

RECEIVED

Mar 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKLEY COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Judge

Case No. 2020-CP-08-00773
Appellate Case No. 2021-001173

Stephanie Michelle GardnerAppellant,

vs.

Berkeley County Sheriff's Office and
Town of Moncks Corner, Respondents,

PETITION FOR REHEARING

/s Louis D Nettles
LOUIS D. NETTLES
Attorney for Appellant
Nettles Law Firm
Post Office Box 5533
Florence, South Carolina 29502
843-409-7744
Louis@NettlesFirm.com

One. Appellant seeks rehearing on the issue of immunity under the torts claim act. The Appellant has consistently cited *Gist v. Berkeley County Sheriffs Dept.*, 336 S.C. 611, 521 S.E.2d 163 (S.C. App. 1999) and *Wortman v. Spartanburg*, 310 S.C. 1, 425 S.E.2d 18 (S.C., 1992). *Gist* being a Supreme Court decision is controlling authority and the issue was raised in the trial court.

Two. Appellant seeks rehearing on the issue of defamation. The publication of the arrest records on Facebook with editorial comments are defamatory and not truthful. The Sheriff's Office had the information in its records that Appellant was not in possession of illegal drugs yet published it to the world for no law enforcement purpose. This Court has failed to properly apply the standard for Summary Judgment by failing to look at the evidence in the light most favorable to the non-moving party.

MEMORANDUM

I. The Appellant has consistently through the case relied on and cited *Gist v. Berkeley County Sheriffs Dept.*, 336 S.C. 611, 521 S.E.2d 163 (S.C. App. 1999) and *Wortman v. Spartanburg*, 310 S.C. 1, 425 S.E.2d 18 (S.C., 1992). In her brief in opposition to the Motions for Summary Judgment Those cases were cited in the Plaintiff's Opposition the Defendant's motions for summary judgment. Plaintiff's Memo RoA p.143 Transcript of Hearing on Motions for Summary Judgement RoA. p. 82. The Motion for Rehearing RoA. p. 148.

In *Wortman v. Spartanburg*, Plaintiff was arrested without a warrant when he was in possession of out-of-State lottery tickets and charged with playing a gambling game at a public place in violation of S.C.Code Ann. § 16-19-40 (1985). Our Supreme court held that since possession of lottery tickets is not a crime the city could not claim that Wortman's arrest for possession of lottery tickets resulted from its attempt to enforce a law absent a showing that a law exists that prohibits the possession of lottery tickets. "We conclude that the actions of the City do not fall within the exception provisions of sections 15-78-60(3) and (4). Consequently, we hold that the trial judge erred in granting summary judgment on the ground that the City was immune

from liability under the Tort Claims Act”. Here we have someone arrested for being near where hidden drugs were found. That is not a crime.

In *Gist v. Berkeley County Sheriffs Dept.* A plaintiff was arrested for robbery based on and identification that included “The mustache and glasses on Gist's driver's license were different, but she was positive of her identification”. This court held that the question of probable cause was a jury issue and an arrest without probable cause was actionable under the SC Tort Claims Act.

II. Appellant has cited *Richardson v. STATE-RECORD COMPANY, INC.*, 330 S.C. 562, 499 S.E.2d 822 (S.C. App. 1998) on defamation. In that case this court held that although the statements were true the implication that was false was actionable. This was a case on reporting privilege and this court said:

However, the privilege attending the publication of a news report arises by reason of the occasion of the communication, and a communication or statement which abuses or goes beyond the requirement of the occasion, loses the protection of the privilege. The privilege extends only to a report of the contents of the public record and any matter added to the report by the publisher, which is defamatory of the person named in the public records, is not privileged.

330 S.E.2d at 567

Here since the arrest was without probable cause there is no privilege for reporting an arrest for trafficking drugs because the Sheriff's office had no law enforcement reason for publishing this on Facebook and had the information in hand to know the implication was false.

Conclusion: The Court has overlooked the Appellant's arguments on the Tort Claims Act raised in the trial court and in this appeal and should reconsider its opinion. Similarly, the

Court has overlooked the Appellant's argument on privilege and defamation and should reconsider the applicable authority cited by her.

Respectfully submitted,

s/Louis D. Nettles
Louis D. Nettles
PO Box 5533
Florence SC 29502
Louis@NettlesFirm.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKLEY COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Judge

Case No. 2020-CP-08-00773
Appellate Case No. 2021-001173

Stephanie Michelle GardnerAppellant,

vs.

Berkeley County Sheriff's Office and
Town of Moncks Corner, Respondents,

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Rehearing by email by copying the
filing email to the AIS email address of

Robin L. Jackson, Esq.
Senn Legal, LLC
PO Box 12279
Charleston, SC 29422-2279
Attorney for Berkeley County Sheriffs Office

Drew Hamilton Butler
Richardson Plowden & Robinson, PA
235 Magrath Darby Blvd.
Suite 100
Mount Pleasant, SC 29464
Attorney for Respondent Town of Moncks Corner

Carmen Vaughn Ganjehsani
Richardson Plowden & Robinson, PA
1900 Barnwell Street
Columbia, SC 29201

Attorney for Respondent Town of Moncks Corner

s/Louis D. Nettles
LOUIS D. NETTLES
Attorney for Appellant
Nettles Law Firm
Post Office Box 5533
Florence, South Carolina 29502
843-409-7744

March 27, 2024

RECEIVED

Mar 27 2024

SC Court of Appeals

**LOUIS D. NETTLES
ATTORNEY AT LAW
NETTLES LAW FIRM**

LOUIS@NETTLESFIRM.COM

March 27, 2024

Hon. Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

Re: Gardner v. TOMC and BCSO, 2020-CP-08-00773
Appellate Case No. 2021-001173

Dear Ms. Kitchings:

Enclosed please find the Appellants Petition for Rehearing and Certificate of Service. I will be mailing you a check for the filing fee

I also enclose a Certificate of Service

With kind regards, I am

Yours very truly,

s\Louis D. Nettles

Louis D. Nettles

Cc: Robin L. Jackson, Esq.
Drew Hamilton Butler
Carmen Vaughn Ganjehsani