

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

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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

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

ORDER REGARDING
DEFENDANT'S
POST-TRIAL MOTIONS

2014 OCT 11 PM 2:21

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.

WPL #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

WP #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.

WPK
#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.

WPA
#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 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 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.

WPM
#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 11th 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), SCRCF, 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
APR 30 A 11:10
CLERK OF COURT
LEXINGTON, SC

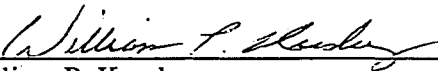
ORIGINAL

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) AM 8:01
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) NETH A. CARRIGG
) CLERK OF COURT
 KAY PASCHAL,) LEXINGTON SC
)
 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

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

2012 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.

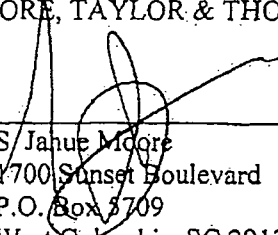
56. The Plaintiff is informed and believes she is entitled to a judgment against the Defendant Leon Lott in his capacity as Sheriff of Richland County for actual damages. The

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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

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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.

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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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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

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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.

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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.

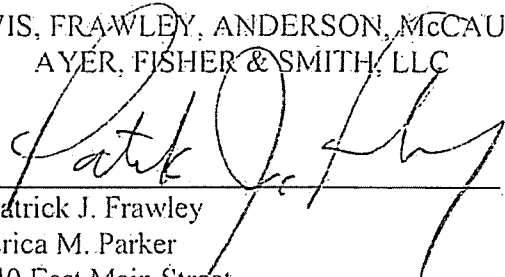
46. These Defendants are informed and believe that the Plaintiff's willful and improper use of this process in order to discourage these Defendants from pursuing the pending criminal investigation is, itself, abuse of process, proximately causing damage to these Defendants; and these Defendants do counterclaim 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

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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

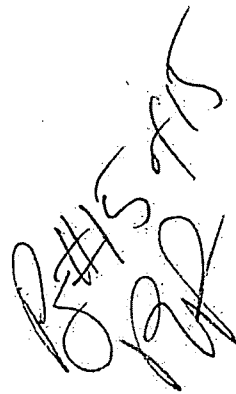
ATTORNEYS FOR THE DEFENDANTS
LEON LOTT, SHERIFF OF RICHLAND COUNTY, AND
LT. HEIDI SCOTT

Lexington, South Carolina
May 4, 2012

FILED

2012 MAY -4 3:08

PETHA A. CARRIGS
CLERK OF COURT
RICHLAND COUNTY, SC



STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

FILED

2014 AUG -4 P 3:58

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH CIRCUIT

Kay F. Paschal,

Plaintiff,

-vs-

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

Defendant.

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.

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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.

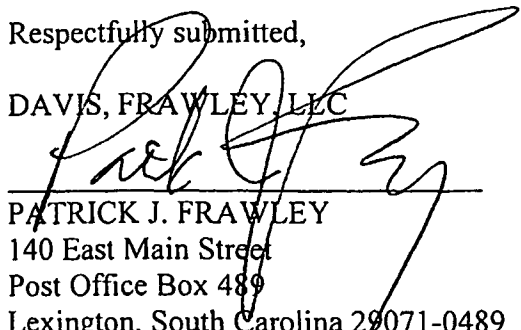
Or in the alternative, the Defendant moves for a new trial.

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

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

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(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

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(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

-vs-

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

Defendant.)

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

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 Veredicto*; 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

PS# 1 of 4
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.

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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.

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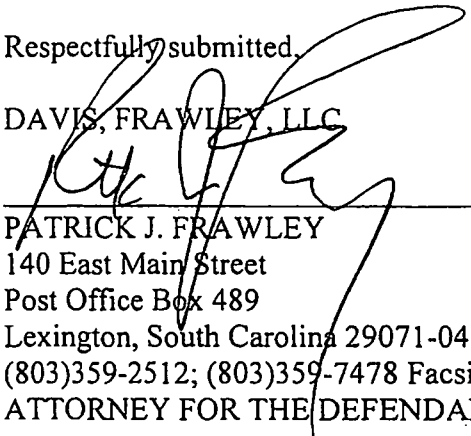
Which grounds support the Defendant's Motion for Judgment in favor of this Defendant, notwithstanding the jury's verdict.

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



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Post Office Box 489
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(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
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
2014 AUG 11 P 4:32
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC
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

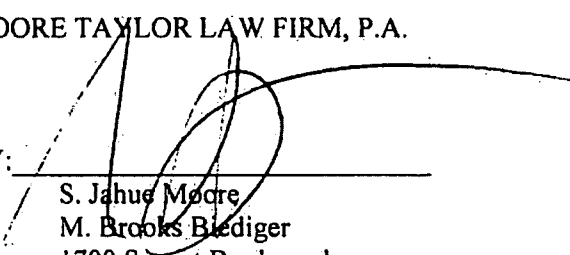
the conclusion of the Plaintiff's case and at the close of all the evidence at trial." The trial court correctly ruled on these motions when presented at trial. The Court properly and correctly denied these motions at trial and the Defendant is not entitled to an order granting him a JNOV, or in the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

MOORE TAYLOR LAW FIRM, P.A.

BY: 

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M. Brooks Biediger
1700 Sunset Boulevard
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West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR PLAINTIFF KAY F.
PASCHAL

West Columbia, South Carolina

August 11, 2014.

IN THE COURT OF COMMON PLEAS
OF THE ELEVENTH JUDICIAL CIRCUIT

Kay Paschal,

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

Plaintiff,

VS.

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

Defendant.

**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

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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

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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 5th 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 13th 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

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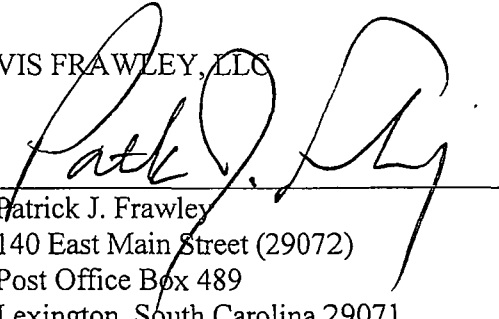
“(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.”

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 flowed¹ 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 13th 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: 

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Post Office Box 489
Lexington, South Carolina 29071

ATTORNEYS FOR THE DEFENDANT LEON LOTT,
AS RICHLAND COUNTY SHERIFF

Lexington, South Carolina
September 1, 2014

¹ 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

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Kay F. Paschal,

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

Plaintiff,

**PLAINTIFF'S MOTION TO
RECONSIDER**

vs.

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

Defendant.

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.

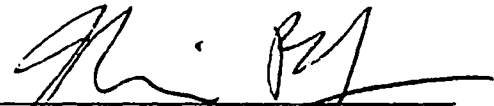
The South Carolina Supreme Court has also expressly adopted the canon of statutory construction "*expressio unius est exclusio alterius*," which holds "to express or include one thing implies the exclusion of another." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000). "The enumeration 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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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 cartid {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 Paschal 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 Paschal 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.