THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-04-01034
Appellate Case No. 2016-000973

Dr.Gregg Battersby.....Appellant,

v.

Sheriff John Skipper, in his official capacity .....Respondent.

FINAL BRIEF OF RESPONDENT SHERIFF JOHN SKIPPER

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STATEMENT OF THE CASE

This appeal follows the Circuit Court's order granting Respondent Sheriff John Skipper's Motion for Summary Judgment on April 7, 2016.

Appellant is a chiropractor who practices out of his home. Appellant originally initiated this action on May 1, 2015 alleging claims against Respondent for malicious prosecution, abuse of process, and false arrest and/or imprisonment arising out of his arrest on August 2, 2013 for two counts of indecent exposure. Respondent filed an answer to Appellant's complaint on June 3, 2015.

Appellant's arrest arose out of two separate incidents involving Appellant which were reported to the Anderson County Sheriff's Office by two of Appellant's former female patients named Carrie Neal and Jan Morton.[1]

Appellant was originally represented by Donald T. Smith, Esquire of the Anderson County Bar. Mr. Smith was relieved as counsel via order filed November 10, 2015. Appellant has proceeded *pro se* for the remainder of the case.

Respondent filed a Motion for Summary Judgment on December 22, 2015 which was set for a hearing on January 25, 2016. Counsel for Respondent made oral arguments at the hearing and Appellant also made oral arguments which were considered by the court. The Circuit Court granted Respondent's Motion for Summary Judgment via Form 4 order filed on January 27, 2016, directing counsel for Respondent to prepare a proposed order for the court's review. The court's order granting Respondent's Motion for Summary Judgment was filed on April 8, 2016. The Notice of Appeal was served by Appellant on May 5, 2016.

[1] Jan Morton is also known as "Jan Morton Gantner."

STATEMENT OF FACTS

As set forth above, the Appellant is a chiropractor who performs chiropractic services out of his home in Anderson County, South Carolina. (R. p. 14).

On July 8, 2013, one of Appellant's patients named Jan Morton went to the Anderson County Sheriff's Office to report that the Appellant exposed himself to her. (R. p. 48 and R. pp. 78-80). She met with Deputy Patrick Marter, who completed an incident report summarizing the information provided by Ms. Morton. (R. p. 48-49). The incident report states:

> On 7-8-13 Deputy Marter received a report of sexual indecent exposure. I spoke with the victim whom advised that while arriving at the office which is also Battersby's residence he had answered the door in a men's robe. He asked her in and disappeared for a few minutes. Upon returning he was still in his robe, but had her get onto the exam table as he started to do chiropractic adjustments in her neck area. He then used a mechanical massager to work upon her neck area. After completing this he then asked her to move to the other table and she lied face down and he began to use the same item to massage her lower extremities. She stated this was not normal and felt that it was inappropriate as he was moving lower towards her bottom area and he was way too close to her while doing this. She stated that she felt very uncomfortable and wanted to leave the office. As the victim got up to leave, Battersby had dropped his robe to the floor and was very close to her with a fully erect penis. She felt like if she did not leave he may try and assault her. There was no explanation for his behavior nor did he attempt any sexual contact of her at that moment. She quickly left the location without further incident. She further advised that the subject has been calling her over the last three weeks attempting to get her back in the office[,] so far she had declined and won't return.

(R. p. 49 and R. pp. 78-80). Shortly thereafter, Investigator Stanley Ashley with the Anderson County Sheriff's Office met with Ms. Morton to discuss her allegations. (R. p. 49). During that meeting, of which an audio recording was made, Ms. Morton went over the facts:

> Ms. Morton: [. . .] He came to the door. He had a towel on.
> Mr. Ashley: He had a towel on?
> Ms. Morton: He had a towel, yes, sir. It was like a brownish, reddish color.
> [. . .]
> And he did that, and then he put this thing on me that vibrates, which I've had that done while I was on vacation. First time I had ever had it done, as a matter of fact, was at the beach. When I had it done at the beach, they set it up here and vibrated. He went across my upper

> back a little bit, but he mostly focused on buttocks and kind of where my legs meet my butt cheeks, that area, and I won't say lower back but that area. That's when I started getting creeped out. I'm laying face down. And then after he gets done with that—because I had on a shirt and it comes up and it ties. So the back was exposed, from here up I mean. After that vibrating thing, I feel something on my back, and it doesn't feel like the normal massage—he's never done this to me before, but it didn't [feel] like what I got at the beach just about every day. So I go to look up to see what he's doing, and that's when I noticed that he has nothing on and he's standing there with an erection and—
>
> Mr. Ashley: So he's buck solid—
>
> Ms. Morton: Completely. [. . .].

(R. pp. 49-50; R. p. 83 [p. "57"], lines 18-22; and, R. p. 84 [p. "61"], line 12 – [p. "62"], line 10).

Shortly after this interview, Carrie Neal reported similar behavior by the Appellant. On July 25, 2013, Carrie Neal met with Investigator Stanley Ashley, who prepared an Incident Report which stated:

> The listed victim did report to this R/O that . . . [on May 23, 2013], the subject did expose his genitalia without consent or request of the victim. The victim was a patient of the subject's chiropractic practice. The offense did occur in the office/therapy area. The subject does also reside at this location.

(R. p. 50 and R. pp. 85-87). Based on the information presented during the course of his investigation, Investigator Ashley completed Affidavits in support of Arrest Warrants. In Arrest Warrant 2013A0410900191, Investigator Ashley stated that "on June 1, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to victim Jan G. Morton at 7800 Hwy. 81S, a public place or property within view of a street or highway." (R. p. 50 and R. pp. 88-89). In Arrest Warrant 2013A0410100898, Mr. Ashley stated that "on May 23, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to Carrie Neal at 7800 Hwy 81 S, a residence and chiropractic business open to the public." (R. p. 50 and R. pp. 90-91). The Warrants were presented to the

Honorable Samuel Lollis and The Honorable William Sharp, respectively, each of whom found probable cause to arrest the Appellant for the crime of indecent exposure. (R. p. 2).

Appellant was arrested on August 2, 2013 and retained the services of Sarah Drawdy, Esquire, to represent him. (R. p. 3). On August 30, 2013, Appellant participated in a preliminary hearing. (R. p. 3). At the hearing, the State presented the testimony of Stanley Ashley, and Ms. Drawdy cross-examined him. (R. p. 3). At the conclusion of the hearing, the court determined that probable cause existed to arrest Appellant and that the charges would go forward. (R. p. 3). The cases were then presented to the grand jury, who returned true bill indictments on November 19, 2013 on both charges (the Jan Morton charge was assigned Case Number 2013-GS-04-02177 and the Carrie Neal charge was assigned case number 2013-GS-04-02178). (R. p. 3). On February 28, 2014, the Appellant, through his counsel, filed a Motion to Compel the production of the audio recording of Investigator Ashley's interview with Jan Morton. (R. p. 3). The recording was produced "a short time later." (R. p. 19). Approximately two months later, the 10th Circuit Solicitor's Office decided not to pursue the case, and it was *nolle prossed.* (R. p. 3).

During the pendency of the criminal charges, the South Carolina Board of Chiropractic Examiners moved to suspend Appellant's license to practice chiropractic medicine. (R. p. 3). A hearing was conducted on October 30, 2013, and during her examination of one of the members of the Board, Appellant's attorney conceded that the Anderson County Sheriff's Office had probable cause to bring charges against Appellant:

> And all they have are two statements from two individual women. And I submit to you, Dr. Banks, if you go out of this room and are alone with someone, they can then go to law enforcement and give a statement. <u>That statement is probable cause for a warrant</u>.

(R. p. 51 and R. p. 94, lines 15-21).

Additionally, in later pleadings filed with the Circuit Court, Appellant again maintained that the Anderson County Sheriff's Office had probable cause to make the arrest. In early 2015, Appellant filed suit against Allstate Insurance Company and attorney Kirk Moorhead, Esquire. (R. p. 52 and R. pp. 95-105). On March 31, 2015, Appellant filed a Second Amended Complaint in that case, which bears Case Number 2015-CP-[04]-00667. (R. p. 52 and R. pp. 95-105). In his Second Amended Complaint, Appellant alleged that Mr. Moorhead instructed Jan Morton and Carrie Neal to file complaints against Appellant with the Anderson County Sheriff's Office. (R. p. 52 and R. p. 97). Further, Appellant specifically pled in that action that "[t]he [Anderson County Sheriff's Office] relied on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement to be truthful and had no knowledge of its falsity" and that "[t]he [Anderson County Sheriff's Office] had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement." (R. p. 52 and R. p. 98). (emphasis added).

Additionally, in a separate action filed by Appellant styled *Battersby v. Carew,* 2014 U.S. Dist. LEXIS 119908 (D.S.C., August 28, 2014); *affirmed*, 601 Fed. Appx. 225 (4th Cir. 2015)[2] in which summary judgment was granted in favor of the Defendants, both Jan Morton and Carrie Neal provided sworn deposition testimony in which they both again confirmed that the Appellant exposed himself to them.

In her deposition, Ms. Morton testified as follows:

A. I actually sat up or turned to sit up.
Q. Turned toward him?
A. Turned to the right, yes.

[2] In that action, the Appellant filed suit against 10 members of the South Carolina State Board of Chiropractic Examiners alleging that these individuals violated his due process rights under the Fourteenth Amendment by temporarily suspending his license to practice chiropractic pending his evaluation by a physician to determine whether he was under a physical or mental disability that would make his further practice a danger to the public. Summary judgment was entered on behalf of the Defendants in that action and affirmed on appeal by the Fourth Circuit.

Q. And then what happened?
A. And that's when I saw that he had no longer had the towel on.
Q. Did you see his penis?
A. Yes.
Q. Was it erect?
A. Yes.
Q. How close was he to you?
A. Standing right by me.

(R. pp. 52-53 and R. p. 108 [p. "95"], line 23 – R. p. 109 [p. "96"], line 9).

In her deposition, Ms. Neal was asked about a trip she made to Appellant's office to retrieve an itemized bill for the chiropractic treatment that she had received and testified as follows:

Q. What did you have to see before Dr. Battersby would be paid?
A. Well, I -- there was something -- I mean would you like -- do you want me to tell you what happened?
Q. Certainly.
A. Okay. I was released from his care, and I was -- with this automobile accident, I was seeing several doctors. I had been to the hospital in an ambulance, and I was told I need to see a chiropractor, which is when I went to Dr. Battersby.
[. . .]
He said he had made a copy, and that I could come by at any time. I did, I went to his house, I parked where I always parked, went to the back door, which is where I always had and seen other patients go. He answered the -- the door is -- his screen door, the top part is screen, and the bottom part is not. It's whatever -- you can't see through it, but he did not have a shirt on when I was walking up the stairs. And I said, "Hey, I'm here to get that itemized bill," and he said, "Okay, yeah. Let me go grab that for you. Come on in."
Well, I opened the door, stood in the laundry room, which is right there when you first walk into his home, and when he came back in, he was completely naked and holding the bill in between us.

(R. p. 168, lines 15-25 and R. p. 169, lines 2-17).

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP." *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Pursuant to Rule 56(c), summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Likewise, the appellate court must view "the evidence and all reasonable inferences . . . in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002).

However, the evidence presented by the party opposing a motion for summary judgment "must do more than simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial. Where a verdict is not reasonably possible under the facts presented, summary judgment is proper." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (internal quotation marks and citations omitted). "One of the purposes of summary judgment is to determine whether the parties can provide evidentiary support for their version of the facts. If a party has credible evidence for its position, it must make the existence of such evidence known [because] [s]ummary judgment cannot be defeated by the vague hope that something may turn up at trial." *E.P. Hinkel & Co. v. Manhattan Co.*, 506 F.2d 201, 205 (D.C. Cir. 1974).

"The admission of evidence is within the trial judge's discretion and his decision will not be reversed absent an abuse of discretion." *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005) (internal citations omitted).

"An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l Med. Ctr.*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citations omitted). Furthermore, in order "[t]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice . . ." *Id.* (citations omitted).

ARGUMENTS

I. THE CIRCUIT COURT CORRECTLY GRANTED RESPONDENT SHERIFF JOHN SKIPPER'S MOTION FOR SUMMARY JUDGMENT AS TO APPELLANT'S CLAIMS FOR MALICIOUS PROSECUTION AND FALSE ARREST/IMPRISONMENT AS NO GENUINE ISSUES OF MATERIAL FACT EXIST AS TO WHETHER THERE WAS LEGALLY SUFFICIENT PROBABLE CAUSE FOR APPELLANT'S ARREST FOR THE CRIME OF INDECENT EXPOSURE.

The Circuit Court did not abuse its discretion by finding that probable cause existed for Appellant's arrest for the crime of indecent exposure.

A. Malicious Prosecution

> To maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.
>
> An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause.
>
> Malice is defined as the deliberate[,] intentional doing of an act without just cause or excuse. Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.
>
> Probable cause in this context does not turn upon the plaintiff's guilt or innocence, but rather upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged.
>
> Where a plaintiff bases the claim on an opponent's institution of civil causes of action, probable cause exists if the facts and circumstances would lead a person of ordinary intelligence to believe that the plaintiff committed one or more of the acts alleged in the opponent's complaint. (internal citations omitted).

Pallares v. Seinar, 407 S.C. 359, 366-367, 756 S.E.2d 128, 131 (2014) (internal citations omitted).

B. False Imprisonment

> The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.
>
> The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.

McBride v. Sch. Dist. of Greenville County, 389 S.C. 546, 567, 698 S.E.2d 845, 856 (Ct.App. 2010) (internal citations omitted).

"The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise." *Horton v. City of Columbia*, 408 S.C. 27, 35, 757 S.E.2d 537, 541 (Ct.App. 2014) (internal citations omitted).

"South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution." *Kinton v. Mobile Home Indus., Inc.*, 274 S.C. 179, 182, 262 S.E.2d 727, 728 (1980).

"A facially valid warrant provides the probable cause necessary to comport with constitutional requirements." *Anderson v. State AG of S.C.*, 2008 U.S. Dist. LEXIS 116083 at *8 (D.S.C. August 19, 2008).

More importantly, a witness statement serves as affirmative evidence of probable cause. *McBride v. Sch. Dist. of Greenville County*, 389 S.C. at 546. In *McBride*, a high school teacher sued the School District of Greenville County and her school principal arising out of the teacher's termination from her employment, alleging claims for breach of contract, wrongful discharge,

defamation of character, abuse of process, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligence, negligence per se, and gross negligence.

Specifically, in regards to McBride's malicious prosecution claim, this Court emphasized:

> In McBride[']s case, the grand jury's true bill of the indictment against her for contributing to the delinquency of a minor is prima facie evidence of probable cause as to that charge. Further, the information in several witness statements supports a finding that the sheriffs department had probable cause to pursue both the charge for contributing to the delinquency of a minor and the charge for enticing an enrolled child from attendance in school. Therefore, the circuit court properly directed a verdict for the District on McBride's malicious prosecution claim.

Id. at 567.

In its analysis of McBride's false imprisonment claim, this Court emphasized:

> Here, McBride has failed to show a lack of probable cause for her arrest. The information in several witness statements supports a finding that the sheriffs department had probable cause to arrest McBride for the offenses of contributing to the delinquency of a minor and enticing an enrolled child from attendance in school.

Id. at 567-568.

When viewed as a whole, the evidence in this case yields but one conclusion as to whether or not there was probable cause for Appellant's arrest, and the conclusion is clear that there was overwhelming evidence of probable cause for Appellant's arrest. "[The question of whether probable cause exists . . . **may be decided as a matter of law when the evidence yields but one conclusion**." *Guider v. Churpeyes, Inc.*, 370 S.C. 424, 431, 635 S.E.2d 562, 566 (Ct.App. 2006) (internal citations omitted); *See also Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995) (holding that when overwhelming evidence exists in support of a motion for summary judgment based upon the statute of limitations, the motion may be granted).

Respondent first determined that probable cause existed based on the direct statements of the victims, Carrie Neal and Jan Morton. As set forth above, a witness statement is sufficient to

establish probable cause. *McBride,* 389 S.C. at 567. Moreover, counsel for the Appellant at his administrative hearing expressly conceded that the statement of the victims constituted probable cause for his arrest. (R. p. 51 and R. p. 94, lines 15-21). Furthermore, in related litigation, Appellant specifically pled that the related defendants "had every right to rely on" the victim's statement and "had no knowledge of its [alleged] falsity." (R. p. 52 and R. p. 98). And, as recently as June 2014, even after the criminal action was *nolle prossed*, Jan Morton and Carrie Neal both maintained, as they have all along, that Appellant exposed himself to them. (R. pp. 52-53; R. p. 108 [p. "95"], line 23 – R. p. 109 [p. "96"], line 9; R. p. 168, lines 15-25; and, R. p. 169, lines 2-17).

Most importantly, in his initial brief, Appellant concedes that his counsel admitted during his administrative hearing that "**there was probable cause to arrest [him] on the incident report of each woman**." (Appellant's Initial Brief p. 8). Additionally, as the Circuit Court noted, the existence of true bill indictments issued by the Anderson County Grand Jury also supports a finding of probable cause in this case as a matter of law. *Kinton*, 274 S.C. at 179. Thus, the facts and circumstances within Respondent's knowledge were overwhelmingly sufficient to warrant a prudent person to believe that Appellant had committed a criminal offense.

As the Circuit Court also noted, Appellant's prior conduct on two separate occasions, once in case number 2015-CP-04-00667 styled *Battersby v. Moorhead*, et al., in addition to Appellant's October 13, 2013 hearing in front of the South Carolina Board of Chiropractic Examiners, at a minimum, supports a finding of judicial estoppel. (R. p. 8); *See also Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004) ("Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. The purpose of the doctrine is to ensure the

integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary.").

Furthermore, Respondent obtained facially valid arrest warrants and there is no evidence as suggested by Appellant to support the notion that Respondent or Respondent's deputies, deliberately or with a reckless disregard for the truth, made material false statements in the affidavits or omitted material facts from the affidavits with the intent to make, or with reckless disregard of whether they thereby made, the affidavits misleading. *Anderson*, 2008 U.S. Dist. LEXIS 116083 at *8 (holding that "[a] facially valid warrant provides the probable cause necessary to comport with constitutional requirements.").

The affidavit used in support of the Morton Arrest Warrant provided:

> I further state that there is probable cause to believe that the defendant [Gregg Newton Battersby] did commit the crime [of indecent exposure] and that probable cause is based on the following facts:
>
> That on June 1, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to victim Jan G. Morton at 7800 Hwy. 81S, a public place or property within view of a street or highway.

(R. p. 57 and R. pp. 88-89). This is the exact information that was provided by Jan Morton when she first contacted the Anderson County Sheriff's Office; it is the exact information that was provided in Ms. Morton's recorded statement taken after her initial report, and it is the exact information that Ms. Morton provided in her deposition taken a year after the warrant was issued.

The affidavit used in support of the Neal Arrest Warrant Provided:

> I further state that there is probable cause to believe that the defendant [Gregg Newton Battersby] did commit the crime [of indecent exposure] and that probable cause is based on the following facts:
>
> That on May 23, 2013 in the county of Anderson, one Gregg Newton Battersby did willfully and maliciously expose his private parts to Carrie Neal at 7800 Hwy 81 S, a residence and chiropractic business open to the public.

(R. p. 57 and R. pp. 90-91). This is the same information that Ms. Neal provided when she first contacted the Anderson County Sheriff's Office, and it is the exact information she confirmed in her deposition on June 3, 2014, more than one year after the arrest warrant was issued. (R. p. 168, lines 15-25 and R. p. 169, lines 2-17). Thus, the only evidence that exists is that the officers included the material allegations of the victims, Jan Morton and Carrie Neal, in the affidavits and did not provide any misleading information or omit any material facts.

Appellant's conclusory allegations that Detectives Ashley and Hendrix intentionally withheld the audio statement of Ms. Morton is also totally without merit as Appellant's attorney had an opportunity to cross examine each detective at the preliminary hearing, and the court still determined that probable cause existed. "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-517, 445 S.E.2d 651, 655 (Ct.App. 1994); "[U]ltimate or conclusory facts and conclusions of law, as well as statements made on ... information and belief, cannot be utilized on a summary judgment motion." *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003). Additionally, a review of Ms. Morton's audio statement further confirms the existence of probable cause for Appellant's arrest, as Ms. Morton expressly stated that Appellant exposed himself to her. (R. p. 83 [p. "57"], lines 18-22 and R. p. 84 [p. "61"], line 12 – [p. "62"], line 10). Thus, Appellants' argument that Defendants intentionally withheld this statement from him is completely without merit, as it does not contain any exculpatory information whatsoever. (Appellant's Initial Brief p. 5-6).

Appellant's argument that that no probable cause existed because the initial incident report created by Officer Patrick Marter indicates that the Appellant was wearing a robe at the time of the alleged exposure, whereas the actual recorded interview given by Ms. Morton indicates that

the Appellant was wearing a towel, or what room she was in is also wholly without merit. (Appellant's Initial Brief p. 2-3). As discussed above, Deputy Patrick Marter first met with Jan Morton. As she did in her recorded interview, Ms. Morton reported that the Appellant indecently exposed himself to her while she was receiving chiropractic care from the Appellant at his home. The information was then written in a supplementary report, which Officer Marter prepared. In other words, this was not a written statement provided by Ms. Morton—rather, it was Officer Marter's 10 line summary of his interview with Ms. Morton. After the initial report was filed, the case was turned over to an investigator, Stan Ashley, who personally interviewed Ms. Morton. During this interview, which was recorded, Ms. Morton provided a full account of her interaction with the Appellant. Furthermore, in its order, the Circuit Court emphasized that this issue "would not affect any reasonable officer's determination that the crime of indecent exposure had been committed." (R. p. 8).

Similarly, Appellant's argument that no probable cause existed because members of the Anderson County Sheriff's Office changed Ms. Neal's story to fit the crime of indecent exposure is without merit. (Appellant's Initial Brief p. 4). As mentioned previously, the incident report clearly alleged that Appellant exposed his genitalia to Ms. Neal. Again, this information was then written in a supplementary report, which investigator Stan Ashley prepared. Again, these statements were not provided by Ms. Neal-rather, it was investigator Ashley's summary of his interview with Ms. Neal.

Moreover, and most importantly, the key factors leading to Defendant's good faith belief that a crime had been committed were Ms. Morton's and Ms. Neal's statements that the Appellant exposed himself to them. Whether Appellant was wearing a robe or a towel (Morton report), or which room Appellant was in when he exposed himself (Neal report), would not affect any

reasonable officer's determination that the crime of indecent exposure had been committed. Indeed, such a fact is wholly immaterial to the basis of the underlying charge. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (holding that a fact is material if proof of its existence or non-existence would affect disposition of the case under applicable law). Thus, even if Ms. Morton or Ms. Neal made conflicting statements about what the Appellant was wearing immediately prior to him exposing himself, or what room he was in when he exposed himself (which they did not), the alleged omission of this fact would not support a claim for malicious prosecution or false arrest/imprisonment. Were it otherwise, an officer would be charged with delving into the minutiae of every criminal charge before he or she could be comfortable in drafting an affidavit in support of an arrest warrant.

Thus, for the reasons set forth above, the Circuit Court did not abuse its discretion in finding that probable cause existed for Appellant's arrest.

II. THE CIRCUIT COURT CORRECTLY GRANTED RESPONDENT SHERIFF JOHN SKIPPER'S MOTION FOR SUMMARY JUDGMENT AS TO APPELLANT'S CLAIMS FOR ABUSE OF PROCESS AS NO GENUINE ISSUES OF MATERIAL FACT EXIST AS TO WHETHER THERE WAS LEGALLY SUFFICIENT PROBABLE CAUSE FOR APPELLANT'S ARREST AND RESPONDENT'S CONDUCT DID NOT AMOUNT TO AN ABUSE OF PROCESS.

The Circuit Court did not abuse its discretion by finding that the Respondent's conduct did not amount to an abuse of process as legally sufficient probable cause existed for Appellant's arrest and Respondent's conduct did not amount to an abuse of process.

In South Carolina, "[t]he tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *McBride*, 389 S.C. at 564.

> Indeed, the essence of the tort of abuse of process centers on events occurring outside of the process, namely: 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. There is, in other words, 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, which constitutes the tort.

Swicegood v. Lott, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (Ct.App. 2008).

Appellant's conclusory allegations that Detectives Ashley and Hendrix had ulterior motives to arrest him are without merit. As mentioned previously: 1) Respondent's office obtained statements from two victims (Carrie Neal and Jan Morton) indicating that Appellant had exposed himself to them; 2) Respondent's deputies obtained arrest warrants issued by two different Anderson County Magistrates, both of whom found that probable cause existed to arrest Appellant; 3) a preliminary hearing was held after Appellant's arrest, during which Appellant's counsel was allowed to cross-examine witnesses, and after which, the court found that probable cause existed for Appellant's arrest; and 4) true bill indictments were issued by a grand jury. For all these reasons, Respondent had sufficient probable cause to arrest Appellant and did not engage in any improper conduct during the proceedings. Moreover, nothing Respondent did could be viewed as any form of extortion as Respondent was merely acting on the reports of two victims and simply performing his official duties as the chief law enforcement officer of the Anderson County Sheriff's Office. Finally, there is no evidence that suggests that Appellant's arrest was supported by an ulterior purpose, other than to enforce the law against indecent exposure.

Additionally, Appellant readily admitted in this proceeding that his counsel conceded that there was probable cause for his arrest during the course of his administrative proceeding. (Appellant's Initial Brief p. 8). In fact, at his administrative hearing, counsel for the Appellant expressly conceded that the statement of the victims constituted probable cause for his arrest. (R. p. 51 and R. p. 94, lines 15-21). Furthermore, in related litigation, Appellant specifically pled that the related defendants "had every right to rely on" the victim's statement and "had no knowledge

of its [alleged] falsity." (R. p. 52 and R. p. 98). And, as recently as June 2014, even after the criminal action was *nolle prossed*, Jan Morton and Carrie Neal both maintained, as they have all along, that Appellant exposed himself to them. (R. pp. 52-53; R. p. 108 [p."95"], line 23 – [p. "96"], line 9; R. p. 168, lines 15-25; and, R. p. 169, lines 2-17). Appellant now presumes to allege conclusory allegations regarding the conduct of Respondent's deputies, but as discussed above, Appellant has already conceded not once, but three times now, that his arrest was supported by probable cause. (Appellant's Initial Brief p. 8; R. p. 94; R. p. 98; and, R. p. 8); *See also Shupe v. Settle*, 315 S.C. at 517 (holding that "ultimate or conclusory facts and conclusions of law, as well as statements made on ... information and belief, cannot be utilized on a summary judgment motion."). Thus, Respondent's conduct does not satisfy the elements of the tort of abuse of process as there is simply no evidence of any ulterior purpose other than that of enforcing the law against indecent exposure.

For all of these reasons, the Circuit Court did not abuse its discretion in holding that the Respondent's conduct amounted to an abuse of process.

III. THE CIRCUIT COURT CORRECTLY GRANTED RESPONDENT SHERIFF JOHN SKIPPER IMMUNITY UNDER THE SOUTH CAROLINA TORT CLAIMS ACT AS LEGALLY SUFFICIENT PROBABLE CAUSE EXISTED FOR APPELLANT'S ARREST AND RESPONDENT FOLLOWED THE PROPER PROCEDURES IN PURSUING APPELLANT'S ARREST.

The Circuit Court did not abuse its discretion by finding that Respondent is entitled to immunity under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq. (the "Act") as legally sufficient probable cause existed for Appellant's arrest and Respondent followed the proper procedures in pursuing Appellant's arrest.

S.C. Code Ann. § 15-78-20 provides in pertinent part:

> The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty,

> immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.

Id.

The Act also provides:

> The governmental entity is not liable for a loss resulting from:
>
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
>
> (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
>
> (4) 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;

Id. at § 15-78-60.

"In determining the legislative intent, it is proper to consider the purpose sought to be accomplished." *Arkwright Mills v. Murph*, 219 S.C. 438, 444, 65 S.E.2d 665, 667 (1951).

"In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

This Court has interpreted the Act to be construed in favor of limiting liability on governmental entities for their actions. "The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. The provisions of [the Act] 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." *Flateau v. Harrelson*, 355 S.C. 197, 204, 584 S.E.2d 413,

416 (Ct.App. 2003). S.C. Code Ann. 15-78-70(b) "lifts the immunity normally enjoyed by governmental employees if they act outside the scope of their employment or their actions constitute fraud, malice, an intent to harm, or a crime of moral turpitude." *Id.* at 208.

Additionally, in *McCoy v. City of Columbia*, 929 F. Supp. 2d 541 (D.S.C. 2013), the District Court of South Carolina held that police officers were entitled to immunity under the Act for tort claims arising from an allegedly unlawful arrest pursuant to a city ordinance that was later found to be unconstitutionally vague because the officers had probable cause to arrest based on violation of the ordinance. Specifically, the Court noted that "a plaintiff cannot maintain a claim based on false imprisonment when the plaintiff is arrested by lawful authority (i.e., when the arrest is supported by probable cause)." *Id.* at 567.

A review of the facts in this case reveals that Respondent's office properly handled Appellant's arrest from the initial investigation stage, Appellant's arrest was fully supported by legally sufficient probable cause, and Appellant was given the full benefit of the judicial process. As mentioned previously, Respondent's office determined that probable cause for Appellant's arrest based upon: 1) statements from two victims (Carrie Neal and Jan Morton) indicating that the Appellant had exposed himself to them; 2) Respondent's deputies obtained arrest warrants issued by two Anderson County Magistrates, both of whom found that probable cause existed to arrest Appellant; 3) a preliminary hearing was held after Appellant's arrest, during which Appellant's counsel was allowed to cross-examine witnesses, and after which, the Court found that probable cause existed for Appellant's arrest, and 4) true bill indictments were issued by a grand jury. As mentioned previously, true bill indictments are prima facie evidence of probable cause in a claim for malicious prosecution. *Kinton,* 274 S.C. at 182. Additionally, the District Court of South Carolina has held that facially valid warrants provide the probable cause necessary

to comply with constitutional requirements. *Anderson*, 2008 U.S. Dist. LEXIS 116083 at *8. "To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime." *Dillingham v. U.S.*, 423 U.S. 64, 65, 96 S. Ct. 303, 303 (1975).

Furthermore, as recently as June 2014, even after the criminal action was *nolle prossed*, Jan Morton and Carrie Neal both maintained, as they have all along, that Appellant exposed himself to them. (R. pp. 52-53; R. p. 108 [p. "95"], line 23 – [p. "96"], line 9; R. p. 168, lines 15-25; and, R. p. 169, lines 2-17). All of this information as whole constitutes overwhelming evidence of the existence of legally sufficient probable cause for Appellant's arrest. More importantly, as the Circuit Court emphasized in its order, Respondent "followed the proper procedure in pursuing a charge against [Appellant.]" (R. p. 11).

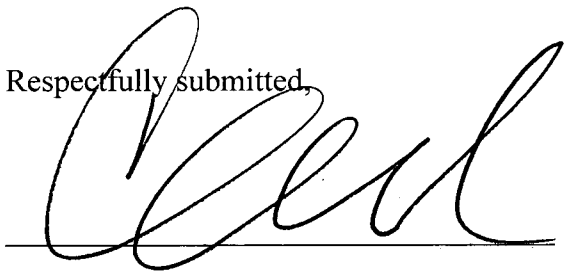
Additionally, Appellant has yet to produce any evidence which suggests that either Ms. Neal or Ms. Morton ever said anything prior to Appellant's arrest which failed to support the charge of indecent exposure as outlined in S.C. Code Ann. § 16-15-130. Thus, under S.C. Code Ann. § 15-78-60(2) – (4), Defendant is entitled to immunity based upon the fact that Defendant was serving lawful process for the institution of judicial proceedings, Appellant's arrest was supported by legally sufficient probable cause, and Respondent followed the proper procedures in pursuing Appellant's arrest. (R. p. 170, lines 21-25). As such, the Circuit Court did not err in holding that Respondent is entitled to immunity under the Act.

CONCLUSION

For the reasons stated above, this Court should affirm the judgment of the Circuit Court. The Circuit Court did not err in holding that probable cause existed for Appellant's arrest, entitling Respondent to summary judgment as to Appellant's claims for malicious prosecution and false arrest. The Circuit Court did not err in holding that Respondent's conduct in this case did not

amount to an abuse of process as legally sufficient probable cause existed for Appellant's arrest, as Respondent was simply acting on the statements of two victims and enforcing the law against the crime of indecent exposure. Finally, the Circuit Court did not err in holding that Respondent is entitled to immunity under the South Carolina Tort Claims Act, as legally sufficient probable cause existed for Appellant's arrest and Respondent followed the proper procedures in pursuing Appellant's arrest. Accordingly, the Circuit Court's decision to grant Respondent Sheriff John Skipper's Motion for Summary Judgment should be affirmed.

Respectfully submitted,



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January 5, 2017
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

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SC Court of Appeals

Case No. 2015-CP-04-01034
Appellate Case No. 2016-000973

Dr. Gregg Battersby.....Appellant,

v.

Sheriff John Skipper, in his official capacity.....Respondent.

CERTFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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