

**RECEIVED**

**Feb 13 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE GEORGETOWN COUNTY  
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

---

Circuit Court Case No. 2021-CP-2200806

---

Thomas M. Reown, Individually and  
As Parent and Natural Guardian of  
K.R., a Minor aged 11 years

Appellants,

v.

Lieutenant Joshua Smith and The  
Salvation Army of the Carolinas,

Respondents.

---

INITIAL BRIEF OF APPELLANTS

---

February 13, 2023

/s/ Thomas S. Tisdale

Thomas S. Tisdale, 5584  
Law Offices of Thomas S. Tisdale, LLC  
4 North Atlantic Wharf, Suite 100  
Charleston, South Carolina 29401  
(843) 823-4100  
tst@chancellorsc.com

*Attorney for Appellants*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....3

STATEMENT OF ISSUES ON APPEAL.....4

STATEMENT OF THE CASE.....5

STANDARD OF REVIEW.....5

FACTURAL BACKGROUND.....6

ARGUMENTS.....7

CONCLUSION.....10

**TABLE OF AUTHORITIES**

**CASES**

*Byrd v. Small*, 2 S.C. 388, 388 (1870).....5

*Daughy v. Nw. R. Co. of S.C.*, 75 S.E. 553, 554 (1912).....5

*Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 670 S.E.2d 1, 4 (Ct. App. 2008).....5

*Mills v. S.C. State Ports Auth.*, 865 S.E.2d 910, 917 (Ct. App. 2021).....5

*Burke v. AnMed Health*, 710 S.E.2d 84, 89 (Ct. App. 2011).....5

*Rush v. Blanchard*, 426 S.E.2d 802, 806 (1993).....5

*Brinkley v. S.C. Dep't of Corr.*, 687 S.E.2d 54, 56 (Ct. App. 2009).....5

*Donkle v. Forster*, 119 S.E.2d 231, 232 (1961).....5

*Holtzscheiter v. Thomson Newspapers*, 306 SC 297, 411 SE 2d 664, (1998).....9,10

**EXHIBITS**

Exhibit A - Trial Transcript.....6,7

Exhibit B - Two telephone transcripts, Joshua Smith made to Sheriff's Department, July 9, 2021  
.....7

Exhibit C - Receipt.....8

**STATEMENT OF ISSUES ON APPEAL**

1. DID THE TRIAL COURT ERR IN DIRECTING A VERDICT IN FAVOR OF THE DEFENDANTS ON ITS MOTION FOR A DIRECTED VERDICT?

2. DID THE TRIAL COURT ERR BY DENYING PLAINTIFF'S MOTION FOR A NEW TRIAL OR TO ISSUE AN ORDER TO RECONSIDER ITS RULING ON SUCH MOTIONS?

## **STATEMENT OF THE CASE**

The case tried was in the Georgetown County Circuit Court on October 10, 2022, and October 11, 2022, and the case was assigned to the Honorable Walton J. McLeod, III. The nature of the action is one for damages occasioned by alleged defamation and a jury trial was demanded.

The trial was concluded on October 11, 2022, by a directed verdict for the Defendants by the Court on the claim made for defamation.

A motion was made and filed for reconsideration of the directed verdict and, alternatively, for a new trial. Both of which were denied by an Order on December 21, 2022, from which this appeal was taken.

## **STANDARDS OF REVIEW**

The Court of Appeals can review orders granting or denying new trials “when based upon an error of law.” *Daughy v. Nw. R. Co. of S.C.*, 75 S.E. 553, 554 (1912), citing to *Byrd v. Small*, 2 S.C. 388, 388 (1870); *see also Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 670 S.E.2d 1, 4 (Ct. App. 2008). “When considering the trial court's ruling on motions for a new trial, this court ‘employ[s] a highly deferential standard of review.’” *Mills v. S.C. State Ports Auth.*, 865 S.E.2d 910, 917 (Ct. App. 2021), quoting *Burke v. AnMed Health*, 710 S.E.2d 84, 89 (Ct. App. 2011), citing *Rush v. Blanchard*, 426 S.E.2d 802, 806 (1993). “The trial court's ‘decision will not be disturbed on appeal *unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.*’” *Mills*, 865 S.E.2d at 917, quoting *Brinkley v. S.C. Dep't of Corr.*, 687 S.E.2d 54, 56 (Ct. App. 2009) (emphasis added). “It is well settled, under the decisions of [the Supreme Court of South Carolina], that an order granting or refusing a new trial when based solely on errors of law is subject to review by [an appellate court]”. *Donkle*

*v. Forster*, 119 S.E.2d 231, 232 (1961). On appeal there are issues of the application of the relevant and prevailing law and proper procedure.

### **FACTURAL BACKGROUND**

On the afternoon of July 9, 2021, the Appellants, Thomas Reown and his eleven (11) year old son, were in their family truck when they arrived at the loading dock of the Salvation Army retail store located at 14792 Ocean Highway in Pawley's Island, South Carolina. They were there as requested by Janet Reown, the mother of the Appellant, Thomas Reown and the grandmother of K.R., age 11, the minor Appellant. Janet Reown had purchased two couches for which she had paid for in full and had been given a receipt for her payment. The record herein reflects that the purchased furniture needed to be retrieved at the loading dock of the Salvation Army store because the purchased items were too large to be picked up at the front of the store, (Trial Transcript 79-80 Exhibit A).

While the two appellants were in the process of loading the furniture that had been purchased and paid for at the store by their mother, the record further reveals that the Respondent, Lieutenant Joshua Smith, an employee and officer of the Respondent, the Salvation Army of the Carolinas, was viewing the Appellants by video from his home some miles away. He was evidently the only viewer or witness of the process being undertaken at the loading dock, (Trial Transcript 81).

Lieutenant Joshua Smith unfortunately did not call by telephone or otherwise contact the manager at the store or another person who was present at the store or to do anything whatsoever to confirm the ownership of the purchased furniture while this was going on before he called the local sheriff's office and reported that he had just witnessed two black males stealing furniture

from the Salvation Army loading dock and were loading it on their truck, Exhibit B two transcripts of telephone call by Joshua Smith to Sheriff's department).

The police answered the call and apprehended and detained the two Appellants who were in an open parking lot and ordered to be detained on the grounds of the U.S. Postal Service located at 654 Bellamy Road, Murrells Inlet, South Carolina, which is about five miles north of the Salvation Army store. The Appellant's were surrounded by multiple police officers and vehicles and accused of "stealing furniture" by the officers. It was later, of course, confirmed by the Salvation Army that the furniture had not been stolen but had been purchased and paid for, (Trial Transcript 83-85).

The jury was dismissed from further service on October 11, 2022.

The Notice of Appeal was executed and filed on January 12, 2023.

### **ARGUMENT**

The issues for the Court to consider in this appeal is whether or not the Circuit Court erred in directing a verdict at the conclusion of the testimony and the presentation of the evidence submitted at the trial of this matter, and the Court erred in not setting aside the directed verdict and ordering a new trial.

The Circuit Court Judge ruled that the Appellants were not able to recover on their claim of damages for defamation after being reported to the Georgetown County Sheriff authorities for committing the crime of the theft of property owned by the Salvation Army store located at Pawley's Island, SC. The sole grounds for such ruling was that the Appellants did not offer sufficient evidence to establish intentional malice even though the claimed defamation was, without dispute a defamation per se according to law.

To aid the Court in reaching a full and complete understanding of Appellants' claims in this appeal, this argument begins with an explanation by the factual basis for it as follows.

On the afternoon of July 9, 2021, the Appellants, Thomas Reown and his eleven (11) year old son, were in their family truck when they arrived at the loading dock of the Salvation Army retail store located at 14792 Ocean Highway in Pawley's Island, South Carolina. They were there as requested by Janet Reown, the mother of the Appellant, Thomas Reown and the grandmother of K.R., age 11, the minor Appellant. Janet Reown had purchased two couches for which she had paid for in full and had been given a receipt for her payment, Exhibit C. The record herein reflects that the purchased furniture needed to be retrieved at the loading dock of the Salvation Army store because the purchased items were too large to be picked up at the front of the store

While the two appellants were in the process of loading the furniture that had been purchased and paid for at the store by their mother, the record further reveals that the Respondent, Lieutenant Joshua Smith, an employee and officer of the Respondent, the Salvation Army of the Carolinas, was viewing the Appellants by video from his home some miles away. He was evidently the only viewer or witness of the process being undertaken at the loading dock.

Lieutenant Joshua Smith unfortunately did not call by telephone or otherwise contact the manager at the store or another person who was present at the store or to do anything whatsoever to confirm the ownership of the purchased furniture while this was going on before he called the local police and reported that he had just witnessed two black males stealing furniture from the Salvation Army loading dock and were loading it on their truck.

The police answered the call and apprehended and detained the two Appellants and ordered them detained on the grounds of the U.S. Postal Service located at 654 Bellamy Road, Murrells Inlet, South Carolina, which is about five miles north of the Salvation Army store. The Appellant's

were surrounded by multiple police officers and vehicles and accused of "stealing furniture" by the officers. It was later confirmed by the Salvation Army that the furniture had not been stolen by no one and had been purchased and paid for.

The questions to be answered on appeal are (1) the undisputed defamatory publication to third parties *per se* defamatory; (2) Was actual or intentional malice required to be established in these circumstances for the Plaintiff to prevail?

The answer is no to both questions as, (1) malice is not required to be further established if the defamation was, as here, is *per se*. (2) There is no disagreement in the evidence presented that the charges of the crime of theft or larceny is defamatory *per se*; and that there is no dispute that such defamatory statement was published to third parties both to many sheriffs' officers, and to many bystanders and passersby also knew the Appellants and observed their detention.

On the question of whether or not Lieutenant Smith slandered Appellants by publishing to the police that the Respondents were thieves and should be detained and arrested as common criminals who had stolen property from the Salvation Army. Such a slanderous allegation is without doubt slanderous *per se* and actionable *per se*. And according to South Carolina law, "*when a publication is actionable per se there arises a common law presumption of implied malice, sometimes called "malice in law", legal malice, or presumed malice which substitutes for common law actual malice."* *Holtzscheiter v. Thomson Newspapers*, 306 SC 297, 411 SE 2d 664, (1998) and related cases.

It is clear from such authority that if the defamation is "*per se*", as here, that evidence of actual malice is not and should not be a requirement to recover damages. To be falsely called a common thief is sufficient character assault to allow a recovery of damages in this case.

At a minimum, such a factual situation presents the question of whether or not the presence of a claimed qualified privilege was abused by the person who defamed the Appellants for not confirming that a theft had actually occurred. In this case, it is certainly a jury question as to whether the speaker of the defamatory words acted negligently or recklessly is one for the jury. The glaring evidence that the wrongdoer only needed to make a phone call to the manager of the Salvation Army store to be immediately told that there had been absolutely no theft committed by anyone. Nothing at all was done to simply verify conclusively, without any question or doubt, that a theft had not occurred. Such conclusion is particularly true when it is also clear that the use of the store loading dock was regularly used for loading furniture in waiting vehicles that had been purchased.

As Chief Justice Finney said in *Holtzscheiter, supra, footnote 2*, "*When a publication is actionable per se there arises a common law presumption of implied malice, sometimes called "malice in law", "legal malice", or "presumed malice", which substitutes for common law actual malice, footnote 2.*

### **CONCLUSION**

In conclusion, all the evidence before this Court points to an inescapable finding that the Appellants defamation claim should have been submitted to the jury for its consideration and that a new trial should be granted.

/s/ Thomas S. Tisdale  
Thomas S. Tisdale, 5584  
Law Offices of Thomas S. Tisdale, LLC  
4 North Atlantic Wharf, Suite 100  
Charleston, South Carolina 29401  
(843) 823-4100  
tst@chancellorsc.com

*Attorney for Appellants*