

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5616 (S.C. Ct. App. filed January 16, 2019)

RECEIVED  
APR 30 2019  
S.C. SUPREME COURT

James C. Owens, .....Petitioner,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a  
WQSC Radio, ADC Engineering, Inc., Tyler Flesch,  
and Red Drum Capital Group, LLC, .....Defendants;

of whom ADC Engineering, Inc., is .....Respondent.

REPLY TO RESPONDENT'S RETURN TO  
PETITION FOR A WRIT OF CERTIORARI

John E. Parker  
William F. Barnes, III  
PETERS, MURDAUGH, PARKER, ELTZROTH,  
& DETRICK, P.A.  
101 Mulberry Street East  
Hampton, SC 29924  
Phone: (803) 943-2111  
ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Molly H. Cherry  
Melissa F. Spence  
NEXSEN PRUET, LLC  
205 King Street, Suite 400 (29401)  
P.O. Box 486  
Charleston, SC 29402  
ATTORNEYS FOR RESPONDENT

## INDEX

TABLE OF AUTHORITIES .....	ii
ARGUMENT.....	1
CONCLUSION.....	2

**TABLE OF AUTHORITIES**

**CASES**

Hancock v. Mid-S. Mgmt. Co., Inc.,  
381 S.C. 326, 673 S.E.2d 801, 803 (2009)..... 1

The Petitioner, James C. Owens (“Owens”), submits this brief reply to Respondent, ADC Engineering, Inc.’s (“ADC”) Return to Petition for Writ of Certiorari. ADC misconstrues Owens’ arguments regarding the improper weighing of the evidence by the Court of Appeals. ADC terminated Owens for one of two reasons: (1) Owens was terminated for exercising his constitutional rights that harmed ADC or (2) Owens was terminated for violating ADC’s technology policy that specifically allowed personal use but not if it harmed ADC. ADC claimed it terminated Owens not for exercising his constitutional rights but that ADC terminated him for violating the Technology Policy. The Court of Appeals affirmed the termination based on the Technology Policy. However, the policy allows for “[b]rief or incidental use of office technology for personal, non-business purposes . . . as long as it [was] not excessive or inappropriate, **and** did not result in expense or loss to the company.” (App. p. 1309) (emphasis added). Therefore, the incidental use for personal purposes must not be (1) excessive or inappropriate and must (2) not result in expense or loss to ADC. The Court of Appeals did not hold that Owens’s personal use was “excessive” or “inappropriate”.

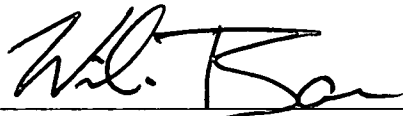
ADC admits in its Return that there is contrary evidence that, when viewed in a light most favorable to Owens, would indicate ADC did not terminate him for violating the Technology Policy: “As indicated in the Court of Appeals’ decision, the **overwhelming evidence before the court** demonstrated that ADC terminated Owens for violating ADC’s technology policy, which resulted in substantial economic harm to ADC.” (Return p. 9) (emphasis added). Owens disputes ADC’s assertion that there is “overwhelming evidence” showing ADC terminated Owens for violating ADC’s technology policy. However, even if ADC is correct, Owens need only present a scintilla of evidence to warrant the reversal of the trial court’s grant of summary judgment. *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (“the non-

moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.”).

The evidence suggests that Owens’s personal use was neither excessive or inappropriate, which are questions of fact for a jury to determine. To reach the conclusion it did, the Court of Appeals weighed the evidence in affirming the trial court’s grant of summary judgment. The Court should grant Owens’s Petition.

Respectfully submitted,

PETERS, MURDAUGH, PARKER,  
ELTZROTH & DETRICK, P.A.



---

John E. Parker  
William F. Barnes, III  
101 Mulberry Street East  
P.O. Box 457  
Hampton, SC 29924  
(803) 943-2111  
jparker@pmped.com  
wbarnes@pmped.com  
ATTORNEYS FOR PETITIONER

April 26, 2019  
Hampton, South Carolina

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5616 (S.C. Ct. App. Filed January 16, 2019)

RECEIVED  
APR 30 2019  
S.C. SUPREME COURT

James C. Owens, ..... Petitioner,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a  
WQSC Radio, ADC Engineering, Inc., Tyler Flesch,  
and Red Drum Capital Group, LLC, ..... Defendants,

of whom ADC Engineering, Inc., is ..... Respondent.

CERTIFICATE OF SERVICE

This is to certify that I, *Megan C. Davis*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within *Reply to Respondent's Return to Petition for a Writ of Certiorari* to:

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk of Court  
Post Office Box 11330  
Columbia, SC 29211

Molly Hughes Cherry, Esquire  
Melissa F. Spence, Esquire  
Nexsen Pruet, L.L.C.  
Post Office Box 486  
Charleston, SC 29402  
*Attorneys for Respondent, ADC Engineering, Inc.*

April 26<sup>th</sup>, 2019  
Hampton, South Carolina

*Megan Davis*  
Megan C. Davis