THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

William P. Keesley, Circuit Court Judge

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

Kay F. Paschal .....Respondent-Appellant,

v.

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

RESPONDENT-APPELLANT'S RETURN TO APPELLANT-RESPONDENT'S PETITION FOR CERTIORARI

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STATEMENT OF THE CASE

Respondent Kay F. Paschal commenced this action against Petitioner Leon Lott alleging causes of action against him for false arrest, malicious prosecution, and abuse of process, negligence and civil conspiracy. (R. p. 16). Petitioner answered the Complaint and asserted a counterclaim against Ms. Paschal for abuse of process. (R. p. 26). The parties subsequently engaged in written discovery as well as discovery depositions.

The case was tried before the Honorable William P. Keesley and a jury on July 21-25, 2014. At the close of the Petitioner's case and again at the close of the evidence, Sheriff Lott moved for a directed verdict. (R. p. 698, l. 3 – p. 699, l. 15). The Court granted Petitioner's motion as to Respondent's false arrest cause of action. All remaining motions were denied. (R. p. 571, l. 23 – p. 756, l. 19; p. 770, ll. 17-20).

At the close of the evidence, Respondent moved for a directed verdict as to the Petitioner's counterclaim. (R. p. 850, l. 11 – p. 855, l. 3). This motion was granted by the Court. (R. p. 855, ll. 4 – 22). Petitioner renewed his directed verdict motions. (R. p. 860, l. 21 – p. 869, l. 20). The Court denied the Petitioner's motions as to the causes of action for abuse of process and malicious prosecution. (R. p. 869, ll. 21-24). Respondent withdrew her cause of action for negligence. (R. p. 870, ll. 12-13).

Respondent's causes of action for malicious prosecution and abuse of process claims were submitted to the jury. After deliberation, the jury returned a verdict in favor of Respondent on both claims and awarded actual damages of 1.61 Million dollars. (R. p. 950).

Petitioner subsequently filed three post-trial motions: a Motion to Reduce Verdict, or in the Alternative for a New Trial (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. (R. pp. 41 - 75). On December 9, 2014, Judge Keesley, after hearing arguments of counsel, issued his Order reducing the Respondent's award to Three Hundred Thousand and No/100 ($300,000.00) dollars. All of the Petitioner's remaining motions were denied. (R. p. 1).

Both parties appealed Judge Keesley's Order. On February 7, 2018, the Court of Appeals issued its memorandum opinion affirming Judge Keesley's Order. Petitioner moved for rehearing which was denied. Petitioner now seeks review in the Supreme Court by way of a petition for writ of certiorari.

STATEMENT OF THE FACTS

This is a very serious case which involves humiliation and abuse suffered by Respondent Kay Paschal ("Kay"), a longtime member of the South Carolina Bar. The abuse came at the hands of the Petitioner Leon Lott ("Sheriff Lott"), operating at all times under color of State Law. Kay brought suit against Sheriff Lott alleging that he conspired to, and did intentionally, abuse her by wrongful law enforcement tactics used to intimidate and to effect/alter the outcome of a Richland County Probate Court proceeding. (R. p. 16). Kay's case was tried for approximately five (5) days before a Lexington County jury. The

jury found for her on her causes of action for abuse of process and malicious prosecution. (R. p. 950). The jury awarded Kay 1.6 Million dollars in actual damages. (R. p. 950).

Kay Paschal is an elderly member of the South Carolina Bar. (R. p. 467, ll. 18-19). Throughout her legal career, she worked representing indigent citizens of South Carolina. (R. p. 480, ll. 12-24). She also worked for the University of South Carolina. (R. p. 480, l. 25 – p. 481, l. 16). She operated her own law practice for a while. (R. p. 481, ll. 17-19).

Apart from her law practice, Kay otherwise lived a quiet life taking care of her family and her pets. (R. p. 480, l. 5 – p. 481, l. 16). In her later years, she developed a relationship with David Wallace ("David"). In 2001 or 2002 she did some legal work for him and for his company. (R. p. 494, ll. 13-17). In 2002, David hired Kay as his secretary. (R. p. 499, ll. 22-25; p. 500, l. 1). As David's secretary, Kay operated his office, paid his bills, kept his books and did his correspondence. (R. p. 494, ll. 22-25; p. 500, l. 1; p. 511, ll. 6-16). She did not perform any legal work for him or his business once she went to work for him as his secretary. (R. p. 500, ll. 2-6).

Later, she and David developed a romantic relationship. At the time, Kay was living in a small house she owned in Lexington County. (R. p. 496, ll. 9-19; p. 497, l. 25 – p. 498, l. 5). Kay moved in with David in 2003 at his house in Forest Acres, South Carolina. (R. p. 498, ll. 8-12). They lived there together until after his death in 2011 when she was evicted from their Forest Acres home by David's children. (R. p. 498, ll. 19-21).

Kay and David worked together in his yard creating a "showcase" home. (R. p. 511, ll. 20-25; p. 512, ll. 1-2). They owned a number of pets together including cats and a pond full of Koi fish. (R. p. 494, l. 18 - p. 495, l. 1; p. 495, ll. 5-11). They took many vacations together. They maintained both separate and joint bank accounts. (R. p. 508, ll. 6-11).

Kay and David considered themselves to be husband and wife, although they never formally married. (R. p. 486, ll. 6-11). Kay wore a ring given to her by David. She adopted his last name as her own. (R. p. 467, ll. 23 – p. 468, l. 7). Many of their mutual friends believed them to be husband and wife. (R. p. 613, l. 25 – p. 614, l. 4). The jury heard testimony that on the Friday prior to David's stroke, he and Kay applied for a marriage license. (R. p. 513, ll. 11-25; p. 514, ll. 1-4).

In April of 2010, David went to Providence Hospital for insertion of a stent in his carotid artery. (R. p. 512, ll. 21-25; p. 513, ll. 1-10). It was anticipated that this would be a same day surgery or, at most, that David would only be hospitalized overnight. (R. p. 514, ll. 5-7). No problems were anticipated or expected. (R. p. 514, ll. 5-7). Unfortunately, shortly after the procedure, David suffered a debilitating stroke which left him paralyzed. (R. p. 515, ll. 3-12; p. 471, ll. 20-25; p. 472, ll. 1-7). This complication resulted in a lengthy hospital stay, both at Providence Hospital and at HealthSouth Rehabilitation Hospital. (R. p. 515, l. 16 – p. 516, l. 5).

Sometime prior to the Providence/HealthSouth hospitalizations, David executed a Power of Attorney ("POA") giving Kay his Power of Attorney. (R. p. 500, ll. 16-25; p. 954). The POA was prepared in the office and given to David. He had the POA executed outside of Kay's presence and away from the office. (R. p. 501, ll. 1-19). Although Sheriff Lott makes much of the preparation and execution of the POA in his Brief, the jury heard ample testimony and evidence that Kay had absolutely no involvement in its execution by David. (R. p. 506, ll. 7-22; p. 501, ll. 17-19).

David brought the executed POA back to the office and gave it to Kay who put it in a file. She did not file it with the Court. During David's hospital stay, she was instructed

by David's medical care providers to file it. (R. p. 473, l. 20 – p. 474, l. 8). After filing the POA, Ms. Paschal signed David's name on checks as she had always done, even in front of David's two children. (R. p. 474, ll. 1-5; p. 507, ll. 1-5; p. 506, l. 1). The Wallace children were well aware of the Power of Attorney and during their father's lifetime raised no issue with Kay using it. The Wallace children never challenged Kay's use of the Power of Attorney to care for their father at any time during his lifetime. (R. p. 525, ll. 13-17).

David was discharged from the hospital with significant physical disabilities and limitations. As a result of the stroke he could not walk. (R. p. 471, l. 20 – p. 472, l. 22). He could not feed himself. He had issues with bowel control. (R. p. 517, ll. 2-12). He was, however, able to understand and converse with others around him even though his speech was somewhat impaired. (R. p. 516, ll. 6-24). Individuals who spoke to him were able to understand him and carry on a conversation with him. (R. p. 444, ll. 5-14; p. 471, l. 20 – p. 472, ll. 7). Contrary to information given to the Lexington Magistrate by Appellant/Respondent, David was never declared mentally incompetent in any way prior to his death. (R. p. 192, ll. 16-22; p. 193, ll. 18-23; p. 194, l. 1). He was never declared to be a vulnerable elderly adult. (R. p. 193, ll. 12-17). No guardian was ever appointed for him during his lifetime. (R. p. 195, ll. 3-5).

After the stroke, Kay was David's primary caregiver. While he was hospitalized she remained at the hospital with him. (R. p. 528, ll. 1-5). Kay hired two caregivers to assist her with David's care during the day. (R. p. 517, ll. 13-23). At night, Kay was his primary caregiver. She drove him to his rehabilitation/physical therapy/doctor's visits. She took him on outings. She prepared his meals. (R. p. 519, ll. 7-12; p. 518, ll. 13-23). She changed David's dressings and gave him his medications. (R. p. 528, ll. 1-18). She

did all of the laundry. (R. p. 469, l. 25 – p. 470, l. 3). She purchased a queen sized hospital bed and slept with him at night in case he needed her. (R. p. 471, ll. 7-19).

She also oversaw modifications to the house which included replacing carpet with linoleum (to make it easier for him to get around in a wheelchair), constructing an indoor ramp, and contacting an architect to make the bathrooms more accessible. She purchased a refrigerator for protein drinks for David. (R. p. 469, ll. 15-25; p. 470, ll. 10-16). Kay purchased a Hoyer lift to assist in getting David in and out of bed. (R. p. 469, l. 15 – p. 471, l. 12).

One of Kay's many responsibilities was to drive David to and from his rehabilitation/doctor's appointments. She also drove him to dinner and on outings. (R. p. 518, ll. 14-21). Because of his paralysis and size (compared to her own) she had difficulty getting him in and out of their vehicle in his wheelchair. (R. p. 518, l. 22 – p. 519, l. 2). She went to Carolina Mobility and spoke with Tim Petersen, the general manager, about purchasing a handicap accessible van for David. (R. p. 434, ll. 10-12; p. 442, ll. 3-9). Mr. Petersen left the dealership with Kay and picked up David who was at a rehabilitation appointment. The three of them returned to Kay and David's residence. (R. p. 442, l. 21 – p. 443, l. 2). Mr. Petersen assisted Kay in getting David out of the van and into the house.

Mr. Peterson spoke with David and Kay regarding their choice of handicap accessible vans. David was present and participated in the decision as to which van they preferred. Mr. Petersen was able to verbally communicate with David. (R. p. 443, ll. 19-23). He was able to understand what David was saying to him. (R. p. 443, ll. 19-23). David was able to communicate what he liked or disliked in a particular van. (R. p. 444, ll. 19-23; p. 444, ll. 11-16). David and Kay decided to purchase a handicap accessible Toyota

van. Kay consummated the transaction, which involved trading in a Cadillac, using her Power of Attorney. (R. p. 189, ll. 11-22; p. 436, ll. 17-25). She used David's money to pay for the van. (R. p. 520, ll. 6-25; p. 521, ll. 1-3; p. 523, ll. 9-13; pp. 966-968). David was aware of this transaction and aware of the fact that his money and the Cadillac were being used to purchase the van. (R. p. 523, ll. 11-13; p. 447, ll. 19-24). Kay testified that she would not have consummated the transaction if David had not wanted her to do so. (R. p. 523, ll. 3-7).

All of the proceeds from the Cadillac were applied to the price of the van. Contrary to the representations of Appellant/Respondent, Kay did not realize any of the proceeds from the sale of the car. (R. p. 479, ll. 5-22). Mr. Petersen, as was his customary practice, recommended that the van be titled as "Mr. Wallace or Ms. Paschal" to make transfer of the van easier for the "surviving party." (R. p. 435, l. 16 - p. 436, l. 8). Kay used the van to transport David to his appointments and on outings. She only used the van without David to buy groceries. She did not use the van for any personal reasons or use. (R. p. 434, ll. 1-12).

On February 20, 2011, David died leaving an estate of approximately $6,000,000.00 dollars. (R. p. 512, ll. 17-22). At the time of his death, David had two adult children, a son, Jeffrey Wallace, and a daughter, Elizabeth Wallace. (R. p. 189, ll. 1-10). The jury heard testimony that Elizabeth is a lawyer and Jeffrey at one time worked for the CIA. During David's lifetime, the children's contact with him was limited. The jury heard testimony that the children rarely visited David. The jury heard testimony that they did not participate in David's care, instead leaving it to Kay. (R. p. 519, ll. 3-12). However, after his death they immediately instituted criminal proceedings against Kay alleging abuse and

neglect. (R. p. 161, ll. 11-22). They also initiated proceedings against Kay in the Richland County Probate Court, for the first time challenging the POA and Kay's use of it to care for their father. (R. p. 528, ll. 23-25).

Leon Lott is the duly elected Sheriff of Richland County. He hired a deputy named Heidi Scott (now Heidi Scott Jackson) ("Lt. Jackson"). All of Lt. Jackson's actions were carried out in her capacity as a deputy for the Richland County Sheriff's Department. (R. p. 96, ll. 3-5; p. 97, ll. 11-14; p. 98, ll. 7-18). The jury heard evidence that Lt. Jackson was never properly deputized. South Carolina Code Section 23-27-70 requires each deputy sheriff to post a surety bond prior to functioning as a deputy. South Carolina Code Section 23-11-30 also requires a bond on the part of the Sheriff. Neither Sheriff Lott nor Lt. Jackson had any such surety bond.

The Wallace children's criminal complaint against Kay ultimately found its way to Lt. Jackson. The jury heard evidence that Lt. Jackson had very little training as a law enforcement officer. She did have training and experience as a victim's advocate. (R. p. 107, ll. 14-20). Lt. Jackson was assigned to the Wallace case. She became very close to the Wallace children during the investigation. By her own admission, she worked closely with them. (R. p. 147, ll. 16-20; p. 148, l. 3 – p. 151, l. 7). The jury heard ample evidence that Lt. Jackson did everything in her power to provide the Wallace children an advantage in the Probate Court proceedings.

Lt. Jackson's first interaction with Kay occurred on March 8, 2011, less than three weeks after David's death. At that time, Kay was at the home she shared with David with his children explaining computer passwords and the property owned by David at the time of his death. (R. p. 529, l. 9 – p. 531, l. 7). Lt. Jackson showed up with Richland County

Sheriff's Department officers and a search warrant. This was a complete surprise to Kay, but not to the Wallace children. (R. p. 542, ll. 13-18). The Wallace children appeared to Kay be very friendly with Lt. Jackson and the deputies. There appeared to Kay to be a "special relationship" between the Wallace children, Lt. Jackson and the Richland deputies. (R. p. 542, ll. 3-18). The jury heard evidence that the Wallace children appeared to not only assist Lt. Jackson with her search, but to direct it. (R. p. 531, ll. 8-16; p. 531, l. 25 – p. 532, l. 16). On at least one occasion during the search, the children personally found items and handed them to Lt. Jackson. (R. p. 545, ll. 1-7).

In addition, during the search, Lt. Jackson and her cohorts took computers, printers, cameras and photo cards. Many of the pictures seized during the search were pictures of Kay and David's pets and pictures that Kay had taken during her vacation trips with David. These belongings had great sentimental value to Kay. (R. p. 530, ll. 11-24; p. 545, ll. 8-17). None of these seized items have ever been returned to her. (R. p. 545, ll. 18-23).

As set forth above, Lt. Jackson was a Richland County deputy. She had absolutely no authority at all in Lexington County. (R. p. 101, ll. 5-25; p. 102, ll. 21-25). Lt. Jackson testified that she is aware that she had no jurisdiction in Lexington County. (R. p. 101, l. 10 – p. 103, l. 21). She was never asked by anyone in Lexington County to participate in any ongoing Lexington County investigation. (R. p. 103, ll. 22-25).

Notwithstanding this fact, Lt. Jackson arranged for a second search of Kay's former residence on Kitty Hawk Drive in Lexington County on May 8, 2011. (R. p. 117, l. 18 – p. 120, l. 21; p. 969). The search warrants are directed to "any bonded law enforcement officer of the aforementioned county." (R. p. 119, ll. 17-25; p. 969). Lt. Jackson was not a bonded law enforcement officer and she was not an officer of Lexington County. (R. p.

120, ll. 5-15; p. 139, ll. 20-22). Despite this obvious deficiency, Lt. Jackson conducted the search and seized Kay's property located in Lexington County anyway.

This search occurred immediately after Kay had been evicted from the Forest Acres home in the Probate Court proceeding initiated by the Wallace children. (R. p. 548, l. 2 – p. 549, l. 6). Kay was in the process of trying to convert her former Lexington County residence, which had been used for storage during the years she lived with David, back into a habitable residence when Lt. Jackson and Richland County Sheriff's Department officers arrived at her house. Like the first search, this second search was done on the authority and direction of Lt. Jackson and carried out solely by Richland County Sheriff's Department officers. (R. pp. 118-119; p. 138, ll. 12-16; p. 555, ll. 9-16). Like the first search, the Wallace children, Kay's adversaries in the Probate Court proceeding, were present when this search occurred. (R. p. 549, ll. 7-24). Once again this search (which was very surprising to Kay) did not appear to be a surprise to the Wallace children. (R. p. 549, ll. 15-17). Once again they participated in the search and assisted Lt. Jackson and her cohorts in it. (R. p. 550, l. 21 – p. 551, l. 3; p. 551, ll. 12-24). Kay testified that during the search Lt. Jackson laughed and joked with Elizabeth Wallace. (R. p. 551, l. 23; p. 552, l. 18 – p. 553, l. 12).

As she had done during the earlier search in Richland County, Lt. Jackson took computers and cameras containing items of great sentimental value to Kay including family photographs, not just of David, but also of her own family. The items seized from Kay's Lexington County home were taken to the Richland County evidence room by Lt. Jackson. (R. p. 173, ll. 3-4). None of these items were ever returned to Kay. (R. p. 555, l. 23 – p. 556, l. 23). Kay has never received any explanation from the Sheriff's Department as to

why they will not return what has been seized. These items have been in the possession of the Sheriff's Department for years with no explanation or excuse. (R. p. 578, ll. 15-21).

The jury heard evidence that these searches were done close to Probate Court hearings. The jury heard ample evidence so that it could have concluded that the two searches were done in a way which deprived Plaintiff of relevant evidence to present to the Probate Court (R. p. 545, l. 21 – p. 546, l. 3; p. 546, l. 19 – p. 547, l. 2). The jury heard testimony regarding the impact of the illegal search and seizure and the fact that it (along with the Richland County search) resulted in the Plaintiff being unable to properly present evidence to the Probate Court. (R. p. 546, l. 19 – p. 547, l. 2). Kay did not have access to her evidence and she did not have access to her records.

Lt. Jackson's improper involvement in this case did not end with the illegal search. On November 16, 2011, a hearing to remove Kay as the administrator and trustee of David Wallace's estate was scheduled in the Richland County Probate Court. (R. p. 559, ll. 5-23; p. 968). After the illegal search and seizure, Lt. Jackson, with the knowledge, permission and ratification of Sheriff Lott, participated in the preparation of two arrest warrants in Lexington County for Kay's arrest. (R. p. 104, l. 21 – p. 105, l. 6). The charges had previously been investigated in Lexington County by Lexington County authorities. (R. p. 203, ll. 6-23). Steve Baumgartner, an 18 year employee of the Lexington County Sherriff's Department, thoroughly investigated the matter involving the use of the POA to purchase the handicap accessible van and determined that there was no probable cause to charge Kay with any wrongdoing or to arrest her. (R. p. 206, l. 18 – p. 207, l. 7; p. 218, l. 8 – p. 221, l. 11; p. 360, l. 23 – p. 361, l. 10; p. 365; p. 979). Despite this finding by the investigating

authorities in Lexington County Law Enforcement, Lt. Jackson continued her crusade against Kay.

The two warrants were sworn to by Lt. Jackson. (R. pp. 977-978; p. 104, ll. 21-23). Lt. Jackson personally travelled to Lexington County to obtain these warrants. The jury heard testimony that this was the first time she had ever done this in her career. (R. p. 227, l. 25 – p. 228, l. 2). They were issued solely on information supplied to the issuing Judge (Judge Whittle) by Lt. Jackson. (R. p. 105, ll. 1-10). The jury heard evidence that Lt. Jackson did not know the meaning of foundational words that she used in the affidavit to obtain the arrest warrant. (R. p. 1; p. 225, ll. 11-24). The jury heard testimony that Lt. Jackson did not have any evidence that Kay intentionally or willfully used a fraudulent POA. (R. p. 240, l. 12 – p. 241, l. 13). The jury heard testimony from which it could have inferred that Lt. Jackson was less than candid or truthful in swearing out the warrants before Judge Whittle. These warrants resulted in Kay turning herself in and being arrested. There was no proof Kay did anything wrong and the jury heard testimony that Lt. Jackson withheld information from the Lexington County Magistrate when she got the warrants. (R. p. 1). She did not tell the Lexington County Magistrate that Lexington County had already investigated these charges and found no probable cause. (R. p. 1). In securing the warrants, Lt. Jackson did not tell the Magistrate that she had spoken with Dayton Riddle, a solicitor in Lexington County, who had raised concerns about Lt. Jackson swearing out a warrant in Lexington County. (R. p. 1.).

As a result of the arrest warrants, Lt. Jackson called Kay on November 15th, the day before a scheduled Probate Court hearing, and informed her of the outstanding warrants and that she needed to go to the Lexington County jail the next morning at 5:30

AM. (R. p. 559, l. 5 – p. 561, l. 2; p. 975). Kay went to the jail at the direction of Lt. Jackson at 5:30 AM on the following day (November 16th) and was arrested. As a result of her arrest and incarceration, she was not able to attend the Probate Court hearing. (R. p. 561, l. 25 – p. 562, l. 16). The matter was heard in Probate Court in Kay's absence. (R. p. 564, ll. 15-19).

The jury heard ample evidence of the degradation that Kay, a member of the South Carolina Bar and an officer of the South Carolina Courts, experienced during her 40 hours in the Lexington County Jail. (R. p. 564, l. 19). Kay was booked, photographed and fingerprinted. (R. p. 562, l. 25 – page 563, l. 5). Her bond was set for $50,000, in part due to testimony from Elizabeth Wallace. (R. p. 564, ll. 4-14). Kay did not have the money to post bail. (R. p. 564, ll. 13-17). She was initially given a jumpsuit to wear, but due to the fact it needed to be washed, she had to turn it in after the bond hearing and was given a sheet to wear. (R. p. 563, ll. 6-19). She was forced to spend the night in jail with only a sheet (no bra or panties), sleeping on a mat on the floor with other prisoners. (R. p. 565, l. 4 – p. 567, l. 9). The jury heard ample evidence of the fear, anxiety, humiliation and shock that this caused Kay. (R. p. 565, l. 4 – p. 567, l. 9).

A bond modification hearing was held on November 17, 2011, before the Honorable Knox McMahon, Presiding Judge of Lexington County. (R. p. 569, l. 3 – p. 571, l. 8; p. 974). To get to the hearing, Kay had to walk through the Courthouse in a prison jumpsuit. She suffered the humiliation of seeing faces she had worked with during her long years as a practicing attorney in Lexington County. The jury heard testimony that neither Lt. Jackson nor any of the Wallace children were present at the bond modification hearing. Judge McMahon's Order granting Kay's motion to modify her bond expressed

concerns about the fact that Kay had been arrested in Lexington County on arrest warrants signed by a Richland County Deputy "apparently functioning in Lexington County." His Order raised questions as to the legality of the warrants. (R. p. 570, ll. 2-8). Judge McMahon ordered Kay's release on a $1,000.00 personal recognizance bond on each count. (R. p. 570, ll. 22-25; p. 974).

The charges brought against Kay by Lt. Jackson were ultimately dismissed for lack of probable cause in January of 2012. (R. p. 175, ll. 19-24; p. 576, ll. 16-21; p. 571, ll. 7-23). Based on the lack of evidence and the lack of jurisdiction, the Honorable Gary Morgan, Magistrate for Lexington County, dismissed the criminal warrants in Lexington County. (R. p. 115, ll. 7-10; p. 381, ll. 1-2; p. 383, ll. 1-3).

Sadly, the dismissal of the Lexington County charges for lack of probable cause did not bring this matter to an end. In December 2013, after Kay commenced this action, two additional warrants for "forgery, no dollar amount" were sworn out by the Richland County Sheriff's Department. (R. p. 176, ll. 21-25; p. 177, ll. 1-11; p. 579, l. 15 – p. 581, l. 24; pp. 1016-1017). Howard Hughes, an employee of the Sherriff's Department, prepared these affidavits "upon information and belief." (R. pp. 1016-1017). There are no factual averments in the compliant, nor is there any indication that Mr. Howard Hughes had any firsthand knowledge of any of the claimed allegations against Kay. Kay has never been given any information as to what these charges are or what they involve. Her efforts to get a preliminary hearing as to these charges have been unsuccessful. (R. p. 581, ll. 8-19). These cases have languished for over two years.

As a result of the arrest warrants sworn out by Lt. Jackson, Kay had to report her arrest to the South Carolina Supreme Court. Her license to practice law was suspended and

has remained suspended since that date. (R. p. 475, ll. 12-25; p. 479, ll. 7-10; p. 987). The jury heard evidence of the damages suffered by Kay as a result of her arrest including embarrassment, humiliation, and loss of income. (R. p. 1).

STANDARD OF REVIEW

A writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. Factors to be considered by the Court in determining whether a grant of certiorari should be granted include whether there are (1) novel questions of law; (2) whether there is a dissent in the Court of Appeals' decision; (3) whether the decision is in conflict with a prior decision of the Supreme Court; (4) whether substantial constitutional issues are directly involved; and (5) whether a Federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242 (SCRAP).

ARGUMENT

The Respondent Kay F. Paschal, respectfully submits this Return to Petitioner Leon Lott's Petition for Rehearing with respect to the decision of the South Carolina Court of Appeals. The decision of the Court is sound. Although they are not all encompassing, it should be noted that none of the factors set forth in Rule 242 are present in this case. For the reasons set forth below and for the reasons stated in the Respondent's Brief and the Opinion, the Court of Appeals' decision should stand and the Petition for a Writ of Certiorari should be denied.

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

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

I. THERE WAS AMPLE EVIDENCE TO SUPPORT RESPONDENT/APPELLANT's MALICIOUS PROSECUTION CLAIM

Petitioner argues that the Court's decision erroneously affirmed the denial of his directed verdict and JNOV motions as to Respondent Paschal's cause of action for malicious prosecution. There was ample evidence in this case to support her claim for Malicious Prosecution and the Trial Court's ruling and the Opinion of the Court of Appeals is correct.

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

However the jury heard ample evidence as to both of these elements and the Opinion of this Court correctly affirmed the Lower Court's denial of Sheriff Lott's directed verdict and post-trial motions with respect to malicious prosecution. The jury heard ample evidence from which it could have concluded that facts within the knowledge of Lt. Jackson would have lead a reasonable person to believe the individual arrested was not

guilty of a crime. *Jackson v. City of Abbeville,* 366 S.C.662, 623 S.E. 2d. 656 (Ct. App. 2005). The jury heard conflicting testimony as to Lt. Jackson's investigation, or lack thereof prior to obtaining her arrest warrants. The jury heard conflicting testimony regarding Lt. Jackson's contact with Tim Peterson, the employee with Carolina Mobility who handled the sale of the van. The jury heard evidence as to her "version" of sale of the van. The jury also heard testimony and evidence regarding the Lexington County Sheriff Department's own investigation of the same transaction. The jury heard testimony that these same charges had previously been investigated in Lexington County by Lexington County authorities. (R. p. 203, ll. 6-23). Steve Baumgartner, an 18-year employee of the Lexington County Sherriff's Department, had thoroughly investigated the matter involving the use of the POA to purchase the handicap accessible van and determined that there was no probable cause to charge Ms. Paschal with any wrongdoing or to arrest her. (R. p. 206, l. 18 – p. 207, l. 7; p. 21, l. 8 – p. 221, l. 11; p. 360, l. 23 – p. 361, l. 10; p. 365; p. 979).

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

warrants in Lexington County."

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

Petitioner Lott argues that Ms. Paschal failed to present evidence from which a jury could have determined that the judicial proceedings (in this case the arrest warrants and subsequent criminal charges terminated in her favor). See, *McKenney v. Jack Eckerd Company,* 304 S.C. 21, 402 S.E.2d 887 (1991). However, as recognized by Judge Keesley, and by this Court, there was ample evidence presented for the jury to conclude that the proceedings terminated in Kay's favor. The jury heard ample evidence that the charges brought against Kay by Lt. Jackson were ultimately dismissed for lack of probable cause in January of 2012. (R. p. 175, ll. 19-24; p. 576, ll. 16-21; p. 579, ll. 7-23; p. 835, ll. 20-24; p. 836, ll. 3-10). Based on the lack of evidence and the lack of jurisdiction, the Honorable Gary Morgan, Magistrate for Lexington County, dismissed the criminal warrants in Lexington County. (R. p. 115, ll. 7-10; p. 381, ll. 1-2; p. 383, ll. 1-3).

In denying Petitioner Lott's post-trial motions, the Court disagreed with Sheriff

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

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

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

The jury heard ample evidence from which it could have concluded that Lt. Jackson completely perverted the legal process in this case, resulting in humiliation, embarrassment and damages to Kay. The jury heard evidence that the Petitioner's officers, particularly Lt.

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

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

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

Although this Statute came up on multiple occasions during the Trial, it was not, contrary to the arguments of Petitioner, "the centerpiece or focus of her (Respondent Paschal's) case." Rather, reference to this statute was only one instance or example of Lt. Jackson's improper conduct and activities in Lexington County and interaction with the Lexington County Magistrate that were presented to the jury. Further, the Court's use of

22-5-110 by the Trial Court was proper and did not constitute an error of law. As correctly recognized by the Trial Court, the Petitioner's conduct with respect to this statute was only one example of the "...overzealous, ill-willed, and improper prosecution...conducted by the Defendant (Petitioner) with respect to the Lexington County charges." (R. p. 6).

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

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

The Trial Court's analysis and conclusions were correct and supported by the evidence presented at Trial. The jury heard ample evidence of Lt. Jackson's participation in the preparation and procurement of two arrest warrants in Lexington County for Respondent's arrest. (R. p. 104, ll. 21 - p. 105, l. 6). These were done in the course and scope of her employment by the Richland County Sheriff's Department. These charges had previously been investigated in Lexington County by Lexington County authorities.

Steve Baumgartner, an 18-year employee of the Lexington County Sherriff's Department, had thoroughly investigated the matter involving the use of the POA to purchase the handicap accessible van and determined that there was no probable cause to charge Respondent-Appellant with any wrongdoing or to arrest her. (R. p. 206, l. 18 – p. 207, l. 7; p. 218, l. 8 – p. 221, l. 11; p. 360, l. 23 – p. 361, l. 10; p. 365; p. 979).

The two warrants were sworn to by Lt. Jackson. (R. pp. 978-979; p. 104, ll. 21-23). They were issued solely on information supplied to the issuing Judge (Judge Whittle) by Lt. Jackson. (R. p. 105, ll. 1-10). The jury heard evidence that Lt. Jackson did not know the meaning of foundational words that she used in the affidavit to obtain the arrest warrant. These warrants resulted in Kay turning herself in and being arrested (R. p. 1). There was no proof Kay did anything wrong and the jury heard testimony that Lt. Jackson withheld information from the Lexington County Magistrate when she got the warrant. She did not tell the Lexington County Magistrate that Lexington County had already investigated these charges and found no probable cause. In securing the warrants, Lt. Jackson did tell the Magistrate that she had spoken with Dayton Riddle, the assistant solicitor in Lexington County who had raised concerns about Lt. Jackson swearing out a warrant in Lexington County. (R. p. 267; p. 268; p. 831; p. 832; p. 1). As correctly recognized by Judge Keesley in his Order, Solicitor Riddle pointed out the statute and its possible application to Lt. Jackson obtaining warrants to arrest Kay. However, at no time did Lt. Jackson convey these concerns to the Magistrate in her haste to obtain arrest warrants against Respondent-Appellant Paschal. (R. p. 267, ll. 4-20).

The Petitioner Lott argues that the Trial Court's alleged misinterpretation and misapplication of this code section resulted in the denial of a directed verdict and JNOV

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

CONCLUSION

For these reasons and the reasons discussed in the Respondent's Brief, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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