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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

JUN 30 2017

**SC Court of Appeals**

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Fifth Judicial Circuit

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Case No: 2016-002503  
Civil Action No: 2015-CP-40-2679

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Valeria Farr.....Appellant

v.

Leon Lott in his Capacity as Richland County Sheriff and the Richland  
County Sheriff's Department.....Respondents

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APPELLANT'S REPLY BRIEF

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**The Respondents in this case attempt to reinterpret the Plaintiff's legal theories for recovery to their liking as well as manipulate the facts presented to the court to their liking, by both improperly weighing the evidence presented to the trial court in their favor as well as failing to even mention pieces of evidence.**

The Appellant's Brief sets forth her theories of recovery and the facts in the record supporting her theories, and addresses each finding by the Order of Dismissal.

The initial section under the argument section of the Respondents' Brief states that the Plaintiff fails to comprehend the rulings made by Judge Newman. In fact, if the facts found in the Order of Judge Newman, as well as the Respondents' Brief, were the only facts before the Court, it would be a fair assessment. However, Judge Newman and the Respondents both improperly weigh evidence, and cite a lack of evidence, when clearly there is evidence before the Court which supports the Plaintiff's causes of action, and if found by a jury to be true, that would not protect the Defendants under a claim of immunity Pursuant to S.C. Code Ann §15-78-60 (17).

As the Appellant clearly states in her brief, there is evidence that a Richland County Sheriff Deputy operating within the scope of his official duties of transporting a prisoner to jail, behaved in a manor constant with the "culture" created within the Richland County Sheriff's Department. (All investigation reports of March 5, 2013 incident involving Deputy Stephens with all attachments; Stephens deposition p.1-12) As such, if the deputy was acting within the scope of his duties, by transporting a prisoner while in his uniform in a Richland County marked vehicle, and the Richland County Sheriff created an environment for the Richland County Sheriff's Department that encouraged inappropriate behavior, it would be those negligent actions that would be accountable. The Appellant presented evidence by way of the negative interference from Deputy Stephens deposition, in which he failed to deny, by asserting the 5<sup>th</sup> amendment of the US Constitution, that the improper environment at the Richland County Sheriff's Department during the time period in question, encouraged Deputys to misbehave and brag about bad behavior to fit in with their colleagues. If this was to be found true by a jury, it would certaly be an actionable offense against the Defendants in this case. The Defendants actions or inactions creating such a culture from developing within the

office, which would allowed officers such as Deputy Stephens to believe that they could act in the manner described in this case without consequences, would be actionable without immunity.(All investigation reports of May 15, 2013 incident involving Deputy Stephens with all attachments; Deposition of Stephens p 1-12) The Appellant's Brief clearly states that there is evidence for a jury to support her position, that Deputy Stephen was operating within the scope of his duties, and that there is evidence that his actions were consistent with the culture negligently created by Sheriff Lott, which would remove any claims of immunity by Sheriff Lott. (Stephen's Deposition)

The evidence presented by the Appellant are the negative inferences from Deputy Stephen's 5<sup>th</sup> amendment refusal to answer questions regarding the work environment of the Sheriff's Department. The Respondent cites absolutely no case law in the state of South Carolina which would prohibit the use of such negative inferences. Deputy Stephen was working for the Sheriff at the time of the incident, and therefore would meet the business relationship test cited by the Respondents in their brief.

**There is evidence before the court supporting the Plaintiff's claim of  
Negligent Retention**


Appellant's Complaint clearly states a cause of action for Negligent Retention. (Complaint) Judge Newman's Order weighs the evidence in the case improperly, and incorrectly asserts that there is no evidence supporting such a claim. The Appellant has pointed out in her Brief that there is evidence on record that Deputy Stephen committed a criminal act just weeks prior to the incident in question. Not only did the Sheriff's Department know of this incident, investigated it, and felt that there was merit to the claim, until Sheriff Lott himself insisted that the investigation be dropped. (all investigation reports of March 5, 2013 incident involving Deputy Stephens with all attachments). Most telling however is the fact that the Respondent's Brief fails to even mention the affidavit of the Plaintiffs expert, James Flowers who states .... "Richland County Sheriff's Department and Sheriff Leon Lott were below the standard of care in retaining Stephens, and therefore culpable in any actions taken by Deputy Tracy Stephens after this incident". (Affidavit of James Flowers) The reason the Respondents did not mention Flower's affidavit is that they have no response. Clearly Judge Newman was wrong in finding

there was no evidence to support an action for negligent retention when there is evidence that Deputy Stephens had a prior criminal incident that the Richland County Sheriff's Department knew of, and that Sheriff Lott himself demanded that they take no further action. The Plaintiff's expert witness has opined that this was negligent, and was the proximate cause of Deputy Stephens still being on the job at the time of the incident at hand.

### CONCLUSION

Therefore, based on the Appellants Brief and the above Reply the Summary Judgment by the Honorable Jaqueline Newman should be reversed and this case be remanded for trial.

Respectfully submitted,



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June 28, 2017

CERTIFICATE OF SERVICE

I, Vicky Cannon, an employee with the law firm of The Hardee Firm., do hereby certify that I have this date served a copy of the following pleading upon the individual named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the address below:

**COUNSEL SERVED:**

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**PLEADING:**

Appellant's Reply Brief

  
\_\_\_\_\_  
Vicky Cannon

Columbia, South Carolina  
June 30, 2017

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