

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
Appellate Case No. 2015-001153

RECEIVED
MAR 26 2018
SC Court of Appeals

Kay F. Paschal, Respondent-Appellant,

v.

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

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

The Appellant-Respondent Leon Lott has petitioned this Court for a rehearing of the recent decision in *Paschal v. Lott*, Op. No. 2018-UP-080 (S.C. Ct. App. filed February 7, 2018). The Respondent-Appellant Kay F. Paschal has now filed a return to which a brief reply is warranted.

I.

In his petition for rehearing, Sheriff Lott expressed his dismay that the Court adjudicated this appeal with a memorandum opinion pursuant to Rule 220(b), SCACR, that sets forth only a string of citations rather than providing legal analysis of the issues to be decided by the Court. Sheriff Lott describes this case as an “important case involving a multi-day jury trial resulting in a verdict of \$1.61 million and involving issues of novel statutory interpretation and significant public importance.” In so doing, Sheriff Lott seeks only to impress upon the Court that this is not an appropriate case for a summary disposition under Rule 220(b) and that rehearing should be granted, if for no other reason, to allow for a reasoned opinion that addresses issues of novel statutory interpretation and significant public importance.

Paschal not surprisingly disagrees, but that is a bit disingenuous. This case focused on the interpretation and application of Section 22-5-110 -- a statute that has never been addressed by an appellate court (and still has not after this Court’s decision). Paschal tries to suggest that Section 22-5-110 was not key to this case, but the record shows that Paschal thought that statute was so critical to the jury’s decision that she made it a Plaintiff’s exhibit at trial so that the jury had a copy available during jury deliberations. (R. 1020). There is no question that Section 22-5-110 was a key aspect of this case, and its interpretation and application present novel issues.

There is, in fact, no case that addresses when it is appropriate for a courtesy summons to be issued instead of an arrest warrant. Yet, according to Paschal in her return to the Petition for Rehearing, Sheriff Lott was held liable for a misuse of process because a magistrate issued arrest warrants for two felonies rather than courtesy summonses and was not “advised” about Section 22-5-110 by the law enforcement officer seeking the warrants. It seems that this case should include a detailed discussion as to the meaning of Section 22-5-110, which would clearly show that Magistrate Whittle was correct in issuing arrest warrants rather than courtesy summonses and that Lt. Scott did nothing to violate Section 22-5-110, which was something that the trial court should have determined itself rather than leaving it to the whim of the jury.

It is unclear whether Paschal also disputes that the case is one of significant public importance and interest. However, the trial and post-trial decisions received significant media attention as did Paschal’s subsequent disciplinary decision by the Supreme Court. In fact, the article in *The State* newspaper on Paschal’s disciplinary sanction described the “widely publicized lawsuit and trial last year” against Sheriff Lott, and her attorney was quoted as linking the case and the disciplinary matter. See, *The State*, May 13, 2015 edition (last accessed on March 22, 2018 at www.thestate.com/news/local/crime/article20912523.html).

In short, Sheriff Lott submits this is a case of significant importance and interest – one that this panel believed was significant enough to warrant oral argument – and should not be decided pursuant to Rule 220(b) with only string citations of “black letter” law but no legal analysis applying that law to the important issues presented.

II.

Notably, on the issue of Section 22-5-110, Paschal never addresses in her return whether the trial judge correctly interpreted the statute. In fact, as in her appellate brief to this Court, Paschal never offers her explanation or interpretation of the statute. She also does not dispute the detailed analysis of the statute proffered by Sheriff Lott in his briefs and in his Petition for Rehearing.

Instead, Paschal just baldly proclaims that the statute was properly submitted to the jury and demurs on whether its application and interpretation played any part in the adverse verdict against Sheriff Lott. At most, she says that “reference to this statute was one instance or example of Lt. [Scott’s] improper conduct and activities in Lexington County and interaction with the Lexington County Magistrate that were presented to the jury.” Yet, she never states how Section 22-5-110 gives rise to “improper conduct and activities” or even how Section 22-5-110 was violated by Lt. Scott. The reality is that Magistrate Whittle correctly applied the statute and issued arrest warrants instead of courtesy summonses. The reality is that Lt. Scott was

within her right to seek the arrest warrants from Magistrate Whittle and that Paschal was lawfully arrested with those warrants.¹ The reality is that Sheriff Lott did not receive a fair trial because the trial judge denied his directed verdict motion on the Section 22-5-110 issue and allowed the jury to interpret the statute as it wished – all of which led to Judge Keesley candidly admitting post-trial to have felt “some angst.” (R. 7). This is clearly a case that is deserving of a new trial at a minimum.

III.

Lastly, with respect to the abuse of process claim, Sheriff Lott pointed out in his Petition for Rehearing as follows: “In her brief and at oral argument, Paschal was unable to point to any evidence that Sheriff Lott or his deputies committed a willful act in the use of the process not proper in the conduct of the proceeding.” It is worth pointing out that Paschal still has not done so.

CONCLUSION

Based on the foregoing discussion, the Appellant-Respondent Leon Lott respectfully renews his request that the Court rehear its decision in this case.

¹ It is also notable that Paschal completely changes her position from trial and now concedes (as she must) that Lt. Scott’s procurement of the arrest warrants “were done in the course and scope of her employment by the Richland County Sheriff’s Department.” She still avoids – albeit slightly -- the “official capacity” language from Section 22-5-110(B)(1), but she obviously recognizes that Sheriff Lott is correct in arguing that conduct by Lt. Scott outside the scope of her official duties is not actionable under the Tort Claims Act.

Sheriff Lott renews his request that this Court reverse the jury's verdict and the order of Judge William P. Keesley filed December 11, 2014, and remand for entry of judgment in Sheriff Lott's favor. In the alternative, Sheriff Lott requests that the Court remand for a new trial absolute.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY: 

ANDREW F. LINDEMANN
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

-AND-

PATRICK J. FRAWLEY
DAVIS FRAWLEY, LLC
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512

*Counsel for Appellant-Respondent
Leon Lott*

Columbia, South Carolina

March 22, 2018

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Appellant-Respondent Leon Lott, does hereby certify that service of **Appellant-Respondent Lott's Reply to Respondent-Appellant's Return to Petition for Rehearing** 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 22nd day of March 2018:

S. Jahue Moore, Esquire
John C. Bradley, Jr., Esquire
Moore Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171

Patrick J. Frawley, Esquire
Davis Frawley, LLC
Post Office Box 489
Lexington, South Carolina 29071-0489

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LINDEMANN, DAVIS & HUGHES, P.A.

Attorneys at Law

Andrew F. Lindemann*
James M. Davis, Jr.†
Joel S. Hughes†

5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260

Telephone (803) 881-8920
Facsimile (803) 862-1181

*Also admitted in North Carolina
†Certified Mediator

March 22, 2018

Direct Dial (803) 881-8921
Email: andrew@ldh-law.com

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

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RE: Kay Paschal Wallace v. Leon Lott, the Duly Elected Sheriff of Richland County,
South Carolina
Appellate Case Number: 2015-001153
Civil Action Number: 2012-CP-32-0342
Our File Number: 314.9502

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Appellant-Respondent Lott's Reply to Respondent-Appellant's Return to Petition for Rehearing** in the above referenced matter. Please file the original and return a clocked-in copy 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,

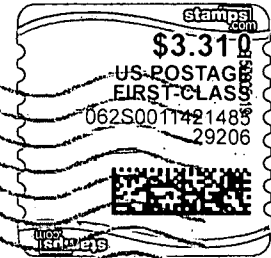
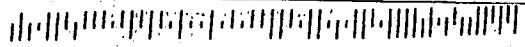
LINDEMANN, DAVIS & HUGHES, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: S. Jahue Moore, Esquire (w/ Enclosure)
John C. Bradley, Jr., Esquire (w/ Enclosure)
Patrick J. Frawley, Esquire (w/ Enclosure)



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FRI 23 MAR 2018 PM

Lindemann, Davis & Hughes, P.A.
Post Office Box 6923
Columbia, South Carolina 29260

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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