

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

SC Court of Appeals

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-001153
Civil Action No. 2012-CP-32-0342

Kay F. PaschalRespondent-Appellant,

v.

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

**RESPONDENT-APPELLANT'S RETURN TO APPELLANT-RESPONDENT'S
PETITION FOR REHEARING**

The Respondent-Appellant Kay F. Paschal, respectfully submits this Return to Appellant-Respondent Leon Lott's Petition for Rehearing with respect to the Court's rulings in Opinion No. 2018-UP-080. The decision of the Court is sound. For the reasons set forth below and for the reasons stated in the Respondent-Appellant's Brief and the Opinion, this Court's decision should stand.

Appellant-Respondent Lott asserts that the well-reasoned Opinion of this Court is insufficient, fails to address all of the issues raised on appeal, and fails to provide the litigants with the bases for the Court's decision to affirm the Lower Court. (Memorandum of Appellant-Respondent, Page 2). Appellant-Respondent Lott further asserts that the

issuance of a memorandum opinion has not provided Sheriff Lott with “meaningful Appellant review as warranted by an important case involving a multi-day jury trial resulting in a verdict of 1.6 million and involving issues of novel statutory interpretation and significant public importance.” The Respondent-Appellant Paschal does not agree. The opinion of this Court was well reasoned, and correct. There is nothing to support the argument that the parties to this appeal did not receive meaningful Appellant review. The Petition for Rehearing should be denied by this Court.

I. THERE WAS AMPLE EVIDENCE TO SUPPORT RESPONDENT-APPELLANT’S MALICIOUS PROSECUTION CLAIM

Appellant-Respondent Sheriff Lott argues that the Court’s decision erroneously affirmed the denial of his directed verdict and JNOV motions as to Respondent-Appellant Paschal’s cause of action for malicious prosecution. The Respondent-Appellant Paschal asserts that there was ample evidence in this case to support her claim for Malicious Prosecution and the Trial Court’s ruling and the Opinion of this Court are correct.

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

Contrary to the assertions and arguments of Sheriff Lott, the jury heard ample evidence as to both of these elements and the Opinion of this Court correctly affirmed the Lower Court’s denial of Appellant-Respondent Sheriff Lott’s directed verdict and post-trial motions with respect to malicious prosecution.

The jury heard ample evidence from which it could have concluded that facts within the knowledge of Lt. Jackson would have lead a reasonable person to believe the individual arrested was not guilty of a crime. *Jackson v. City of Abbeville*, 366 S.C.662, 623 S.E. 2d. 656 (Ct. App. 2005). The jury heard conflicting testimony as to Lt. Jackson's investigation, or lack thereof prior to obtaining her arrest warrants. The jury heard conflicting testimony regarding Lt. Jackson's contact with Tim Peterson, the employee with Carolina Mobility who handled the sale of the van. The jury heard evidence as to her "version" of sale of the van. The jury also heard testimony and evidence regarding the Lexington County Sheriff Department's own investigation of the same transaction. The jury heard testimony that these same charges had previously been investigated in Lexington County by Lexington County authorities. (R. p. 203, ll. 6-23). Steve Baumgartner, an 18 year employee of the Lexington County Sherriff's Department, had thoroughly investigated the matter involving the use of the POA to purchase the handicap accessible van and determined that there was no probable cause to charge Ms. Paschal with any wrongdoing or to arrest her. (R. p. 206, l. 18 – p. 207, l. 7; p. 21, l. 8 – p. 221, l. 11; p. 360, l. 23 – p. 361, l. 10; p. 365; p. 979).

Appellant-Respondent Lott relies upon Lt. Jackson's conversations with various law enforcement personnel as justification of her actions with respect to the arrest warrants. However, as brought out by Ms. Paschal's counsel in his cross examination of these witnesses, these contacts were fatally flawed in that Lt. Jackson did not present any of these individuals with a full set of facts prior to eliciting their opinions and were therefore designed to bolster her own flawed prosecution of the case, as opposed to obtaining objective opinions regarding the status of her investigation. (R. p. 260, l. 2 – p. 261, l. 16). The Trial Court properly considered this argument and rejected it, recognizing, "there is a

dispute as to whether there was a full and complete disclosure of all the material facts, and whether Defendant acted and relied upon such advice in good faith before seeking the arrest warrants in Lexington County.”

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

Appellant-Respondent Lott argues that Ms. Paschal failed to present evidence from which a jury could have determined that the judicial proceedings (in this case the arrest warrants and subsequent criminal charges terminated in her favor). See, *McKenney v. Jack Eckerd Company*, 304 S.C. 21, 402 S.E.2d 887 (1991). However, as recognized by Judge Keesley, and by this Court, there was ample evidence presented for the jury to conclude that the proceedings terminated in Kay’s favor. The jury heard ample evidence that the charges brought against Kay by Lt. Jackson were ultimately dismissed for lack of probable cause in January of 2012. (R. p. 175, ll. 19-24; p. 576, ll. 16-21; p. 579, ll. 7-23; p. 835, ll. 20-24; p. 836, ll. 3-10). Based on the lack of evidence and the lack of jurisdiction, the

Honorable Gary Morgan, Magistrate for Lexington County, dismissed the criminal warrants in Lexington County. (R. p. 115, ll. 7-10; p. 381, ll. 1-2; p. 383, ll. 1-3).

In denying Appellant-Respondent Lott's post-trial motions, the Court disagreed with Sheriff Lott's argument "...that there is a lack of evidence that the Richland County Sheriff's Department acted with malice in instituting or continuing the proceedings, and a lack of evidence about the Defendant instituting or continuing an action that lacked probable cause." (R. p. 1). To the contrary, the Court concluded that, ".....there is sufficient evidence to allow the jury to draw those conclusions." (R. p. 1). The Court's Opinion, affirming the Trial Court's Order is supported by the evidence presented to the jury in this case and the Petition for Rehearing should be denied.

II. THERE IS AMPLE EVIDENCE TO SUPPORT RESPONDENT-APPELLANT'S ABUSE OF PROCESS CLAIM

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

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

III. THE TRIAL COURT PROPERLY SUBMITTED SOUTH CAROLINA CODE SECTION 22-5-110 (SUPP.2017) TO THE JURY

Appellant-Respondent Sheriff Lott argues the this Court erred by affirming the Lower Courts use of South Carolina Code Section 22-5-110 (Supp. 2017) to evaluate the actions of Sheriff Lott's employee, Lt. Jackson with respect to her appearance before the Lexington Magistrate, Judge Whittle, and the arrest warrants that she obtained in Lexington County. Appellant-Respondent Sheriff Lott again asserts, as he did in the Lower Court and at Oral Argument that the Trial Court's use of this statute at trial resulted in denial of Appellant-Respondent Sheriff Lott's directed verdict motions, as well as his post-trial JNOV Motions. Appellant-Respondent Sheriff Lott finally asserts that this resulted in him receiving an unfair trial. Once again, this assertion lacks merit and the Opinion of this Court affirming the Lower Court's submission is correct.

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

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

Viewing the totality of the circumstances, the court finds that sufficient evidence was presented to enable the jury to determine that the conduct of the Defendant (Respondent) in pursuing and obtaining the arrest warrant that is the subject of this action was contrary to the procedure provided in S.C. Code Ann 22-5-110, that the Defendant (Respondent) was put on notice by the 11th Circuit Solicitor’s office of the applicability of that statute, that there was mention to the Richland County Lieutenant about Magistrates having to issue a courtesy summons in some situations, that the Richland County failed to alert the Magistrate about the information she obtained related to a courtesy summons, and that she withheld from the Magistrate the fact that the Lexington County Sheriff’s Office investigation did not conclude that charges were warranted.

The Trial Court's analysis and conclusions were correct and supported by the evidence presented at Trial. The jury heard ample evidence of Lt. Jackson's participation in the preparation and procurement of two arrest warrants in Lexington County for Respondent-Appellant's arrest. (R. p. 104, ll. 21 - p. 105, l. 6). These were done in the course and scope of her employment by the Richland County Sheriff's Department. These charges had previously been investigated in Lexington County by Lexington County authorities. Steve Baumgartner, an 18 year employee of the Lexington County Sheriff's Department, had thoroughly investigated the matter involving the use of the POA to purchase the handicap accessible van and determined that there was no probable cause to charge Respondent-Appellant with any wrongdoing or to arrest her. (R. p. 206, l. 18 - p. 207, l. 7; p. 218, l. 8 - p. 221, l. 11; p. 360, l. 23 - p. 361, l. 10; p. 365; p. 979).

The two warrants were sworn to by Lt. Jackson. (R. pp. 978-979; p. 104, ll. 21-23). They were issued solely on information supplied to the issuing Judge (Judge Whittle) by Lt. Jackson. (R. p. 105, ll. 1-10). The jury heard evidence that Lt. Jackson did not know the meaning of foundational words that she used in the affidavit to obtain the arrest warrant. These warrants resulted in Ms. Paschal turning herself in and being arrested (R. p. 1). There was no proof Ms. Paschal did anything wrong and the jury heard testimony that Lt. Jackson withheld information from the Lexington County Magistrate when she got the warrant. She did not tell the Lexington County Magistrate that Lexington County had already investigated these charges and found no probable cause. In securing the warrants, Lt. Jackson did tell the Magistrate that she had spoken with Dayton Riddle, the assistant solicitor in Lexington County who had raised concerns about Lt. Jackson swearing out a warrant in Lexington County. (R. p. 267; p. 268; p. 831; p. 832; p. 1). As correctly

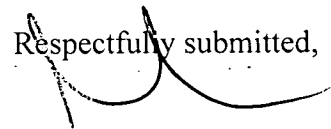
recognized by Judge Keesley in his Order, Solicitor Riddle pointed out the statute and its possible application to Lt. Jackson obtaining warrants to arrest Kay. However, at no time did Lt. Jackson convey these concerns to the Magistrate in her haste to obtain arrest warrants against Respondent-Appellant Paschal. (R. p. 267, ll. 4-20).

The Appellant-Respondent Lott argues that the Trial Court's alleged misinterpretation and misapplication of this code section resulted in the denial of a directed verdict and JNOV motions and also caused Sheriff Lott to receive an unfair trial. This argument is not supported by the facts that were presented to the jury. As set forth by Judge Keesley on numerous occasions during Trial and in his Order, the jury heard ample evidence to support Respondent-Appellant Paschal's causes of action. There is simply nothing to support the Appellant-Respondent's assertions that the Trial Court's handling of this statute resulted in either the denial of Appellant-Respondent's directed verdict or JNOV motions or resulted in an unfair trial.

CONCLUSION

For these reasons and the reasons discussed in the Respondent-Appellant's Brief, this Court should deny the petition for rehearing.

Respectfully submitted,



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March 15, 2018

THE STATE OF SOUTH CAROLINA
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William P. Keesley, Circuit Court Judge

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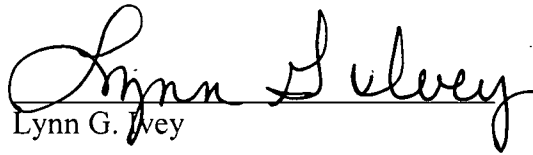
Leon Lott, the Duly Elected Sheriff of
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PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Taylor Law Firm, P.A., certify that I have served the Respondent-Appellant's Return to Appellant-Respondent's Petition for Rehearing by United States mail, in an envelope with sufficient postage affixed thereto, upon all counsel of record on March 15, 2018.

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March 15, 2018

The Honorable Jenny Abbott Kitchings
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RE: Kay F. Paschal v. Leon Lott, the Duly Elected Sheriff of Richland
County, South Carolina
Appellate Case No. 2015-001153
C/A No. 2012-CP-32-00342

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J. Mark Taylor*
C. Vance Stricklin, Jr.
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Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent-Appellant's Return to Appellant-Respondent's Petition for Rehearing in the above referenced matter. We would appreciate it if you would please file the original and return the extra copies via our courier.

By copy of this letter I am serving all counsel of record with the same.

Thank you for your assistance in this matter. If you have any questions or need any additional information and/or documentation, please do not hesitate to contact my office.

Sincerely,



S. Jahue Moore, Esquire

/lgi

Enclosures

cc: Andrew F. Lindemann, Esquire
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