

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

APPEAL FROM YORK COUNTY  
John C. Hayes, III, Circuit Court Judge

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NOV 02 2017

Court of Appeals

Appellate Case No. 2016-002556  
Case No. 2014-CP-46-1307

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Russell Shane Carter, ..... Respondent-Appellant,

v.

Bruce Bryant, as Representative for the Office of the  
York County Sheriff, ..... Appellant-Respondent.

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**INITIAL RESPONDENT'S BRIEF OF APPELLANT-RESPONDENT**

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*Taylor v. Henson*,  
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### **Statutes and Rules**

42 U.S.C. § 1983.

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## STATEMENT OF THE CASE

This appeal involves a malicious prosecution action brought by the Respondent-Appellant Russell Shane Carter against the Appellant-Respondent Bruce Bryant in his official capacity as Sheriff of York County. In his complaint, Carter asserted causes of action for false arrest and malicious prosecution arising out of his arrest for Assault and Battery of a High and Aggravated Nature ("ABHAN") on April 26, 2012.

The causes of action proceeded to trial on November 7, 2016, before Circuit Judge John C. Hayes, III and a jury. At the close of Carter's case and again at the close of the evidence, Sheriff Bryant moved for a directed verdict on multiple grounds. Judge Hayes granted a directed verdict on the false arrest claim because the arrest was made based upon a facially valid warrant issued by a York County Magistrate Judge. (Tr. 316). The malicious prosecution claim, however, was submitted to the jury, which returned a verdict in favor of Russell Carter. The jury awarded actual damages of \$150,000. (Verdict Form).

After the verdict was returned, Sheriff Bryant filed a motion for a judgment notwithstanding the verdict (JNOV). In the alternative, Sheriff Bryant also moved for a new trial absolute. Judge Hayes denied each of those motions. (Order).

Sheriff Bryant thereupon filed a timely appeal to this Court.

## STATEMENT OF FACTS

On Wednesday, April 25, 2012, at about 10:20 p.m., former York County Sheriff Deputy Kevin Gwinn was dispatched to 3001 Lesslie Highway in York County, South Carolina in response to a disorderly situation at a residence. Upon arrival, Deputy Gwinn heard someone yelling for an individual to get off their property. Deputy Gwinn saw Russell Carter on the porch with an aluminum baseball bat in his hand. There was also a pregnant woman standing nearby. Proceeding onto the porch, Deputy Gwinn saw an individual named Michael Faile laying on the porch covered in blood and bleeding from his head. Deputy Gwinn advised dispatch that he needed EMS for a head injury.

Deputy Gwinn retrieved the bat from Carter and asked what had happened. Carter provided an oral account. Gwinn then advised Carter and his wife (Dawn Oaskasy) to go inside, and he would come inside and obtain their statements. Carter refused to comply, returning outside with his camera phone and attempted to take pictures of Faile. Deputy Gwinn then placed Carter in investigatory detention and placed him in his patrol vehicle. He also noted that Faile was lying on his stomach wedged against the side of the house and the porch. EMS arrived and transported Faile to Piedmont Medical Center. Deputy Gwinn took statements from Carter and his wife.

Later that evening Deputy Gwinn went to the hospital and obtained Faile's account. He noted that Faile's head was swollen in some parts, and sunken in other areas. He had bruises all over his body.

On Thursday, April 26, 2012, Deputy Gwinn had an in-person meeting with York County Magistrate Judge Leon Yard at the Moss Justice Center in York, South Carolina. During the course of the meeting, Judge Yard was advised of the events of the previous day at Carter's residence, the full narrative within Deputy Gwynn's police report, the written statements of Russell Carter and Dawn Oaskasy, and the nature and extent of Faile's injuries. At the time of his meeting with Judge Yard, Deputy Gwinn had not made any arrests. Moreover, he had not expressed an opinion or formulated any conclusions as to which of the subjects were legally culpable as he had solely compiled the aforementioned documentation and presented that information to Judge Yard. Deputy Gwinn intended to solely rely upon Judge Yard's findings as to the lawfulness of their conduct.

In considering probable cause, Judge Yard reviewed the versions of events by the various participants including information that had been obtained orally from Michael Faile by Deputy Gwinn at the hospital. Judge Yard reached the conclusion that probable cause did exist to arrest Russell Carter for ABHAN resulting from Carter having struck Faile with an aluminum bat multiple times, which in turn caused significant bodily injury to Faile. After such a finding, Judge

Yard prepared and issued Arrest Warrant M-604594 for Carter on the ABHAN charge.

Carter was subsequently arrested and posted \$1,000 bond the following day. Ultimately, on June 5, 2012, Eli Springs, who was the Assistant Solicitor assigned to the case, made a determination to nolle pros the ABHAN charge. Springs had determined that there was probable cause for the arrest, but he also determined that Carter could present what he believed to be a credible immunity defense based on the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410, *et seq.*

## ARGUMENTS

**I. The trial court in its "gatekeeping" role ruled correctly in excluding the proffered expert testimony of Jay Phillips as an expert witness in field of criminal investigations.**

As the first issue raised in his cross-appeal, the Respondent-Appellant Russell Carter argues that Circuit Court Judge John C. Hayes, III erred in excluding Jay Phillips' testimony as an expert witness in the field of "investigations." (Tr. 244). After hearing a lengthy proffer of Phillips' proposed testimony, including cross-examination by the Sheriff's counsel, Judge Hayes excluded him as a witness on two bases. First, Judge Hayes found that Phillips' testimony lacked "foundation" and "credibility." (Tr. 300). He determined that Phillips was offering opinions without doing "a complete investigation on what he bases his opinions on." (Tr. 300). Moreover, Judge Hayes recognized that "[t]he scope of the investigation is not an issue in this case." (Tr. 300). He thus concluded that the Phillips' testimony would not assist the jury which was required to determine the existence of probable cause. (Tr. 300).

"The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert

by knowledge, skill experience, training, or education may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. The South Carolina Supreme Court has recognized that "expert testimony receives additional scrutiny relative to other evidentiary decisions." *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169, 175 (2010). In fulfilling its "gatekeeping" duties, a trial court is required to make "three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony." *Id.* "First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Id.* Second, "while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter." *Id.* "Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Id.* The Supreme Court in *Watson* further explained that "[e]xpert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate." *Id.*

In 2009, the Supreme Court also confirmed that the trial court's gatekeeping

role under Rule 702 applies not only to scientific opinions but also to "nonscientific (or experienced based) expert testimony." *State v. White*, 382 S.C. 265, 676 S.E.2d 684, 686 (2009). The Supreme Court expressly rejected the contention, as made by Carter in the case at bar, that the reliability of nonscientific expert testimony goes only to the weight and not the admissibility of the evidence. *Id.* In *White*, the Supreme Court stressed that "[r]eliability is a central feature of Rule 702 admissibility." *Id.* The Court further explained as follows:

[T]he trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. *The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.*

*White*, 676 S.E.2d at 689. (Emphasis added).<sup>1</sup>

The Supreme Court has "declined to set a general test for nonscientific testimony due to the multitude of challenges which may arise. Thus, this evidence must be evaluated on an *ad hoc* basis." *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 735 S.E.2d 650, 656 (2012). The Supreme Court explained that "[t]he

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<sup>1</sup> Importantly, Carter relies on pre-2009 case law in arguing that "familiar evidentiary mantra" that the foundation or reliability of an expert opinion is a question of weight rather than admissibility of the evidence.

foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony." *White*, 676 S.E.2d at 688. "We do not pretend to know the myriad of Rule 702 qualification and reliability challenges that could arise with respect to nonscientific expert evidence. Consequently, we offer no formulaic approach that will apply in the generality of cases." *Id.*

The standard of review for a trial court's gatekeeping role with respect to expert testimony is an abuse of discretion standard. *See, White*, 676 S.E.2d at 686 (2009) ("[a] trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion"). "An abuse of discretion occurs when the circuit court's rulings either lack evidentiary support or are controlled by an error of law." *Graves*, 735 S.E.2d at 655.

In fulfilling his gatekeeping role under Rule 702, Judge Hayes made the determination that Jay Phillips' proffered expert testimony lacked "foundation" and "credibility." (Tr. 300). He also ruled that the proffered area of expert knowledge -- criminal investigations -- was not the issue in the case, and accordingly, the substance of the opinion testimony would not assist the jury. (Tr. 300). In challenging that ruling at trial, Carter's counsel only argued that the trial court's reliability assessment goes to the weight and not the admissibility of the evidence. (Tr. 301-302). As explained above, that rationale is clearly no longer the law post 2009 with respect to

nonscientific expert evidence. On appeal, Carter includes no real analysis of the issues and certainly does not show an abuse of discretion. He only argues in a conclusory manner that the sufficiency of the foundation for Phillips' testimony "was for the jury to decide after appropriate cross-examination or the presentation of contrary evidence." *See*, Carter's Appellant's Brief, p. 15.

Importantly, Carter never argues that Judge Hayes relied on inappropriate factors to assess the foundation of the evidence including its reliability or that the factual basis for his ruling was non-existent or in error. Indeed, Carter recites in his brief the very facts on which Judge Hayes based his ruling. During the proffer, in response to questions from both sides, Phillips candidly conceded that he had not reviewed much of the information available to him, including the deposition of Deputy Gwinn, the deposition of the magistrate, as well as the affidavits submitted at the summary judgment stage including the affidavit of the prosecutor. (Tr. 287-288). He also testified that he had never read the Protection of Persons and Property Act. (Tr. 273-274). Likewise, he had never been a witness in or to an evidentiary hearing applying the Act. (Tr. 274). Based on that testimony, Judge Hayes concluded that Phillips' testimony was unreliable and lacked the requisite foundation required by Rule 702 because Phillips "hadn't even done a complete investigation of what he bases his opinions on. [He] didn't read all the material. .... [J]ust came to these conclusions without full investigation." (Tr. 300). Importantly, Carter does not refute the basis for Judge Hayes' ruling nor argue that it was an inadequate basis for

the judge to fulfill the gatekeeping role he has under Rule 702 and the precedents discussed above. Clearly, Carter has not demonstrated any abuse of discretion.

Moreover, Carter does not even discuss the second basis for Judge Hayes' decision to exclude Phillips' testimony -- that the area of witness' purported expertise in criminal investigations was "not an issue in this case." (Tr. 300). In sum, Carter has not shown that Judge Hayes' fulfillment of his "gatekeeper" role and his ultimate ruling to exclude Phillips' testimony rise to the level of an abuse of discretion. Quite simply, the trial court's rulings do not warrant a new trial.

## **II. The trial court ruled correctly in granting a directed verdict on the false arrest cause of action.**

The Respondent-Appellant Russell Carter also contends as part of his cross-appeal that Judge Hayes erred in granting a direct verdict and dismissing his false arrest cause of action. Carter argues that Judge Hayes erred in concluding as a matter of law that the warrant on which he was arrested was facially valid. (Tr. 301).

Carter does not dispute that an arrest based upon a facially valid warrant will not give rise to a false arrest claim. *See, Dorn v. Town of Prosperity*, 375 Fed. Appx. 284, 288 (4th Cir. 2010) (recognizing "the long-standing precedent in South Carolina that there can be no claim for false arrest where the arrest is effectuated pursuant to a facially valid warrant"). *See also, Bushardt v. United Inv. Co.*, 121 S.C. 324, 113 S.E. 637 (1922); *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987);

*Watkins v. Mobil Oil Corp.*, 281 S.C. 79, 313 S.E.2d 641 (Ct. App. 1984).

In arguing that the arrest warrant was not facially valid, Carter makes arguments on appeal that were not first made to the trial court. In addition, Carter confuses the issue of "facial validity" and the issue of whether the warrant was supported by probable cause.

The evidence presented in Carter's case-in-chief supports only one reasonable conclusion -- that the warrant for Carter's arrest was facially valid. As a result, under the authorities cited above including *Dorn* and *Bushardt*, Carter has not proven a false arrest claim because he was arrested pursuant to a facially valid warrant.

Instead of demonstrating any errors on the face of the arrest warrant, Carter instead makes arguments challenging the sufficiency of the evidence giving rise to the probable cause determination by the magistrate on which the warrant was based. However, a challenge to the veracity or sufficiency of the warrant affidavit does not impact the *facial* validity of the warrant. A facially valid warrant is one that is valid on its face. The Restatement Second of Torts, § 123 provides:

A warrant is valid if (a) it is regular in form, and (b) it is issued by a court, body or official (i) having authority to issue the warrant for the conduct for which it is issued and which is described therein, and (ii) having jurisdiction over the person sufficiently named or otherwise described therein, and (c) all proceedings required for the proper issuance of such a warrant have duly taken place.

Restatement Second of Torts, § 123 (2008). "A warrant is valid even though the court, through lack of information or otherwise, has issued it for the arrest of a person in fact innocent of the offense alleged." Restatement Second of Torts, § 123 (2008), comment (a). South Carolina law is in accord. *See e.g., State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 525 S.E.2d 872, 880 (2000) (Supreme Court explained that appellant challenged the sufficiency of the warrant affidavit but "does not challenge the facial sufficiency of the warrants").

In the present case, the arrest warrant meets the Restatement definition. The warrant was regular in form, was issued by a court of competent jurisdiction, the criminal defendant was correctly named and identified, and all proceedings were held as necessary for the issuance of the warrant. To the extent that Carter maintains that false or incomplete information was used to procure the warrant, that does not affect the *facial* validity of the warrant. A facially valid warrant may ultimately be invalidated by a showing that the facts on which the warrant was issued were false, incomplete or insufficient to demonstrate probable cause; yet such a showing does not make that warrant facially invalid.

Carter appears to suggest that the sufficiency of the evidence contained in the warrant application may render a warrant to be *facially* invalid. That is simply not the case,<sup>2</sup> and for that reason alone, Judge Hayes' ruling that the warrant was

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<sup>2</sup> As discussed further below, South Carolina law clearly provides that the factual information in a warrant affidavit may be supplemented prior to execution by means of sworn

facially valid should be affirmed, as should the dismissal of the false arrest claim on that basis.<sup>3</sup>

Moreover, even if the Court is inclined to address the merits of Carter's challenges to the warrant affidavit, those arguments do not merit a reversal of the trial judge's grant of a directed verdict. In particular, Carter makes for the first time on appeal a challenge to the warrant based on *Franks v. Delaware*, 438 U.S. 154 (1978), whereby he contends that material facts were omitted from the warrant affidavit. At no time at trial did Carter raise a *Franks* challenge to the warrant affidavit, and furthermore, such a claim was never pled in Carter's Complaint. Thus, the argument is not preserved for appellate review.<sup>4</sup>

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oral communication to the issuing magistrate. See, *State v. Jones*, 342 S.C. 121, 536 S.E.2d 675, 679 (2000). Thus, from a factual standpoint, probable cause is not determined solely based on what it stated in the warrant affidavit or on the "face" of the warrant document.

<sup>3</sup> In his brief, Carter cites to cases brought pursuant to 42 U.S.C. § 1983. Importantly, Carter has not brought a Section 1983 claim as part of his lawsuit. Nonetheless, the federal courts have reached the same conclusion as Judge Hayes did. By way of example, in *Porterfield v. Lott*, 156 F.3d 563 (4th Cir. 1998), the Fourth Circuit held that "a claim for false arrest may be considered only when no arrest warrant has been obtained." 156 F.3d at 568. The Fourth Circuit explained that "a public official cannot be charged with false arrest when he arrests a defendant pursuant to a facially valid warrant. At most, such an official can be pursued through a cause of action for malicious prosecution." *Id.* Relying on the decision of the United States Supreme Court in *Heck v. Humphrey*, 512 U.S. 477 (1994), the Fourth Circuit in *Porterfield* further explained as follows: "At common law, allegations that a warrantless arrest or imprisonment was not supported by probable cause advanced a claim of false arrest or imprisonment. ... However, allegations that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for a period after legal process issued, are analogous to the common-law tort of malicious prosecution." *Id.* See also, *Brooks v. City of Winston-Salem*, 85 F.3d 178 (4th Cir. 1996).

<sup>4</sup> The State Supreme Court has repeatedly stressed "the long-established preservation requirement that the [appealing] party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those

Furthermore, Carter has not made a proper showing under *Franks*. In *Franks v. Delaware, supra*, the United States Supreme Court held that the Fourth and Fourteenth Amendments "gave an accused the right in certain circumstances to challenge the veracity of a warrant affidavit after the warrants had been issued and executed." *State v. Missouri*, 337 S.C. 548, 524 S.E.2d 394, 396 (1999). The challenge may be based on false information being included in the warrant affidavit or exculpatory evidence being omitted from the affidavit. 524 S.E.2d at 397. The omission of exculpatory evidence does not *per se* invalidate a warrant.<sup>5</sup> Rather, under the two-prong test established in *Franks*, the plaintiff must make a preliminary showing that the exculpatory information was omitted with the intent to make, or in reckless disregard of whether it made, the affidavit misleading to the issuing judge. "There will be no *Franks* violation if the affidavit, including the omitted data, still contains sufficient information to establish probable cause." *Id.*

At trial, Carter never made a showing under *Franks*. There is no mention of *Franks* or its two-prong test anywhere in the trial record. Moreover, during his case-in-chief, Carter never attempted to offer evidence that exculpatory information was omitted, intentionally or not, by Deputy Gwinn. Likewise, he

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issues and arguments." *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004).

<sup>5</sup> In his brief, Carter does not allege that Deputy Gwinn included false information in the warrant affidavit. He only contends that certain additional information was omitted.

never attempted to show that any omission was made with the requisite intent or reckless disregard to cause the affidavit to be misleading to the issuing magistrate judge.

Quite simply, Carter never offered any such evidence in his case-in-chief. In fact, it is important for this Court to recognize that Judge Hayes granted the directed verdict on the false arrest claim after Carter's case-in-chief. At that point in the trial, neither Deputy Gwinn nor Magistrate Judge Leon Yard had testified. Consequently, there had been no evidence presented regarding the issuance of the arrest warrant or what information was provided to Judge Yard to support his finding of probable cause. In his brief, Carter now attempts to rely on evidence that was presented after the false arrest claim had already been dismissed, including the testimony of Judge Yard. That is absolutely improper. Whether a directed verdict was properly granted must be based on the record as it existed when the motion was made and granted. In this instance, the record must be limited to what was presented in Carter's case-in-chief. Again, Carter never presented the testimony of Deputy Gwinn or Judge Yard in his case-in-chief. Moreover, the warrant affidavit ends with the following statement: "probable cause based on a police investigation" and provides the report number. (Tr. 109).

Carter never submitted the investigative report into evidence in his case-in-chief.<sup>6</sup> Judge Hayes noted that the report was incorporated into the warrant, but because the report was not entered into evidence, he was unable to determine whether the report supported the probable cause finding by Magistrate Yard. (Tr. 400-402).<sup>7</sup> Moreover, because Carter did not present the report that was incorporated as part of the warrant affidavit nor present the testimony of Deputy Gwinn and Judge Yard, he has not and cannot demonstrate that the eleven "facts" that he now claims on appeal were omitted were indeed not presented in some form to Magistrate Yard in his determination of probable cause. In essence, what Carter argues is pure supposition and should be rejected as presented for its insufficiency, lack of merit and lack of preservation having been presented for the first time on appeal.

The same is true with Carter's alternative argument that the warrant affidavit was too conclusory to support a finding of probable cause. Carter simply did not sustain his burden of proof on that issue. To recap, the warrant affidavit incorporated the investigative report which was not admitted into evidence. In addition, Carter never presented the testimony of Deputy Gwinn or Judge Yard in his case-in-chief to explain what evidence was even before Judge Yard that

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<sup>6</sup> Even when the Sheriff's counsel moved to admit the investigative report in the defense case-in-chief, Carter's counsel objected, and the objection was sustained. (Tr. 343-345, 402).

<sup>7</sup> Judge Hayes nonetheless confirmed that he did not need the report to determine that the warrant was facially valid. (Tr. 402).

established probable cause. This Court has explained that courts must be "mindful on review that affidavits are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation and should therefore be viewed in a common sense and realistic fashion." *State v. Gore*, 408 S.C. 237, 758 S.E.2d 717, 722 (Ct. App. 2014). The courts' "task is to decide whether the magistrate had a substantial basis for concluding probable cause existed." *Id.* Moreover, it is also well established that the factual information in a warrant affidavit may be supplemented prior to execution by means of sworn oral communication to the issuing magistrate. *State v. Jones*, 342 S.C. 121, 536 S.E.2d 675, 679 (2000).

Here, the information contained in the warrant affidavit was sufficient to support the magistrate's finding of probable cause including, contrary to Carter's assertions, each of the elements of the ABHAN charge. Thus, the arrest warrant was supported by probable cause.

Finally, even if the Court agrees that the arrest warrant was "facially invalid" for any reason, Carter is still not entitled to a new trial on his false arrest claim.<sup>8</sup> It

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<sup>8</sup> In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* See also, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also

is well settled that an arrest made based upon an invalid warrant must simply be treated as a warrantless arrest. Therefore, if there is probable cause to support a warrantless arrest, then "[s]uch an arrest is valid despite an invalid warrant." *Dearinger v. United States*, 378 F.2d 346, 347 (9th Cir. 1967). *See also, Taylor v. Henson*, 61 F.3d 906, \*4 (7th Cir. 1995) (unpublished) ("[a] warrantless arrest supported by probable cause does not violate the Fourth Amendment even if the arrest was made pursuant to an invalid warrant"). In the present case, for the reasons discussed at length in Section II of the Sheriff's Appellant's Brief, which is incorporated herein, the information available to Deputy Gwinn, upon his arrival to the scene of the freshly committed crime, was sufficient to establish probable cause for the arrest of Carter on the ABHAN charge.<sup>9</sup> Consequently, Carter's false arrest claim fails for one of the same reasons that his malicious prosecution claim also fails -- there was sufficient information available to Deputy Gwinn to support a finding of probable cause.

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contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

<sup>9</sup> *See, State v. Ramsey*, 398 S.C. 275, 727 S.E.2d 429, 432 (Ct. App. 2012) ("our appellate courts held that an officer may make a warrantless arrest for an offense not committed in the officer's presence if the offense was 'freshly committed' when the officer arrived on the scene").

## CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Bruce Bryant respectfully requests that this Court affirm the trial court's ruling on the exclusion of expert testimony and the directed verdict granted on the false arrest cause of action. Consistent with his own appeal, Sheriff Bryant also requests that the Court remand for entry of a directed verdict and/or judgment as a matter of law in his favor on the malicious prosecution claim. In the alternative, Sheriff Bryant respectfully requests that the Court remand for a new trial absolute on the malicious prosecution claim alone.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

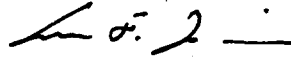
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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant-Respondent, does hereby certify that service of the **Initial Respondent's Brief of Appellant-Respondent** and **Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 31st day of October 2017:

Blake A. Hewitt, Esquire  
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October 31, 2017

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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Russell Shane Carter v. Bruce Bryant, as Representative for the  
Office of the York County Sheriff  
Appellate Case Number: 2016-002556  
Civil Action Number: 2014-CP-46-1307  
Claim Number: 58922  
Our File Number: 103.9486

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Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Respondent's Brief of Appellant-Respondent** and **Appellant-Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
October 31, 2017  
Page Two

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cc: (w/ Enclosures)

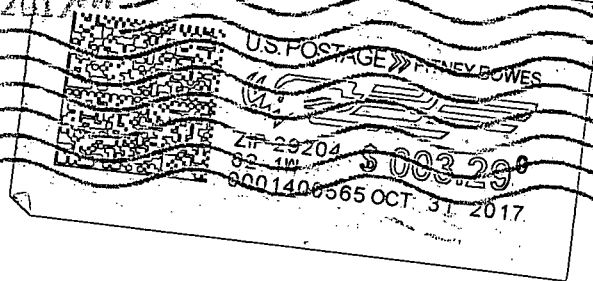
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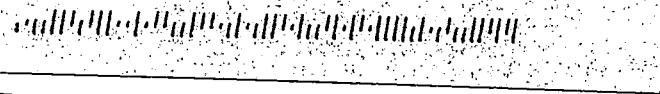
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