

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

105092

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JUN 26 2025

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
CIRCUIT COURT

The Honorable G. D. Morgan, Jr., Circuit Court Judge  
The Honorable Perry H. Gravely, Circuit Court Judge

Trial Court Case No. 2020-CP-23-01450  
Appellant Case No. 2022-001432

Michael Gene Putnam.....Appellant,

vs.

Robert Henry Purkerson .....Respondent.

**APPELLANT’S PETITION FOR REHEARING**

Pursuant to Rule 221(a), SCACR, Appellant Michael Gene Putnam respectfully moves the Court for rehearing and/or to alter its Unpublished Opinion No. 2025-UP-188 of June 11, 2025, which affirmed the trial court’s grant of summary judgment. This appeal arises from a grant of summary judgment in Circuit Court in Respondent’s favor in a defamation case Appellant brought against Defendant. Because the Court’s opinion neglects to address critical facts and arguments as well as evidence in the record supporting Appellant’s position, Appellant respectfully requests that the Court rehear this matter or alter its opinion to reverse the Circuit Court’s grant of summary judgment.

## Argument

**I. The court's opinion does not attempt to address Appellant's primary argument related to whether conveying a defamatory statement to a small group or family member satisfies the publication requirement.**

With respect to the court's holdings related to the defamation cause of action, Appellant would point out that the Court's ruling does not attempt to address the argument Appellant raised relating to the ruling in the Circuit Court's findings that the fact that the defamatory statements were made to a family member do not constitute a publication citing *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978) for this proposition. (Form 4 Order dated 7/8/22). (R., p. 13). Except for the emails that are addressed separately, the court's order simply states that the oral statements alleged to have been defamatory "were made directly to Putnam and not in the presence of others and thus, were not published." This is not at all what the record reflects and not at all what the Circuit Court ruled. The Court's Form 4 Order granting Purkerson's renewed motion for summary judgment concedes that "one of the emails and one of the voicemails produced by the Plaintiff in opposition to summary judgment contain statements made by [Purkerson] to third parties about the Plaintiff." (Form 4 Order dated 7/8/22). (R., p. 13). The fact that the oral defamatory statements were made to third parties is not in dispute.

What is in dispute is the Circuit Court's ruling that defamatory statements made to third parties who are family member or that constitute a small group does not satisfy the publication requirement. The Court grants the summary judgment motion because the statements "do not satisfy the publication element required for a defamation claim" because the people hearing the statements were "either a family member or unidentified." (Form 4

Order dated 7/8/22). (R., p. 13). The Court cites *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978) for this proposition. (Form 4 Order dated 7/8/22). (R., p. 13).

The Court's full order dated August 17, 2022 restates this holding more fully stating that the "publication must be derogatory to more than a single individual or a very small group of persons, such as family members." (Order dated 8/17/22, p. 16), (R., p. 19). The Court goes on to state that the publication requirement was not met in this case because the communications were made only to the Appellant or to a family member, again citing *Capps*. (Order dated 8/17/22, p. 16). (R., p. 19).

As argued in Appellant's final brief, *Capps* does not stand for the proposition that publication must be to more than a single individual, a small group or beyond family members and it was an error of law for the court to interpret it that way. *Id.* *Capps* is not a case on publication at all as the defamatory remark in *Capps* was published in a newspaper at the defendant's request. *Id.* The only mention of family in *Capps* is the Appellant's request that the defendant be responsible for his wife's doctor's bills to get a prescription for her to handle the anxiety allegedly caused by the defamatory statements. *Id.* The Court found that general damages were presumed and that whether calling the defendant a "paranoid sonofabitch" is defamatory is a question for the jury under the circumstances. *Id.* The other two cases cited in the Court's Order make no reference to a publication needing to be more than one person, a small group of people or someone beyond the family and Appellant can find no case law with such a holding. See *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998).

The only reference at all in the Court's August 17, 2022 Order related to the size of the group that hears the defamatory remark is an excerpt from the Restatement Second of Torts, §559. The excerpt states that a defamatory communication need not offend everyone or even a majority, but that it is enough that the communication would be derogatory in the view of a single individual or a very small group of persons. (Order dated 8/17/22, p. 15), (R., p.19). This states exactly the opposite of what the court found in holding that the defamatory communications did not meet the publication requirement because it was said to only one person, a small group or a family member. (Order dated 8/17/22, p. 16), (R., p. 19). It is entirely unclear where the court came to the belief that a defamatory communication must be made to more than one person, a small group and to non-family members. Appellant argues in his final brief that because the court misapprehended the law on publication as explained above, this court should reverse the trial court on the issue of a lack of publication of the defamatory remarks and remand the case to the trial court. This court's order does not address this argument at all, and Appellant makes this motion in part respectfully seeking a ruling on this issue and a reversal of the Circuit Court's grant of summary judgment.

**II. The court should reconsider its holding that calling someone a "sick and desperate man" are words of abuse and scurrility. It should be a question for the jury as to whether these words carry a defamatory meaning.**

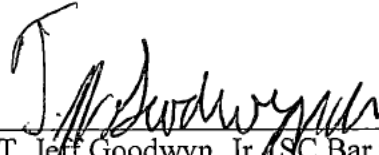
With respect to the emails, Appellant would ask the court to reconsider its finding that calling Appellant a "sick and desperate man" was at least a jury question as to whether it has a defamatory meaning. "A person makes a defamatory statement if the statement

‘tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him.’” *Fleming v. Rose*, 350 S.C. at 494, 567 S.E.2d at 860 (2002); (Order dated 8/17/22, p. 14, R. p.19). It cannot fairly be said that these statements do not tend to injure one’s reputation as to lower him in the estimation of the community or deter third persons from associating or dealing with him. There is clear intent to harm someone’s reputation when you call them “sick and desperate” and this phrase conveys a strong negative connotation. Under *Capps v. Watts*, “[I]t is for the jury to determine whether [the statements] were used in a libelous sense given the circumstances.” *Capps at 610*. For these reasons, Appellant respectfully asks the court to amend its order to reverse the Circuit Court’s order on this issue.

### **Conclusion**

The court’s ruling does not attempt to address the argument Appellant raised relating to the ruling in the Circuit Court’s findings that the fact that the defamatory statements were made to a family member do not constitute a publication. The Circuit Court found that the oral defamatory statements were made to a third person and this issue has never been in dispute. It is improper for this court to find that these oral defamatory statements were not published in light of this fact and this court should amend its order to address this issue, reverse the Circuit Court and remand this case for trial.

There is clear intent to harm someone’s reputation when you call them “sick and desperate” and this phrase conveys a strong negative connotation. Under *Capps v. Watts*, “[I]t is for the jury to determine whether [the statements] were used in a libelous sense given the circumstances.” As a result, the court should amend its order and reverse the Circuit on this issue and remand the case for trial.



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*Attorneys for Appellant*

Columbia, South Carolina

June 26, 2025

IN THE STATE OF SOUTH CAROLINA  
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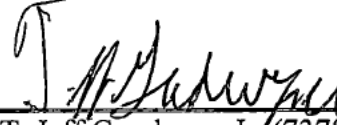
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I certify that I have served a copy of the **Appellant's Petition for Rehearing** on counsel  
for Respondent at the address below via E-mail, on June 26, 2025.

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Laura C. Tesh, Esquire  
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\*\*\*SIGNATURE TO FOLLOW ON NEXT PAGE\*\*\*

**GOODWYN LAW FIRM, LLC**

A handwritten signature in black ink, appearing to read "T. Jeff Goodwyn, Jr.", is written over a horizontal line.

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**VIA HAND-DELVIERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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SC Court of Appeals

RE: **Michael Gene Putnam v. Robert Henry Purkerson**  
*Appellate Case No.: 2022-001432*  
*Our File No.: 3000-0743*

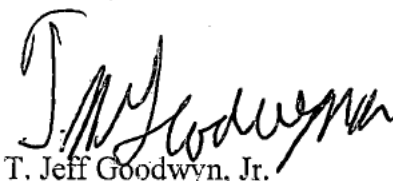
Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of **Appellant's Petition for Rehearing**, along with a Proof of Service for filing in connection with the above-referenced matter. Please file the original and return a filed copy of same to me in the self-addressed stamped envelope provided.

As evidenced in the Proof of Service, I have served all interested parties with a copy.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



T. Jeff Goodwyn, Jr.

TJG:cnc

Enclosures

cc: Langdon Cheves, III, Esquire  
Laura C. Tesh, Esquire  
Michael Putnam  
(all via email)