
8 please contact me. Cordially, Steve Baumgardner,  
9 Lexington County Sheriff's Department. End of the  
10 document.

11 **MR. MOORE:** Thank you very much. Detective  
12 Baumgardner, would you answer any questions  
13 Mr. Frawley might have?

14 **THE WITNESS:** Certainly.

15 **THE COURT:** Cross.

16 **MR. FRAWLEY:** May it please the Court.

17 **THE COURT:** Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. FRAWLEY:

20 **Q** Detective Baumgardner, good morning.

21 **A** Good morning, sir.

22 **Q** You had mentioned on direct that you were, I  
23 think you said, a white collar crime investigator  
24 with Lexington County Sheriff's Department, correct?

25 **A** That's correct, sir.

1 Q Can you explain to the jury briefly what white  
2 collar crime involves?

3 A White collar -- and I was on this -- I was  
4 deemed a white collar crime detective, Counselor, as  
5 we received a grant from the federal government.

6 Q Yes, sir.

7 A That was the term. A white collar crime  
8 detective generally does not deal with violent  
9 crimes as it were. A white collar crime detective  
10 generally deals with forgeries and matters of monies  
11 that are missing, vulnerable adult cases where some  
12 member of a family has taken advantage of a  
13 vulnerable adult.

14 I've also assisted United States Secret Service  
15 in counterfeiting -- counterfeit bills, forged  
16 checks, embezzlements, breach of trust cases through  
17 employers, where an employee has taken advantage of  
18 an employer and has stolen money.

19 Q Okay. And white collar crime, you mentioned it  
20 doesn't involve violent acts. Would you agree with  
21 me that white collar crime is more of an insidious  
22 act, something that is behind the scenes, something  
23 that is obscured, something that is not readily  
24 apparent at first blush?

25 A I would -- I would agree with your statement

1 sir, yes, sir.

2 Q Okay. And would you also agree with me that in  
3 order to get past the facades or the subterfuges  
4 that are there, it takes some period of time and  
5 some investigation to get to that in order to  
6 establish your case? Would you agree with that  
7 statement?

8 A Yes, sir. They generally take a little longer  
9 than most cases because of the documents you have to  
10 obtain.

11 Q Yes, sir. And would you also agree with me  
12 that there are -- the cases are rare in which you  
13 can go and find, for lack of a better term, a clear  
14 smoking gun? You have to find pieces of evidence  
15 that are circumstantial and frequently piece them  
16 together. Would you agree with that statement?

17 A Oh, yes, sir. I rarely have one that I can  
18 solve very quickly.

19 Q Okay. Have you had many, in your experience,  
20 where the alleged perpetrator, like Perry Mason  
21 shows from the '50s, raises his hand and says, You  
22 got me, I did it? Does that ever happen, in your  
23 experience?

24 A Oh, yes. Yes, sir.

25 Q It does happen?

1       **A**     I've had confessions on the spot, yes, sir.

2       **Q**     Okay. Is it a frequent or an infrequent  
3       occurrence?

4       **A**     It's not -- I wish it were more frequent than  
5       it is.

6       **Q**     Yes, sir.

7       **A**     Not very frequent.

8       **Q**     Okay. Now, you mentioned that you were a white  
9       collar crime investigator for Lexington County. At  
10      that time, you were the white collar crime  
11      investigator, weren't you?

12      **A**     I was primarily the white collar crime  
13      investigator. There were some cases that other  
14      detectives worked just because of sheer volume.

15      **Q**     Yes, sir.

16      **A**     But, for the most part, I was considered the  
17      white collar crime detective, the white collar crime  
18      detective.

19      **Q**     You were the lead guy. And if someone had a  
20      white collar crime that they wanted an investigation  
21      done, you were the guy they would go to, correct?

22      **A**     As I am today, yes, sir.

23      **Q**     As you are today. And there may have been  
24      other people that could pinch-hit and pick up stuff,  
25      but you were mainly the guy?

1       A     I was, sir, yes.

2       Q     Now, you mentioned that it's your practice that  
3       even if you get a case file from an adjacent county  
4       or some other source than the Lexington County  
5       Sheriff's Department, that it's been your practice  
6       typically to start it over, correct?

7       A     Yes, sir. We'll generate an incident report.

8       Q     Yes, sir.

9       A     And try to start a brand new investigation.

10      Q     And the reason for that is that -- excuse me --  
11      you want to be sure of the facts and sure of the  
12      evidence before you get to the point that you're  
13      going to pursue an arrest warrant, correct?

14      A     That's a very fair statement, sir.

15      Q     Okay. So if you are given a file from a  
16      different jurisdiction, a different county, and say  
17      they've got ten months' worth of investigation in a  
18      file, you're not necessarily going to piggyback  
19      entirely on their investigation. You're going to  
20      look into it yourself before you are satisfied that  
21      there's probable cause sufficient to seek a search  
22      -- or an arrest warrant, correct?

23      A     That is correct, sir.

24      Q     All right. And that's a reasonable thing for  
25      you, as a law enforcement officer, to do; isn't that



1 correct?

2 A I'd like to think so, yes, sir.

3 Q Yes, sir.

4 You said several times, in responding to  
5 Mr. Moore's questions, that when you gave this file  
6 back, November 4th of 2011 --

7 A Yes, sir.

8 Q -- that you did not find probable cause  
9 sufficient to pursue an arrest warrant, and you seem  
10 to frequently use the caveat "at that time."

11 A That -- that's correct.

12 Q Do you recall saying that?

13 A That's correct.

14 Q I mean, if I were to ask you that question  
15 again, would you add the caveat, I didn't have  
16 probable cause at that time?

17 A That's correct, sir.

18 Q That doesn't mean that had you been offered --  
19 afforded the opportunity to continue your  
20 investigation, which you said you were planning on  
21 doing anyway --

22 A Yes, sir.

23 Q -- that you wouldn't have, at some point, found  
24 probable cause, correct?

25 A There may have been additional documents that

1 led to probable cause, yes, sir.

2 Q Yes, sir. Okay. And with regard to your being  
3 able to do your own investigation, your own in-depth  
4 investigation into this case, would you agree with  
5 me that between October 14th, when you got the case,  
6 and November 4th, when you had to give it back --

7 A Yes, sir.

8 Q -- in that little over three-week period, you  
9 did not have sufficient time to perform a complete  
10 and thorough investigation to your own standards?

11 A I did not, sir. I had other cases. And, quite  
12 frankly, this was just one of many that I was  
13 investigating.

14 Q Yes, sir. In other words, this wasn't a matter  
15 where you got this thing on November -- or October  
16 14th and every day between October 14th through  
17 November 4th, you were hitting it on this case?

18 A Oh, no, sir. I did not work this case  
19 exclusively --

20 Q Yes, sir.

21 A -- during that period of time.

22 Q And you had three and a half weeks to  
23 assimilate an investigation that Richland County had  
24 been ongoing with since March 1st. And given your  
25 practice, you're not going to piggyback on what they

1 did; you want to look into it yourself, correct?

2 A That's correct.

3 Q And by October 4th, you simply hadn't had the  
4 chance to do that yet, correct?

5 A Not at three weeks, no, sir.

6 Q So, at that time, you didn't have sufficient  
7 probable cause to seek a search -- or an arrest  
8 warrant?

9 A On November the 4th, 2011, I did not have  
10 probable cause, in my opinion, to seek the warrant.

11 Q Sure. Now, you've -- you mentioned that you  
12 had some health issues coming up, November 4th, and  
13 you told Lieutenant Scott of that, didn't you?

14 A I don't think I told her exactly what I was  
15 having done --

16 Q Sure. That's none of her business.

17 A -- but I did tell her that I was going to be  
18 out for an extended period of time.

19 Q Yes, sir. You're going to take some medical  
20 leave, none of her business why, but that you did  
21 tell her that you were going to be out-of-pocket at  
22 or after November 4th of 2011, correct?

23 A That's correct, sir.

24 Q All right. And didn't you also have a young --  
25 one of your -- your youngest son was coming back

1 from Afghanistan around that time?

2 **A** Yes, sir. He came back from Afghanistan, his  
3 tour in Afghanistan.

4 **Q** Do you remember when he got back in relation to  
5 when this thing came up? Not important if you don't  
6 remember.

7 **A** It was in the last part of October.

8 **Q** Okay. Okay. And which branch was he in?

9 **A** He's in the United States Army.

10 **Q** United States Army. Stationed in Afghanistan?

11 **A** Yes, sir.

12 **Q** He was fixing to come back, and you had health  
13 issues, correct?

14 **A** That's -- that's correct, sir.

15 **Q** Okay. So you had this file for three and a  
16 half weeks maybe and had to give it up. And she  
17 picked it up -- Lieutenant Scott picked it up on  
18 November 4th, as far as you know?

19 **A** I'm not sure who --

20 **MR. MOORE:** Objection, please, to the question  
21 is a mischaracterization of the evidence --

22 **MR. FRAWLEY:** I'll rephrase the question. I'll  
23 withdraw that question and I'll rephrase it.

24 **BY MR. FRAWLEY:**

25 **Q** You closed the file, as far as Lexington County

1 Sheriff's Department working on this file, on or  
2 about November 4th of 2011, correct?

3 A That's correct.

4 Q And some time thereafter, the Richland County  
5 Sheriff's Department, whether it's Lieutenant Scott  
6 or somebody else, picked that file up?

7 A That's correct, sir.

8 Q Okay. Now, you indicated you did speak with a  
9 Mr. Peterson?

10 A Yes, sir.

11 Q Okay. And that was in your three and a half  
12 weeks, you were able to do that, correct?

13 A Yes, sir. During the first initial  
14 investigation, yes, sir.

15 Q Okay. Did you speak with Ms. Paschal?

16 A No, I did not -- well...

17 Q In that three and a half weeks?

18 A Counsel, I -- I don't remember.

19 Q Okay. Well, let me approach it this way: And  
20 I know you've got a lot of files and all those files  
21 have case reports, don't they?

22 A They all do, sir, yes, sir.

23 Q I mean, these documents that we've got in that  
24 you've read up there, these aren't the only three  
25 documents you typed during that period of time?

1       **A**     I don't believe so.

2       **Q**     Okay.

3       **A**     I believe there's other documents that I've  
4       typed.

5       **Q**     Well, I mean, as far as all your cases?

6       **A**     Well, every case, I have many, many reports.

7       **Q**     All right. So as far as your being able to  
8       have an independent recollection today as to whether  
9       you spoke with Kay Paschal or not in that  
10      three-and-a-half-week period, would you agree with  
11      me that you prepared the documents that Mr. Moore  
12      went over with you closer in time to when you did  
13      whatever you did than today?

14      **A**     Those documents were prepared during that  
15      timeframe.

16      **Q**     Okay. So would you agree with me that the  
17      likelihood is that, as far as the accuracy of what  
18      you did during that period of time, would be best  
19      set out in those documents that you prepared at or  
20      around that time?

21      **A**     I felt like the information contained on them  
22      is accurate.

23      **Q**     Sure. So if you put something in there about  
24      your talking to Ms. Paschal, that's likely true  
25      because it would have happened there, and the

1 absence of that material in there would indicate  
2 that you didn't talk to Ms. Paschal. Would you  
3 agree with that statement?

4 **A** I just can't remember today, Counselor, if I  
5 did or didn't. And I'm sorry, I just can't  
6 remember.

7 **Q** And that's fine. That's fine.

8 Do you recall whether there's any notation in  
9 any of those documents that you've just gone over,  
10 which I believe are Plaintiff's Exhibits 15, 16, 17,  
11 and 18 as I recall?

12 **A** That's correct, yes, sir.

13 **Q** Do you recall whether you have any notations in  
14 there of having spoken with Ms. Paschal?

15 **A** I don't believe that -- I don't remember  
16 reading --

17 **Q** Okay.

18 **A** -- that just a few moments ago.

19 **Q** And that's close enough. The jury will be able  
20 to read that when they get in the jury room. Thank  
21 you, sir.

22 **A** Thank you.

23 **Q** Now, with regard to whether Mr. Wallace  
24 approved of, was cognizant of anything that went on  
25 in the purchase of this van, there were only three

1 people who may have had knowledge about that,  
2 correct?

3 A That's correct, sir. I obviously never had a  
4 chance to interview Mr. Wallace.

5 Q Sure. Those people would have been  
6 Mr. Wallace -- David Wallace, Kay Paschal, and Tim  
7 Peterson, correct?

8 A That's correct, sir.

9 Q All right. David Wallace you couldn't  
10 interview obviously because he had passed on  
11 February 20th of 2011, before you ever got the file,  
12 correct?

13 A Correct, sir.

14 Q Kay Paschal would have had knowledge, but you  
15 don't know or you can't recall if you talked to her.  
16 And she was represent -- did you know that she was  
17 under investigation for criminal charges in the  
18 Richland County Sheriff's Department at that time?

19 A Yes, sir, because of the case file.

20 Q That's why you got the file, right?

21 A Because of the case file, yes, sir.

22 Q All right. So you knew she had a lawyer at  
23 that time or did you know?

24 A I did not know that, sir.

25 Q Okay. And the third person would have been



1 Mr. Peterson, correct?

2 A That's correct.

3 Q Who was able, whatever this transaction was,  
4 whether it was a good transaction or a bad  
5 transaction, was able to sell a 63,000 dollar van --

6 A That's correct.

7 Q -- as a product of that transaction, correct?

8 A That's correct, sir.

9 Q All right. You mentioned on direct that when  
10 you talked to Lieutenant Scott -- she's Lieutenant  
11 Jackson now, but at that time, was Lieutenant Scott  
12 -- that you told her that, at that time, you didn't  
13 think you had probable cause, and I think you said  
14 that Lieutenant Scott disagreed with that  
15 conclusion?

16 A I think she felt like there was -- there was  
17 just a -- I think it was just a disagreement between  
18 us, whether I felt like I had enough or whether she  
19 felt like she had enough.

20 Q Sure, sure. And at that point, she indicated  
21 that she'd like to pick up the file and they would  
22 pursue what they were going to pursue; is that what  
23 took place?

24 A Yes, sir. They were going to continue the  
25 investigation, yes, sir.

1       Q     All right. Well, let me ask you this: In your  
2       18 years as a detective, have you ever before had  
3       disagreements with some of your peers or your  
4       superiors or people who are working with you over  
5       whether there is or is not probable cause for  
6       pursuing an arrest warrant?

7       A     Yes, sir, I've had disagreements.

8       Q     That happens, doesn't it?

9       A     I think it's probably pretty frequent. I  
10      would --

11      Q     Okay. And reasonable conscientious detectives  
12      viewing the same evidence may differ between  
13      themselves as to whether that evidence constitutes  
14      probable cause. Would you agree with that  
15      statement?

16      A     Yes, sir, I would.

17      Q     And that happens more often than not, doesn't  
18      it?

19      A     I know that it happens.

20      Q     Okay. And it's your understanding that  
21      Lieutenant Scott was investigating this case and had  
22      been investigating it from approximately March 1st  
23      of 2011 up until November -- or October 14th, 2011,  
24      when she sent it to you?

25      A     Oh, they had quite a lengthy investigation,

1       yes, sir.

2       **Q**    Okay. And you done the best you could have  
3       done given your case load and your son coming back  
4       and your impending medical leave, but you only had  
5       three and a half weeks to look into this case,  
6       didn't you?

7       **A**    I had -- basically, Counselor, I had 15  
8       business days as it were.

9       **Q**    Yes, sir.

10      **A**    So I guess it was a relatively short period of  
11      time.

12      **Q**    Now, one of the questions that was asked was  
13      whether there was any urgency in pursuing this. And  
14      you said one of the good things about white collar  
15      crime is that the evidence doesn't usually go away.  
16      Once you get hold of it, it's going to stay there;  
17      is that an accurate statement?

18      **A**    That's correct, yes, sir.

19      **Q**    Okay. So you could have done it when you got  
20      back from sick leave or it could have been done  
21      later on. But with regard to whether the Richland  
22      County Sheriff's Department wanted to move this  
23      file, this investigation, that they'd been going on  
24      since March 1st of that year and didn't want to wait  
25      two months on it, do you see any problem with them

1 doing that?

2 **A** Counselor, I may have done the same thing in a  
3 reverse role, I don't know. But it's not uncommon  
4 somebody wants their -- wants their case back.

5 **Q** You just don't want to have to do the same  
6 thing twice and you don't want to wait three months  
7 and have to revisit all those facts, so you want  
8 some continuity; is that an accurate statement?

9 **A** That's true, sir. Yes, sir.

10 **Q** All right. Can you find Plaintiff's Exhibit 16  
11 among those documents you've got up there? I want  
12 to ask you some questions about that.

13 **A** 16, yes, sir.

14 **Q** Okay. Now, I know Mr. Moore had you read the  
15 whole thing, and we're not going to do that. We are  
16 going to highlight some portions of it, though.

17 **A** All right, sir.

18 **Q** If you could look at the very beginning, it  
19 starts with 11/4/2011, correct?

20 **A** That's correct.

21 **Q** Now, you would have prepared this for purposes  
22 of closing your file, correct?

23 **A** I believe this is the last document that I had  
24 that closed this file.

25 **Q** Yes, sir. And you testified you're not sure if

1       this actual document would have been in the file  
2       that was picked up again, but, clearly, it's in the  
3       Lexington County Sheriff's Department system because  
4       you would have prepared it that day, correct?

5       **A**     That's correct, sir.

6       **Q**     All right. First sentence is: Lieutenant  
7       Heidi Scott with Richland County Sheriff's  
8       Department contacted Baumgardner with Lexington  
9       County Sheriff's Department. Lieutenant Scott is  
10      investigating a case in Richland County dealing with  
11      a large family estate.

12             That would have been your recounting what took  
13      place in this case, and this is her first contact  
14      with you, correct?

15      **A**     That's correct, yes, sir.

16      **Q**     All right. A couple sentences down there, it  
17      says, Kay Paschal, who claims to be the common-law  
18      wife of David Wallace, had taken the assets of David  
19      Wallace. That's -- you got that from Lieutenant  
20      Scott, correct?

21      **A**     From her case file, yes, sir.

22      **Q**     All right. And you hadn't had the chance to  
23      investigate, by November 4th, whether there was  
24      evidence that Ms. Paschal had taken or had not taken  
25      assets? You didn't know that, did you?

1       **A**     That was just what was alleged, yes, sir.

2       **Q**     And that may have been a product with evidence  
3       of the Richland County Sheriff's Department  
4       investigation, but you didn't have a chance to look  
5       into that by November 4th, did you?

6       **A**     I had done some preliminary investigation  
7       during that timeframe, but, honestly, I did not have  
8       the documentation that they had contained in their  
9       case.

10      **Q**     Right. You weren't in a position to conclude  
11      that. That's just what Lieutenant Scott's telling  
12      you?

13      **A**     I just take took it straight from their -- from  
14      their documents.

15      **Q**     Thank you, sir.

16             And then there was a question about a power of  
17      attorney, that last sentence in that first  
18      paragraph. There was a POA, however, Elizabeth  
19      Wallace, daughter of David Wallace, deceased,  
20      alleges to have been forged by Paschal, correct?

21      **A**     That there was a power of attorney that had  
22      been examined by...

23      **Q**     A fellow named Dawson?

24      **A**     Mr. Dawson and by SLED.

25      **Q**     Yes, sir. So there were actually two sources

1 of a forensic review of that document, one was by  
2 Dawson and one was by SLED, correct?

3 A Yes, sir. That's correct, sir.

4 Q Did you have the opportunity to closely review  
5 reports from Dawson and SLED?

6 A I reviewed the reports. It had a -- it was a  
7 very detailed report and it had conclusions.

8 Q Yes, sir. Did you give it a cursory review or  
9 was it something that you gave in-depth review on?

10 A (No response.)

11 Q If you remember today. I know you had other  
12 files.

13 A I don't remember, Counsel. I remember reading  
14 it, but I don't remember.

15 Q Now, if you look in the second paragraph there,  
16 the last sentence, this is where you have spoken  
17 with Mr. Peterson: Mr. Peterson stated that a POA  
18 was presented and that Kay gave a check to purchase  
19 the van. Mr. Peterson stated that Mr. Wallace  
20 inspected the van while he was alive and it met with  
21 his approval.

22 That's what you got from your conversation with  
23 Mr. Peterson, correct?

24 A Right. That there were some modifications, and  
25 once they were approved, they wanted to purchase the

1 van.

2 Q Okay. Did Mr. Peterson indicate to you that  
3 Mr. Wallace and Ms. Paschal were there together the  
4 same day or that this took place over a couple of  
5 days or three days?

6 A My recollection is this is when they took the  
7 -- Mr. Peterson picked Mr. Wallace up, transported  
8 him back to Forest Acres. And they were inspecting  
9 the incline of the ramp and the height of the  
10 carriage and whether he could have his chair  
11 maneuvered to the passenger front so he could look  
12 out the windshield, I believe.

13 Q Okay. So the purpose of Mr. Peterson going to  
14 pick up Mr. Wallace was to see if Mr. Wallace could  
15 use this van, if it accommodated his needs. Would  
16 you agree with that statement?

17 A And for them to inspect it and make sure it's  
18 what they wanted.

19 Q Okay. So the likelihood is that there had  
20 already been a meeting between Ms. Paschal and  
21 Mr. Peterson to arrange for this van so that  
22 Mr. Peterson would know to take this van over to the  
23 rehab center to pick up Mr. Wallace. Would you  
24 agree with that statement?

25 A I'm not sure, but it would be a reasonable



1 conclusion, yes, sir.

2 Q Okay. Would it also be a reasonable conclusion  
3 that any power of attorney that was tendered to  
4 Mr. Peterson was given to him out of the presence of  
5 Mr. Wallace if Mr. Wallace was still at the rehab  
6 center?

7 A That I don't know.

8 Q You got no basis for even knowing that, right?

9 A I don't know. I wasn't --

10 Q Mr. Peterson would be the guy we need to talk  
11 to about that, correct?

12 A That's correct, sir.

13 THE COURT: Let me know when you get to a good  
14 stopping point.

15 MR. FRAWLEY: Yes, sir. I've got one more  
16 question on this document and that will be a good  
17 stopping point.

18 BY MR. FRAWLEY:

19 Q If you could look at your very last sentence  
20 there.

21 A Yes, sir.

22 Q All right. Because this case will be sent back  
23 to Richland County Sheriff's Department at their  
24 request, Baumgardner will close this case as  
25 ex-cleared slash no prosecution in Lexington County.

1. A That's correct.

2. Q That's what you wrote, correct?

3. A That's correct, sir.

4. Q And you mentioned that ex-cleared means five  
5 different things.

6. A It has five subparts --

7. Q But in this particular one, it means that  
8 you're concluding your investigation?

9. A That's correct.

10. Q You're giving it back to Richland County  
11 Sheriff, correct?

12. A Correct, sir.

13. Q And you're not in a position to determine if  
14 there is probable cause or whether you're going to  
15 prosecute, correct?

16. A Well, I closed it because I didn't have  
17 probable cause --

18. Q Yes, sir.

19. A -- but, mainly, they were going to take their  
20 case back.

21. Q Right. You didn't have probable cause, again,  
22 with the caveat "at that time", correct?

23. A That's correct, yes, sir.

24. Q Doesn't mean that you wouldn't have gotten it  
25 if you had the opportunity to investigate for nine

1 months like Richland County did, but, at that time,  
2 after three and a half weeks, you didn't have  
3 probable cause?

4 **MR. MOORE:** Objection, please, Your Honor, to  
5 speculation and for a misstatement of the facts.

6 **THE COURT:** I don't get into facts. What -- do  
7 you --

8 **MR. MOORE:** It's total speculation.

9 **THE COURT:** -- wish to be heard? Do you wish  
10 to be heard?

11 **MR. FRAWLEY:** I do. He had testified earlier  
12 that he may have found probable cause later on, he  
13 may not have, but he only had three and a half  
14 weeks. So I guess --

15 **MR. MOORE:** Actually, Your Honor, I withdraw  
16 the question -- I'll withdraw the objection. I'm  
17 sorry.

18 **THE COURT:** Okay.

19 **MR. MOORE:** Thank you.

20 BY MR. FRAWLEY:

21 **Q** Do you understand the question I just asked?

22 **A** I think so, Counselor.

23 **Q** Okay. Let me ask it again and clean it up.

24 **A** Yes, sir.

25 **Q** At that time, you didn't have probable cause.

1 After three and a half weeks, you didn't have  
2 probable cause, correct?

3 A That is correct, yes.

4 Q But you hadn't been afforded the full length,  
5 the period of time that the Richland County  
6 Sheriff's Department had to conduct an  
7 investigation, correct?

8 A No, sir. They had a lengthy investigation.

9 Q All right. And had you investigated for a  
10 longer period of time, you may have had a different  
11 result?

12 A There may have been probable cause discovered  
13 later on. I don't know.

14 MR. FRAWLEY: Your Honor, this is a good time  
15 for a break.

16 THE COURT: Ladies and gentlemen of the jury,  
17 we'll take a break. Don't discuss the case.

18 (The jury retires to the jury room.)

19 THE COURT: Mr. Baumgardner, during the break,  
20 you may step down, but you're not permitted to  
21 discuss your testimony.

22 THE WITNESS: Yes, sir, Your Honor. Thank you.

23 THE COURT: Court's in recess for 15 minutes.

24 (Brief recess.)

25 THE COURT: Ready for the jury, Mr. Frawley?

1           **MR. FRAWLEY:** I'm ready, Your Honor.

2           **THE COURT:** Mr. Moore?

3           **MR. MOORE:** Yes, sir.

4           **THE COURT:** Bring in the jury.

5                   (The jury returns to the courtroom.)

6           **THE COURT:** Mr. Frawley, you may continue.

7           **MR. FRAWLEY:** May it please the Court.

8           **THE COURT:** Sure.

9           BY MR. FRAWLEY:

10          **Q**     Detective Baumgardner, let me ask you this:  
11           You said at this preliminary hearing, that you were  
12           subpoenaed to the preliminary hearing, correct?

13          **A**     That is correct, sir.

14          **Q**     In your experience, is that a usual occurrence  
15           or an unusual occurrence for you?

16          **A**     I never heard of it before, before that day.

17          **Q**     Okay. All right. So before that day, in this  
18           process, you were subpoenaed by Mr. Moore's office,  
19           and that's the first time that had happened to you,  
20           correct?

21          **A**     That's correct, sir.

22          **Q**     Could you pick up Plaintiff's Exhibit 18. I  
23           have a few questions for that.

24          **A**     (Witness complies.)

25          **Q**     Got it?

1       A     Yes, sir.

2       Q     This is your case supplemental report dated  
3     January 31st, 2012, correct?

4       A     That is correct, sir.

5       Q     And what you're doing here -- the gentleman  
6     that this is addressed to was your supervisor, and  
7     I'm not even going to attempt to pronounce his name,  
8     but that's who you were addressing this to, correct?

9       A     Yes, sir, Sergeant Prestigiacomo.

10      Q     Okay. I'll let you handle that.

11      A     All right, sir.

12      Q     And what you're doing here is you're going --  
13     of course, you've got a son in the military. Were  
14     you in the military?

15      A     No, sir, I was not.

16      Q     Well, sheriff's departments, like the military,  
17     have a chain of command, don't they?

18      A     That's correct, sir.

19      Q     And I was in the Army for three years, and I  
20     was a sergeant, I had a staff sergeant, he had a  
21     lieutenant. I mean, you go all the way up your  
22     chain of command, correct?

23      A     That is correct, sir.

24      Q     All right. And what you're doing with  
25     Plaintiff's Exhibit 18 is you're reporting up your

1 chain of command as to what took place on this file,  
2 correct?

3 A That's correct.

4 Q Okay. That's not an unusual occurrence in your  
5 profession, is it?

6 A No, sir. I write many e-mails explaining the  
7 course of an investigation.

8 Q You got to keep your superiors informed as to  
9 what's going on, correct?

10 A That's correct, sir.

11 Q All right. Now, the first entry there, January  
12 31st, 2012, you say that Baumgardner was sent a  
13 subpoena from Moore, Taylor, Thomas, PA, to produce  
14 all documents related to the case. And that was  
15 dated 1/11/2012?

16 A That's correct, I believe, sir.

17 Q Is that the date the subpoena came in or the  
18 date they were produced, if you know?

19 A I don't know, sir, because it went to -- it  
20 went to our legal counsel.

21 Q Okay. And -- which is the next sentence there:  
22 Baumgardner sent all documentation to Major J. Tate,  
23 LCSD legal counsel.

24 John Tate was an attorney who worked with the  
25 sheriff's department, correct?

1       A     That's correct, sir.

2       Q     Okay. And then Mr. Tate later advised that his  
3     office had received a subpoena from Mr. Moore's  
4     office to compel you to appear at the January 20,  
5     2012, preliminary hearing, correct?

6       A     That -- that's correct, sir.

7       Q     Okay. So showing up at that hearing wasn't  
8     your idea, you were compelled to show up, correct?

9       A     I was ordered to be there.

10      Q     But you were under oath and you testified  
11     truthfully, correct?

12      A     That's correct, sir.

13      Q     All right. As you're doing today?

14      A     That's correct, sir.

15      Q     All right. Now, toward the bottom of that  
16     first page of Plaintiff's Exhibit Number 18, you  
17     closed this case November 4, 2011, when it was  
18     turned back over to the Richland County Sheriff's  
19     Department, correct?

20      A     I did close it, yes, sir.

21      Q     All right. Did you ever reopen it?

22      A     I never -- the case was picked up, and I never  
23     reopened it, no, sir.

24      Q     Okay. The next -- I guess third to the last  
25     paragraph on page 1 of Plaintiff's Exhibit 18 says,



1 On January 24, 2012, I stopped at Carolina Mobility,  
2 Inc., to speak with Tim Peterson, general manager.

3 Do you see that?

4 A Yes, sir.

5 Q Okay. Now, January 24, 2012, that's four days  
6 after the preliminary hearing in this case, correct?

7 A That is correct, sir.

8 Q All right. Why are you doing additional  
9 investigation, if that's what it was --

10 A Well, I --

11 Q -- on January 24th?

12 A To be honest with you, Counselor, I wanted to  
13 make sure that I interpreted exactly what  
14 Mr. Peterson had told me during our first interview.

15 Q Okay.

16 A I wanted to make sure that I was exact and knew  
17 every detail on that, so that's why I stopped by, to  
18 make sure that I hadn't missed something.

19 Q And I don't want to infer that there's anything  
20 wrong with it. You wanted to make sure that what  
21 you said was correct.

22 A I didn't want to second-guess myself.

23 Q Yes, sir. And then the next paragraph, the  
24 same date, you re-interviewed Mr. Peterson. And  
25 Mr. Peterson let you read a statement that he'd

1 given to Lieutenant Scott, correct?

2 A That's correct, sir.

3 Q All right. And if you've got in front of you  
4 -- I think there's Plaintiff's Exhibit Number 14 up  
5 there. Can you look at that?

6 A I don't have 14, I don't believe, Counselor.  
7 No, sir, I don't have it.

8 (Pause.)

9 MR. FRAWLEY: Your Honor, we can't find  
10 Plaintiff's Exhibit 14. 14 is in evidence, right?

11 THE COURT: What is it?

12 BY MR. FRAWLEY:

13 Q All right. I am handing you -- the court  
14 reporter has helped me find Plaintiff's Exhibit 14.  
15 I'm handing it to you.

16 A Thank you.

17 Q Is that the written statement that Mr. Peterson  
18 let you get a copy of and look at? Go ahead and  
19 look it over for a minute.

20 A This appears to be the same statement. As a  
21 matter of fact, I stamped it in the right-hand  
22 corner with my case number.

23 Q Okay. In this statement, there's a  
24 question/answer portion. You see that, about a  
25 quarter of the way down the front page?

1       **A**     Yes, sir.

2       **Q**     All right. And if you go to the fifth question  
3       and answer, it reads, Was David Wallace with Kay  
4       Paschal when she made these transactions? That's  
5       the question that's asked by Lieutenant Scott,  
6       correct?

7       **A**     It appears, yes, sir.

8       **Q**     All right. And Mr. Peterson's answer here was,  
9       No. Correct?

10      **A**     No, yes, sir.

11      **Q**     So if you read that, it indicates that  
12      Mr. Wallace was not with Kay Paschal when she made  
13      the transactions, according to this statement?

14      **A**     I'm not sure which transaction they're talking  
15      about.

16      **Q**     Sure.

17      **A**     But this says he wasn't present.

18      **Q**     Well, they say, plural, transactions.

19      **A**     Transactions. I'm sorry. Yes, sir.

20      **Q**     But whatever -- whichever one he's talking  
21      about, whether he's talking about all of them, in  
22      this statement, Mr. Peterson says, No. Correct?

23      **A**     That's what he indicates, yes, sir.

24      **Q**     All right. All right. And then I think two  
25      down from that -- or the next two: Did Kay Paschal

1 present a power of attorney? And he says, Yes.

2 Correct?

3 A That's correct, sir.

4 Q And then, Do you have the power of attorney  
5 that Kay Paschal presented you? And he says, Yes.

6 A He did, sir.

7 Q Okay. Then the next question is: Did Kay  
8 Paschal sign David Wallace's name on the paperwork?  
9 And he also says, Yes. Correct?

10 A Again, I'm not sure what paperwork, but he does  
11 say, yes.

12 Q Sure. And whatever paperwork he's got in mind  
13 when this happens, but he's also indicated that he's  
14 got a power of attorney from Ms. Paschal, so that's  
15 okay if it's a proper power of attorney, correct?

16 A That's correct, sir. Yes.

17 Q All right. Then the next question, Was anyone  
18 else present when the transactions took place? And  
19 the answer says, No. Correct?

20 A That's correct also.

21 Q So the only two people that would have been  
22 there during these transactions, according to  
23 Mr. Peterson's statement, would be Ms. Paschal and  
24 Mr. Peterson, correct?

25 A That's correct, sir.

1 Q Okay. Now, if we could look back at Number 18  
2 again, please, Plaintiff's 18.

3 A All right, sir.

4 Q Okay. At the very bottom, the very bottom  
5 paragraph of page 1, it says, On 1/25/2012, I was  
6 asked to meet with Robert Lam and Dayton Riddle of  
7 the Lexington County Solicitor's Office. Do you see  
8 that?

9 A Yes, sir. And there's a typo there. I'm  
10 sorry. It should be Elam.

11 Q Okay. Because I see somewhere else where it is  
12 Elam?

13 A Yes, sir.

14 Q I don't know Mr. Lam or Mr. Elam, so it doesn't  
15 matter to me.

16 A They're one and the same, yes, sir.

17 Q Okay. And is he an attorney, an assistant  
18 solicitor? What is he?

19 A He's an assistant solicitor of Lexington  
20 County.

21 Q Okay. All right. And Dayton Riddle is or was,  
22 I understand he recently retired, but he was,  
23 correct?

24 A He was, yes, sir.

25 Q All right. And then you go into the purpose

1 for the meeting was to discuss your findings of your  
2 interview. I guess that would be the interview of  
3 Mr. Peterson, correct?

4 A Counselor, I'm going to assume so.

5 Q Okay.

6 A I did not -- that was a default on me. I did  
7 not make it very clear.

8 Q Don't worry about that. This is two years ago.

9 Then, on the second page, the second  
10 paragraph -- first full paragraph, On January 30,  
11 2012, I responded to Carolina Mobility and spoke  
12 with Tim Peterson again. So you're meeting with him  
13 again?

14 A I did. I've met with him, I believe, three  
15 times, sir.

16 Q Okay. Three times after the case was closed?

17 A Well, two times after the case was closed, yes,  
18 sir.

19 Q Okay. Is that -- is that usual or unusual to  
20 do that once you close a case, that you continue to  
21 meet with one of the witnesses?

22 A I would say it's unusual, but not unusual for  
23 me in that if I have any questions or any doubts or  
24 sometimes I'll say, Well, did I miss something, let  
25 me look, and so that's the reason I interviewed

1 Mr. Peterson twice after the preliminary hearing.

2 Q Okay. Detective Baumgardner, would you agree  
3 with me that in the three-and-a-half week period you  
4 had to investigate this case, that the primary  
5 witness you spoke with was Mr. Peterson? Would you  
6 agree with that?

7 A I would, yes, sir.

8 Q Okay. And that's why, because he was the  
9 primary witness in the limited period of time you  
10 had to investigate this and determine that there  
11 wasn't probable cause at that time, that you wanted  
12 to make sure that you were clear and accurate on  
13 what information you'd gotten from Mr. Peterson upon  
14 which you based your decision that there was no  
15 probable cause at that time. Was that -- would you  
16 agree with that statement?

17 A Insomuch that, as you've stated earlier, there  
18 were three people that were there, and one I  
19 couldn't talk to, one I had not talked to, to my  
20 recollection -- I may have, but I don't remember it.  
21 But Mr. Peterson, obviously, was there, and I had  
22 talked to him once before the preliminary -- the  
23 early stages of the investigation, twice afterward,  
24 just to make sure that I didn't fumble the ball  
25 somewhere.

1       **Q**     Right. And based on those subsequent  
2       conversations with Mr. Peterson, your conclusion was  
3       that your conversations with Peterson and your  
4       conclusions from those conversations were accurate  
5       with regard to what you knew and when you knew them,  
6       correct?

7       **A**     Correct. Mr. Peterson was very -- as I said,  
8       he was very cooperative, and he was -- each time I  
9       talked with him, it was virtually the same -- the  
10      same statement each time.

11      **Q**     Sure. So you talked to the same guy that you  
12      spoke with in your limited three-and-a-half-week  
13      investigation, but you didn't do any additional  
14      investigation beyond Mr. Peterson because you didn't  
15      have an active case then?

16      **A**     That's correct. That's correct.

17              **MR. FRAWLEY:** Detective, I thank you for your  
18      time, and I hope your boy gets home safe.

19              **THE WITNESS:** Thank you very much, sir. Thank  
20      you.

21              **THE COURT:** Redirect?

22              **MR. MOORE:** May it please Your Honor, just  
23      briefly.

24              **THE COURT:** Sure.

25                                      \*\*\*\*



1 REDIRECT EXAMINATION

2 BY MR. MOORE:

3 Q Detective Baumgardner, let me make sure that  
4 you have your documents in front of you.

5 A I'm trying to get them back in order,  
6 Mr. Moore.

7 Q Very good.

8 A All right, sir.

9 Q I want to hand you two exhibits, 9 and 10,  
10 which are the arrest warrants signed by Heidi Scott  
11 for the van transaction in Lexington County.

12 Now, as I understand what you told Mr. Frawley,  
13 you closed your case on what date?

14 A I believe the 4th of November. I left on the  
15 6th.

16 Q And it was roughly how long before someone from  
17 Richland County would have come to pick up the case  
18 file?

19 A The very next week. Some time during that  
20 following week after the 6th.

21 Q And the warrant in this case was issued on what  
22 date?

23 A Um...

24 Q You want my glasses?

25 A I may need a pair of spectacles.

1 Q Here you go. I've got the same problem.

2 A Thank you.

3 Q You're welcome.

4 A This was issued on 11/15 of 2011 for Exhibit 9,  
5 and 11/15/2011 for Exhibit 10.

6 Q And I'll take these back so that I can use  
7 them.

8 A Yes, sir.

9 Q Detective Baumgardner, then let me ask you  
10 this: Between the day you closed your file and  
11 November the 15th of 2011, are you familiar with any  
12 additional evidence that surfaced regarding the  
13 case?

14 A I'm not aware of any, no, sir.

15 Q Now, were -- you've talked about the  
16 preliminary hearing. Did you listen to the evidence  
17 that was presented at the preliminary hearing?

18 A Yes --

19 MR. FRAWLEY: Your Honor, that's beyond the  
20 scope of my cross. I didn't ask him questions about  
21 the preliminary hearing other than was he subpoenaed  
22 to it. We did not get into what took place at the  
23 preliminary hearing. So he's beyond the scope of my  
24 cross-examination.

25 THE COURT: Do you wish to be heard?

1           **MR. MOORE:** Yes, please, Your Honor.

2           **THE COURT:** It's overruled. Go ahead.

3           BY MR. MOORE:

4           **Q**     At the preliminary hearing, was there any  
5           evidence presented to the magistrate that you had  
6           not found during your investigation?

7           **A**     There was -- I don't believe anything other  
8           than oral testimony was presented at that time, sir.

9           **Q**     To your knowledge, between the time you closed  
10          your file and the time the case was dismissed for  
11          lack of probable cause, what, if any, additional  
12          evidence had surfaced in the case?

13          **A**     I'm aware of no additional evidence. The only  
14          thing that I did find was the one statement, I  
15          think, Exhibit 14, but that was after the  
16          preliminary hearing.

17          **Q**     Now, you were questioned in regard to the power  
18          of attorney that was referred to in Mr. Peterson's  
19          statement.

20          **A**     Yes, sir.

21          **Q**     Do you know, when Mr. Peterson was talking  
22          about a power of attorney, what power of attorney he  
23          was talking about?

24          **A**     I did not. There's several different types of  
25          powers of attorney, so I wasn't sure which one they

1       were discussing.

2       **Q**     I want to make sure that I don't violate the  
3       rules of examination. On cross-examination, did you  
4       discuss anything at all dealing with Elizabeth  
5       Wallace?

6       **A**     I don't believe I did.

7       **Q**     Then I won't ask you that question.

8       **MR. MOORE:** Detective Baumgardner, thank you  
9       for answering my questions.

10      **THE WITNESS:** Yes, sir, thank you.

11      **THE COURT:** Recross.

12      **MR. FRAWLEY:** Nothing further, Your Honor, and  
13      I would ask that Detective Baumgardner be excused  
14      from his subpoena.

15      **MR. MOORE:** Oh, absolutely, please.

16      **MR. FRAWLEY:** Unless he particularly wants to  
17      sit around and watch the rest of our trial.

18      **THE WITNESS:** I find it interesting, Counselor.  
19      Thank you.

20      **THE COURT:** You're free to go.

21      **THE WITNESS:** Thank you very much, Your Honor.

22      **THE COURT:** Make sure we got all the exhibits.

23      **THE WITNESS:** Yes, sir.

24      **THE COURT:** Call your next witness.

25      **MR. MOORE:** I call Mr. Tim Peterson.