

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RUSSELL SHANE CARTER  
Court of Common Pleas

**RECEIVED**

John C. Hayes, III, Circuit Court Judge **JAN 29 2020**

**SC Court of Appeals**

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Appellate Case No. 2016-002556  
Circuit Court Case No. 2014-CP-46-1307

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Russell Shane Carter,.....Respondent,

v.

Bruce Bryant,.....Appellant.

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**PETITION FOR REHEARING**

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This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing petitions. Rule 240 governs motions and petitions.

The Court issued its decision on January 15, 2020. See Op. No. 5710. This petition is timely filed under Rule 221(a).

Respondent wishes to preserve the arguments from briefing for further review. In addition to those arguments, Respondents respectfully submits the Court may have overlooked or misapprehended the following points in its decision.

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### **False Arrest**

Carter believes the court misapprehended law on the facial validity of the arrest warrant and the requirement that probable cause be established under oath. The court's affirmance of the trial court's directed verdict was in error. The four corners of the warrant failed to properly allege the facts to support the charge of ABHAN. The court failed to follow the holdings of *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163(Ct. App. 1999) and *Law v. South Carolina Department of Corrections*, 368 S.C. 424, 629 S.E. 2d 642 (2006), in finding the warrant was not supported by sworn testimony.

\*

The court further erred in finding that probable cause was sufficiently alleged in the warrant. The incantation of Deputy Gwinn that "probable cause was based on an investigation" is not sufficient on its face to incorporate by reference information not given under oath. This was an issue for the jury and not the court.

\*

The court misapprehended the law regarding the ability to raise a *Franks v. Delaware*, 438 U.S. 154(1978) challenge to the arrest warrant in the context of a false arrest claim.

\*

### **The Exclusion of the Expert Witness**

The court overlooked the controlling nature of the South Carolina Rules of Evidence, Rule 704, analysis in finding the trial court did not abuse its discretion in excluding Plaintiff's expert. The court erred in affirming the exclusion of a properly qualified expert in law enforcement. The court allowed other testimony regarding the propriety of the investigation and the issue of probable cause in the testimony of Prosecutor Springs indicating that "the arrest was good and the investigation was solid". Any perceived shortcomings in the expert's opinion went to the weight of his testimony, not the admissibility of his testimony.

\*

### **Malicious Prosecution**

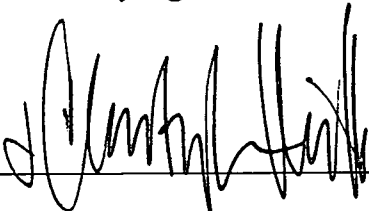
The court misapprehended the law in finding the probable cause was established as a matter of law. The court erred in reversing the trial court and the jury verdict on this claim. Probable cause is historically a jury question in a malicious prosecution action. The facts taken in a light most favorable to Mr. Carter, as prevailing party at trial, allowed the jury to reasonably find the arresting

deputy lacked probable cause to arrest Shane Carter for ABHAN. "When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams; L.L.P.*, 399 S.C. 322, 331-332, 732 S.E.2d 166, 171 (2012). The Court of Appeals erred in finding that the evidence here yielded only one conclusion. The court overlooked evidence in the record to support the jury's verdict and the conclusion that the arresting deputy lacked probable cause to charge Carter with ABHAN.

### CONCLUSION

For the reasons stated above, the Court should grant this petition and issue an opinion affirming the jury's verdict and the denying the Defendant's motion for JNOV.

Respectfully submitted,



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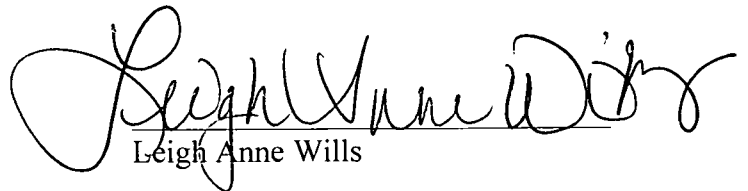
**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the Petition for Rehearing by mailing copies of the same by united States Mail with first class postage prepaid to the following address:

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January 29, 2020

  
Leigh Anne Wills



Chris Mills Law

January 29, 2020  
**HAND DELIVERED**

**RECEIVED**

JAN 29 2020

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

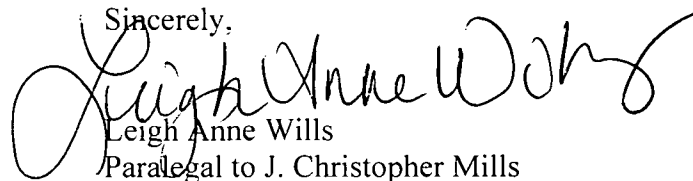
Re: *Russell Shane Carter vs. Bruce Bryant, as Representative for York County Sheriffs Office*  
Case Tracking No.: 2016-002556

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a Petition for Rehearing in reference to the above matter. I have also enclosed a proof of service of this document on counsel for the Appellants and a \$25.00 check for filing this motion. Please return to the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

  
Leigh Anne Wills  
Paralegal to J. Christopher Mills

JCM/law

Enclosures

Cc and enc.: Andrew Lindemann, Esquire  
Robert Garfield, Esquire