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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
G. D. Morgan, Jr., Circuit Court Judge

Case No. 2019-CP-23-01522
Appellate Case No. 2024-000931

Samantha Katchick Respondent,

v.

Marshall Alexander Chapman, DMD, Brooke I. Chapman, Chapman Dental, P.A., Douglas P. Schmieding, CPA, Jennings Cook & Co., CPAs, PA, and Earl A. Simmons, CPA, Defendants,

of which Marshall Alexander Chapman and Chapman Dental, P.A. are the Appellants.

APPELLANTS' INITIAL REPLY BRIEF

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I. THE FACIALLY VALID WARRANT DEFENSE APPLIES TO PRIVATE PERSONS

Respondent incorrectly argues (citing no authority) that the defense of a facially valid warrant only applies to law enforcement and not to private individuals. Although the defendant in *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (Ct. App. 2020) was the York County Sheriff, this Court recognized the long-standing doctrine was not limited to law enforcement when it favorably cited *Bushardt v. United Inv. Co.*, 121 S.C. 324, 330, 113 S.E. 637, 639 (1922) in support. The defendant in *Bushardt* was a private company.

Respondent's attempts to distinguish *Bushardt* are ineffectual. As in the present case, the plaintiff was arrested based on information provided by a third party, an employee of the defendant. There is no distinction to be made, as argued by Respondent, based on the fact the present case involved alleged embezzlement. The facially valid inquiry is not an invitation to look beyond the language of the warrant, which need only contain information given under oath that "plainly and substantially" sets forth the offense charged. S.C. Code Ann. § 22-3-710 (2007).

The fact that the Court in *Bushardt* also affirmed a nonsuit on additional grounds does not undermine its finding that, "[i]t has been definitely decided in this jurisdiction that where one is 'properly arrested by lawful authority,' 'an action for false imprisonment cannot be maintained against the party causing the arrest.'" *Bushardt,* 121 S.C. at 330, 113 S.E. at 639.

II. THE LOWER COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT TO APPELLANTS AS TO FALSE IMPRISONMENT WHERE NO REASONABLE INFERENCE CAN BE DRAWN THAT APPELLANTS REQUESTED, DIRECTED, OR COMMANDED AN UNLAWFUL ARREST

The vast majority of Respondent's Brief addresses the issue of false imprisonment. Therefore, this Reply will address this first. Appellants acknowledge that South Carolina recognizes a cause of action against a private individual for false imprisonment if they "induce[d]

an officer by request, direction or command to unlawfully arrest another." *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 272, 826 S.E.2d 609, 615 (2018) citing *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944). The fact that *Sunshine Recycling* does not address the facially valid warrant defense does not mean that it is inapplicable in the present case or that the South Carolina Supreme Court limited the application of that defense in any way.

Respondent states several times in her Brief that Turner testified he got all information from Appellants and they convinced him only Respondent could be responsible. The lower court overlooked Turner's testimony that he pursued his own investigation after receiving the initial information from Appellants (Tr. p. 126, l. 16 – p. 127, l. 2). This investigation included Turner contacting Magistrate Ford, of his own volition, regarding Respondent's family's non-payment under an unapproved payment plan. (Tr. p. 143, l. 25-p. 144, l. 12).

Turner also contacted the head of the white collar unit of the Solicitor's Office (Tr. p. 144, ll. 15-22) to seek her advice regarding whether probable cause existed to issue a warrant against Respondent. (Tr. p. 145, l. 13-p. 146, l. 7). Turner testified the Assistant Solicitor was comfortable with a warrant being signed if there was any evidence in the Magistrate case that Respondent had not properly collected fees for services rendered to her family (*Id.*) and she agreed that a warrant was appropriate (Tr. p. 155, ll. 24-25). This input played a large part in Turner's decision to pursue the warrant based on probable cause (Tr. p. 150, ll. 14-22).

Respondent's allegation in her Statement of Facts that Investigator Turner testified that he was approached by Dr. and Mrs. Chapman "for the purposes of having Respondent arrested" is false. Turner's actual testimony was that Appellants only conveyed they were "eager to have [the matter] looked at" (Tr. p. 132, l. 20 - p. 133, l. 1). At no time did Appellants request, direct, or command Investigator Turner to arrest Respondent. The Supreme Court in *Bushardt*, noted:

> The test is, Does the evidence warrant a reasonable inference that a man of ordinary sense and prudence . . . would not have relied and acted upon the information? The evidence is that Strickland, the head of the detective force of the city, acted only after investigation. . . . There is no evidence that the robbery was not committed, and none that there was any other source of information available as to the commission of the crime or as to the identity of the perpetrator.

Bushardt, 121 S.C. at 334-335, 113 S.E. at 640-641. Similarly, in the present case Investigator Turner conducted an independent investigation and formed his own opinions. Also, as in *Bushardt*, there was no evidence that money was not missing from the practice. Other allegations of Appellants' actions cited by Respondent on page 15 of its Brief do not alter the information known to Investigator Turner at the time of his investigation nor the facial validity of the warrant issued against Respondent.

Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 30 S.E.2d 307 (1944), *Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 162 S.E. 753 (1931), and *Falls v. Palmetto Power & Light Co.*, 117 S.C. 327, 109 S.E. 93 (1921) are not cited by *Sunshine Recycling* to address whether a facially valid warrant existed but rather to address whether a party directed, commanded, or induced the unlawful arrest of another. Respondent does not claim *Wingate* or *Falls* are analogous to the present case.

Respondent alleges *Whitmire* is analogous because an agent of Publix Theatre Corporation provided false information to law enforcement which resulted in Whitmire's detention. As noted by the Court in *Sunshine Recycling*, the Court in *Whitmire* found the evidence presented at trial justified the jury's conclusion theater representative's actions caused plaintiff's arrest by requesting police to return plaintiff to the theater for an investigation. *Sunshine Recycling*, 426 S.C. at 273, 826 S.E.2d at 615. Unlike *Whitmire*, Appellants did not instruct Investigator Turner to detain Respondent.

Respondent argues *Bushardt*, *Wingate*, *Whitmire*, and *Falls* "all support that a private individual is liable for providing false information that leads to an arrest of another person based on that false information." (Respondent's Brief, p. 21) None of these cases cited by *Sunshine Recycling* address allegations of false information provided to law enforcement. Rather they address a command or direction to detain another. There is no such evidence in this case.

Appellants did not tell Investigator Turner to arrest Respondent, nor did they request that she be detained or taken in for questioning. Dr. Chapman testified he did not tell Investigator Turner he wanted anyone arrested (Tr. p. 448, ll. 13-16). This is supported by Turner's testimony that Appellants only conveyed they were "eager to have it looked at" (Tr. p. 132, l. 20 - p. 133, l. 1). He did not repeatedly contact Turner to ask how the case was progressing, nor did he ask if an arrest had been made. Turner conducted his own independent investigation, even getting the approval of the Assistant Solicitor before seeking a warrant.

III. THERE IS NO REASONABLE INFERENCE THAT APPELLANTS KNOWINGLY PROVIDED FALSE INFORMATION

The Court in *Sunshine Recycling* makes it clear that Appellants did not have a duty to investigate and analyze evidence in order to verify the information provided. The question is whether Appellants "provided the police with his honest or good faith belief of the facts." *Sunshine Recycling, supra.,* 426 S.C. at 272, 826 S.E.2d at 615. An individual is only liable for false imprisonment when he or she acts in bad faith or knowingly reports incorrect information to law enforcement. *Id.*, 426 S.C. at 274, 826 S.E.2d at 616.

The question was not whether Appellants were ultimately incorrect regarding whether Respondent took money from the practice or even whether they were incorrect as to any of the information presented to Investigator Turner. The question is whether the evidence presented yielded a reasonable inference that Appellants presented knowingly incorrect information or did

so in bad faith. *Id.* The lower court, and ultimately the jury, were clearly influenced by this misapprehension of the law.

Respondent incorrectly characterizes the evidence presented at trial to say that it showed a scheme by Appellants to have her arrested. For example, in the Statement of Facts, Respondent claims Dr. Chapman admitted firing Respondent for stealing when he actually testified that the practice had been struggling with outstanding insurance claims and patients owing money. These collections were part of Respondent's job duties. When the issue of discrepancies with cash deposits also arose, he had no choice but to let her go. (Tr. p. 444, l. 23-p. 445, l. 3)

Respondent suggests the holding in *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 853 S.E.2d 508 (Ct. App. 2020) negates the application of the facially valid warrant defense or the limitations acknowledged in *Sunshine Recycling* on a party's duty to verify information before reporting it to law enforcement. Quite to the contrary, this Court noted in *Seabrook*:

> Seabrook's able counsel candidly conceded the arrest warrant was valid on its face. Precedent explains "one arrested pursuant to a facially valid warrant has no cause of action for false arrest." *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 528 (Ct. App. 2020).

Id. 432 S.C. at 444, 853 S.E.2d at 510.

Respondent claims the arrest warrant was obtained based on false information and therefore not a facially valid warrant based on assumptions not supported by the record. Respondent's arguments are based on assumptions made by Investigator Turner and not on evidence regarding Appellants' actions. Respondent claims Appellants sent selected parts of their paperwork to CPA Earl Simmons (R., Ex. 4-7) to CPA Doug Schmieding (R., Ex. 8), but do not claim that the Summary Reconciliation sent to Schmieding misrepresented in any way the information previously sent to Earl Simmons. Respondent presented no evidence that the information provided to either CPA was false.

Schmieding testified he was asked to review Eaglesoft records and compare them with the bank statements (Tr. p. 173, ll. 9-17; p. 174, ll. 16-23). He calculated the discrepancy to be $3,505.19. He provided Dr. Chapman with a letter containing his findings (R. Ex. 9). Schmieding's letter clearly stated that he was asked to perform a calculation based upon a summary of information provided by Appellants. Respondent's own expert O'Shea agreed that there was a negative discrepancy between the cash shown in Easglesoft and the bank deposits (Tr. p. 355, l. 20- p. 356, l. 4). There is no evidence that Appellants "tricked" Schmieding into providing the letter.[1]

No evidence was presented that Dr. Chapman told Turner the Summary he was providing had been prepared by Jennings Cook or was part of Schmieding's letter. Turner testified he was provided with a set of documents by Dr. Chapman and assumed the calculations behind Jennings Cook's letter were part of the letter. (Tr. p. 132, ll. 9-17).[2] Schmieding's letter does not state that it contained an attachment. Dr. Chapman testified he handed all of the documents he had to Turner to review and did not indicate the calculations were part of the letter. (Tr. p. 456, l. 23-p. 457, l. 4). Exhibit 12 is the discovery response from the Greenville County Solicitor's Office and provides no information regarding the manner in which documents were presented to Investigator Turner.

There is no evidence that Appellants represented the letter from Schmieding was the result of a forensic audit. Turner testified that he took the letter to be an audit. (Tr. 131, l. 22- p. 132, l. 5). This conclusion was part of his independent investigation. There was no evidence that Appellants informed Turner that Jennings Cook had conducted an audit. To the contrary, the letter clearly stated Schmieding prepared a "calculation." (R. Ex. 12). Turner has a banking background

[1] Respondent's allegation that Schmieding testified Appellants misused his letter is also untrue. Schmieding testified that Assistant Solicitor Alexa Kluska's email to him took the letter out of context. (Tr. p. 177, ll. 4-20).

[2] Respondent confirms on page 8 of her Brief that Turner testified in the Preliminary Hearing that the letter was multiple pages "from what I recall", not that he was told this by Chapman. (R., Ex. 13, p. 9-10).

and should have been familiar with the difference between an audit and a calculation. (Tr. p. 136, ll. 3-8). In contrast Dr. Chapman testified he did not know what a forensic audit was. (Tr. p. 450, ll. 17-19).

Respondent suggests Appellants misled Turner by representing Schmieding was their "expert," however, the record reflects that he was represented to be exactly what he was: a CPA who performed a calculation showing a discrepancy between deposits shown in the Eaglesoft system and bank statements based on information provided by Appellants. Turner's improper assumptions, as part of his independent investigation, do not create a reasonable inference that Appellants knowingly manipulated evidence in order to have Respondent arrested.

The Summary Reconciliation provided to Investigator Turner (R. , Ex. 12, p. 22) did not contain knowingly false information. The statement "Note: Client Records and Bank Deposits were Maintained Solely by Samantha Katchick" is not evidence of falsity.[3] Respondent admitted she was responsible for making the bank deposits (Tr. p. 279, ll. 16-18). This was confirmed by Brooke Chapman (Tr. p. 432, ll. 20-25) and Angela Hawthorne (Tr. p. 120, l. 7-p.121, l. 9).[4] The lower court itself suggested there was no evidence someone else took deposits to the bank (Tr. p. 394, ll. 5-13). Importantly, the discrepancies ceased after Respondent was terminated. (Tr. p. 412, ll. 5-7; p. 445, ll. 8-13).

It is not evidence of falsity by Appellants that Simmons prepared a document for Dr. Chapman's signature. Simmons determined that he had not been asked to prepare a CPA report and, while his work was accurate, he did not feel it was appropriate to sign his work when it hadn't been reviewed by anyone. (Tr. p. 371, ll. 19-21; p. 374, ll. 2-6). There is no evidence Simmons informed Appellants that his work was unreliable. Statements made by Earl Simmons in his emails

[3] Plaintiff's trial exhibit 5 indicates it was Earl Simmons who added this note, not Appellants. (R.)
[4] Hawthorne testified Dr. Chapman would go to the bank occasionally (Tr. p. 120, ll. 22-23).

cannot be imputed to Appellants.[5] The lower court noted there was no evidence Appellants subscribed to his views. (Tr. p. 669, ll. 10-16; p. 671, ll. 1-17; p. 673, ll. 13-20).

Respondent says Turner testified the information he relied upon for the warrant was provided solely by Dr. Chapman; however, Turner testified that he pursued his own investigation after receiving the initial information from Appellants (Tr. p. 126, l. 16 – p. 127, l. 2). Finally, Respondent claims S.C. Code 16-17-725 was argued at trial and charged to the jury. The lower court charged S.C. Code § 16-17-725 as part of its charge on civil conspiracy. (Tr. pp. 557-558) The jury found in favor of Appellants as to civil conspiracy. (R. , verdict form).

As the Court noted in *Sunshine Recycling*, "we find punishing an individual who . . . unwittingly provides what is later discovered to be incorrect information in a criminal investigation serves no purpose." *Id. supra*, 426 S.C. at 274, 826 S.E.2d at 616. The lower court erred in permitting the jury to do precisely that in this case. The only evidence before the jury and the only inference to be drawn in the light most favorable to Respondent, was that Appellants did not knowingly report incorrect information to Investigator Turner. Therefore, Appellants respectfully request this Court to reverse the denial of directed verdict and JNOV and find in favor of Appellants as to false imprisonment.

IV. EVEN WHEN CONSTRUING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO RESPONDENT, ONLY REASONABLE INFERENCES CAN BE CONSIDERED BY THE LOWER COURT AND THE INFERENCES DRAWN MUST COMPORT WITH APPLICABLE LAW

Respondent misstates Appellants' arguments in claiming a "no reasonable juror" argument

[5] Simmons testified that the statements he made in his emails did not reflect a conversation in which Appellants had participated. (Tr, p. 370, ll. 19-22; p. 370, l. 23-p. 371, l. 1; p. 459, ll. 12-14). Respondent includes matter in her statement of facts regarding Earl Simmons that was not part of the trial of the case. Likewise, Respondent's statement that Earl Simmons was disclosed late in the case was not an issue for the jury's consideration.

should be treated as an admission of the existence of sufficient evidence to support a jury verdict. Appellants' arguments address whether reasonable inferences could be drawn, in light of controlling case law, to support a finding of false imprisonment, malicious prosecution, or defamation.

"When reviewing a motion for directed verdict or JNOV, an appellate court must employ the same standard as the trial court." *Byrd as Next Friend of Julia B. v. McLeod Physician Assocs. II*, 427 S.C. 407, 412–13, 831 S.E.2d 152, 154 (Ct. App. 2019) (quoting *Wright v. Craft*, 372 S.C.1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006)). The court is required to view the evidence and inferences that reasonably can be drawn in the light most favorable to the non-moving party. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). "The standard for summary judgment 'mirrors the standard for a directed verdict under Rule 50(a)' [SCRCP]." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 219 n.4, 578 S.E.2d 329, 334 n.4 (2003). The Court has recently reiterated that stating as to the summary judgment standard "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 462, 892 S.E.2d 297, 301 (2023), quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

The evidence cited by Respondent does not create a reasonable inference, even in the light most favorable to Respondent. For example, it is not a reasonable inference to impute statements made by third parties, or the assumptions of those third parties, to the Appellants. Investigator Turner's testimony in the preliminary hearing, after his independent investigation, is not imputed to Appellants. Dr. Chapman never reported Respondent had "sole control" over the money. That term does not appear in Turner's investigation file. Turner uses the term "sole control" at the preliminary hearing with no evidence that was the term used by Appellants (R. - Ex. 13, Tr. p. 150,

l. 23- p. 151, l. 3). Respondent claims there is no meaningful difference in the terms "sole responsibility" and "sole control", however from a lay perspective having the job responsibility for a task and "sole control" over a task are vastly different. Turner testified that critical in his decision regarding whether there was probable cause for a warrant was whether Respondent was responsible for making the deposits and not whether she was the sole person taking in payments. (Tr. p. 151, ll. 4-16).

It was undisputed at trial that Respondent's responsibilities included determining how much patients needed to pay, collecting amounts owed, submitting insurance claims, recording and depositing funds in the bank (Tr. 442, l. 16-p. 443, l. 1). If another employee took a payment from a patient (no other employee made deposits), Respondent still was responsible for making sure it was deposited and accurately recorded (Tr. p. 443, l. 7-17).

Nor could a jury reasonably infer, from the evidence presented, that Appellants knowingly presented false information to Turner based on Respondent's speculation regarding their motivation for providing the information they gathered. Respondent's allegation that evidence at trial showed Appellants "manipulated" Investigator Turner to believe Respondent was the only person who could have been responsible for the discrepancy is not supported by the record. Appellants did not mislead Turner as to who had access to the money. The evidence presented at trial was that Appellants presented the information to Investigator Turner as they reasonably believed it to be true. Although Respondent stresses that Turner testified in the preliminary hearing at he was not aware Respondent left work early on Wednesdays, he admitted at trial he was aware deposits were kept in an unlocked drawer in an open office, where they could potentially be accessed by others (Tr. p. 140, ll. 4-7; p. 159, ll. 7-9).

Respondent's statement that Appellants put the words "solely responsible" in the letter of Doug Schmieding is simply untrue. Schmieding's letter does not mention Respondent nor does it contain the term "solely responsible." (R., Ex. 12, p. 21) As set forth above, there is no evidence in the record that Appellants represented the Summary Reconciliation statement as part of Schmieding's letter. Turner simply assumed that fact based solely on the inclusion of both the letter and the Summary in the packet presented to him. (Tr. p. 132, ll. 9-17).

Respondent's argument regarding the testimony of her expert, Mike O'Shea, is a prime example of the reasonable inferences that can be drawn in light of the applicable case law finding Appellants did not have a duty to investigate at a forensic level before taking the information to the police. *Sunshine Recycling, Id.* 426 S.C. at 273, 826 S.E.2d at 615. When determining probable cause, the Court has found it "does not turn upon the plaintiff's guilt or innocence, but rather upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged." *Kinton v. Mobile Home Indus., Inc.,* 274 S.C. 179, 181, 262 S.E.2d 727, 728 (1980).

Although Respondent's expert testified to flaws in the Eaglesoft system, it was undisputed that a comparison of the Eaglesoft reports and the bank deposits showed money was missing from the practice. (Tr. p. 355, l. 20-p. 356, l. 4). Respondent's expert witness agreed the discrepancies could have been caused by cash being taken from the practice. (Tr. p. 357, ll. 7-10; p. 359, ll. 10-12). Critically, the discrepancies ceased after Respondent was terminated. (Tr. p. 412, ll. 5-7; p. 445, ll. 8-13).

The applicable standard is not whether Appellants failed to follow best practices regarding their bookkeeping or could have performed a more thorough investigation.[6] There is no evidence

[6] Respondent's suggestion that a reasonable inference from the evidence is that Dr. Chapman took cash from the drawer to avoid reporting it as income is not only not supported, but uncalled for. There was no testimony from any

that Appellants knew of an inherent flaw in the way they were operating the Eaglesoft system that would make the data unreliable. Nor was any evidence presented that Appellants manipulated the data to make it appear that there was a discrepancy when there wasn't. Respondent's expert, O'Shea, agreed that Dr. Chapman may have thought money was being taken from the practice based on the discrepancies. (Tr. p. 360, ll. 8-14).

Respondent further claims the fact that Appellants looked into the matter to confirm there was a discrepancy between collections and deposits and that the discrepancies did not continue after Respondent's termination (Tr. p. 412, ll. 5-7; p. 445, ll. 8-13) distinguishes the case from *Sunshine Recycling*. There is no evidence Appellants knew or suspected they had incorrect information when they went to the Greenville County Sheriff's Office. The evidence is the opposite, showing good faith in asking two outside CPAs to verify that a discrepancy existed before going to the police. None of the cases cited by Respondent hold that only an eye-witness account can be an "unwitting" report to law enforcement.

Respondent's argument is really that Appellants were ultimately wrong about whether Respondent was responsible for the discrepancy in the cash deposits. That is not the standard. The lower court erred in failing to apply the holding in *Sunshine Recycling* that there is no duty for Dr. Chapman to investigate and analyze evidence in the same manner as law enforcement. He does not have to conduct an investigation in order to verify the information provided. As this Court stated in *Sunshine Recycling*:

> To interpret Wingate in such a manner would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability. *Id.*

An individual is only liable for false imprisonment when he or she acts in bad faith or knowingly

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witness that Dr. Chapman took cash from the cash envelope to avoid reporting it. The fact that Appellants requested confirmation of a discrepancy from two CPAs and reported the incident to the Sheriff's Office, risking exposure of such behavior, runs contrary to an inference they were themselves taking the money from the practice.

reports incorrect information to law enforcement. *Id.*, 426 S.C. at 274, 826 S.E.2d at 616.

The question was not whether Appellants were ultimately incorrect regarding whether Respondent took money from the practice or even whether they were incorrect as to any of the information presented to Investigator Turner. The question is whether the evidence presented yielded a reasonable inference that Appellants presented knowingly incorrect information or did so in bad faith. *Id.* The evidence presented did not create such a reasonable inference. Appellants respectfully request this Court to reverse the denial of directed verdict and JNOV and find in favor of Appellants as to false imprisonment.

V. THE LOWER COURT ERRED IN FAILING TO GRANT APPELLANTS' MOTIONS FOR DIRECTED VERDICT AND JNOV AS TO MALICIOUS PROSECUTION

A review of the Court's decision in *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 272, 826 S.E.2d 609, 615 (2018) makes it clear that the mere fact that a theft is reported is not sufficient to sustain a cause of action for either false imprisonment or malicious prosecution. Neither does *Sunshine Recycling* support Respondent's argument that Chapman's inclusion of Respondent's name as potentially involved in the incident is sufficient to prove either cause of action.

Seventy pounds of copper wire and fifty pounds of aluminum wire were stolen from Aiken Electric Cooperative in *Sunshine Recycling*. Aiken reported the theft to the local Sheriff. Aiken checked with metal recyclers to see if the thief tried to sell the copper and aluminum and the search led him to Sunshine Recycling.

Sunshine's owner, Joseph Rich, had already pulled copies of Huffman's invoice, receipt, and driver's license when the Sheriff arrived. Rich, a Sunshine employee, told the officer employees working in Sunshine's drop-off area had informed him Huffman was the individual

who brought in the items. Huffman was arrested and detained. Rich never viewed the surveillance video which would have shown Huffman brought in a small quantity of metal while another person came in after Huffman with large quantities. Despite the fact Sunshine provided Huffman's name as the person responsible for the theft and failed to review surveillance footage that could have brought that fact into question, the South Carolina Supreme Court found in favor of Sunshine, concluding Huffman failed to present evidence that Sunshine instituted the proceedings against her or that the proceedings were instituted at the instance of Sunshine.

In contrast, Aiken did not directly challenge the sufficiency of the evidence presented by Huffman. The Court found the testimony of two officers was properly admitted that Aiken's Coordinator, Mark Goss, "imposed a sense of urgency on the case" (*Id.*, 426 S.C. at 2, 87926 S.E.2d at 618), and "wanted to know what I was going to do [with the case]. Was I going to arrest [Huffman], lock her up . . ." *Id.*, 426 S.C. at 280, 826 S.E.2d at 619.

The evidence Respondent presented in the subject action shows that Appellants acted in a manner similar to Sunshine rather than Aiken. The only evidence was that Appellants wanted to determine what had happened to the missing money. (Tr. p. 126, ll. 2-22). Unlike Aiken, Appellants did not request, direct, or command that proceedings be instituted or continued against Respondent. (Tr. 448, ll. 11-16). This is supported by Turner's testimony that Appellants only conveyed they were "eager to have it looked at" (Tr. p. 132, l. 20 - p. 133, l. 1). They responded when Investigator Turner requested information but did not actively participate (Tr. 449, ll. 1-11) and did not object when the charges were dropped (Tr. p. 450, ll. 8-16). Therefore, like Sunshine, directed verdict in favor of Appellants is warranted.

In determining whether probable cause existed "only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should

be considered." *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). The facts must be "regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be." *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 478, 289 S.E.2d 414, 415-16 (1982) (citing 54 C.J.S. *Malicious Prosecution* § 20, p. 977). The undisputed evidence presented was that Appellants honestly believed: (1) a comparison of Eaglesoft with the bank deposits showed money was missing (Tr. p. 355, l. 20-p. 356, l. 4); (2) as testified by Respondent's own expert, the discrepancies in could have been caused by an employee taking money (Tr. p. 359, ll. 10-12); (3) the discrepancies occurred while Respondent was employed as Office Manager with responsibility for the management of the funds (Tr. p. 442, l. 13-p. 443, l. 1; Ex. 9); (4) Respondent took the deposits to the bank (Tr. p. 279, ll. 5-7); and (5) the discrepancies ceased when Respondent was terminated. (Tr. p. 412, ll. 5-7; p. 445, ll. 8-13). As set forth above, Respondent's contention that Appellants manipulated evidence is not supported by the record. As with *Sunshine Recycling*, Appellants brought the information they had gathered and turned it over to Investigator Turner so he could independently determine whether a crime had been committed. Affirming the lower court will create an unprecedented duty upon Appellants which will have a chilling effect on the public to cooperate with law enforcement.

VI. THE LOWER COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF APPELLANTS AS TO DEFAMATION

Respondent admits any statements Appellants made to Angela Hawthorne may have been subject to qualified privilege but overlooks that Hawthorne admitted Respondent had already told her she was accused of theft, before Hawthorne confronted Dr. Chapman. The element of publication is not met for defamation if the plaintiff is the one disseminating the statement. *See State v. Syphrett*, 27 S.C. 29, 2 S.E. 624 (1887) (finding element of publication not met where plaintiff asked his wife to read a letter from the defendant for him); *Fonville v. McNease*, 319

S.C.L. (Dud.) 303 (1838) (finding where defamed party makes public a letter sent by the originator containing defamatory materials, "the defendant is not answerable for the consequences-for the act of publication is not his.")

Respondent's argument that Dr. Chapman and Jim Nasim did not have a common interest at the time they spoke overlooks the fact the duty to communicate "is not a legal one, but only a moral or social duty of imperfect obligation." *Conwell v. Spur Oil Co. of Western S.C.*, 240 S.C. 170, 125 S.E.2d 270 (1962). Even taken in the light most favorable to Respondent, Dr. Chapman expressed to Respondent's new employer a concern regarding his former employee for which a social duty existed if she had taken money from the practice.

Respondent does not argue that communications with Brian Smith were not privileged. Smith admitted in his testimony that Chapman's communication to him regarding Respondent involved Chapman's concern about the lawsuit filed by Respondent except to say the communications occurred after the charges against Respondent had been dismissed. (Tr. p. 224, ll. 10-16). In *Texas Company v. C.W. Brewer & Company,* 180 S.C. 325, 185 S.E. 623 (1936), the South Carolina Supreme Court established that pleadings, although they may constitute libel on their own, are absolutely privileged if they are relevant and legitimately related to the issues and inquiry at trial. Chapman's discussion about the lawsuit and his concerns would not constitute defamation.

VII. THE LOWER COURT ERRED IN ALLOWING RESPONDENT TO PRESENT PUNITIVE DAMAGES TO THE JURY AFTER INCLUDING PUNITIVE DAMAGES AS A COMPONENT OF COMPENSATORY DAMAGES

Respondent notes that Appellants requested a bifurcated trial, but do not refute that during closing arguments in the first stage, Respondent's counsel asked the jury to "send a message that this kind of conduct is not acceptable in the State of South Carolina" (Tr. p. 522, ll. 2-5) or that the

jury's verdict reflected that it was sending this message in the initial stage. (R. -- Verdict form). Punitive damages should not be awarded where they duplicate a component of compensatory damages. *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 409 (2003) citing Restatement (Second) of Torts § 908, Comment *c,* p. 466 (1977). It was error to allow Respondent to present punitive damages to the jury a second time after asking them to send a message to Appellants.

VIII. THE LOWER COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF APPELLANTS AS TO PUNITIVE DAMAGES

Respondent does not address the heightened burden for punitive damages of proving by clear and convincing evidence Appellants' misconduct was willful, wanton, or with reckless disregard for her rights. S.C. Code Ann. § 15-33-135 (2004); *Taylor v. Medenica,* 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). Clear and convincing evidence of actual malice is required to warrant an award of punitive damages on a defamation cause of action. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 466-67, 629 S.E.2d 653, 665 (2006) (explaining that to recover punitive damages on a defamation cause of action, the plaintiff "must prove by clear and convincing evidence that the defendant acted with constitutional actual malice, *i.e.*, the defendant published the statement with knowledge it was false or with reckless disregard of whether it was false or not"). Respondent failed to present clear and convincing evidence that Appellants acted willfully, wantonly, or in reckless disregard for her rights or that Appellants acted with actual malice.

IX. RESPONDENT'S ARGUMENT OVERLOOKS THE DUE PROCESS VIOLATION IN ALLOWING HOLLAND TO TESTIFY IN THE PUNITIVE DAMAGE STAGE OF THE TRIAL

Respondent fails to address the necessary application of the protections of the Due Process Clause of the U.S. Constitution to punitive damages. *Atkinson v. Orkin Exterminating Co.*, 361

S.C. 156, 164, 604 S.E.2d 385, 389 (2004); *see also BMW of North America v. Gore,* 517 U.S. 559, 568 (1996). Because civil defendants are not accorded the protections afforded criminal defendants, punitive damages pose an acute danger of arbitrary deprivation of property, which is heightened when the decisionmaker is presented with evidence having little bearing on the amount that should be awarded. *Campbell, supra.,* 538 U.S. at 409.

Appellants did not object to Althea Holland's testimony because it was unfavorable, but rather because it caused the degree of reprehensibility of Appellants' conduct to be unfairly inflated by allowing the jury to consider unrelated evidence regarding the general bookkeeping procedures of the dental practice. This, in turn, unfairly inflated the amount of punitive damages.

Holland also reversed her testimony from her proffered testimony that she was always paid for the work she performed, even when paid in cash, to state she wasn't always paid what she was owed. Appellants objected to her testimony prior to its proffer, arguing that it was not relevant to the punitive factors (Tr. p. 583, l. 24- 583, l. 15; p. 591, l. 3- p. 592, l. 6; p. 592, ll. 15-25; p. 603, l. 19-p. 604, l. 24). The former employee had already testified that she didn't enter payments into Eaglesoft (Tr. p. 324, ll. 18-19), didn't know about the Eaglesoft reports (Tr. p. 324, l. 24-p. 325, l. 2), and wasn't told why Respondent was terminated (Tr. p. 327, ll. 6-8). When Respondent proffered her testimony, it was not relevant to any of the punitive factors. (Tr. p. 611, l. 24-p. 634, l. 13).

Respondent does not address the inconsistency in the lower court's ruling, initially recognizing general bookkeeping procedures of the dental practice were not relevant to the issues of punitive damages (Tr. p. 595, ll. 22-24), that Holland testified in the liability stage and could have been asked about cash payments at that time, and (Tr. p. 596, ll. 18-25) relevant testimony was limited to "like conduct". The lower court correctly stated, "any testimony about how the

books were handled or whether you bartered with the barber down the road for services doesn't have any relation to the conduct, similar past conduct" and, therefore, was not relevant to the issues set forth in *Gamble* or S.C. Code § 15-32-520. (Tr. p. 606, l. 3-p. 607, l. 25).

The lower court then inconsistently ruled Holland could be questioned about being paid in cash for services and whether those transactions were zeroed out in Eaglesoft. (Tr. p. 634, ll. 18-24). These bookkeeping practices were not similar conduct to Respondent's claims of false imprisonment, malicious prosecution, and defamation as noted originally by the lower court. (Tr. p. 595, ll. 22-24). *See Campbell,* 538 U.S. at 409 (defendant's dissimilar acts, independent from acts upon which liability was premised, may not serve as basis for punitive damages). Punishment on the basis of dissimilar acts creates the possibility of multiple punitive damages awards for the same conduct. *Id.* at 422-423.

Appellants renewed their objection and argued the introduction of the testimony violated Appellants' due process rights (Tr. p. 638, l. 24- 639, l. 24; p. 640, l. 17-641, l. 2). Nevertheless, the lower court allowed the former employee to testify before the jury. (R. Tr. p. 634, l. 18-p. 638, l. 11; p. 641, ll. 3-8) Holland testified regarding bookkeeping practices and how she was paid when customers made cash payments. (Tr. p. 654, ll. 3-25). This testimony suggested improper business practices regarding how Holland was paid and had nothing to do with the claims raised by the Respondent. This was highly prejudicial because it allowed the jury to punish Appellants for conduct unrelated to the conduct in the present case and unfairly exaggerated the degree of reprehensibility of Appellants' conduct. *Atkison v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 604 S.E.2d 385 (2004).

The lower court erred in allowing Holland to testify and Appellants respectfully request this Court to reverse the punitive damages or in the alternative to reduce the punitive damages

award.

X. THE *GAMBLE* AND *GORE* FACTORS DO NOT JUSTIFY THE VERDICT AS TO PUNITIVE DAMAGES

Respondent asserts that the degree of reprehensibility was supported by evidence that it "tricked" third parties like Doug Schmieding. Again, as set forth above, the actual evidence presented is that Schmieding prepared a letter based on the documents he reviewed and the letter clearly stated the parameters on which his calculation was based. Schmieding's letter was provided to Investigator Turner in its original form. If Turner assumed that other documents in the same packet of information were also prepared by Schmieding, that is not imputable to Appellants, as there is no evidence they told him there were two pages to the Schmieding letter, nor were these the only two pages presented as the time.

Reprehensibility "reflects the view that some wrongs are more blameworthy than others." *BMW of North America v. Gore,* 517 U.S. 559, 576-577 (1996). A text from Dr. Chapman to Respondent after the charges against her were dismissed does not evidence a degree of reprehensibility. To the contrary, Dr. Chapman testified he sent the text in an effort to make peace with Respondent. (Tr. p. 453, ll. 2-11).

Respondent provides no support from the record that "the evidence established that Appellants sought to have Respondent's liberty taken from her and to cost her limited financial resources to defend the charges and get treatment for the inevitable emotional distress and humiliation to have to tell her children she had been arrested." (Respondent brief, p. 37) The only evidence in the record is that Appellants went to the police because they wanted to "get to the bottom of what was going on." (Tr. p. 448, ll. 17-25).

Respondent argues the duration of events supports a finding of a high degree of culpability. Respondent does not cite to specific evidence in the record as to the duration of any particular

conduct but vaguely argues punitive damages were supported because Appellants took the time to confirm discrepancies existed and that they had ceased following Respondent's termination before going to the police. This is, in fact, evidence that Appellants were not indifferent to Respondent but wanted to confirm their initial findings before asking for police review.

The lower court may not rely upon the consideration of the ratio of punitive damages to actual damages to justify an otherwise excessive punitive damages award to justify an otherwise excessive punitive damages award. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 588, 686 S.E.2d 176, 185 (2009).

Respondent argues there are no comparable cases regarding punitive damages "in which a defendant has blatantly violated the privacy rights of countless others for decades." Regardless of how Respondent wants to characterize Appellants' actions, that statement does not describe this case. There is no evidence of similar actions by the Appellants involving other individuals nor that the events alleged continued for "decades" as alleged by Respondent on page 39 of her Brief. Respondent was arrested approximately a year after she was terminated by Appellants, with the time the Sheriff's office spent independently investigating the matter comprising many months of that time.

This case is comparable to the admonition in *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 409 (2003) that punitive damages should not be awarded where they duplicate a component of compensatory damages. In comparing the present case to *Campbell, supra*, 538 U.S. 408 (2003), it is clear that the compensatory damages awarded were likely based on a component that was duplicated in the punitive damages award.

XI. APPELLANTS' POST-TRIAL MOTIONS WERE TIMELY MADE

Rule 49, SCRCP addresses special verdicts and general verdicts accompanied by answers to interrogatories. This Rule does not address motions for judgment notwithstanding the verdict or the issue of excessive damages awarded by a jury.

Camden v. Hilton, 360 S.C. 164, 600 S.E.2d 88 (Ct. App. 2004), cited by Respondent, addresses verdicts that are erroneous as to form. A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice[,] or prejudice." *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "In considering a motion for new trial *nisi*, the trial court must evaluate the adequacy of the verdict in light of the evidence presented." *Id.* Appellants' Motions for Judgment Notwithstanding the Verdict or, alternatively, for a new trial were made under Rules 50(b) and 59 which require such motions to be made within 10 days after the jury is discharged. Appellants motions were timely made.

XII. THE LOWER COURT ERRED IN FAILING TO FIND THE JURY AWARDED EXCESSIVE DAMAGES

Respondent does not dispute the jury awarded $70,590 in special damages (R. Verdict Form) despite the fact Respondent only presented and requested a total of $46,108.79. (Tr. p. 515, l. 18-p. 518, l. 20). This award was in addition to the general damage award of $31,827. If the jury verdict is not overturned in its entirety, the award should be reduced to reflect the damages presented.

Respondent also does not refute that the jury awarded $15,000 in special damages for defamation when the only special damages Respondent presented were related to her being moved temporarily from the front desk at her new job. The damages awarded for the other causes of action likely encompassed all of the damages awarded for defamation and should be reduced accordingly.

Respondent claimed $7,395 in wage loss and the cost of additional driving to and from the call center. Special damages should not have been awarded as Respondent self-published the information regarding her arrest to her employer, but at the very least they should be reduced to reflect the $7,395 presented. Therefore, Appellants respectfully request this Court to reduce the verdict for defamation if the verdict is not overturned in its entirety.

As set forth above, there is no cause of action for false imprisonment under these circumstances. The arrest was made on a facially valid warrant with no false statements or reckless omissions of fact. Moreover, Investigator Turner spent three months investigating the case prior to making a decision to arrest Respondent. Turner controlled the investigation and there is no evidence Appellants pushed for an arrest or exerted any influence over him. Therefore, Appellants respectfully request this Court reduce the verdict for false arrest if the verdict is not overturned in its entirety.

Appellants demonstrated probable cause to take their concerns regarding a breach of trust to the police for review. Appellants did not attempt to direct the investigation or take any proactive steps to further it. Appellants only provided additional information when requested. There is no evidence Appellants objected to the dismissal of the charges against Respondent and there is no evidence of malice. Therefore, Appellants respectfully request this Court to reduce the verdict for malicious prosecution if the verdict is not overturned in its entirety.

The jury awarded $175,000 in punitive damages. This is excessive based on the facts of the case. None of the factors to be considered for a punitive damages award supported such a verdict. It is likely the jury considered the failings of other non-parties (like Turner) in awarding the excessive punitive damages award. Appellants therefore respectfully request this Court reverse

the jury's finding of punitive damages and reduce the punitive damages award to either zero or a minimal amount that reflects the conduct in this case.

CONCLUSION

Respondent attempts to draw inferences based on assumptions made by Investigator Turner or her own conclusions as to Appellants motives rather than the evidence presented regarding Appellants' honest belief at the time they went to the police. These arguments ignore the applicable law and overlook the fact the lower court can only consider the reasonable inferences a jury could draw from the evidence presented.

The evidence and testimony presented at trial was that (1) Dr. Chapman provided Investigator Turner with his good faith belief of the facts; (2) Dr. Chapman did not induce or direct the police to unlawfully detain or arrest the Respondent; and (3) the facts within Dr. Chapman's knowledge, in particular the fact that all discrepancies ceased after her termination, would have lead a reasonable person to believe Respondent was responsible for the missing money. As the Court held in *Sunshine Recycling, supra.*, it is irrelevant whether Appellants were ultimately correct in their belief or whether they could have investigated further and come to a different conclusion. Appellants motions for directed verdict and JNOV should, therefore, have been granted as to false imprisonment and malicious prosecution.

Likewise, as to punitive damages, there was no reasonable inference that Appellants were willful, wanton, or reckless in their actions. It was improper to allow a second punitive damages stage when the jury was asked to "send a message" when it awarded compensatory damage and then a second time at the punitive damages stage. An award of punitive damages does not comport with due process and Appellants request that the award be reversed or reduced to reflect the evidence presented.

Finally, the lower court erred in allowing defamation to go to the jury when Respondent self-published the statements and the statements were privileged. Appellants, therefore, respectfully request that the jury verdict be reversed as to all causes of action, or in the alternative, reduced to reflect the evidence presented.

In the alternative, the verdict should be reduced to reflect the evidence as to all causes of action and punitive damages. Respondent does not refute the jury awarded special damages in excess of the amount presented or that the damages awarded for defamation exceeded the evidence presented.

Respectfully submitted,

July 7, 2025

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Case No. 2019-CP-23-01522
Appellate Case No. 2024-000931

Samantha Katchick Respondent,

v.

Marshall Alexander Chapman, DMD, Brooke I. Chapman, Chapman Dental, P.A., Douglas P. Schmieding, CPA, Jennings Cook & Co., CPAs, PA, and Earl A. Simmons, CPA, Defendants,

of which Marshall Alexander Chapman and Chapman Dental, P.A. are the Appellants.

PROOF OF SERVICE

I, Peggy McComb, certify that I have served a copy of Appellants' Initial Reply Brief *via email* on July 7, 2025 to counsel of record:

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