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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2016-000973

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Dr. Gregg Battersby, Appellant,

v.

Sheriff John Skipper, in his official capacity, Respondent.

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FINAL REPLY BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

- 1) DID THE TRIAL COURT ERR IN OPINING THAT APPELLANT WAS ARRESTED WITH PROBABLE CAUSE?
- 2) DID THE TRIAL COURT ERR IN OPINING THAT RESPONDENT'S ACTS DID NOT CONSTITUTE AN ABUSE OF PROCESS?
- 3) DID THE TRIAL COURT ERR IN OPINING THAT THE RESPONDENT HAS IMMUNITY UNDER THE SOUTH CAROLINA TORT CLAIMS ACT?

## ARGUMENTS

### **THE TRIAL COURT ERRED IN OPINING THAT PROBABLE CAUSE EXISTED TO ARREST APPELLANT ON THE ALLEGATIONS OF NEAL AND MORTON.**

The basis of this complaint is what Respondent knew prior to seeking the arrest warrants and his actions in hiding the evidence from the magistrates, solicitor and Appellant that exonerated Appellant. Respondent had two conflicting statements from Jan Morton. Either statement taken by itself would establish probable cause, however, the two conflicting statements taken together would call into question the veracity of her claims. Respondent had one statement from Carrie Neal that failed to support the elements of indecent exposure by stating her alleged incident occurred in the laundry room of Appellant's residence and never stating that Appellant's genitalia was exposed. Neal denied under oath on several occasions that she saw Appellant's genitalia. Respondent went further and changed what Neal said to fit the elements of indecent exposure. It might be added that subsequent to this final order, Neal pled guilty to possession of methamphetamine and was arrested for possession of Methadone and Alprazolam.

According to the law, the only thing relevant in determining the existence of probable cause is what Respondent knew prior to seeking the arrest warrants. Statements of Appellant or Appellant's counsel after the fact are irrelevant. Further compounding Respondent's actions were his hiding the exculpatory audio statements from the magistrate in seeking the arrest warrants and prolonging the prosecution by withholding the exculpatory audio statements from the solicitor, Grand Jury, and Appellant. The magistrate and solicitor were deprived of all the information in the possession of Respondent so they failed to make fully informed decisions. Making fully informed decisions is essential in signing an arrest warrant and seeking an indictment. The solicitor confirmed that the evidence did not establish probable cause by stating there were substantial issues with the facts that legally forced her to dismiss the charges once she was provided with the exculpatory audio statements by Respondent nine months after Appellant's arrest. In addition, Deputy Patrick Marter, the deputy Morton filed her incident report with, testified that Morton's statements were contradictory and that contradictory statements do not establish probable cause. The only evidence was the contradictory statements of Neal and Morton. Respondent cannot claim innocence when they are responsible for the magistrate, Grand Jury, and solicitor making ill-informed decisions.

**RESPONDENT ABUSED LEGAL PROCESS BY ARRESTING APPELLANT WITHOUT PROBABLE CAUSE, WITHHOLDING AND TAMPERING WITH EVIDENCE.**

Respondent fully knew that they were seeking an arrest warrant with evidence that lacked probable cause. This is not the legitimate use of the legal process. This exhibited ulterior purpose in Respondent's actions. A reasonable person does not go to this extent.

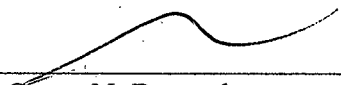
**THE TRIAL COURT ERRED IN GRANTING IMMUNITY UNDER THE SOUTH**

**CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act is the exclusive remedy for wrongs committed by Respondent in his official capacity. It only protects Respondent from liability in his personal or individual capacity. Respondent is being sued in his official capacity. In addition, state law creates liability for Respondent for the misconduct or negligent acts of his deputies under SC Code Ann. § 23-13-10 (2013). Many litigants have successfully sued sheriffs and other state offices in South Carolina as Appellant has cited in his initial brief. If what Respondent asserts is correct, none of these cases would have been successful by the plaintiffs.

**CONCLUSION**

Appellant requests this Court reverse the decision of the trial court dismissing this action.

  
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**CERTIFICATE OF SERVICE**

Appellant served this Final Reply Brief on Respondent's attorney by regular U.S. Mail on January 3, 2017.

  
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Dr. Gregg N. Battersby

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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR, it contains no matter which is irrelevant to the appeal.

January 3, 2017

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