

**RECEIVED**

**Oct 23 2020**

**S.C. SUPREME COURT**

The State of South Carolina  
In the Supreme Court

---

Appeal from Horry County  
Court of Common Pleas  
R. Markley Dennis, Jr., Circuit Court Judge

---

Op. No. 5715 (S.C. Ct. App. filed Mar. 11, 2020)  
Appellate Case No. 2020-001273

Christine LeFont, ..... Respondent,

v.

City of Myrtle Beach, ..... Petitioner.

---

**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

---

Ryan P. Compton  
**BAKER COMPTON LAW FIRM, LLC**  
11019 Tournament Blvd., Suite 203  
Murrells Inlet, South Carolina 29576  
t. 843.547.3333 / f. 843.536.9035  
ryan@bakercomptonlawfirm.com

–and–

Stephen L. Goldfinch, Jr.  
Thomas W. Winslow  
**GOLDFINCH WINSLOW, LLC**  
Post Office Box 829  
Murrells Inlet, South Carolina 29576  
t. 843.357.9301 / f. 843.357.9303  
stephen@goldfinchwinslow.com  
tom@goldfinchwinslow.com

**ATTORNEYS FOR RESPONDENT**

**TABLE OF CONTENTS**

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED ..... 1

STATEMENT OF THE CASE ..... 2

STATEMENT OF FACTS..... 3

STANDARD OF REVIEW ..... 4

ARGUMENT..... 5

I. City’s Petition does not present and argue special and important reasons warranting this Court’s review of the Court of Appeals’ decision, and none exist. .... 5

II. The Court of Appeals correctly held that neither barrel of the circuit court’s “two barrel appeal” contained a ground based on subsection (15) of the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-60(15). .... 7

III. LeFont’s status at the time of her fall is a determination left to the jury as the Court of Appeals correctly held. .... 11

    A. Evidence exists yielding more than one inference concerning LeFont’s status. .... 12

    B. The broad unwritten holding inferred by the City misapprehends the Court of Appeals’ correct analysis. .... 13

    C. City concedes LeFont was an invitee/business visitor but became licensee as a matter of law upon entry to parking lot due to exceeding the scope of invitation..... 13

IV. Constructive notice..... 15

V. LeFont’s arguments are preserved for appellate review..... 19

CONCLUSION..... 21

**COUNTER-STATEMENT OF THE QUESTIONS PRESENTED**

1. Whether the City's Petition presents special and important circumstances justifying a discretionary writ of certiorari pursuant to Rule 242(b), SCACR.
2. The Court of Appeals correctly found that S.C. Code Ann. 15-78-60(15) was not one of the "two barrels" on which the City was granted a directed verdict and therefore is not a ruling which could be law of the case.
3. Sufficient evidence existed from which a jury could conclude LeFont was an invitee.
4. Sufficient evidence was presented from which a jury could infer the City had constructive notice.

Pursuant to Rule 242(f), SCACR, Respondent Christine LeFont respectfully submits this Return opposing the Petition for a Writ of Certiorari filed by Petitioner City of Myrtle Beach.

**STATEMENT OF THE CASE**

On January 5, 2015, LeFont filed a civil action against City and the Myrtle Beach Convention Center Hotel Corporation in the Horry County Court of Common Pleas. LeFont alleged a premises liability action against the defendants and sought to recover damages.

The City filed an Answer on March 20, 2015, denying liability and raising affirmative defenses generally alleging, in part, that the action was subject to provisions of the South Carolina Tort Claims Act, S.C. Code §§ 15-78-60 (1), (4), (5), (8), (9), (13), (15), (16), and (20).

Prior to trial, Myrtle Beach Convention Center Hotel Corporation was dismissed by stipulation as a defendant. The City was the sole Defendant which proceeded to jury trial before the Honorable R. Markley Dennis, Jr. on September 6, 2016.

At trial, following the close of the Plaintiff's evidence, the City orally moved for directed verdict. Judge Dennis denied these motions from the bench. Subsequently, following the close of the evidence at trial, the City orally moved for directed verdict, arguing in relevant part the same grounds from its earlier motions. Judge Dennis granted, from the bench, directed verdict to the City ruling that: (1) LeFont was unquestionably a licensee; and (2) there was no

evidence the City had constructive notice. Then, by written Form 4 Order filed September 7, 2016, Judge Dennis ordered verdict for the City.

LeFont timely filed a Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial. The City did not file in opposition to LeFont's Motion. More than seven months later, Judge Dennis denied Plaintiff's Motion for Reconsideration, without oral argument, by Order filed April 27, 2017.

On May 26, 2017, LeFont filed and served her Notice of Appeal of the circuit court's orders and rulings. Following briefing, the Court of Appeals heard oral arguments and subsequently filed a published opinion reversing the circuit court's directed verdict, and remanding for trial. City then filed a Petition for Rehearing. LeFont filed a Return to the City's Petition for Rehearing at the request of the Court of Appeals. Thereafter, the Court of Appeals issued an order denying City's Petition for Rehearing.

City then filed the present Petition before this Court seeking a Writ of Certiorari to review and reverse the decision from the Court of Appeals, and reinstate the circuit court's directed verdict in favor of the City.

#### **STATEMENT OF THE FACTS**

The instant case is a premises liability matter involving a static defect in the paved rear parking lot at the City of Myrtle Beach's Convention Center. On August 13, 2014, Christine LeFont and her husband, John Gambelli, went to the City of Myrtle Beach's Convention Center for a trade show being held there. (Tr. p. 62). They were vendors of a product. (Tr. p. 61, ll. 17-20). As

vendors, LeFont and her husband had paid money in order to be able to be there to present their products. (Tr. p. 320, l. 23 – p. 321, l. 1).

LeFont parked her vehicle in the small parking lot in the rear of the City's convention center. (Tr. p. 65, l. 14 – p. 66, l. 22). She exited her vehicle and walked towards the convention center when she unexpectedly encountered a hole in the parking lot surfacing that her foot dipped into. (Tr. p. 67, ll. 21-22; p. 73, ll. 9-21). The hole was approximately four to six inches in diameter and one and one half inches deep – the thickness of a full layer of asphalt. (Plaintiff's Exhibits 4, 5, 6, and 7; Tr. p. 166, ll. 13-25). Upon her foot dipping into the hole, LeFont stumbled and ultimately fell down onto the parking lot. (Tr. p. 73, l. 23 – p. 74, l. 2). In the fall, LeFont sustained personal injuries, including fractures to both of her arms. (Tr. p. 74, l. 24 – p. 75, l. 2; pp. 80-84).

#### **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. *See generally Ellison v. State*, 382 S.C. 189, 676 S.E.2d 671 (2009); *In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases*, 321 S.C. 563, 564, 471 S.E.2d 454 (1990) (holding that this Court reviews decisions of the court of appeals by way of writ of certiorari only where special reasons justify exercise of that power). In determining whether special reasons for review exist, this Court considers the following five criteria: (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict

with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. *See Haggins v. State*, 377 S.C. 135, 137 n.2, 659 S.E.2d 170, 170 n.2 (2008); Rule 242(b), SCACR. Because the City's Petition does not raise and present an argument on any of the criteria for review as set forth more fully below, the Petition should be denied.

The City's Petition for a Writ of Certiorari otherwise correctly states that the standard of review is that of a directed verdict.

#### ARGUMENT

**I. City's Petition does not present and argue special and important reasons warranting this Court's review of the Court of Appeals' decision, and none exist.**

Rule 242(b), SCACR, sets forth factors considered by this Court in determining whether to review certain issues on certiorari. The City's Petition falls short of presenting let alone arguing what special and important reasons exist in this case to warrant this Court's review. And, in fact, there simply are no special and important reasons that exist.

First, the decision of the three-judge panel in the Court of Appeals was unanimous.

Second, the Court of Appeals' decision does not conflict—directly or indirectly—with any prior decision of this Court. The Court of Appeals' decision simply remedied the circuit court's erroneous directed verdict consistent with this Court's prior premises liability decisions involving: (1)

when invitee/licensee status can be correctly decided as matter of law by a judge rather than by a jury; and (2) evidentiary sufficiency to present a jury question on a defendant's constructive notice of a static, non-foreign substance condition. The Court of Appeals correctly reversed on both points.

Third, this case does not involve a constitutional issue.

Fourth, this case does not involve a novel question of law. The questions of law in this case are common and central to a typical premises liability claim: whether evidence exists from which a jury could reasonably infer LeFont was an invitee or licensee; and whether evidence exists from which a jury could reasonably infer City should have known of the existence of a six inch diameter full-thickness hole through asphalt surfacing of City's own parking lot and where City's own employees park. Those questions are hardly novel. This case then presents quintessential questions of fact. A jury must decide those questions. The Court of Appeals correctly reversed because a jury should decide those questions based on the evidence. Fifth, and for the same reasons just stated, the Court of Appeals' decision does not create confusion in the law.

The Court of Appeals' decision is correct. There is simply no need for this Court to speak here and, specifically, there is no conflict in authority for this Court to resolve. Indeed, no "special and important reasons" are presented. *See* Rule 242(b), SCACR ("writ of certiorari is ***not a matter of right*** . . . and will be ***granted only where there are special and important reasons.***") (emphasis added). Based on this and the arguments below, there is simply no

need for this Court to review the decision of the Court of Appeals. Accordingly, this Court should deny the City's Petition.

**II. The Court of Appeals correctly held that neither barrel of the circuit court's "two barrel appeal" contained a ground based on subsection (15) of the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-60(15).**

City contends the circuit court granted directed verdict on multiple grounds, and one of the grounds was specifically subsection (15) of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(15). Obviously, whether the circuit court directed verdict premised upon S.C. Code § 15-78-60(15) as a ground therefor is an issue on which the parties have flatly disagreed. (*See* Opinion, p. 3). City's argument concerning the SCTCA is based on a false premise: that the circuit court did in fact grant directed verdict based on subsection (15) as a ground therefor. City's argument confuses a court ruling with an in-court discussion. The circuit court's stated ruling and stated grounds on which that ruling is based is what matters—not a discussion.

City's argument requires a tortured reading of the circuit court record and is incompatible with the circuit court judge's "two barrel appeal" ruling. The colloquy at trial concluded with the circuit court judge orally stating his ruling, stating to LeFont's counsel: (1) the specific number of grounds on which directed verdict was being granted; and (2) the specific grounds for granting directed verdict. The circuit court judge orally stated said ruling using specific terms that are hard to ignore and in a format leaving no question how many grounds on which he ruled, stating specifically to LeFont's counsel: "**creates a**

**twofold—a two barrel appeal if you want to take it . . .** the Plaintiff met the definition of a licensee, not an invitee . . . But primarily I don't find that there's any evidence that would establish constructive notice . . .” Again, the circuit court judge ruled directed verdict was granted based on two barrels—not three. Neither of the stated two barrels were loaded with a ruling on the South Carolina Tort Claims Act let alone specifically subsection (15) thereof and the circuit court judge never discussed a “third barrel.”

Additionally, this critical distinction between two barrels and three barrels cannot be overstated because City says it moved for directed verdict on three grounds—not two grounds—that:

- (1) [LeFont] had not presented sufficient evidence to establish liability under the SCTCA, specifically S.C. Code Ann. § 15-78-60(15);
- (2) [LeFont] failed to presented evidence the City either created the hole ... or had actual or constructive notice of it as required in a premises liability case; and
- (3) evidence supported as a matter of law that [LeFont] was, at best, a licensee at the time of the accident.

(Pet. 4, City’s Statement of the Case) (format and underlining added for emphasis). Juxtaposing the circuit court’s two-barrel directed verdict ruling with City’s three-grounded motion makes painstakingly clear only one conclusion: City’s directed verdict motion was not granted on a SCTCA ground<sup>1</sup>, but was granted on the other two grounds. Moreover, the licensee

---

<sup>1</sup> City did not file a motion to alter or amend, or seek reconsideration the directed verdict on this ground. City did not raise and argue this as an

ground and the constructive notice ground were both argued by City, and were then both ruled upon by the circuit court as the first barrel and second barrel of the “two-barrel appeal.” (“licensee, not an invitee . . . I don’t find that there’s any evidence that would establish constructive notice”). The Court of Appeals similarly reached this conclusion. The Court of Appeals correctly held the circuit court’s directed verdict ruling was not grounded on SCTCA, but instead grounded on the two-barrels stated by the circuit court judge. It needs no review in this Court. City’s Petition for a Writ of Certiorari should be denied.

Of course, because the SCTCA was not ruled as ground on which the circuit court’s two-barrel directed verdict ruling was based, it cannot be the law of the case. City argues it is—incorrectly presuming the SCTCA subsection (15) is a ground on which the circuit court granted directed verdict. City is wrong.

Acceptance of City’s argument advances an absurd result. First, accepting City’s argument would require that every in-court discussion or conversation be appealed from in addition to every stated ruling or stated ground upon which that ruling was based. That is absurd. Second, accepting City’s argument would force counsel to appeal *dicta* to preclude the law of the case doctrine. That result is squarely at odds with longstanding South Carolina case law. *See White’s Mill Colony, Inc. v. Williams*, 363 S.C. 117, 609 S.E.2d

---

additional sustaining ground in briefing before the Court of Appeals. City did not raise and argue this as an additional sustaining ground in its Petition for Rehearing before the Court of Appeals.

811 (Ct. App. 2005) (finding it elementary that the law of the case doctrine does not apply to *dicta*); *see also Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) (stating “doctrine of the law of the case is not applicable to a statement by the court which does not constitute a binding adjudication.”).

The Court of Appeals reviewed the record and correctly held the circuit court did not grant directed verdict to City based or grounded upon a SCTCA issue, including S.C. Code § 15-78-60(15). When parties and the trial court engage in a discussion, that does not mean that the trial court has ruled on every topic or issue discussed. So, too, when a trial court does not state it is ruling on a previously discussed issue, does specifically state it is ruling on two other issues, and then proceeds to enumerates those stated rulings (i.e. “twofold—a two barrel appeal if you want to take it . . .”), it should be clear that those unstated matters were not ruled upon.

Acceptance of City’s contention would require this Court to significantly modify its long-standing error and issue preservation rules. It would result in our preservation rules no longer serving the legitimate purpose for which they exist. It would result in preservation being a “gotcha” game. That is not the current law and cannot be the law.

Because there was no ruling on the SCTCA, including subsection (15), this issue cannot be the law of the case. LeFont appealed and briefed all of the “two-barrels” of the circuit court’s directed verdict ruling. There are no unchallenged stated grounds ruled upon which could be the law of the case.

Therefore, the law of the case is inapplicable here. City's Petition for a Writ of Certiorari should be denied.

For the very first time, City mentions an additional sustaining ground in its Petition for a Writ of Certiorari to this Court. (Pet. 6, fn. 2). City's entire discussion of an additional sustaining ground is limited to one footnote in its Petition to this Court. City's alleged additional sustaining ground was not raised or argued as such in City's briefs before the Court of Appeals. City did not raise or argue an additional sustaining ground in its Petition for Rehearing before the Court of Appeals. It is not preserved for review as an additional sustaining ground when presented for the first time by way of Petition for a Writ of Certiorari to this Court. It would not be fair to consider it either for the same reasons. City's Petition for a Writ of Certiorari should be denied.

**III. LeFont's status at the time of her fall is a determination left to the jury as the Court of Appeals correctly held.**

In its Petition, City contends: (1) LeFont was a licensee as a matter of law when she fell in the parking lot; and (2) no evidence exists from which a jury could infer LeFont was an invitee. (Pet. 10). Also, City raises several additional points concerning LeFont's legal status that are internally inconsistent, disregard the applicable directed verdict standard of review, and disregard case law relied upon by the Court of Appeals in its opinion—namely *Vogt v. Murraywood Swim & Racquet Club*, 357 S.C. 506, 511, 595 S.E.2d 617, 620 (Ct. App. 2004). (*See* Opinion, II. LeFont's Status).

As this Court is aware, the circuit court may not resolve credibility disputes or conflicts in the evidence when reviewing a directed verdict motion. Instead, the circuit court considers *all of the evidence* and that consideration of all the evidence is *in the light most favorable to the non-moving party*. Such a motion asks whether a verdict for that party “would be reasonably possible under the facts as liberally construed in [the non-moving party’s] favor.” *Harvey v. Strickland*, 350 S.C. 303, 309, 566 S.E.2d 529, 532 (2002) (other citations omitted). In this case, the circuit court erred by not properly applying this standard. The subsequent reversing decision of the Court of Appeals highlighted that this standard of review, when properly applied to the record in this case, does present questions properly left to the jury. The Court of Appeals decision is correct.

**A. Evidence exists yielding more than one inference concerning LeFont’s status.**

City contends the Court of Appeals erred in finding that evidence exists for a jury to determine the legal status of [LeFont] at the time of the subject incident. (Pet. 10). Then the City immediately acknowledges the existence of testimony that the City’s own security guard opened the parking lot gate specifically for LeFont to enter, and expressly gave her permission to park therein. Disregarding how this evidence must be viewed for directed verdict purposes, City argues that this evidence exists but “is not fatal to a finding of [LeFont] as a licensee” because licensees are “privileged to enter or remain on the premises only by the property owner’s express or implied consent.” (Pet.

12) (citing *Sims*, 343 S.C. at 720, 541 S.E.2d at 863-64). City disregards the fact that this testimony, as the Court of Appeals correctly found, is some evidence from which a jury could reasonably infer that LeFont entered or remained not only by *consent* but with express and implied *invitation*.

**B. The broad unwritten holding inferred by the City misapprehends the Court of Appeals' correct analysis.**

City contends the Court of Appeals “seemingly held that the entirety of the Convention Center premises were open for vendors, and that [LeFont] was an invitee or business visitor for purposes of her legal status while on any part of the Convention Center premises” (Pet. 9). As an initial matter, City’s contention is clearly not supported by the language of the opinion from the Court of Appeals. However, to the extent this unwritten holding has been inferred by the City, the City’s argument is mistaken because it disregards the existence of evidence and further disregards that the evidence reasonably yields more than one inference.

**C. City concedes LeFont was an invitee/business visitor but became licensee as a matter of law upon entry to parking lot due to exceeding the scope of invitation.**

Immediately following the City’s unwritten holding argument or inference, as described in the preceding paragraph, the City abruptly pivots away from its repeated “licensee as a matter of law” argument to a theory it first raised in its Briefs to the Court of Appeals. (Resp. Final Br. 12), but repeated in its Petition for Rehearing: “upon entry into the employee lot, even with the permission of the security officer, exceeded the scope of the initial

invitation and designation of areas open for vendors which would have deemed [LeFont] an invitee or business visitor. Upon entry into the employee lot, [LeFont's] legal status changed from that of an invitee or business visitor, to that of a licensee." (Pet. 13). City asserts "because [LeFont] exceeded the scope of invitation, [LeFont's] status at the time of the subject incident was that of a licensee." (Pet. 13-14).

City seemingly concedes LeFont was an invitee or business visitor. (Pet. 10). But, then, the City conclusively states LeFont exceeded the scope of invitation upon being specifically admitted entry into the parking lot by City's security guard and, thereby, immediately upon entry LeFont lost business visitor status becoming a licensee as a matter of law. (Pet. 10).

No argument was presented by the City to the circuit court that it was entitled to a directed verdict because LeFont lost her status as an invitee or business visitor by exceeding the scope of invitation upon entry to the parking lot. So, too, the circuit court did not issue an order or finding on this issue or this argument.

First, the City significantly omits that its own argument—whether LeFont exceeded the scope of invitation—is necessarily a factual determination that is determined by a jury. *See Hoover v. Broome*, 324 S.C. 531, 479 S.E.2d 62 (Ct. App. 1996) (legal status of invitee versus licensee completely based on factual determination of conflicting inferences, specifically regarding the scope of invitation). City's argument conveniently ignores that

“[t]he loss of invitee status is usually a question for the jury.” *Sims v. Giles*, 343 S.C. 708, 733, 541 S.E.2d 857, 870 (Ct. App. 2001). The City has not argued nor distinguished how the loss of invitee status, in this case, is an exception to that well-accepted rule. LeFont has argued throughout that her status on the property was, in fact, a question for the jury to determine. *See, e.g.* (Appellant’s Final Br. 9–10) (Appellant’s Final Reply Br. 6–7). The Court of Appeals correctly held LeFont’s status at the time of her fall was a question for the jury.

Second, City omits that its own argument as to a change in LeFont’s legal status from business visitor to licensee would necessarily acknowledge evidence in conflict as to her status, which is a question of fact to be determined by a jury. The Court of Appeals correctly held the conflicting evidence regarding LeFont’s status presents a question of fact properly left to the jury. This does not present a conflict in this Court’s prior decisions. This does not present a novel question of law. This simply presents questions of fact which are appropriately determined by a jury. Therefore, this Court should deny City’s Petition for a Writ of Certiorari.

**V. Constructive notice.**

The Court of Appeals correctly found sufficient evidence in the record for a jury to infer that the City had constructive notice of the hole. (Opinion, III. Notice). The Court of Appeals specifically mentioned the testimony of Dr. Bryan Durig and testimony from others, referring to the testimony of several employees of the City.

City's Petition presents a flawed and misguided constructive notice argument, based on the following contentions:

- 1) "evidence . . . supports mere speculation of the length of existence of the hole. . ." (Pet. 19).
- 2) "mere presence in or near the area of the alleged defect is insufficient. . ." (Pet. 20).
- 3) "that Respondent has a policy for employees to report dangerous conditions . . . does not establish or yield an inference of constructive notice." (Pet. 20).
- 4) "reliance upon Dr. Durig's testimony that the hole contained dirt and debris only provide for mere speculation as to the length of time the hole existed." (Pet. 19).

LeFont responds to these contentions in turn. In the light most favorable to LeFont, there was evidence that: (1) there were numerous City personnel, regularly and continuously, within this area of the hole who could have seen and reported the hole; (2) the hole condition had quite possibly existed for enough time to discover it; and (3) the City had an established practice to deal with unsafe conditions on its premises. In light of the testimony and evidence presented, the circuit court erroneously overlooked the existence of evidence and failed to view the evidence and all reasonable inferences from the evidence in the light most favorable to LeFont. The Court of Appeals correctly reversed given that there is evidence from which a jury could reasonably infer City had constructive notice of the hole worn through the asphalt in its employee's parking lot.

In the City's "mere speculation" argument, the City concedes the existence of evidence but disagrees with the import of that evidence by ignoring

the appropriate standard of review. City does so by characterizing testimony in evidence from Dr. Bryan Durig and multiple City employees to support “mere speculation” of how long the hole existed. City’s narrow interpretation of that evidence is incorrectly determined by not viewing all the evidence in the light most favorable to LeFont. The evidence, particularly as outlined in the Court of Appeals’ opinion, does reasonably yield an inference that this hole existed in the asphalt of the employee parking lot long enough for the City’s employees to discover it.

Absurdly, City argues that LeFont can never establish a jury question as to constructive notice unless she produces evidence and testimony affirmatively establishing the precise time this hole came to exist in the City’s employee parking lot, and that any evidence or testimony short of stating that precise time is “mere speculation” and insufficient as a matter of law. (Pet. 19). This is obviously not correct.

The effect of City’s argument is absurd—constructive notice would never present a jury question without evidence of actual knowledge. Acceptance of that argument would eradicate the inquiry notice.

Sufficient evidence exists from which to infer constructive notice without direct evidence as to the exact length of time the condition had existed. Here, Dr. Durig’s testimony established the hole present in the asphalt was as deep as a full layer of asphalt, measured some four to six inches in diameter and one and a half inches in depth, and contained dirt and debris. This kind of

testimony is sufficient to submit the constructive notice issue to a jury. On that issue, the prior decisions of this Court are not in conflict. Accordingly, this Court should deny City's Petition for a Writ of Certiorari as sufficient evidence exists concerning constructive notice and it should be decided by a jury, just as the Court of Appeals correctly held.

As to City's contention that the "mere presence" of employees nearby is insufficient (Pet. 20), City sets forth one-sentence: averring that mere presence near the area is insufficient to establish constructive notice. City then states the Courts of Appeals' decision "directly conflicts with well-established South Carolina Supreme Court case law" is not correct. As an initial matter, this Court should not consider City's contention as it is too conclusory to constitute an argument on appeal. City's contention similarly fails to present or argue how the Court of Appeals decision presents special and important reasons warranting this Court's review on this conclusory allegation. Even if this Court chooses to consider this conclusion, City's contention misses the point by narrowly focusing only on "mere presence" nearby while disregarding the existence of the other evidence and testimony. The presence nearby aspect is but one piece of the collective constructive notice constellation which exists in this case.

City's one-sentence contention is followed by nearly one page of string citations of foreign substance cases where mere presence alone was insufficient; the cases involved: transparent plastic bags on floor; green beans

on floor; and a Texas state court interpreting Texas state law. Those cases are obviously distinguishable from this case. Green beans on a grocer floor could appear in an instant; a full-thickness hole six inches wide worn through asphalt does not.

As to City's contention that having "policy for employees to report dangerous conditions" is insufficient (Pet. 20), City sets forth no argument other than its asserted belief there is no evidence. This Court should deny the Petition for a Writ of Certiorari.

**VI. LeFont's arguments are preserved for appellate review.**

City contends that LeFont's invitee or business invitee status, mutual benefit arguments, and presence connected to the purpose premises were held open, are not preserved for appellate review. (Pet. 15-16). City's contention is wrong.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). Here, LeFont raised each of the above arguments to the circuit court.

As to the first point, LeFont argued that the City's employees, who testified at trial, testified that they are employees of the City and that they are regularly in the employee parking lot. (Tr. 331, ll. 7-19; Tr. 338, ll. 18-20; Tr. 337, ll. 7-9). LeFont argued this again in her Motion for Reconsideration. The

point raised and argued in the Court of Appeals is the same point LeFont argued below.

As to the second point, LeFont argued that the hole had possibly existed for a while before her incident. (Tr. 333, l. 25 – Tr. 334, ll. 9; Tr. 336, ll. 13-15). LeFont argued this again in her Motion for Reconsideration. The point raised and argued in the Court of Appeals is the same point LeFont argued below.

As to the third point, LeFont argued that she was an invitee or business visitor. (Tr. 338, l. 25 – Tr. 339, ll. 2; Tr. 339, ll. 13 – Tr. 340, ll. 1). The circuit court understood that LeFont was arguing that she was an invitee or business visitor, as the circuit court judge specifically stated:

The Court: You don't need to because your record supports your argument. You think they are invitees, and I'm ruling as a matter of law that I understand the rule of what an invitee is. And you don't have to argue to me because the record's going to support it."

(Tr. 339, ll. 15-19). LeFont argued this again in her Motion for Reconsideration. The point raised and argued in the Court of Appeals is the same point LeFont argued below.

South Carolina appellate courts repeatedly find an issue is preserved for appellate review when the nature of the issue is clear from the argument made in the record, even upon failure to use correct legal terminology. *See State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (finding argument in motion for directed verdict preserved for appeal even though movant omitted "corpus delicti" from argument); *State v. James*, 362 S.C. 557, 562, 608 S.E.2d 455, 458 (Ct. App. 2004) (finding argument in motion for

directed verdict as preserved for appeal even though movant argued “insufficient evidence” instead of “substantial circumstantial evidence”); *State v. Guillebeaux*, 362 S.C. 270, 274 n.1, 607 S.E.2d 99, 101 n.1 (Ct. App. 2004) (finding argument improperly stated as “motion for mistrial” nevertheless preserved a “motion for a new trial” for appellate review). It seems clear that no specific or “magic language” is required to preserve an issue for appellate review.

The circuit court had a “fair opportunity” to consider everything here. Indeed, the circuit court *did* consider these arguments. City’s allegation that LeFont’s arguments are not preserved for appeal is contrary to relevant South Carolina case law and meritless. The Court of Appeals correctly considered those same arguments since they were preserved for appellate review. The Court of Appeals’ decision with regards to those issues were preserved. This Court should deny City’s Petition for a Writ of Certiorari.

#### CONCLUSION

For the foregoing reasons, this Court should deny the City’s Petition for a Writ of Certiorari.

***[Signature Page Follows]***

Respectfully submitted,

s/ Ryan P. Compton

Ryan P. Compton (SC Bar #101152)  
**BAKER COMPTON LAW FIRM, LLC**  
11019 Tournament Blvd., Suite 203  
Murrells Inlet, South Carolina 29576  
t. 843.547.3333 / f. 843.536.9035  
ryan@bakercomptonlawfirm.com

–and–

Stephen L. Goldfinch, Jr. (SC Bar #77665)  
Thomas W. Winslow (SC Bar #73584)  
**GOLDFINCH WINSLOW, LLC**  
Post Office Box 829  
Murrells Inlet, South Carolina 29576  
t. 843.357.9301 / f. 843.357.9303  
stephen@goldfinchwinslow.com  
tom@goldfinchwinslow.com

ATTORNEYS FOR RESPONDENT

October 23, 2020  
Murrells Inlet, South Carolina

The State of South Carolina  
In the Supreme Court

---

Appeal from Horry County  
Court of Common Pleas  
R. Markley Dennis, Jr., Circuit Court Judge

---

Op. No. 5715 (S.C. Ct. App. filed Mar. 11, 2020)  
Appellate Case No. 2020-001273

Christine LeFont, ..... Respondent,

v.

City of Myrtle Beach, ..... Petitioner.

---

**PROOF OF SERVICE**

---

The undersigned hereby certifies that the foregoing Return to Petition for a Writ of Certiorari was served on counsel for Petitioner by electronic mail, pursuant to South Carolina Supreme Court Order 2020-000447, to the following AIS e-mail addresses for counsel of record:

Christian Stegmaier  
Kelsey J. Brudvig  
COLLINS & LACY, P.C.  
Post Office Box 12487  
Columbia, South Carolina 29211  
cstegmaier@collinsandlacy.com  
kbrudvig@collinsandlacy.com

Amy L. Neuschafer  
COLLINS & LACY, P.C.  
11945 Grandhaven Drive, Suite D  
Murrells Inlet, South Carolina 29576  
aneuschafer@collinsandlacy.com

October 23, 2020

s/ Ryan P. Compton  
Ryan P. Compton